CHAPTER 4

Office of Regulatory Staff

**SECTION 58‑4‑5.** Definitions.

 As used in this chapter:

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

 (2) "Immediate family" means an individual who is:

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

 (b) a spouse of the person; or

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

 (3) "Commission" means the Public Service Commission.

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

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

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

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

HISTORY: 2004 Act No. 175, Section 6, eff July 1, 2004.

**SECTION 58‑4‑10.** Office of Regulatory Staff created; representation of "public interest" in actions before commission; restrictions of communications.

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

 (B) Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before the commission. The regulatory staff must represent the public interest of South Carolina before the commission. For purposes of this chapter only, "public interest" means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

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

HISTORY: 2004 Act No. 175, Section 6; eff July 1, 2004, as to subjections (A) and (C); eff January 1, 2005, as to subsection (B); 2018 Act No. 258 (H.4375), Section 8, eff June 28, 2018; 2019 Act No. 62 (H.3659), Section 12, eff May 16, 2019.

Editor's Note

2018 Act No. 258, Section 12, provides as follows:

"SECTION 12. This act takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before the Public Service Commission or in any other court or venue on or after the effective date of this act."

Effect of Amendment

2018 Act No. 258, Section 8, rewrote (B).

2019 Act No. 62, Section 12, in (B), in the third sentence, inserted "only" following "For purposes of this chapter", and made a nonsubstantive change.

**SECTION 58‑4‑20.** Staff makeup, supervision and location.

 (A) The Office of Regulatory Staff shall consist of the executive director, transportation inspectors, pipeline safety inspectors, railway safety inspectors, and other professional, administrative, technical, and clerical personnel as may be necessary in order for the regulatory staff to represent the public interest, as hereinafter provided. All such personnel must be appointed, supervised, and directed by the executive director.

 (B) The regulatory staff is not subject to the supervision, direction, or control of the commission, the chairman, or members of the commission.

 (C) The Office of Regulatory Staff must not be physically housed in the same location as the Public Service Commission. The review committee must approve the location of the Office of Regulatory Staff.

HISTORY: 2004 Act No. 175, Section 6, eff July 1, 2004.

**SECTION 58‑4‑30.** Appointment of executive director; qualifications; term of office; removal; vacancies; oath of office.

 (A) The Executive Director of the Office of Regulatory Staff must be an attorney qualified to practice in all courts of this State with a minimum of eight years' practice experience and must be appointed pursuant to the procedure set forth in Section 58‑3‑530(1)(b).

 (B) The review committee must nominate one candidate as qualified to serve as executive director for the Governor's consideration.

 (1) A person must not be appointed to serve as Executive Director of the Office of Regulatory Staff unless the review committee nominates the person.

 (2) If the Governor rejects a person nominated by the review committee for executive director, the review committee must nominate another candidate for the Governor to consider, until the Governor makes an appointment.

 (C) The executive director must be appointed by the Governor for a term of six years and until his successor is appointed.

 (D) The executive director must be initially appointed by the Governor on or before May 1, 2004. Thereafter, the executive director must be appointed by the Governor on or before April first of the year in which the term of the executive director begins.

 (E) The initial term of office for the executive director begins July 1, 2004.

 (F) The executive director may be removed from office by the Governor in the event of his incapacity to serve. In addition, the executive director may be removed for cause from office by the Governor pursuant to Section 1‑3‑240(C).

 (G) In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of a nominee for the executive director's successor must be submitted by the review committee to the Governor.

 (H) The executive director must take the oath of office provided by the Constitution and the oaths prescribed by law for state officers.

 (I) The Office of Regulatory Staff shall be subject to annual review by the review committee; however, decisions of the Office of Regulatory Staff with respect to duties and responsibilities contained in Section 58‑4‑50 are in the sole discretion of the executive director, except as modified by order of a court of competent jurisdiction.

 (J) The salary of the executive director must be set by the review committee.

