CHAPTER 5

Gas, Heat, Water, Sewerage Collection and Disposal, and Street Railway Companies

ARTICLE 1

General Provisions

**SECTION 58‑5‑10.** Definitions.

When used in Articles 1, 3, and 5 of this chapter:

(1) The term “commission” means the Public Service Commission.

(2) The term “corporation” includes joint stock companies, corporations, associations and commissions and boards, whether public or private, having any powers or privileges not possessed by individuals or partnerships.

(3) The term “person” includes an individual, a firm, and a copartnership.

(4) The term “public utility” includes every corporation and person delivering natural gas distributed or transported by pipe, and every corporation and person furnishing or supplying in any manner heat (other than by means of electricity), water, sewerage collection, sewerage disposal, and street railway service, or any of them, to the public, or any portion thereof, for compensation; provided, however, that a corporation or person furnishing, supplying, marketing, and/or selling natural gas at the retail level for use as a fuel in self‑propelled vehicles is not a public utility by virtue of the furnishing, supplying, marketing, and/or selling of natural gas and a corporation or person whose only purpose is the furnishing, supplying, marketing, and/or selling of treated effluent for irrigation purposes is not a public utility by virtue of the furnishing, supplying, marketing, and/or selling of treated effluent if the effluent is not permitted for consumption by a regulatory agency.

(5) The term “public or any portion thereof” means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or any political subdivision of the State for which the service is performed or to which the commodity is delivered and whenever such corporation or person performs a service or delivers a commodity to the public, or any portion thereof, for which compensation is required such corporation or person is hereby declared to be a public utility subject to the jurisdiction and regulation of the Public Service Commission, the Office of Regulatory Staff, and Articles 1, 3, and 5 of this chapter to the extent of its activities within the State.

(6) The term “regulatory staff” means the executive director or the executive director and employees of the Office of Regulatory Staff.

HISTORY: 1962 Code Section 58‑101; 1952 Code Section 58‑101; 1942 Code Section 8209; 1932 Code Section 8252; Civ. C. ‘22 Section 1045; Civ. C. ‘12 Section 922; 1910 (16) 564; 1922 (32) 938; 1935 (39) 25; 1959 (51) 375; 1994 Act No. 389, Section 1, eff May 10, 1994; 2006 Act No. 318, Section 5, eff May 24, 2006; 2007 Act No. 83, Section 9, eff June 19, 2007.

CROSS REFERENCES

Exemption from regulation for certain utility services, see Section 58‑3‑240.

Provisions governing regulation of transportation by motor vehicles for compensation as not affecting the commission’s jurisdiction under this chapter, see Section 58‑23‑20.

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

Library References

Public Utilities 101.

Westlaw Topic No. 317A.

C.J.S. Corporations Sections 8 to 13, 89 to 90.

C.J.S. Public Utilities Sections 1, 3, 6, 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 30, Licensing.

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1. Construction with other laws

The statute vesting public service commission with power to regulate rates and service of every public utility in the state and to fix such rates and reasonable standards, classifications, regulations, practices, and measurements of services to be furnished, imposed, or observed and followed by every public utility in state, and the statute defining term “public utility” which was enacted in same year, must be construed together. Code 1932, Sections 8248, 8252 (See Code 1942, Sections 8204, 8209). Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

2. Public utility

Statute governing utility providers not engaged in business exclusively as a public utility is intended to subject the provider to regulation by the Public Service Commission (PSC) as a utility with respect to its activities in the provision of utility services. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Public Utilities 112

The statute vesting public service commission with power to regulate rates and service of every public utility in the state and to fix such just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed and followed by every public utility in state, refers to those companies which are classified as “public utilities” in contradistinction to “transporting and transmitting corporations.” Code 1932, Sections 8248, 8251, 8252. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

3. Gas manufacturing

A lessor of real and personal property, consisting of gas manufacturing plant and distributing system, is not a corporation, nor public utility under jurisdiction of railroad commissioners. Columbia Gaslight Co. v. Mobley (S.C. 1927) 139 S.C. 107, 137 S.E. 211.

4. Operating motor vehicles for hire

Operating motor vehicles. Under this chapter the business of operating motor vehicles for hire is not within the Commission’s regulatory jurisdiction. Shealy v. Taylor (S.C. 1924) 128 S.C. 365, 122 S.E. 491.

5. Railways

The term “public utilities” as defined in this section [Code 1962 Section 58‑101] does not include railroads. Southern Ry. Co. v Public Service Comm., 195 SC 247, 10 SE2d 769 (1940). City of Columbia v South Carolina Public Serv Com’n, 242 SC 528, 131 SE2d 705 (1963).

The rule of public service commission requiring that no rate, toll, charge, fare, nor service of any public utility under regulation of commission should be deemed approved or consented to by commission until such rate, toll, etc., had been affirmatively approved, which rule was promulgated under authority of statute vesting commission with power to regulate rates and service of every public utility in the state and to fix such just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed or observed and followed by every public utility in state, refers only to “public utilities” as defined in statute, and does not refer to railways. Code 1932, Sections 8248, 8251, 8252. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

6. Sewer service

A sewer company created to serve a homeowners’ association had standing to apply for rate establishment by the Public Service Commission, even though the association’s master deed set rates for sewer service, since the association had been dissolved through bankruptcy and the sewer company was operating the system in fact, thus giving it a real, material, and substantial interest in the matter. Anchor Point, Inc. v. Shoals Sewer Co. (S.C. 1992) 308 S.C. 422, 418 S.E.2d 546, rehearing denied. Municipal Corporations 710

A sewer company created to serve a homeowners’ association would be presumed to be a public utility within the meaning of Section 58‑5‑10, since Reg. 103‑502.2(1991) provides that such a sewer company “may be found” not to be a utility. Anchor Point, Inc. v. Shoals Sewer Co. (S.C. 1992) 308 S.C. 422, 418 S.E.2d 546, rehearing denied.

7. Street railway service

Code 1962 section 58‑1 will confer jurisdiction on the Commission after a complete substitution of buses for streetcars is made; and the power company, after complete substitution, will be a corporation “furnishing in some manner street railway service to the public for compensation,” so that the Commission will have jurisdiction also under chapter. City of Columbia v. Pearman (S.C. 1936) 180 S.C. 296, 185 S.E. 747.

8. Review

As railroads are not within statutory definition of public utilities, statute providing for appeals by utilities provides no methods for review of public service commission’s decisions relating to railroads. Code 1962, Sections 58‑101, 58‑124. City of Columbia v. South Carolina Public Service Commission (S.C. 1963) 242 S.C. 528, 131 S.E.2d 705. Railroads 9(2)

On appeal from judgment requiring public service commission to abate its order refusing the proposed discontinuance by railroad of its agency at a particular station, where point was not made in court of common pleas nor made by any exception on appeal that statute under which the action to review the order was purportedly commenced did not cover orders relating to railroads but applied only to other public utilities, the point could be considered as “waived” and could be disregarded by Supreme Court. Code 1932, Sections 8251‑8255. Southern Ry. Co. v. Public Service Commission (S.C. 1940) 195 S.C. 247, 10 S.E.2d 769.

Review of an order of the public service commission relating to railroads is not provided for by statute which provides for review by court of common pleas, with right of appeal, of orders of the commission relating to public utilities, but which does not include railroads in its definition of the term “public utilities”. Code 1932, Sections 8252‑8255. Southern Ry. Co. v. Public Service Commission (S.C. 1940) 195 S.C. 247, 10 S.E.2d 769.

**SECTION 58‑5‑20.** Applicability to a business not exclusively a public utility.

Any corporation or person not engaged in business exclusively as a public utility shall be governed by the provisions of Articles 1, 3 and 5 of this chapter in respect only of the public utility owned, leased, operated or managed by it or him and not in respect to any other business or pursuit.

HISTORY: 1962 Code Section 58‑102; 1952 Code Section 58‑102; 1942 Code Section 8209; 1932 Code Section 8252; Civ. C. ‘22 Section 1045; Civ. C. ‘12 Section 922; 1910 (16) 564; 1922 (32) 938; 1935 (39) 25.

Library References

Public Utilities 112.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 2, 11, 13, 170.

NOTES OF DECISIONS

Jurisdiction 1

1. Jurisdiction

Public Service Commission (PSC) properly declined to exercise jurisdiction over owner of utility providing water and sewer services when considering request for increase in rates and charges; owner did not satisfy statutory definition of “public utility,” statute governing utility providers not engaged in business exclusively as a public utility did not provide jurisdictional basis, and any transaction between owner and utility that was unreasonable or not done at arm’s length would be properly excludable from rate base. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Municipal Corporations 712(8); Water Law 2201(1)

**SECTION 58‑5‑30.** Exemption of public utilities owned or operated by municipalities and regional transportation authorities.

Except as provided in Article 23, Chapter 9 of Title 58, nothing contained in Articles 1, 3, and 5 of this chapter shall give the commission or the regulatory staff any power to regulate or interfere with public utilities owned or operated by or on behalf of any municipality or regional transportation authority as defined in Chapter 25 of this title or their agencies.

HISTORY: 1962 Code Section 58‑103; 1952 Code Section 58‑103; 1942 Code Section 8213; 1932 Code Section 8262; 1922 (32) 938; 1923 (33) 183; 1935 (39) 25; 1985 Act No. 169, Section 1, eff July 1, 1985; 2002 Act No. 360, Section 1B, eff July 1, 2002; 2006 Act No. 318, Section 6, eff May 24, 2006.

CROSS REFERENCES

Establishment of rents, rates and the like by joint agency pursuant to Joint Municipal Electric Power and Energy Act, see Section 6‑23‑10 et seq.

Regulation of electrical utilities, see Section 58‑27‑10 et seq.

Library References

Carriers 10.

Public Utilities 112.

Westlaw Topic Nos. 70, 317A.

C.J.S. Carriers Section 330.

C.J.S. Public Utilities Sections 2, 11, 13, 170.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 30, Licensing.

Attorney General’s Opinions

Commission without authority to regulate rates of municipally owned public utilities. 1963 Op.Atty.Gen. No. 1492, p. 49, Feb. 25, 1963 (1963 WL 8246).

NOTES OF DECISIONS

In general 1

1. In general

Reading Sections 5‑7‑60 and 58‑5‑30 together, it is concluded that general assembly intended for municipalities to be able to extend their services beyond corporate limits without interference from Public Service Commission and to enjoin city from extending its water and sewer services beyond its corporate limits solely because Commission has previously given another entity exclusive rights to provide those services in affected area will indirectly confer upon Commission power which general assembly has seen fit to deny. Glendale Water Corp. of Florence, Inc. v. City of Florence (S.C. 1980) 274 S.C. 472, 265 S.E.2d 41.

