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COMMITTEE REPORT

January 10, 2018

**H. 4375**

Introduced by Reps. McCoy, Ott, Lucas, Anderson, Ballentine, Blackwell, Caskey, Crawford, Crosby, Davis, Finlay, Forrester, Gilliard, Hardee, Henegan, Hixon, Mack, Pope, Rutherford, J.E. Smith, Sandifer, Stavrinakis, Erickson, Huggins, W. Newton, Bales, Young, McEachern, Clary, Tallon, Brown, Fry, Robinson‑Simpson, V.S. Moss, Clyburn, Martin, Magnuson, Bennett and Arrington

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Read the first time January 9, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4375) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 34 to Title 58 so as to establish provisions for specific utility plants or projects in regard, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 32, beginning on line 38, by deleting SECTION 5 in its entirety.

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 34 TO TITLE 58 SO AS TO ESTABLISH PROVISIONS FOR SPECIFIC UTILITY PLANTS OR PROJECTS IN REGARD TO RATE DETERMINATIONS AND OTHER REQUIREMENTS WHICH WILL SUPPLEMENT THE GENERAL RATE PROVISIONS AND REQUIREMENTS OF ARTICLE 7, CHAPTER 27, TITLE 58; TO AMEND ARTICLES 4 AND 5, CHAPTER 33, TITLE 58, RELATING TO THE BASE LOAD REVIEW ACT OF 2007, SO AS TO FURTHER PROVIDE FOR PROCEDURAL AND OTHER MATTERS RELATING TO THE ACT, INCLUDING PROVISIONS TO DEFINE CERTAIN TERMS, AND TO PROVIDE THAT RATE INCREASES FOR THESE BASE LOAD PLANTS PROSPECTIVELY SHALL BE DETERMINED IN ACCORDANCE WITH ARTICLE 7, CHAPTER 27, TITLE 58, AS WELL AS CERTAIN REVISED PROVISIONS OF THIS ARTICLE; TO AMEND SECTION 58‑27‑850, RELATING TO CHANGES OF RATES BY THE PUBLIC SERVICE COMMISSION AFTER INVESTIGATION, SO AS TO PROVIDE THAT THE PROVISIONS OF THIS SECTION AND THE ARTICLE WHEREIN IT IS CONTAINED SHALL BE SUPPLEMENTED BY THE PROVISIONS OF CHAPTER 34; AND TO DELETE ARTICLES 1, 3, AND 7 OF CHAPTER 33, TITLE 58, RELATING TO UTILITY FACILITY SITING, PROTECTIONS, AND CERTIFICATION.

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

SECTION 1. (A) The General Assembly finds that:

(1) It is necessary to exercise its constitutional authority pursuant to Section 1, Article IX of the South Carolina Constitution, 1895, to regulate electric utility rates to protect the public interest and ratepayers of South Carolina.

(2) The nuclear construction of V.C. Summer Nuclear Units 2 and 3 near Jenkinsville, South Carolina has been plagued with serious problems from the outset, including billions of dollars of cost overruns, years of delays, flawed construction plans, faulty designs, inadequate management of contractors, mismanagement, lack of oversight, imprudent actions and decisions, and a lack of transparency and truthfulness with regulators and investors that has caused serious harm to the public interest and ratepayers of South Carolina.

(3) The Base Load Review Act was abused, material information was withheld from regulators, and regulators were intentionally misled, all of which contributed to the Public Service Commission approving rate increases that otherwise would not have been approved and which were inconsistent with the intent of the General Assembly and the law of South Carolina.

(4) The Base Load Review Act has been interpreted and applied in a manner inconsistent with the intent of the General Assembly and it is necessary to provide clarification as to the intent of the General Assembly, including defining undefined terms and resolving inconsistencies within the Base Load Review Act in order to protect the public interest.