HISTORY: 2004 Act No. 175, Section 6, eff March 4, 2004.

**SECTION 58‑4‑40.** Conflict of interest.

 (A) Unless otherwise provided by law, no person may serve as the Executive Director of the Office of Regulatory Staff if the commission regulates any business with which that person is associated.

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

 (C) No person may be an employee of the Office of Regulatory Staff if the Public Service Commission regulates a business with which he is associated and this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

HISTORY: 2004 Act No. 175, Section 6, eff March 4, 2004.

**SECTION 58‑4‑50.** Regulatory staff duties and responsibilities; providing assistance to commission; ethics and Administrative Procedures Act workshop attendance.

 (A) It is the duty and responsibility of the regulatory staff to:

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

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

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

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

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

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

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

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

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

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

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

 (12) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, make inspections, audits, and examination of the compliance by electric cooperatives with the provisions of law specified in Section 33‑49‑150.

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

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

HISTORY: 2004 Act No. 175, Section 6, eff January 1, 2005; 2019 Act No. 56 (H.3145), Section 13, eff January 1, 2020.

Editor's Note

2019 Act No. 56, Section 16, provides as follows:

"SECTION 16. Where the provisions of new or revised 1976 Code sections or subsections contained in this act conflict with provisions of the bylaws of an electric cooperative, the provisions of this act control and the cooperative, as permitted by Section 33‑49‑280, shall amend and conform its bylaw provisions accordingly."

Effect of Amendment

2019 Act No. 56, Section 13, in (A), added (12).

**SECTION 58‑4‑55.** Production of books, records and other information; noncompliance; inspections, audits and examinations; costs; expenses.

 (A) The regulatory staff, in accomplishing its responsibilities under Section 58‑4‑50, may require the production of books, records, and other information to be produced at the regulatory staff's office, that, upon request of the regulatory staff, must be submitted under oath and without the requirement of a confidentiality agreement or protective order being first executed or sought. The regulatory staff must treat the information as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility or electric cooperative agrees that such information is no longer confidential or proprietary. Unless the commission's order contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30‑4‑10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

 If the books, records, or other information provided do not appear to disclose full and accurate information and, if such apparent deficiencies are not cured after reasonable notice, the regulatory staff may require the attendance and testimony under oath of the officers, accountants, or other agents of the parties having knowledge thereof at such place as the regulatory staff may designate and the expense of making the necessary examination or inspection for the procuring of the information must be paid by the party examined or inspected, to be collected by the regulatory staff by suit or action, if necessary. If, however, the examination and inspection and the reports thereof disclose that full and accurate information had previously been made, the expense of making the examination and inspection must be paid out of the funds of the regulatory staff.

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

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

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

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

 (D) Nothing in this section restricts the regulatory staff's ability to serve discovery in a contested case proceeding that seeks the type of documents or information the regulatory staff has obtained in the course of any review, investigation, inspection, audit, or examination, nor does anything in this section restrict the ability of any public utility or electric cooperative to object to such discovery or to seek relief regarding such discovery, including without limitation, the entry of a protective order. The regulatory staff shall not be required to execute a confidentiality agreement or seek a protective order prior to accessing the documents or information of a public utility or electric cooperative, and such information or documents must be treated as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility or electric cooperative agrees that such information is no longer confidential or proprietary. Unless the commission's order contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Section 30‑4‑10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity. However, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

 (E) The Office of Regulatory Staff, in order to accomplish any of the responsibilities assigned to it by Chapter 4, Title 58 or any other provision of law, may apply to the circuit court for subpoenas to be issued to entities over which the Public Service Commission does not have jurisdiction. Such subpoenas will be issued by the circuit court in the same manner as subpoenas are issued to parties to proceedings before that court, and all rules applicable to the issuance of such subpoenas, including enforcement and penalties, shall apply to subpoenas issued at the request of the regulatory staff.