**SECTION 58‑5‑35.** Exemption of certain public utilities and pipeline companies from regulation by Commission.

Public utilities and pipeline companies engaged in the extraction, processing, distribution, or sale of landfill gas (LFG) derived from sanitary landfills, which provide this gas to no more than twenty customers from any single landfill, are exempt from regulation by the commission.

HISTORY: 1989 Act No. 162, Section 3, eff June 5, 1989.

Library References

Gas 9.

Public Utilities 112.

Westlaw Topic Nos. 190, 317A.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 19.

C.J.S. Public Utilities Sections 2, 11, 13, 170.

**SECTION 58‑5‑40.** Exemption of sellers at wholesale of water or water‑borne waste disposal services to municipality.

Any water supplier who sells water wholesale to a municipality and any supplier of water‑borne waste disposal services who renders such services on a wholesale basis to a municipality shall not be under the jurisdiction of the South Carolina Public Service Commission or the Office of Regulatory Staff as to such sale of water or services.

HISTORY: 1962 Code Section 58‑107; 1969 (56) 444; 1976 Act No. 556; 2006 Act No. 318, Section 7, eff May 24, 2006.

Library References

Public Utilities 112.

Water Law 1018.

Westlaw Topic Nos. 317A, 405.

C.J.S. Public Utilities Sections 2, 11, 13, 170.

C.J.S. Waters Sections 102, 482 to 487, 491 to 512, 516 to 518, 520 to 530.

**SECTION 58‑5‑50.** Exemption of certain term contracts from declaration of unreasonableness by Commission.

Nothing contained in Articles 1, 3 and 5 of this chapter shall authorize the Commission to declare any rate, toll, charge or fare contained in any contract voluntarily entered into prior to March 24, 1922 for a term of years by and between any public utility and any person or corporation, whether public, private or municipal, for the sale and purchase of gas, or other commodity, the subject of such contract, to be unreasonable and noncompensatory without the consent of both parties to such contract.

HISTORY: 1962 Code Section 58‑104; 1952 Code Section 58‑104; 1942 Code Section 8213; 1932 Code Section 8262; 1922 (32) 938; 1923 (33) 183; 1935 (39) 25.

Library References

Gas 1, 14.3(1).

Public Utilities 115, 119.1.

Westlaw Topic Nos. 190, 317A.

C.J.S. Gas Sections 1, 7 to 10, 12 to 13, 15 to 19, 71, 73 to 74, 76, 79 to 80.

C.J.S. Public Utilities Sections 4 to 5, 11, 13 to 36, 74 to 75, 175 to 176.

**SECTION 58‑5‑60.** Exemption of certain rates, tolls, charges, or fares set by franchise or ordinance from declaration of unreasonableness by Commission.

The Commission shall have no power to declare any rate, toll, charge or fare or any maximum rate, toll, charge or fare contained in, or provided for, by any franchise or ordinance, whereby any municipality, prior to March 24, 1922, has given any public utility the right to use the streets or public places of such municipality for any purpose, to be unreasonable and noncompensatory when such ordinance or franchise has been, prior to March 24, 1922, accepted by such public utility.

HISTORY: 1962 Code Section 58‑105; 1952 Code Section 58‑105; 1942 Code Section 8213; 1932 Code Section 8262; 1922 (32) 943; 1923 (33) 183; 1935 (39) 25.

Library References

Public Utilities 123, 145.1.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5, 11, 13, 16, 26, 28 to 32, 70 to 73, 159 to 166, 169 to 171, 177 to 178.

NOTES OF DECISIONS

In general 1

1. In general

Act Feb. 3, 1923, 33 St. at Large, p. 183, giving railroad commission authority to regulate, supervise, and control public utilities, did not preclude city from instituting proceeding in mandamus to require street railroad to operate lines beyond city limits, as required by franchise. City of Spartanburg v. South Carolina Gas & Elec. Co. (S.C. 1924) 130 S.C. 125, 125 S.E. 295.

ARTICLE 3

Regulation of Rates and Services Generally

**SECTION 58‑5‑210.** Supervision and regulation of rates and service.

The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every “public utility” as herein defined.

HISTORY: 1962 Code Section 58‑111; 1952 Code Section 58‑111; 1942 Code Section 8210; 1932 Code Section 8253; Civ. C. ‘22 Section 1046; Civ. C. ‘12 Section 923; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25.

CROSS REFERENCES

Public Service Commission regulations pertaining to gas systems, see S.C. Code of Regulations R. 103‑400 et seq.

Public Service Commission regulations pertaining to sewage utilities, see S.C. Code of Regulations R. 103‑500 et seq.

Public Service Commission regulations pertaining to water utilities, see S.C. Code of Regulations R. 103‑700 et seq.

Library References

Public Utilities 114, 122.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5 to 9, 11, 13, 28, 74 to 75, 104 to 109, 202 to 207.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 31, Rates and Charges.

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1. In general

It is incumbent upon the Public Service Commission to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also distribute fairly the revenue requirements, considering the price at which the company’s service is rendered and the quality of that service. Seabrook Island Property Owners Ass’n v. South Carolina Public Service Com’n (S.C. 1991) 303 S.C. 493, 401 S.E.2d 672. Public Utilities 123

2. Constitutional issues

South Carolina statute, which allows public utilities selling electricity and gas to put into effect a temporary rate increase, without any prior hearing to determine reasonableness thereof, by filing of an undertaking, satisfactory to South Carolina Public Service Commission, guaranteeing to repay all customers any part of rate increase which is not thereafter approved by the Commission, does not violate due process clause, notwithstanding claim that practical effect of this procedure was to deprive indigent persons of electric and gas service because this group would be unable to pay increased costs of these essential services without depriving itself of other more vital necessities of life. Code S.C.1962, Sections 24‑31 et seq., 58‑111 et seq.; U.S.C.A.Const. Amend. 14; 28 U.S.C.A. Sections 2281, 2284. Holt v. Yonce, 1973, 370 F.Supp. 374.

3. Rate‑setting

In determining whether to grant request to increase rates and charges for water and sewer services, Public Service Commission (PSC) properly refused to attribute building incentive fees received by utility’s owner to utility as a contribution in aid of construction to utility; evidence indicated that utility did not receive any monies from building incentive fees currently collected by owner, and none of those fees related to utility’s provision of water and sewer services. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Municipal Corporations 712(8); Water Law 2201(4)

Public Service Commission (PSC) has wide latitude to determine its methodology in rate‑setting, and there is no abuse of discretion where substantial evidence supports the finding of a just and reasonable rate. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Public Utilities 122

4. 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

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

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

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

5. Expenses

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

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

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)

6. Payments to Affiliates

When examining utility’s payment to an affiliate for purpose of determining whether rate increase is reasonable, Public Service Commission (PSC) must review and analyze intercompany dealings and determine if they are reasonable; if there is an absence of data and information from which the reasonableness and propriety of the services rendered and the reasonable cost of rendering such services can be ascertained, the allowance is properly refused. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Public Utilities 128

Expenses of a public utility are normally presumed to be reasonable when incurred in good faith, for purposes of determining whether rate increase is reasonable; however, when payments are made to an affiliate, a mere showing of actual payment does not establish a prima facie case of reasonableness. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Public Utilities 128

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. Regulations

South Carolina recognizes that a compliance by an electric company with pertinent rules and regulations of the Public Service Commission with respect to requirements for transmission of electric power is at least some evidence of the exercise of due care by the company. Code S.C.1952, Sections 24‑112, 58‑111; Rules and Regulations, Electric Utilities Rules, rule 14, Vol. 7, Code S.C.1952. Berry v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1960) 273 F.2d 572.

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

9. Jurisdiction

Public Service Commission (PSC) properly declined to exercise jurisdiction over owner of utility providing water and sewer services when considering request for increase in rates and charges; owner did not satisfy statutory definition of “public utility,” statute governing utility providers not engaged in business exclusively as a public utility did not provide jurisdictional basis, and any transaction between owner and utility that was unreasonable or not done at arm’s length would be properly excludable from rate base. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Municipal Corporations 712(8); Water Law 2201(1)

The Court of Common Pleas had jurisdiction to enforce an alleged contractual right to cost‑free sewer service, since the action was not one dealing with the fixing of rates for a public utility under Section 58‑5‑210. Lindler v. Baker (S.C.App. 1984) 280 S.C. 130, 311 S.E.2d 99.

Although exclusive right to regulate rates and charges for public utility has been vested in Public Service Commission by Section 58‑5‑210, court of common pleas had jurisdiction over complaint by seller of stock of water and sewer company alleging that consideration for sale was, among other things, $110,000 in cash plus agreement that defendant would not charge or collect connection or tap‑on fees, and alleging that defendant was charging such fees, since at time of purchase, water and sewer system was not regulated by Public Service Commission, and fact that it came to be regulated at later date did not mean that court was determining rates. Martin v. Carolina Water Services, Inc. (S.C. 1979) 273 S.C. 43, 254 S.E.2d 52.

10. Res judicata

Statute gives Public Service Commission exclusive right to regulate utility rates, but where utility customer did not contest reasonableness of fees, instead asserting its agreement to pay fees was fraudulently obtained, argument that it could not have raised issue in prior suits because only Public Service Commission, and not Circuit Court could determine validity of fees, was without merit; therefore, action was barred by doctrine of res judicata. Hilton Head Center of South Carolina, Inc. v. Public Service Com’n of South Carolina (S.C. 1987) 294 S.C. 9, 362 S.E.2d 176.

11. Sufficiency of evidence

Evidence supported decision of Public Service Commission (PSC) that land leases from utility’s owner to utility providing sewage services were both necessary and reasonable, and thus PSC could consider land leases in determining request to approve increase in rates and charges, although utility entered into leases without prior PSC approval; evidence indicated that objecting parties did not challenge reasonable rental value of property and did not challenge claim that additional holding cell for treated effluent was necessary. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Municipal Corporations 712(8)

12. Review

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 58‑5‑220.** Standardized system of accounts.

The Office of Regulatory Staff may, in its discretion, subject to approval of the commission:

(a) establish a standardized system of accounts to be kept by the public utilities subject to its jurisdiction;

(b) classify such public utilities and establish a standardized system of accounts for each class; and

(c) prescribe the manner in which such accounts shall be kept.

HISTORY: 1962 Code Section 58‑112; 1952 Code Section 58‑112; 1942 Code Section 8210; 1932 Code Section 8253; Civ. C. ‘22 Section 1046; Civ. C. ‘12 Section 923; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 2006 Act No. 318, Section 8, eff May 24, 2006.