(5) A utility must be subject to a heightened duty of utmost care and diligence to its customers in the decision‑making processes and actions taken by the utility and any affiliated person or entity relating to ratemaking, construction, construction activities, expansion and operation of base load nuclear plants.

(6) It is necessary to apply the “used and useful test” which has long served as the foundation of utility law in South Carolina.

(7) It must recognize the constitutional mandate that any legislation must achieve the proper balance between protecting the interest of the utility’s shareholders and the interest of the customers, along with further constitutional limitations prohibiting certain retroactive applications of legislation; accordingly, the General Assembly finds it necessary to exercise its constitutional authority to regulate rates through enacting a new ratemaking statute applying the “used and useful test” to be applied to projects initiated pursuant to the Base Load Review Act while also amending the Base Load Review Act to provide clarifications should a court of competent jurisdiction find that the Constitution of this State prohibits application of the “used and useful test” to projects initiated pursuant to the Base Load Review Act.

(B) The General Assembly therefore declares its intent to enact legislation that will permit the Public Service Commission through the exercise of its authority as contained in this act to:

(1) remove all rate increases associated with the construction of the V.C. Summer nuclear project near Jenkinsville that had been previously imposed;

(2) prevent ratepayers from paying for any additional costs of the failed and abandoned project; and

(3) implement interim electric rates which would remove all costs associated with this project from ratepayer bills and would be effective until pending proceedings before the commission are resolved.

SECTION 2. Title 58 of the 1976 Code is amended by adding:

“CHAPTER 34

Rate Determinations and Requirements for Certain

Utility Plants

Section 58‑34‑100. (A) On and after the effective date of this chapter, the determination of electric rates and charges for plants or projects as defined in subsection (B) must be as provided by the provisions of this chapter as supplemented by the provisions of Article 7, Chapter 27, Title 58, and not as provided in Chapter 33. In addition, a resumption of a base load project governed by the former provisions of Chapter 33, which has been abandoned, also shall be governed by the provisions of this chapter in regard to these plants, as well as the revised provisions of Chapter 33.

(B) The following terms and the explanatory provisions relating to them, for purposes of this chapter, unless the content clearly indicates otherwise, have the definitions or applications below:

(1) ‘Imprudent’ or ‘imprudence’ means and includes, but is not limited to, the lack of caution, care, and diligence. Imprudent or imprudence includes, but does not require, a finding of negligence or recklessness. Imprudence on behalf of any contractor, subcontractor, agent, or person hired to construct a plant shall be attributed to the utility.

Imprudence includes, but is not limited to, any one or more of the following:

(a) failure to timely disclose and provide to the commission or the Office of Regulatory Staff any report, study, analysis, or written communication material to a particular project prepared by a third party it engaged or caused to be engaged and furnished to the utility which brings into question the management, supervision, or oversight of the project, the budgeted costs of the project, the performance of contractors or subcontractors on the project, or the scheduled completion date of the project;

(b) imbalance of the original cost estimates of the project as made by the utility as compared with the final cost estimates or anticipated cost estimates of the project. Where the actual costs of the project to date or the anticipated costs of the project at its completion exceeds one hundred twenty percent or more of the utility’s original cost estimates of the project, it may be presumed that imprudence on the part of the utility is present;

(c) inappropriate or poor management or oversight decisions in the construction or operation of the project including failure to keep knowledgeable utility management or supervisory personnel on the project site to ensure proper supervision and oversight of the project and its construction;

(d) failure of the utility to act in the general public interest in management and oversight decisions in the acquisition, construction, or operation of the project as determined by the commission;

(e) the acceptance of risks in the construction of the project which are inappropriate to the general public interest of the State of South Carolina as determined by the commission; and

(f) any other fact, factor, or relationship which indicates the lack of prudence as defined in this section as determined by the commission.

Imprudent or imprudence as used in this chapter includes the presence of one or more of the factors enumerated in this item which have occurred since the base load review order or project development order and its attendant finding of prudency.