 (F) The actual expenses of the Office of Regulatory Staff incurred in carrying out its duties under Section 58‑4‑50(A)(12) must be certified annually to the Public Utilities Review Committee in an itemized statement by the Office of Regulatory Staff, shown as a line item in the Office of Regulatory Staff budget, to be assessed directly to an audited electric cooperative by the Office of Regulatory Staff, and deposited with the State Treasurer to the credit of the Office of Regulatory Staff.

HISTORY: 2004 Act No. 175, Section 6, eff January 1, 2005; 2018 Act No. 258 (H.4375), Section 10, eff June 28, 2018; 2019 Act No. 56 (H.3145), Section 14, eff January 1, 2020.

Editor's Note

2018 Act No. 258, Section 12, provides as follows:

"SECTION 12. This act takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before the Public Service Commission or in any other court or venue on or after the effective date of this act."

2019 Act No. 56, Section 16, provides as follows:

"SECTION 16. Where the provisions of new or revised 1976 Code sections or subsections contained in this act conflict with provisions of the bylaws of an electric cooperative, the provisions of this act control and the cooperative, as permitted by Section 33‑49‑280, shall amend and conform its bylaw provisions accordingly."

Effect of Amendment

2018 Act No. 258, Section 10, rewrote the section, requiring production without the requirement of a confidentiality agreement or protective order, except under specified circumstances, providing when such information must be kept confidential and when such information may be disclosed, providing specific procedures to protect confidentiality, and allowing the Office of Regulatory Staff to apply in circuit court for subpoenas to be issued to entities over which the commission does not have jurisdiction.

2019 Act No. 56, Section 14, rewrote the section, including electric cooperatives within the section and providing for how the expenses of the Office of Regulatory Staff must be certified and assessed to audited electric cooperatives.

**SECTION 58‑4‑60.** Expenses to be borne by regulated utilities; assessment and collection.

 (A) The Office of Regulatory Staff must be staffed and equipped to perform the functions described in Section 58‑4‑50. The expenses of the office must be paid as set forth in Section 58‑3‑100 and this section. The executive director, within established budgetary limits and as allowed by law, must authorize and approve travel, subsistence, and related necessary expenses of the executive director or regulatory staff incurred while traveling on official business.

 (B)(1) The expenses of the Transportation Department of the Office of Regulatory Staff, with the exception of the expenses incurred in its railway jurisdiction, must be borne by the revenues from license fees derived pursuant to Sections 58‑23‑530 through 58‑23‑630, assessments to the Transportation Network Companies pursuant to Sections 58‑23‑1690 and 58‑23‑1700, and assessments to the carriers of household goods and hazardous waste for disposal carriers. The expenses of the railway section of the Office of Regulatory Staff must be borne by the railroad companies subject to the commission's jurisdiction according to their gross income from operations in this State.

 (2) All other expenses of the Office of Regulatory Staff must be borne by the public utilities subject to the jurisdiction of the commission. On or before the first day of July in each year, the Department of Revenue must assess each public utility, railway company, household goods carrier, and hazardous waste for disposal carrier its proportion of the expenses in proportion to its gross income from operation in this State in the year ending on the thirtieth day of June preceding that on which the assessment is made which is due and payable on or before July fifteenth. The assessments must be charged against the companies by the Department of Revenue and collected by the department in the manner provided by law for the collection of taxes from the companies including the enforcement and collection provisions of Article 1, Chapter 54, 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.

 (C) The Office of Regulatory Staff must certify to the Department of Revenue annually on or before May first the amounts to be assessed; however, the deadline shall not apply to the certification made to the Department of Revenue in 2004.

 (D) The Office of Regulatory Staff shall operate as an other‑funded agency.

 (E) The appropriation for the Office of Regulatory Staff shall be advanced by the State until such time as funds have been collected from the corporations liable therefor and, when collected, must be placed in the state treasury.