Library References

Public Utilities 116.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Section 179.

**SECTION 58‑5‑230.** Examination of books and accounts.

The books and accounts of all public utilities shall be subject to the examination of the regulatory staff at any time.

HISTORY: 1962 Code Section 58‑113; 1952 Code Section 58‑113; 1942 Code Section 8210; 1932 Code Section 8253; Civ. C. ‘22 Section 1046; Civ. C. ‘12 Section 923; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 2006 Act No. 318, Section 9, eff May 24, 2006.

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.

**SECTION 58‑5‑240.** Filing schedules of proposed rates and the like; effective date.

(A) Whenever a public utility desires to put into operation a new rate, toll, rental, charge, or classification or a new regulation, it shall give to the commission and the regulatory staff not less than thirty days’ notice of its intention to file and shall, after the expiration of the notice period, then file with the commission and provide to the regulatory staff a schedule setting forth the proposed changes. Subject to the provisions of subsections (D) and (E) of this section, the proposed changes must not be put into effect in full or in part until approved by the commission.

(B) After the schedule has been filed, the Commission shall, after notice to the public such as the Commission may prescribe, hold a public hearing concerning the lawfulness or reasonableness of the proposed changes.

(C) The Commission shall rule and issue its order approving or disapproving the changes in full or in part within six months after the date the schedule is filed.

(D) Should the Commission determine that it cannot, due to circumstances reasonably beyond its control, issue such order within the six‑month period prescribed by this section, the Commission, may, by order, extend the six‑month period for an additional five days. Any such order shall set forth such circumstances and make appropriate findings concerning the need for the extended period.

If the Commission rules and issues its order within the time aforesaid, and the utility shall appeal from the order, by filing with the Commission a petition for rehearing, the utility may put the rates requested in its schedule into effect under bond only during the appeal and until final disposition of the case. Such bond must be in a reasonable amount approved by the Commission, with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons, corporations, or municipalities, respectively, entitled to the amount of the excess, if the rate or rates put into effect are finally determined to be excessive; or there may be substituted for the bond other arrangements satisfactory to the Commission for the protection of parties interested. During any period in which a utility shall charge increased rates under bond, it shall provide records or other evidence of payments made by its subscribers or patrons under the rate or rates which the utility has put into operation in excess of the rate or rates in effect immediately prior to the filing of the schedule.

All increases in rates put into effect under the provisions of this section which are not approved and for which a refund is required shall bear interest at a rate of twelve percent per annum.

The interest shall commence on the date the disallowed increase is paid and continue until the date the refund is made.

In all cases in which a refund is due, the Commission shall order a total refund of the difference between the amount collected under bond and the amount finally approved.

(E) If the Commission fails to rule or issue its order within the time prescribed in subsection (C) or subsection (D) of this section, the utility may put into effect the change in rates it requested in its schedule. The change is to be treated as an approval of the new rate schedule by the Commission.

(F) After the date the schedule is filed with the commission and provided to the Office of Regulatory Staff, no further rate change request under this section may be filed until twelve months have elapsed from the date of the filing of the schedule; provided, however, this section shall not apply to a request for a rate reduction.

(G) Notwithstanding the provisions of this section, the Commission may allow rates or tariffs to be put into effect without a hearing upon order of the Commission when such rates or tariffs do not require a determination of the entire rate structure and overall rate of return, or when the rates or tariffs do not result in any rate increase to the public utility, or when the rates or tariffs are for experimental purposes.

(H) The commission’s determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. The commission shall specify an allowable operating margin in all water and wastewater orders.

HISTORY: 1962 Code Section 58‑114; 1952 Code Section 58‑114; 1942 Code Section 8211; 1932 Code Section 8254; Civ. C. ‘22 Section 1047; Civ. C. ‘12 Section 924; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 1983 Act No. 138 Section 1, eff June 15, 1983; 1989 Act No. 184, Section 2, eff June 8, 1989; 2006 Act No. 318, Section 10, eff May 24, 2006.

CROSS REFERENCES

Sewage utilities, “rate” defined, see S.C. Code of Regulations R. 103‑502.

Water utilities, “rate” defined, see S.C. Code of Regulations R. 103‑702.

Library References

Public Utilities 119.1, 129.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5, 11, 13 to 36, 74 to 83, 98 to 103.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 31, Rates and Charges.

NOTES OF DECISIONS

In general 1

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Time requirements 2

1. In general

The Public Service Commission must not use the simple fact of a recent rate increase as a reason to deny a utility’s 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 123

Fact that water utility had recently obtained a rate increase did not by itself justify Public Service Commission’s denial of utility’s subsequent application for rate increase. 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. Water Law 2198

Although statute requires Public Service Commission (PSC) in rate‑setting to specify allowable operating margin, that directive does not mean that operating margin methodology must be used in determining fair rate of return. Heater of Seabrook, Inc. v. Public Service Com’n of South Carolina (S.C. 1996) 324 S.C. 56, 478 S.E.2d 826, rehearing denied. Public Utilities 129

Under Section 58‑5‑240(H), the Public Service Commission was not limited to the “cost‑of‑service” method to ensure just and reasonable rates for natural gas sold to industrial customers. Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com’n (S.C. 1994) 312 S.C. 79, 439 S.E.2d 270, rehearing denied. Gas 14.4(1)

It is incumbent upon the Public Service Commission to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also distribute fairly the revenue requirements, considering the price at which the company’s service is rendered and the quality of that service. Seabrook Island Property Owners Ass’n v. South Carolina Public Service Com’n (S.C. 1991) 303 S.C. 493, 401 S.E.2d 672. Public Utilities 123

2. Time requirements

Failure of Public Service Commission (PSC) to stay utility’s rate application review pending resolution of appeal of prior rate order was not abuse of discretion; PSC was required to act upon application within six months and could stay issuance of order for only five days beyond six‑month period. Kiawah Property Owners Group v. Public Service Com’n of South Carolina (S.C. 2004) 359 S.C. 105, 597 S.E.2d 145, on remand 2004 WL 4963022. Public Utilities 194

The Public Service Commission (PSC) did not err in denying a motion to dismiss a utility’s application for a rate increase on the basis that the utility violated the statutory time parameter provisions of Section 58‑5‑240(F) by amending its application, where the alleged “amendment” was not a change in the proposed rate schedules but was merely a revision of the utility’s financial and accounting exhibits. Seabrook Island Property Owners Ass’n v. South Carolina Public Service Com’n (S.C. 1991) 303 S.C. 493, 401 S.E.2d 672.

3. Review

Public Service Commission’s (PSC) statement that it had determined that only “minimal increases in expenses” had been incurred which were not significant enough to justify grant of water and sewer utility’s application for rate increase, which statement was unaccompanied by factual documentation, was insufficient to permit meaningful appellate review. Heater of Seabrook, Inc. v. Public Service Com’n of South Carolina (S.C. 1998) 332 S.C. 20, 503 S.E.2d 739. Municipal Corporations 712(8); Water Law 2201(4)

**SECTION 58‑5‑260.** Notice by publication of filing of new or changed schedule.

Within ten days after the filing of any new or changed schedule by a public utility the Commission shall give general notice thereof by publication.

HISTORY: 1962 Code Section 58‑116; 1952 Code Section 58‑116; 1942 Code Section 8211; 1932 Code Section 8254; Civ. C. ‘22 Section 1047; Civ. C. ‘12 Section 924; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25.

Library References

Public Utilities 119.1.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5, 11, 13 to 36, 74 to 75.

**SECTION 58‑5‑270.** Applications and individual consumer complaints; hearings.

Applications may be made by any corporation, public or private, person, chamber of commerce or board of trade, by any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or by any body politic, commission, board, or municipal corporation by petition in writing, setting forth any act or thing done, or omitted to be done, with respect to which, under the provisions of Articles 1, 3, and 5 of this chapter, the commission has jurisdiction or is alleged to have jurisdiction. Individual consumer complaints must be filed with the Office of Regulatory Staff which has the responsibility of mediating consumer complaints under the provisions of Articles 1, 3, and 5. If a complaint is not resolved to the satisfaction of the complainant, the complainant may request a hearing before the commission. The commission has jurisdiction to hear complaints regarding the reasonableness of any rates or charges that affect the general body of ratepayers; but the commission may at its discretion refuse to entertain a petition as to the reasonableness of any rates or charges unless it be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission or other legislative body of the city or county or city or town affected by the subject matter of such complaint or by not less than twenty‑five consumers of the public utility named in the complaint. Any public utility shall have the right to petition the commission on any of the grounds upon which petitions are allowed to be filed by other parties, including the fairness, reasonableness, or sufficiency of any schedule, classification, rate, price, charge, fare, toll, rental, rule, regulation, service, or facility of such public utility and in such event the same procedure shall be adopted and followed as in other cases.

HISTORY: 1962 Code Section 58‑117; 1952 Code Section 58‑117; 1942 Code Section 8211; 1932 Code Section 8254; Civ. C. ‘22 Section 1047; Civ. C. ‘12 Section 924; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 2006 Act No. 318, Section 11, eff May 24, 2006.

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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 31, Rates and Charges.

Forms

Am. Jur. Pl. & Pr. Forms Public Utilities Section 2 , Introductory Comments.

**SECTION 58‑5‑290.** Correction by Commission of improper rates and the like.

Whenever the Commission shall find, after hearing, that the rates, fares, tolls, rentals, charges or classifications or any of them, however or whensoever they shall have theretofore been fixed or established, demanded, observed, charged or collected by any public utility for any service, product or commodity, or that the rules, regulations or practices, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, noncompensatory, inadequate, discriminatory or preferential or in any wise in violation of any provision of law, the Commission shall, subject to review by the courts, as herein provided, determine the just and reasonable fares, tolls, rentals, charges or classifications, rules, regulations or practices to be thereafter observed and enforced and shall fix them by order as herein provided.

HISTORY: 1962 Code Section 58‑119; 1952 Code Section 58‑119; 1942 Code Section 8210; 1932 Code Section 8253; Civ. C. ‘22 Section 1046; Civ. C. ‘12 Section 923; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25.

Library References

Public Utilities 119.1, 122.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5, 11, 13 to 36, 74 to 75, 104 to 109.