The utility shall bear the burden of proving the prudency of each individual action or decision challenged. If the utility fails to prove prudency as it relates to any individual action or decision, all costs incurred relating to the project are deemed imprudent. The Office of Regulatory Staff may challenge as imprudent any action or decision relating to the project or in the context of the entire project.

(2) ‘Plant’ or ‘project’ means a plant constructed pursuant to a base load review order or project development order as provided for in the Base Load Review Act.

(3) ‘Prudent’ or ‘prudence’ means and requires a high standard of care in making decisions and taking actions in order to protect the public interest.

In the context of this chapter, it means a high standard of caution, care, and diligence in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants, or any other person acting on behalf of or for the utility affecting the project.

A finding of prudency may be revisited where new information comes available to the commission relating to the prudency finding that was unavailable to the commission at the time the decision was made. Prudency is required in the context of the project as a whole and also as it relates to each individual action or decision affecting the project.

To the extent a utility enters a contract with a third party that delegates some or all decision‑making authority related to the project, the utility retains the burden of establishing the prudency of specific items of cost or specific third party decisions.

(4) ‘Utility’ means a person owning or operating equipment or facilities for generating, transmitting, or delivering electricity to South Carolina retail customers for compensation, but it shall not include electric cooperatives, municipalities, the South Carolina Public Service Authority, or a person furnishing electricity only to himself, itself, its residents, employees, or tenants when the electricity is not resold or used by others.

(C) Other definitions contained in Section 58‑27‑10 also apply to the provisions of this chapter mutatis mutandis.

Section 58‑34‑110. No costs associated with the construction or expansion of a facility, including preconstruction costs, capital costs, construction work in progress costs, return on equity, weighted average cost of capital, or AFUDC undertaken by a utility pursuant to an existing base load review order under Article 4, Chapter 33, Title 58, may be made a part of the rate base or otherwise included in the rates charged by the electric utility or recovered from customers in any form until such time as the facility is determined by the commission to be used and useful in service to the public. Except as stated in this section, no electric utility property is considered used and useful until it commences commercial operations and is presently providing actual electric utility service to customers. If any previous orders of the commission have approved any of these costs to be part of the rate base or otherwise included in the rates charged by the utility, the Office of Regulatory Staff shall petition the commission to have these costs removed permanently, and if so, the provisions of Section 58‑34‑120 regarding interim rates shall apply pending the final determination, including appeals of the petition filed by the Office of Regulatory Staff.

Section 58‑34‑120. Notwithstanding the provisions of Section 58‑34‑110, upon abandonment of construction of a plant, the commission may upon its own motion, or upon petition from any party, or by a filing of a public utility, authorize the collection of interim rates until a plant or project the utility is constructing in this State is used and useful in service to the public and is then providing actual utility service to customers, or until proceedings relating to the abandonment of the plant or project are concluded. The interim rates as imposed by this section, after notice and hearing, must not include any preconstruction costs, capital costs, construction work in progress costs, return on equity costs, weighted average cost of capital, or AFUDC. The interim rates shall remain in effect, notwithstanding any litigation or repeals pertaining to them, until the final conclusion including appeals of proceedings involving the abandonment of the plant.

Section 58‑34‑130. The commission shall have the power to evaluate the efficiency or prudence of acquisition, construction, or operating practices of a utility subject to the provisions of this chapter. In the event the commission determines that a portion of the costs of acquisition, construction, or operation were incurred due in whole or in part to a lack of efficiency or prudence, it shall have the power and authority to exclude all or a portion of those costs from the revenue requested by the utility.

Section 58‑34‑140. The Executive Director of the Office of Regulatory Staff is authorized to employ expert witnesses and other professional engineering, construction, or other experts or consultants as the executive director considers necessary to assist the regulatory staff in its participation in proceedings under this chapter. The compensation paid to these persons may not exceed the compensation ordinarily paid by the regulated industry for these specialists. Upon agreement between the utility and the Office of Regulatory Staff or upon approval of the review committee established under Section 58‑3‑20, the compensation and expenses must be paid by the utility involved.