HISTORY: 2004 Act No. 175, Section 6, eff July 1, 2004; 2005 Act No. 5, Section 6, eff December 3, 2004; 2015 Act No. 88 (H.3525), Section 2, eff June 24, 2015.

Effect of Amendment

2015 Act No. 88, Section 2, in (B), added designators (1) and (2), and in (B)(1), inserted "assessments to the Transportation Network Companies pursuant to Sections 58‑23‑1690 and 58‑23‑1700, and".

**SECTION 58‑4‑80.** Actions for judicial review of commission orders; intervention.

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

HISTORY: 2004 Act No. 175, Section 6, eff January 1, 2005; 2018 Act No. 258 (H.4375), Section 9, eff June 28, 2018.

Editor's Note

2018 Act No. 258, Section 12, provides as follows:

"SECTION 12. This act takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before the Public Service Commission or in any other court or venue on or after the effective date of this act."

Effect of Amendment

2018 Act No. 258, Section 9, added the fourth sentence, providing the Office of Regulatory Staff does not represent the commission on appeal.

**SECTION 58‑4‑90.** Discretion of executive director as to initiation of actions.

 Except as required by Section 58‑4‑50, decisions relating to whether, when, or how to initiate, continue, participate, or intervene in proceedings pursuant to Section 58‑4‑50 are in the sole discretion of the executive director, except as modified by order of a court of competent jurisdiction.

HISTORY: 2004 Act No. 175, Section 6, eff July 1, 2004.

**SECTION 58‑4‑100.** Employment of certain expert witnesses and third‑party consultants exempted State Procurement Code.

 (A) To the extent necessary to carry out regulatory staff responsibilities, the executive director is authorized to employ expert witnesses and other professional expertise as the executive director may consider necessary to assist the regulatory staff in its participation in commission proceedings. The compensation paid to these persons may not exceed compensation generally paid by the regulated industry for such specialists. The compensation and expenses therefor must be paid by the public utility or utilities participating in the proceedings upon agreement between the public utility or utilities participating in the proceedings and the Office of Regulatory Staff or upon approval by the Review Committee or from the regulatory staff's budget. If paid by the public utility or utilities, the compensation and expenses must be treated by the commission, for ratemaking purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before the commission. An accounting of compensation and expenses must be reported annually to the review committee, the Speaker of the House of Representatives, and the Chairman of the Senate Judiciary Committee.

 (B) The Office of Regulatory Staff is exempt from the State Procurement Code in the selection and hiring of an expert or third‑party consultant to conduct an independent study described in Section 58‑37‑60 and Section 58‑41‑20(H). However, the Office of Regulatory Staff and the commission may not hire the same expert or third‑party consultant in the same proceeding or to address the same or similar issues in different proceedings.

HISTORY: 2004 Act No. 175, Section 6, eff July 1, 2004; 2005 Act No. 5, Section 7, eff December 3, 2004; 2019 Act No. 62 (H.3659), Section 13, eff May 16, 2019.

Effect of Amendment

2019 Act No. 62, Section 13, inserted the (A) identifier, and added (B).

**SECTION 58‑4‑110.** Annual reports.

 The regulatory staff must make and publish annual reports to the General Assembly on its activities in the interest of the using and consuming public.

HISTORY: 2004 Act No. 175, Section 6, eff July 1, 2004.

**SECTION 58‑4‑120.** Promulgation of rules governing internal administration and operations.

 Rules governing the internal administration and operations of the Office of the Regulatory Staff must be promulgated by the office and subject to review by the General Assembly as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution. After submission to the House of Representatives, the Speaker shall refer the rules to the Labor, Commerce and Industry Committee. After submission to the Senate, the President shall refer the rules to the Judiciary Committee.

HISTORY: 2004 Act No. 175, Section 6, eff July 1, 2004.

**SECTION 58‑4‑130.** Restriction on outside employment of executive director.

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

HISTORY: 2004 Act No. 175, Section 6, eff July 1, 2004.