NOTES OF DECISIONS

In general 1

1. In general

Under statute governing Public Service Commission (PSC) correction of improper utility rates, Commission has continuing power to prospectively correct or reduce previously‑approved charge. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 122

Any reduction in previously‑approved utility charge is subject to requirement that utility receive notice and opportunity to be heard. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 122

It is incumbent upon the Public Service Commission to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also distribute fairly the revenue requirements, considering the price at which the company’s service is rendered and the quality of that service. Seabrook Island Property Owners Ass’n v. South Carolina Public Service Com’n (S.C. 1991) 303 S.C. 493, 401 S.E.2d 672. Public Utilities 123

The duty to fix a reasonable rate for a service performed by a public utility rests solely with the Public Service Commission and cannot be delegated by the commission to the courts. Carolina Water Service, Inc. v. South Carolina Public Service Commission (S.C. 1978) 272 S.C. 81, 248 S.E.2d 924. Public Utilities 119.1

**SECTION 58‑5‑300.** All facts may be considered in making correction.

In connection with a determination under Section 58‑5‑290 the commission may consider all facts which in its judgment have a bearing upon a proper determination of the question, although not set forth in the application and not within the allegations contained therein.

HISTORY: 1962 Code Section 58‑120; 1952 Code Section 58‑120; 1942 Code Section 8210; 1932 Code Section 8253; Civ. C. ‘22 Section 1046; Civ. C. ‘12 Section 923; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 2006 Act No. 318, Section 12, eff May 24, 2006.

Library References

Public Utilities 119.1, 122.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5, 11, 13 to 36, 74 to 75, 104 to 109.

**SECTION 58‑5‑310.** Record of proceedings; transcript of evidence.

The commission shall cause a record to be kept of all proceedings and all testimony shall be taken down by a competent stenographer, designated by the commission, and a copy or transcript thereof, verified by the oath of such stenographer, shall be furnished on terms fixed by the commission to parties desiring it and shall be received in evidence with the same effect as if such stenographer were present and testified thereto.

HISTORY: 1962 Code Section 58‑121; 1952 Code Section 58‑121; 1942 Code Section 8211; 1932 Code Section 8254; Civ. C. ‘22 Section 1047; Civ. C. ‘12 Section 924; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 2006 Act No. 318, Section 13, eff May 24, 2006.

Library References

Public Utilities 165, 167.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110 to 112, 115, 119 to 135, 215 to 223, 240 to 241.

**SECTION 58‑5‑320.** Recision, alteration or amendment of order or decision.

The commission may, at any time, upon notice and opportunity to the public utility affected and the regulatory staff to be heard, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

HISTORY: 1962 Code Section 58‑122; 1952 Code Section 58‑122; 1942 Code Section 8211; 1932 Code Section 8254; Civ. C. ‘22 Section 1047; Civ. C. ‘12 Section 924; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 2006 Act No. 318, Section 14, eff May 24, 2006.

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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 31, Rates and Charges.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 58‑122] is constructively a part of the Commission’s orders. Carolina Pipeline Co. v. South Carolina Public Service Commission (S.C. 1971) 255 S.C. 324, 178 S.E.2d 669.

Company held to have assented to Commission’s power to rescind or modify certificate. Having accepted and acted upon the certificate subject to the Commission’s statutory power to rescind or modify it, the company must be held to have assented to this reservation, at least for good cause shown. Carolina Pipeline Co. v. South Carolina Public Service Commission (S.C. 1971) 255 S.C. 324, 178 S.E.2d 669.

And modification eliminating territory is not confiscation without due process. To modify orders by eliminating part of a company’s certificated territory does not amount to a confiscation of its property without due process of law. Carolina Pipeline Co. v. South Carolina Public Service Commission (S.C. 1971) 255 S.C. 324, 178 S.E.2d 669.

Orders not res judicata. Commission may change order respecting substitution of bus service for streetcar service on certain street, in absence of rights vested thereunder, since such orders are not res judicata in judicial sense. City of Columbia v. Tatum (S.C. 1934) 174 S.C. 366, 177 S.E. 541. Urban Railroads 7.1

**SECTION 58‑5‑330.** Rehearing by Commission.

Within twenty days after an order or decision is made by the commission, any party to the action or proceeding may apply for a rehearing as to any matter determined in the action or proceeding and specified in the application for rehearing and a rehearing must be granted if in the judgment of the commission sufficient reason exists. No right of appeal arising out of an order or decision of the commission accrues in any court to any corporation or person unless the corporation or person makes application to the commission for a rehearing within the time specified. The application must set forth specifically the ground on which the applicant considers the decision or order to be unlawful. The determination must be made by the commission within thirty days after it is finally submitted. If, after the hearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission is of the opinion that the original order or decision, or any part of it, is in any respect unjust or unwarranted or should be changed, the commission may abrogate, change or modify it and, if changed or modified, the modified order must be substituted in the place of the order originally entered and with like force and effect.

HISTORY: 1962 Code Section 58‑123; 1952 Code Section 58‑123; 1942 Code Section 8211; 1932 Code Section 8254; Civ. C. ‘22 Section 1047; Civ. C. ‘12 Section 924; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 2006 Act No. 387, Section 38, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Library References

Public Utilities 167.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110 to 112, 115, 119 to 129, 219 to 223, 240 to 241.

**SECTION 58‑5‑340.** Court review of orders or decisions.

A decision of the commission may be reviewed by the Supreme Court or court of appeals as provided by statute and the South Carolina Appellate Court Rules upon questions of both law and fact, as provided pursuant to this section. The commission must not be a party to the action.

No order of determination of the commission reducing any rate, fare, charge, or toll may be in force during the pendency of the action if the utility affected executes and files with the clerk of court a bond undertaking in a sum as the court prescribes, and approved by the court, conditioned to secure the refund to customers of any sum that may be collected in excess of the rates, fares, charges, or tolls that are finally adjudged to be lawful and valid.

HISTORY: 1962 Code Section 58‑124; 1952 Code Section 58‑124; 1942 Code Section 8211; 1932 Code Section 8254; Civ. C. ‘22 Section 1047; Civ. C. ‘12 Section 924; 1910 (26) 564; 1922 (32) 938; 1935 (39) 25; 2006 Act No. 318, Section 15, eff May 24, 2006; 2006 Act No. 387, Section 39, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Library References

Public Utilities 188.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 244, 246 to 267, 271 to 272.

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative Law ‑ The Scope of Judicial Review of Decisions of Administrative Agencies in South Carolina. 23 S.C. L. Rev. 472.

NOTES OF DECISIONS

In general 1

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1. In general

Section provides no review of order relating to railroads. The term “public utilities” as defined in Code 1962 Section 58‑101 does not include railroads. The result therefore is that this section [Code 1962 Section 58‑124] provides no method of review of an order of the Public Service Commission relating to railroads. Southern Ry. Co. v Public Service Comm., 195 SC 247, 10 SE2d 769 (1940). City of Columbia v South Carolina Public Serv Comm’n. 242 SC 528, 131 SE2d 705 (1963).

A circuit court did not have authority under the Administrative Procedures Act, coupled with the court’s inherent equitable power, to put a rate schedule for a public utility into effect under bond at the motion of the Consumer Advocate. Santee Cooper Resort, Inc. v. South Carolina Public Service Com’n (S.C. 1989) 298 S.C. 179, 379 S.E.2d 119. Administrative Law And Procedure 325; Water Law 2212

Waiver of process. By making a general appearance and answering on the merits defendants waive not only all defects and irregularities in the process but also an entire want of process. Beard‑Laney, Inc. v. Darby (S.C. 1946) 208 S.C. 313, 38 S.E.2d 1.

Requisites for changing order of Commission. Commission’s order based on findings of fact should not be changed without further hearing on facts, with notice and hearing accorded adverse party. City of Columbia v. Tatum (S.C. 1934) 174 S.C. 366, 177 S.E. 541. Public Utilities 169.1

Judicial determination required. Commission’s order respecting substitution of bus service for streetcar service was legislative, and party adversely affected was entitled to judicial determination of its validity. City of Columbia v. Tatum (S.C. 1934) 174 S.C. 366, 177 S.E. 541. Urban Railroads 7.1

2. Standard and scope of review

Findings made by Public Service Commission (PSC) are presumptively correct, requiring the party challenging a PSC order to show the decision is clearly erroneous in view of the substantial evidence on the whole record. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Public Utilities 195

This section [Code 1962 Section 58‑124] does not authorize the substitution of the circuit judge’s judgment for that of the Commission as to the wisdom of the action taken. Carolina Pipeline Co. v. South Carolina Public Service Commission (S.C. 1971) 255 S.C. 324, 178 S.E.2d 669.

Judicial review of Commission’s decisions is provided for by this section [Code 1962 Section 58‑124] wherein both questions of law and fact may be reviewed by court of common pleas for City of Columbia v. South Carolina Public Service Commission (S.C. 1963) 242 S.C. 528, 131 S.E.2d 705.

In action to review orders of the commission, the court must exercise independent judgment on questions of both law and fact, and as to facts must examine evidence in record of Commission and determine truth according to court’s best judgment. City of Columbia v. Tatum (S.C. 1934) 174 S.C. 366, 177 S.E. 541. Public Utilities 187

**SECTION 58‑5‑370.** Charging higher water or gas rates than those fixed by Commission unlawful.

Any person or corporation owning or operating a plant furnishing water or gas to the public or any portion thereof for compensation who shall fail or refuse to accept the rate fixed by the Commission to be charged for water or gas and instead thereof shall charge, demand or receive a greater amount than that fixed by the Commission shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty‑five dollars nor more than one hundred dollars, to be recovered in any court of competent jurisdiction, one half of such fine as may be imposed going to the informer and the other half to the city in which the complaint arises. Each overcharge to any consumer of water or gas shall constitute a separate offense.

HISTORY: 1962 Code Section 58‑127; 1952 Code Section 58‑127; 1942 Code Section 8241; 1932 Code Section 1356; Cr. C. ‘22 Section 253; Cr. C. ‘12 Section 276; 1910 (26) 564; 1922 (32) 956; 1935 (39) 25.

CROSS REFERENCES

Gas systems, customer relations, adjustment of bills, see S.C. Code of Regulations R. 103‑440.

Regulation of electrical utilities, see Section 58‑27‑10 et seq.

Library References

Gas 14.1.

Water Law 2183.

Westlaw Topic Nos. 190, 405.

C.J.S. Gas Sections 45 to 47, 63 to 64, 66 to 68, 71 to 72, 84 to 87.

C.J.S. Waters Sections 722, 730 to 732, 734 to 747.

**SECTION 58‑5‑380.** Restrictions on interruption of gas service to residential customer for nonpayment of bill; exceptions.

(A) Except as provided in subsections (B) and (C) of this section, a gas utility must not interrupt gas service to any residential customer for nonpayment of a bill until twenty‑five days have elapsed from the date of billing.

(B) A gas utility may interrupt natural gas service to any residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of natural gas and his account balance on a daily basis and the balance of that customer’s prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his natural gas service may be interrupted when the balance of his prepay account reaches zero; (2) natural gas service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the gas utility to give the customer notice of the impending interruption by telephone or electronically; and (3) service must not be interrupted except during hours when the gas utility, or an agent, is accepting cash payments.

(C) A prepay program established by a gas utility shall be subject to approval by the commission prior to implementation. Any interruption of natural gas service under an approved prepay program shall be governed by the terms of this section and the provisions of the prepay account agreement. A prepay program approved by the commission under this subsection must allow the utility to interrupt service when the balance of the customer’s prepay account is zero and the conditions set out in subsection (B) are met. Upon a showing of good cause, the commission may allow alternative compliance with the requirement of subsection (B) regarding the ability of the customer to monitor his consumption and account balance on a daily basis, if such compliance provides consumer information and protections similar to that required in subsection (B).

(D) Nothing contained herein shall be construed so as to relieve a gas utility of the requirements of Act 313 of 2006.

(E) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law.

HISTORY: 1983 Act No. 138 Section 22, eff June 15, 1983; 2010 Act No. 258, Section 1, eff June 11, 2010.

Library References

Gas 13(3), 13(6).

Westlaw Topic No. 190.

C.J.S. Gas Sections 30, 45 to 52, 56 to 58, 60 to 62.

**SECTION 58‑5‑390.** Tap fees for installation and maintenance of fire sprinkler system; exception.

(A) A publicly or privately owned utility may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line to the system.

(B) For purposes of this section, actual costs include direct labor, direct material, the necessity of increased capacity, and other direct charges associated with the separate fire sprinkler line. The direct costs must be documented by either an invoice or work order that specifically assigns the costs to the separate fire sprinkler line. Nothing in this section may be construed as requiring a utility to provide service to support a private fire protection system.

(C) Nothing in this section shall give the commission or the regulatory staff any power to regulate or interfere with public utilities owned or operated by or on behalf of any municipality, county, or regional transportation authority as defined in Chapter 25 of this title or their agencies.

HISTORY: 2008 Act No. 357, Section 1, eff June 25, 2008; 2010 Act No. 232, Section 3, eff June 7, 2010.

Library References

Water Law 2183.

Westlaw Topic No. 405.

C.J.S. Waters Sections 722, 730 to 732, 734 to 747.

Attorney General’s Opinions

This section would most likely apply to any fire sprinkler system, regardless of whether the tap supplies only the fire sprinkler or not. S.C. Op.Atty.Gen. (November 20, 2012) 2012 WL 6061811

A water company may charge a monthly minimum fee for a water line associated with a fire sprinkler. S.C. Op.Atty.Gen. (May 18, 2011) 2011 WL 2214071.

ARTICLE 4

Natural Gas Rate Stabilization Act

**SECTION 58‑5‑400.** Citation of article.

This article may be cited as the “Natural Gas Rate Stabilization Act”.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

**SECTION 58‑5‑410.** Election to come under article.

A public utility providing natural gas distribution service, in its discretion and at anytime, may elect to have the terms of this article apply to its rates and charges for gas distribution service, on a prospective basis, by filing a notice of the election with the commission and on the same day and by the same means serving a copy on the Office of Regulatory Staff. Upon receipt of notice of the election, the commission shall proceed to make the findings and establish the ongoing procedures required for adjustments in base rates to be made under this article. In carrying out the procedures established by this article with respect to such an election, the commission shall rely upon and utilize the approved rates, charges, revenues, expenses, capital structure, returns, and other matters established in the public utility’s most recent general rate proceeding pursuant to Section 58‑5‑240; provided, however, that the most recent order must have been issued no more than five years prior to the initial election to come under the terms of this article. A public utility may combine an election under this article with the filing of a rate proceeding pursuant to Section 58‑5‑240 and the commission shall include the findings required by this article in its rate orders issued in the Section 58‑5‑240 proceedings, and the election shall remain in effect until the next general rate proceeding.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.1(1).

Westlaw Topic No. 190.

C.J.S. Gas Sections 63 to 64, 71 to 72.

**SECTION 58‑5‑415.** Duration of election; withdrawal of request to come under article.

The election by a utility to have the terms of this article apply to its rates and charges for gas distribution service once made shall remain in effect until the next Section 58‑5‑240 general rate proceeding for the public utility at which time the public utility may then elect to continue the applicability of this article to its rates and charges or elect to opt out of the provisions of this article. The applicant may withdraw its request to come under the terms of this article at any time before the entry of a final order of the commission on the merits of the proceeding in which the election is made or on a petition for rehearing in the proceeding.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.1(1).

Westlaw Topic No. 190.

C.J.S. Gas Sections 63 to 64, 71 to 72.

**SECTION 58‑5‑420.** Contents of order.

In issuing its order pursuant to Section 58‑5‑410, and in addition to the other requirements of Section 58‑5‑240, if a proceeding pursuant to that section is required:

(1) the commission shall specify a range for the utility’s cost of equity that includes a band of fifty basis points (0.50 percentage points) below and fifty basis points (0.50 percentage points) above the cost of equity on which rates have been set; and

(2) the commission separately shall state the amount of the utility’s net plant in service, construction work in progress, accumulated deferred income taxes, inventory, working capital, and other rate base components. It also shall state the utility’s depreciation expense, operating and maintenance expense, income taxes, taxes other than income taxes, other components of income for return, revenues, capital structure, cost of debt, overall cost of capital, and earned return on common equity. The figures stated shall be those which the commission has determined to be the appropriate basis on which rates were set in the applicable orders.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.1(1).

Westlaw Topic No. 190.

C.J.S. Gas Sections 63 to 64, 71 to 72.

**SECTION 58‑5‑430.** Monitoring reports; schedule and contents.

The utility shall file with the commission monitoring reports for each twelve‑month period ending on March thirty‑first, June thirtieth, September thirtieth, and December thirty‑first of each year, the filings to be made no later than the fifteenth day of the third month following the close of the period. The utility shall serve a copy of such reports on the Office of Regulatory Staff on the same day and by the same means as they are provided to the commission. These quarterly monitoring reports shall include the following:

(1) the utility’s actual net plant in service, construction work in progress, accumulated deferred income taxes, inventory, working capital, and other rate base components. The report shall also show the utility’s depreciation expense, operating and maintenance expense, income taxes, taxes other than income taxes, other components of income for return, revenues, capital structure, cost of debt, overall cost of capital, and earned return on common equity;

(2) all applicable accounting and pro‑forma adjustments historically permitted or required by the commission for the utility in question, or for similarly situated utilities, or authorized by general principles of utility accounting, or authorized by accounting letters or orders issued by the commission. This authorization may occur either in a general rate hearing or in any other type of filing or hearing that the commission considers appropriate. However, other parties shall be given sufficient opportunity to review and provide comments on any proposed accounting letter or order issued after the initial order allowing future base rate adjustments pursuant to this article;

(3) pro‑forma adjustments to annualize for the twelve‑month period any rate adjustments imposed pursuant to this article or other events affecting only part of the period covered by the filing so that the annualization is required to show the effects of those events on the utility’s earnings going forward; and

(4) pro‑forma or other adjustments required to properly account for atypical, unusual, or nonrecurring events.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.1(1).

Westlaw Topic No. 190.

C.J.S. Gas Sections 63 to 64, 71 to 72.

**SECTION 58‑5‑440.** March report; additional schedules.

In the monitoring report filed for the twelve‑month period ending March thirty‑first of each year, the utility shall provide additional schedules indicating the following revenue calculations:

(1) if the utility’s earnings exceed the upper end of the range established in the order, the utility shall calculate the reduction in revenue required to lower its return on equity to the midpoint of the range established in the order; or

(2) if the utility’s earnings are below the lower range established in the order, the utility shall calculate the additional revenue required to increase its return on equity to the midpoint of the range established in the order.

The utility also shall provide a schedule that specifies changes in its tariff rates required to achieve any indicated change in revenue.

The proposed rate changes, filed by the utility, shall conform as nearly as is practicable with the revenue allocation principles contained in the most recent rate order.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.1(1).

Westlaw Topic No. 190.

C.J.S. Gas Sections 63 to 64, 71 to 72.

**SECTION 58‑5‑450.** Review of reports; proposed tariff rate adjustments.

The Office of Regulatory Staff shall review the monitoring report filed pursuant to Sections 58‑5‑430 and 58‑5‑440 to determine compliance with its terms taking into account the findings of any audit conducted by the Office of Regulatory Staff concerning compliance with Sections 58‑5‑430 and 58‑5‑440. The Office of Regulatory Staff shall propose those adjustments it determines to be required to bring the report into compliance with Section 58‑5‑440. Based upon that report and the findings of any audit conducted by the Office of Regulatory Staff, the commission shall order the utility to make the adjustments to tariff rates necessary to achieve the revenue levels indicated in Section 58‑5‑440.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.1(1).

Westlaw Topic No. 190.

C.J.S. Gas Sections 63 to 64, 71 to 72.

**SECTION 58‑5‑455.** Rate adjustment request and implementation procedure; notice to and comments by interested parties; issuance of Initial Order; when adjustments take effect.

The procedures contained in this section shall apply to monitoring reports related to the quarter ending March thirty‑first.

(1) The utility shall file the monitoring reports with the commission and Office of Regulatory Staff on or before June fifteenth and simultaneously shall mail or electronically transmit copies to any interested parties who have requested in writing to receive them.

(2) Interested parties shall be allowed until July fifteenth to file comments in writing to the commission and the Office of Regulatory Staff concerning the monitoring report.

(3) In cases where the monitoring report indicates rate adjustments are required, or where it otherwise appears to the commission or the Office of Regulatory Staff that an adjustment in rates may be warranted under this article, the Office of Regulatory Staff shall conduct an audit of the monitoring report and specify any changes that the Office of Regulatory Staff determines to be necessary to correct errors in the report or to otherwise bring the report into compliance with this article. The Office of Regulatory Staff’s audit reports shall be provided to the commission and to the utility and made available to all interested parties no later than September first.

(4) Interested parties shall be allowed until September fifteenth to file written comments with the commission and the Office of Regulatory Staff related to the Office of Regulatory Staff’s audit report and shall simultaneously mail or electronically transmit copies of these comments to the utility and to all parties who previously appeared and filed comments.

(5) On or before October fifteenth the commission shall issue an initial order setting forth any changes required in the utility’s request to adjust rates under this article (the “Initial Order”). In the absence of such an Initial Order, the gas rate adjustment contained in the utility’s filing shall be considered to be granted as filed.

(6) Any gas rate adjustments authorized under the terms of this article shall take effect for all bills rendered on or after the first billing cycle of November of that year.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.3(1), 14.3(3).

Westlaw Topic No. 190.

C.J.S. Gas Sections 71, 73 to 74, 76 to 82.

**SECTION 58‑5‑460.** Petition for review of Initial Order or failure to issue order; hearing.

Within thirty days of the issuance of an Initial Order pursuant to Section 58‑5‑450, or within thirty days of the failure by the commission to issue an order as required pursuant to Section 58‑5‑450, any aggrieved party may petition the commission for review of the Initial Order or failure to issue an order and all interested parties of record shall have a right to be heard at an evidentiary hearing on the matter. The party shall serve a copy of such petition on the Office of Regulatory Staff on the same day and by the same means as it is provided to the commission.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.3(3), 14.3(4).

Westlaw Topic No. 190.

C.J.S. Gas Sections 71, 77 to 78, 81 to 83, 89 to 91.

**SECTION 58‑5‑465.** Final order; contents; deadline for issuance.

After conducting the hearing required by Section 58‑5‑460, the commission shall issue a final order that:

(1) sets forth any changes that are required to the rates approved in the Initial Order issued under Section 58‑5‑455(5);

(2) determines the amount of any overcollection or undercollection by the utility that resulted from collection of the rates authorized in the Initial Order as compared to the rates authorized in the final order issued under this section; and

(3) establishes a credit to refund the amount of any overcollection, or a surcharge to collect the amount of any undercollection that arose during the time that the rates approved in the Initial Order were collected, and requires the utility to apply the credit or surcharge until such time as the overcollection or undercollection is exhausted.

The commission shall issue any final order required under this section by April fifteenth of the year following the year in which the monitoring report was filed. The order shall make the corrected rates and the credit or surcharge, if any, effective as of the first billing cycle of May of that year.

The provisions of Sections 58‑5‑330 and 58‑5‑340 concerning rehearing and appeal shall apply to the orders issued pursuant to this section.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.3(4).

Westlaw Topic No. 190.

C.J.S. Gas Sections 71, 77, 83, 89 to 91.

**SECTION 58‑5‑470.** Review of Initial Orders; scope; rule to show cause why full rate proceeding should not be initiated.

The review of Initial Orders pursuant to Sections 58‑5‑460 and 58‑5‑465 is limited to issues related to compliance with the terms of this article. Matters determined in orders issued pursuant to Section 58‑5‑420 are not subject to review except in full rate proceedings pursuant to Section 58‑5‑240. Any proceedings pursuant to this article are without prejudice to the right of the commission to issue, or any interested party to request issuance of, a rule to show cause why a full rate proceeding should not be initiated, nor does this article limit the right of a utility to file an application pursuant to Section 58‑5‑240 for an adjustment to its rates and charges, nor does it impose the restrictions on filings contained in Section 58‑5‑240(F).

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 14.3(4).

Westlaw Topic No. 190.

C.J.S. Gas Sections 71, 77, 83, 89 to 91.

**SECTION 58‑5‑480.** Office of Regulatory staffing; assessments for staffing costs.

The Office of Regulatory Staff is authorized additional positions as the General Assembly may provide in the annual General Appropriations Act for the purpose of performing its duties under this article; however, no more than one position for each natural gas utility regulated pursuant to this article may be authorized. All salaries, benefits, expenses, and charges incurred by the Office of Regulatory Staff for these positions must be borne by the natural gas utilities regulated pursuant to this article.

On or before the first day of July in each year, the Department of Revenue must assess each natural gas utility regulated pursuant to this article an equal portion of these salaries, benefits, expenses, and charges 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 natural gas utilities by the Department of Revenue and collected by the department in the manner provided by law for the collection of taxes from the natural gas utilities, 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. These assessments are in addition to any amounts assessed pursuant to Section 58‑4‑60. These assessments must be deposited in a special fund with the State Treasurer’s Office from which the salaries, benefits, expenses, and charges shall be paid.

The Office of Regulatory Staff must annually certify to the Department of Revenue on or before May first the amounts to be assessed.

HISTORY: 2005 Act No. 16, Section 1, eff February 16, 2005.

Library References

Gas 13(1), 14.3(1).

Westlaw Topic No. 190.

C.J.S. Gas Sections 30, 45 to 47, 49 to 52, 71, 73 to 74, 76, 79 to 80.

ARTICLE 7

Regulation of Water and Sewer Utilities’ Adequacy of Service

**SECTION 58‑5‑710.** Issuance of order to provide adequate and proper service; fine or penalty; lien on property of utility.

The Public Service Commission, upon petition by any interested party, shall have the right to require any person or corporation, as defined in Section 58‑5‑10, operating a water or sewer utility system for which prior consent or approval by the commission is required to appear before the commission on proper notice and show cause why that utility should not be required to take steps as are necessary to provide adequate and proper service to its customers. If the commission upon hearing determines that the service is not being provided, it shall issue an order requiring the utility to take steps as are necessary to the provision of the service within a reasonable time as prescribed by the commission. Upon failure of the utility to provide the service within the time prescribed without cause or excuse, as shall be determined by the commission, the commission shall impose a penalty or fine against the utility in an amount not less than one hundred dollars per day but not more than one thousand dollars per day. Each day the failure or noncompliance continues shall be considered a separate and distinct breach or violation of the order. Any fine or penalty so imposed or assessed by the commission, upon proper filing in the appropriate county office or offices, constitutes a lien upon the properties and assets of the utility in like manner and form as any other judgment at law. Any fine or penalty so imposed by the commission shall go into the general fund of the State, unless otherwise provided by law.

HISTORY: 1962 Code Section 58‑148; 1969 (56) 244; 1999 Act No. 22, Section 1, eff June 1, 1999; 2006 Act No. 318, Section 17, eff May 24, 2006.

Library References

Municipal Corporations 711.

Water Law 2037.

Westlaw Topic Nos. 268, 405.

C.J.S. Municipal Corporations Sections 1963, 1965, 1968 to 1970.

**SECTION 58‑5‑720.** Filing of bond of certificates of deposit prior to approval by commission of construction or other work on water or sewer system; forfeiture.

The commission shall, before the granting of authority or consent to any water or sewer utility regulated by the commission, for the construction, operation, maintenance, acquisition, expansion, or improvement of any facility or system, prescribe as a condition to the consent or approval that the utility shall:

(1) file with the commission a bond with sufficient surety, as approved by the commission, in an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars payable to the commission and conditioned upon the provision by the utility of adequate and sufficient service within its service area and provide a copy of the bond to the Office of Regulatory Staff; or

(2) deliver to the commission certificates of deposit, with endorsements as required by the commission, of federal or state chartered banks or savings and loan associations who maintain an office in this State and whose accounts are insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The certificates of deposit shall not exceed the amount covered by insurance. The commission has the right, upon notice and hearing, to declare all or any part of the bond or certificate of deposit forfeited upon a determination by the commission that the utility failed to provide service without just cause or excuse and that this failure has continued for an unreasonable length of time. A further condition of the bond or certificate of deposit shall be the provision for payment to the commission of any fine or penalty imposed or assessed by the commission against the utility under the provisions of Section 58‑5‑710.

HISTORY: 1962 Code Section 58‑149; 1969 (56) 244; 1978 Act No. 479, eff April 19, 1978; 1999 Act No. 22, Section 2, eff June 1, 1999; 2006 Act No. 318, Section 18, eff May 24, 2006.

Library References

Municipal Corporations 345.

Water Law 1961.

Westlaw Topic Nos. 268, 405.

C.J.S. Municipal Corporations Sections 1390 to 1391, 1398.

NOTES OF DECISIONS

In general 1

1. In general

Construction company is not liable under performance bond for cost of improvements on sewer system where it abandons construction of system; surety’s obligation is contractual and cannot extend beyond terms of bond and intent of parties thereto. South Carolina Public Service Commission v. Colonial Const. Co. (S.C. 1980) 274 S.C. 581, 266 S.E.2d 76.

**SECTION 58‑5‑730.** Appointment of receiver upon failure of utility to provide adequate and sufficient service.

If the commission, after notice and hearing, determines that a utility subject to the regulations of the commission has wilfully failed to provide adequate and sufficient service for an unreasonable length of time and that it is likely to continue such failure to the detriment of the public served by the utility, or if the commission shall determine after notice and hearing, that adequate and sufficient service is not being provided by such utility and that such utility is unable to provide such service for any reason, the Office of Regulatory Staff shall have the right to petition the court of common pleas for the county wherein the utility shall have its principal office or place of business for the appointment of a receiver to assume possession of the facilities and system and to operate such utility upon such terms and conditions as the court shall prescribe. The court shall require as a condition to the appointment of such receiver that a sufficient bond be given by the receiver and conditioned upon his compliance with the orders of the court and the protection of all property rights involved. The court shall have the right to provide for disposition of the facilities and system in like manner as any other receivership proceeding in this State.

HISTORY: 1962 Code Section 58‑150; 1969 (56) 244; 2006 Act No. 318, Section 19, eff May 24, 2006.

Library References

Water Law 2087.

Westlaw Topic No. 405.

**SECTION 58‑5‑740.** Rights and remedies are cumulative.

The rights and remedies granted or imposed by this article shall be deemed cumulative and not in derogation of any other rights and remedies prescribed by law relative to the organization and control of public utilities.

HISTORY: 1962 Code Section 58‑150.1; 1969 (56) 244.

Library References

Public Utilities 189.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 246 to 249, 252 to 255, 261, 263 to 267.

**SECTION 58‑5‑750.** Appeals.

Any party in interest being dissatisfied with an order of the Commission may appeal as provided by statutory law.

HISTORY: 1962 Code Section 58‑150.2; 1969 (56) 244.

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative Law ‑ The Scope of Judicial Review of Decisions of Administrative Agencies in South Carolina. 23 S.C. L. Rev. 472.

ARTICLE 9

South Carolina Gas Safety Act of 1970

**SECTION 58‑5‑910.** Short title.

This article shall be entitled “The South Carolina Gas Safety Act of 1970.”

HISTORY: 1962 Code Section 58‑136; 1970 (56) 2420.

**SECTION 58‑5‑920.** Definitions.

When used in this article:

(a) The term “commission” means the Public Service Commission of the State of South Carolina.

(b) The term “commissioner” means one of the members of the Public Service Commission of South Carolina.

(c) The term “corporation” includes all private or public corporations, business trusts, joint stock companies or associations, domestic or foreign, their lessees, assignees, trustees, receivers or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships.

(d) The term “Federal safety standards” shall mean the minimum standards of gas safety adopted by the United States Department of Transportation pursuant to the Natural Gas Pipeline Safety Act of 1968 (P.L. 90‑481, 49 U.S.C. Section 1672), as may be amended from time to time, and any rules and regulations promulgated by any regulatory agency of the United States of America having jurisdiction thereof.

(e) The term “gas” means natural gas, flammable gas or gas which is toxic or corrosive.

(f) The term “gas utility” includes persons, corporations and gas authorities, municipalities, public service districts and other political subdivisions of this State and which are not subject to the jurisdiction of the Federal Power Commission as provided for by Section 3(b) of the Natural Gas Pipeline Safety Act of 1968. (P.L. 90‑481) (49 U.S.C. Section 1672(b)). Provided, however, that gas authorities, municipalities and public service districts and other political subdivisions of this State shall remain exempt from any economic regulation by the Commission.

(g) The term “person” includes all individuals, partnerships or associations, cooperatives, lessees, assignees, trustees, receivers or other successors in interest, other than corporations.

(h) The term “pipeline system” or “pipeline facilities” shall mean new and existing pipe rights‑of‑way and any equipment, facility or building used in the transportation of gas or the treatment of gas during the course of transportation; but the Commission is not authorized to prescribe the location or routing of any pipeline facility “rights‑of‑way.”

(i) The term “public” means the public generally, or any limited portion of the public, including a person or corporation.

(j) The term “regulatory staff” means the executive director or the executive director and the employees of the Office of Regulatory Staff.

(k) The term “transportation of gas” when used in this article means gathering, transmission, distribution, and storage of gas.

HISTORY: 1962 Code Section 58‑136.1; 1970 (56) 2420; 2006 Act No. 318, Section 20, eff May 24, 2006.

NOTES OF DECISIONS

Sovereign immunity 1

1. Sovereign immunity

Manufacture and sale of power is a public and governmental function, and there is no distinction between the power of a unit of government to manufacture and sell electricity and the power to buy and sell natural gas; hence, Natural Gas Authority is a quasi‑municipal corporation immune to an action ex delicto because of the sovereign immunity of the State. Boyce v. Lancaster County Natural Gas Authority (S.C. 1976) 266 S.C. 398, 223 S.E.2d 769.

**SECTION 58‑5‑930.** Compliance with orders and regulations relating to federal safety standards.

Each gas utility shall obey and comply with each and every requirement of every lawful order, decision, direction, rule, or regulation made or prescribed by the commission and every direction, rule, or regulation made or prescribed by the Office of Regulatory Staff in the performance of its duties under this article in relation to federal safety standards and it shall do everything reasonably necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

HISTORY: 1962 Code Section 58‑136.2; 1970 (56) 2420; 2006 Act No. 318, Section 21, eff May 24, 2006.

Library References

Gas 9.

Westlaw Topic No. 190.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 19.

**SECTION 58‑5‑940.** Assessments against gas utilities for administrative expenses and charges.

All lawful expenses and charges incurred by the commission and the Office of Regulatory Staff in the administration of this chapter and in performance of its duties thereunder shall be defrayed by assessments made by the Comptroller General against the gas utilities regulated thereunder and based upon the gross revenues collected by the gas utilities from their business done wholly within this State in the manner set out in Section 58‑3‑100 for other corporations; provided, however, the assessments against municipalities, gas authorities, public service districts, or other political subdivisions of the State shall be applicable only to expenses and charges incurred in the administration and enforcement of the provisions of this article relating to gas safety requirements.

The Public Service Commission and the Office of Regulatory Staff shall certify to the Comptroller General annually on or before August first the amounts to be assessed in the format approved by the Comptroller General.

HISTORY: 1962 Code Section 58‑136.3; 1970 (56) 2420; 1982 Act No. 331, Section 2, eff April 9, 1982; 2006 Act No. 318, Section 22, eff May 24, 2006.

Library References

Gas 4.1.

Westlaw Topic No. 190.

C.J.S. Gas Sections 21, 23.

**SECTION 58‑5‑950.** Employment of staff; legal representation.

The commission and the Office of Regulatory Staff may employ such technical administrative and clerical staff as may be required to carry out the provisions of this article and to perform the duties and exercise the powers conferred upon it by this article in relation to gas utilities. The Office of Regulatory Staff shall institute and defend all suits or actions arising under this chapter.

HISTORY: 1962 Code Section 58‑136.4; 1970 (56) 2420; 2006 Act No. 318, Section 23, eff May 24, 2006.

Library References

Gas 1.

Westlaw Topic No. 190.

C.J.S. Gas Sections 1, 7 to 10, 12 to 13, 15 to 19.

**SECTION 58‑5‑960.** Compliance with safety standards.

All pipeline facilities used in this State for the transportation of gas must be constructed, operated, and maintained in such a manner as at all times to be in compliance with minimum federal safety standards and with the safety standards adopted by the commission.

HISTORY: 1962 Code Section 58‑137.1; 1970 (56) 2420; 2006 Act No. 318, Section 24, eff May 24, 2006.

CROSS REFERENCES

Gas systems, adoption of minimum safety standards, see S.C. Code of Regulations R. 103‑490.

Library References

Gas 9.

Westlaw Topic No. 190.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 19.

**SECTION 58‑5‑970.** Adoption and enforcement of federal standards for pipeline facilities and transportation.

The Office of Regulatory Staff is authorized to adopt and enforce the minimum federal safety standards for the transportation of gas and pipeline facilities established by the Secretary of Transportation pursuant to Section 3 (b) of the Natural Gas Pipeline Safety Act of 1968 (P.L. 90‑481) [49 U.S.C. Section 1672 (b)], as may be amended from time to time.

HISTORY: 1962 Code Section 58‑137.2; 1970 (56) 2420; 2006 Act No. 318, Section 25, eff May 24, 2006.

CROSS REFERENCES

Commission adoption of Federal Minimum Safety Standards for Transportation of Natural and Other Gas, see S.C. Code of Regulations R. 103‑490.

Library References

Gas 9.

Westlaw Topic No. 190.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 40, Adoption of Federal Regulations.

**SECTION 58‑5‑980.** Additional minimum safety standards.

(a) After reasonable notice and an opportunity for the submission for written data, view, or arguments with or without opportunity for oral presentation by interested gas utilities, the regulatory staff, and the public, the commission may establish additional minimum safety standards for pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) in this State.

(b) Gas safety standards may apply to the design, installation, inspection, testing, construction, extension, replacement and maintenance of the facilities. The safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing the standards, the Commission shall consider: (1) relevant pipeline safety data; (2) whether the standards are appropriate for the particular type of pipeline transportation and distribution; (3) the reasonableness of any proposed standards; and (4) the extent to which the standards will contribute to the public safety.

HISTORY: 1962 Code Section 58‑138; 1970 (56) 2420; 2006 Act No. 318, Section 26, eff May 24, 2006.

CROSS REFERENCES

Gas systems, adoption of minimum safety standards, see S.C. Code of Regulations R. 103‑490.

Library References

Gas 9.

Westlaw Topic No. 190.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 41, Additional Regulations.

**SECTION 58‑5‑990.** Application for rehearing; judicial review.

A gas utility which is or will be adversely affected by a rule or order of the commission adopted or established pursuant to this article may file an application for rehearing and may seek judicial review in accordance with provisions of Section 58‑5‑340. The commission must not be named a party to any action.

HISTORY: 1962 Code Section 58‑139; 1970 (56) 2420; 2006 Act No. 318, Section 27, eff May 24, 2006; 2006 Act No. 387, Section 40, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Library References

Gas 9.

Westlaw Topic No. 190.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 19.

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative Law ‑ The Scope of Judicial Review of Decisions of Administrative Agencies in South Carolina. 23 S.C. L. Rev. 472.

**SECTION 58‑5‑1000.** Certain gas utilities shall file plans for inspection and maintenance of pipeline facilities; revision of plans.

(a) Each gas utility that engages in the transportation of gas or which owns or operates pipeline facilities not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act shall file with the Office of Regulatory Staff a plan for inspection and maintenance of each pipeline facility owned or operated by the gas utility, and any changes in the plan, in accordance with regulations prescribed by the commission.

(b) The commission may by regulation also require any gas utility which engages in the transportation of gas or which owns or operates pipeline facilities subject to the provisions of this article to file its plan for approval with the Office of Regulatory Staff.

(c) If at any time the Commission finds that the plan is inadequate to achieve safe operation it shall, after notice and opportunity for a hearing, require the plan to be revised. The plan required by the Commission shall be practicable and designed to meet the need for pipeline safety. In determining the adequacy of any plan, the Commission shall consider: (1) relevant, available pipeline safety data; (2) whether the plan is appropriate for the particular type of pipeline transportation; (3) the reasonableness of the plan; and (4) the extent to which the plan will contribute to public safety.

HISTORY: 1962 Code Section 58‑140; 1970 (56) 2420; 2006 Act No. 318, Section 28, eff May 24, 2006.

Library References

Gas 9, 11.

Westlaw Topic No. 190.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 20.

**SECTION 58‑5‑1010.** Records and reports of gas utilities; inspections and investigations; accident reports.

(a) Each gas utility which engages in the transportation of gas or which owns or operates pipeline facilities shall establish and maintain such records, make such reports, and provide such information as the Office of Regulatory Staff may reasonably require to enable it to determine whether the utility has acted or is acting in compliance with the standards established under this article.

(b) Each utility shall permit an officer, employee, or agent of the Office of Regulatory Staff to inspect books, papers, records, and documents relevant to determining whether the utility has acted or is acting in compliance with the standards established pursuant to this article.

(c) The Office of Regulatory Staff may conduct such other relevant inspection and investigation as may be necessary to aid in the enforcement of the standards established pursuant to this article. For purposes of enforcement of this article, officers, employees, or agents of the Office of Regulatory Staff upon presenting appropriate credentials to the individual in charge are authorized (1) to enter upon, at reasonable times, pipeline facilities, and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner the facilities. Each inspection shall be commenced and completed with reasonable promptness.

(d) Accident reports made by any officer, employee, or agent of the Office of Regulatory Staff shall be available for use, but not admissible into evidence, in any civil, criminal, or other judicial proceeding arising out of an accident. Any officer, employee, or agent may be required to testify in such proceedings as to the facts developed in the investigations, but no officer, employee, or agent shall give opinion testimony or otherwise testify as to the ultimate fact in any civil, criminal, or other judicial proceeding out of the accident, except in a proceeding or action between the Office of Regulatory Staff and a gas utility. Any report shall be made available to the public in a manner which need not identify individuals. All reports on research projects, demonstration projects, and other related activities shall be public information.

(e) All information reported to or otherwise obtained by the commission, the Office of Regulatory Staff, or their representatives pursuant to subsection (a), (b), or (c), which information contains or relates to a trade secret, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this article or when relevant in any proceeding under this article. Nothing in this section shall authorize the withholding of information by the commission, the Office of Regulatory Staff, or any officer, employee, or agent under its control from the duly authorized committees of the state legislature.

HISTORY: 1962 Code Section 58‑141; 1970 (56) 2420; 2006 Act No. 318, Section 29, eff May 24, 2006.

CROSS REFERENCES

Applicability to Legislative Audit Council staff members of provisions relative to confidentiality of agency records, see Section 2‑15‑62.

Library References

Gas 9, 11.

Westlaw Topic No. 190.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 20.

NOTES OF DECISIONS

Review 1

1. Review

Where plaintiff in personal injury action cross‑examined witness without reserving his objections to witness’ testimony on theory that they contravened statute providing that accident reports should not be admissible into evidence, error was waived. Code 1976, Section 58‑5‑1010(d). Kirkland v. Peoples Gas Co. (S.C. 1977) 269 S.C. 431, 237 S.E.2d 772. Trial 412

**SECTION 58‑5‑1020.** Duties of certain gas utilities with regard to safety standards, inspection and maintenance plans and records.

Each gas utility which engages in the transportation of gas or which owns or operates pipeline facilities shall:

(a) At all times after the date any applicable safety standard established under this article takes effect, comply with the requirements of such standard; and

(b) File and comply with a plan of inspection and maintenance required by Section 58‑5‑1000; and

(c) Permit access to or copying of records; and make reports or provide information, and permit entry or inspection as required under Section 58‑5‑1010.

HISTORY: 1962 Code Section 58‑142; 1970 (56) 2420.

Library References

Gas 9, 11.

Westlaw Topic No. 190.

C.J.S. Gas Sections 2, 10, 12 to 14, 16 to 20.

**SECTION 58‑5‑1030.** Civil penalties.

(a) A gas utility which violates a provision of Section 58‑5‑1020 or a regulation under this article is subject to a civil penalty of not more than ten thousand dollars for each violation for each day that the violation persists, except that the maximum civil penalty may not exceed five hundred thousand dollars for any related series of violations.

(b) A civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, must be considered. The amount of the penalty when finally determined, or the amount agreed upon in compromise, may be recovered in a civil action in the court of common pleas.

HISTORY: 1962 Code Section 58‑143; 1970 (56) 2420; 1990 Act No. 334, Section 1, eff February 20, 1990.

Library References

Gas 22.

Westlaw Topic No. 190.

C.J.S. Gas Section 59.

**SECTION 58‑5‑1040.** Injunctive relief.

(a) The court of common pleas shall have jurisdiction to restrain violations of this article (including the restraining of transportation of gas or the operation of a pipeline facility) or to enforce standards established hereunder upon petition by the Office of Regulatory Staff. Whenever practicable, the Office of Regulatory Staff shall give notice to any gas utility against which an action for injunctive relief is contemplated and afford it an opportunity to present its views, and, except in the case of a knowing and willful violation, shall afford it reasonable opportunity to achieve compliance. The failure to give notice and afford an opportunity to achieve compliance shall not preclude the granting of appropriate relief.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this article, trial shall be by the court or upon demand of the accused, by a jury. The trial shall be conducted in accordance with the practice and procedure applicable in such proceedings established by the court of common pleas.

(c) Actions under subsection (a) of this section and Section 58‑5‑1030 may be brought in the judicial circuit wherein any act or transaction constituting the violation occurred, or in the circuit wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other circuit of which the defendant is an inhabitant or transacts business or wherever the defendant may be found.

(d) In any action brought under subsection (a) of this section and Section 58‑5‑1030, subpoenas for witnesses who are required to attend a court of common pleas may be served in any county.

HISTORY: 1962 Code Section 58‑144; 1970 (56) 2420; 2006 Act No. 318, Section 30, eff May 24, 2006.

CROSS REFERENCES

Civil remedy of injunction, generally, see SCRCP, Rule 65.

Library References

Injunction 1432.

Westlaw Topic No. 212.

C.J.S. Injunctions Section 168.

**SECTION 58‑5‑1050.** Interaction with federal agencies.

(a) As soon as practicable after April 23, 1970, and every year thereafter, the Office of Regulatory Staff shall submit an annual certification to the Secretary of the Department of Transportation as provided for in Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (P.L. 90‑481) [49 U.S.C. Section 1674(a)], as may be amended from time to time.

(b) In the event that a new or amended federal safety standard is adopted, the Office of Regulatory Staff shall submit an appropriate certification to comply with Section 5(d) of the Natural Gas Pipeline Safety Act of 1968 [P.L. 90‑481, 49 U.S.C. Section 1674(d)].

(c) The Office of Regulatory Staff is further empowered to make and to provide certifications, reports, and information to the Secretary of the United States Department of Transportation or any other regulatory agency of the United States having jurisdiction over federal safety standards; to enter into agreements with the Secretary to carry out the purposes of this article; to enforce federal safety standards in the State in lieu of enforcement by the Department of Transportation as permitted by the Natural Gas Pipeline Safety Act of 1968, as may be amended from time to time; and to exercise regulatory jurisdiction over the safety of pipeline systems and the transportation of gas as permitted by the Natural Gas Pipeline Safety Act of 1968, as may be amended from time to time.

HISTORY: 1962 Code Section 58‑145; 1970 (56) 2420; 2006 Act No. 318, Section 31, eff May 24, 2006.

Library References

Gas 1, 9.

Westlaw Topic No. 190.

C.J.S. Gas Sections 1 to 2, 7 to 10, 12 to 19.

**SECTION 58‑5‑1060.** Article inapplicable to liquefied petroleum gas.

Nothing in this article shall be applicable to the regulation of liquefied petroleum gas (LPG) to the extent that this subject is regulated by Sections 39‑43‑10 through 39‑43‑180 and the regulations issued pertinent thereto.

HISTORY: 1962 Code Section 58‑146; 1970 (56) 2420.

Library References

Gas 2.

Westlaw Topic No. 190.

C.J.S. Gas Sections 5 to 13, 15 to 19.

**SECTION 58‑5‑1070.** Article inapplicable to anhydrous ammonia.

The provisions of this article shall not be applicable to the regulation of anhydrous ammonia to the extent that this subject is regulated by Sections 39‑47‑10 to 39‑47‑70 and the regulations issued thereunder.

HISTORY: 1962 Code Section 58‑147; 1970 (56) 2420.

Library References

Gas 2.

Westlaw Topic No. 190.

C.J.S. Gas Sections 5 to 13, 15 to 19.

ARTICLE 11

Termination of Natural Gas Service Due to Nonpayment

**SECTION 58‑5‑1110.** Definitions.

For purposes of this article:

(1) “Licensed health care provider” means a licensed medical doctor, physician’s assistant, nurse practitioner, or advanced‑practice registered nurse.

(2) “Special needs account customer” means the account of a residential customer:

(a) when the customer can furnish to the utility a certificate on a form provided by the utility and signed by a licensed health care provider that states that termination of natural gas service would be dangerous to the health of the customer or a member of his household at the premises to which natural gas service is rendered; or

(b) who suffers from Alzheimer’s disease or dementia as certified by a licensed health care provider.

HISTORY: 2006 Act No. 313, Section 4, eff June 1, 2006; 2012 Act No. 122, Section 4, eff February 22, 2012.

**SECTION 58‑5‑1120.** Termination procedures; contents.

(A) Each public utility furnishing natural gas to residential customers must establish written procedures for termination of service due to nonpayment for a special needs account customer at any time and for all residential customers during weather conditions marked by extremely cold or hot temperatures. Each public utility furnishing natural gas to residential customers must submit its procedures to the Office of Regulatory Staff by November 1, 2006. Any subsequent revisions must be submitted semiannually by March first or September first.

(B) The procedures for termination must include the following:

(1) notification procedures so that the customer is made aware of an impending termination and the time within which he must make arrangements for payment prior to termination;

(2) arrangements for a payment arrangement plan to enable a residential customer, who has a satisfactory payment history as determined by the public utility, to pay by installments where the customer is unable to pay the full amount due for electric service;

(3) a procedure to advise customers who are unable to pay the full amount due or who are not approved for a payment arrangement plan that they may contact local social service agencies to determine the availability of public or private assistance with the payment of electric bills;

(4) a schedule of termination that takes into account the availability of the acceptance of payment and the reconnection of service; and

(5) the standards for determining weather conditions marked by extremely cold or hot temperatures.

HISTORY: 2006 Act No. 313, Section 4, eff June 1, 2006.

Library References

Gas 13(6).

Westlaw Topic No. 190.

C.J.S. Gas Sections 30, 45 to 47, 49 to 52, 56 to 57.

**SECTION 58‑5‑1130.** Third‑party notification program.

Each public utility furnishing natural gas must consider establishing and maintaining a third‑party notification program to allow a residential customer to designate a third party to be notified if the natural gas service is scheduled for termination.

HISTORY: 2006 Act No. 313, Section 4, eff June 1, 2006.

Library References

Gas 13(6).

Westlaw Topic No. 190.

C.J.S. Gas Sections 30, 45 to 47, 49 to 52, 56 to 57.

**SECTION 58‑5‑1140.** Disconnection when public safety emergency exists.

Notwithstanding another provision of this article, a public utility furnishing natural gas may disconnect a customer when it is determined that a public safety emergency exists.

HISTORY: 2006 Act No. 313, Section 4, eff June 1, 2006.

Library References

Gas 13(6).

Westlaw Topic No. 190.

C.J.S. Gas Sections 30, 45 to 47, 49 to 52, 56 to 57.

**SECTION 58‑5‑1150.** Promulgation of regulations.

Nothing in the article prohibits the commission from promulgating detailed regulations governing termination of service by a public utility furnishing natural gas so long as the regulations include the termination and third‑party notification protections provided by this article.

HISTORY: 2006 Act No. 313, Section 4, eff June 1, 2006.

Library References

Gas 13(6).

Westlaw Topic No. 190.

C.J.S. Gas Sections 30, 45 to 47, 49 to 52, 56 to 57.

**SECTION 58‑5‑1160.** Private right of action; new duty of care.

This article does not create a new private right of action or a new duty of care. This article does not diminish, increase, affect, or evidence any duty of care existing under the laws of this State prior to the effective date of this article.

HISTORY: 2006 Act No. 313, Section 4, eff June 1, 2006.

Library References

Action 3.

Gas 13(6).

Westlaw Topic Nos. 13, 190.

C.J.S. Actions Sections 56 to 57, 62 to 64, 67.

C.J.S. Gas Sections 30, 45 to 47, 49 to 52, 56 to 57.