Section 58‑34‑150. This chapter applies to all cases, proceedings, petitions, or matters pending on or after the effective date of this chapter, including petitions filed pursuant to Article 4, Chapter 33, Title 58.”

SECTION 3. Articles 4 and 5, Chapter 33, Tile 58 of the 1976 Code are amended to read:

“Article 4

Base Load Review Act

Section 58‑33‑210. This article is known, and may be cited, as the ‘Base Load Review Act’ and is applicable to utilities as defined in Section 58‑33‑220 of this article.

Section 58‑33‑220. The following terms and the explanatory provisions relating to them, when used in this article, have the following meanings or applications, unless another meaning or application is clearly apparent from the context:

(1) ‘Allowance for Funds Used During Construction’ or ‘AFUDC’ means the allowance for funds used during construction of a plant calculated according to regulatory accounting principles. ‘AFUDC’ shall not include any costs from a plant which fails to commence commercial operation, is abandoned, or is not in compliance with previously approved construction schedules or previously approved cost estimates. AFUDC also shall not include any costs from a plant where the utility fails to prove the prudency of a challenged action or decision or the commission finds the utility withheld material information related to the plant’s construction schedules or costs.

(2) ‘Base load plant’, ~~or~~ ‘plant’, or ‘project’ means a new coal or nuclear fueled electrical generating unit or units or facility that is designed to be operated at a capacity factor exceeding seventy percent annually, has a gross initial generation capacity of three hundred fifty megawatts or more, and is intended in whole or in part to serve retail customers of a utility in South Carolina, and for a coal plant, includes Best Available Control Technology, as defined by the United States Environmental Protection Agency, for the control of air emissions.

~~(3)~~ ~~‘Base load review application’ or ‘application’ means an application for a base load review order under the terms of this article.~~

~~(4)~~(3) ‘Base load review order’ means an order issued by the commission ~~pursuant to Section 58‑33‑270~~ establishing that if a plant is constructed in accordance with an approved construction schedule, approved capital ~~costs~~ cost estimates, and approved projections of in‑service expenses, as defined herein, and is presently generating, transmitting, or delivering electricity to retail customers, the plant is considered to be used and useful for utility purposes such that its capital costs are prudent utility costs and are properly included in rates. If a plant fails to commence commercial operations or is abandoned, the plant must be considered not to be used and useful for utility purposes such that all costs are properly excluded from rates. If construction of a plant is not in accordance with previously approved construction schedules or previously approved capital cost estimates, the plant must be considered not to be used and useful for utility purposes such that its capital costs are properly excluded from rates.

~~(5)~~(4) ‘Capital costs’ or ‘plant capital costs’ means costs associated with the design, siting, selection, acquisition, licensing, construction, testing, and placing into service of a base load plant, and capital costs incurred to expand or upgrade the transmission grid in order to connect the plant to the transmission grid and includes costs that may be properly considered capital costs associated with a plant under generally accepted principles of regulatory or financial accounting, and specifically includes AFUDC associated with a plant and capital costs associated with facilities or investments for the transportation, delivery, storage, and handling of fuel. ‘Capital costs’ or ‘plant capital costs’ shall not include any costs from a plant which fails to commence commercial operations, is abandoned, or is not in compliance with previously approved construction schedules or previously approved capital cost estimates. ‘Capital costs’ or ‘plant capital costs’ also shall not include any costs from a plant where the utility fails to prove the prudency of a challenged action or decision or if the commission finds the utility withheld material information related to the plant’s construction schedules or costs.

~~(6)~~ ‘~~Combined application’ means a base load review application which is combined with an application for a certificate under the Utility Facility Siting and Environmental Protection Act, or which involves a plant located outside of the State of South Carolina, and at the utility’s option may be combined with an application for new electric rates under Section 58‑27‑860.~~

~~(7)~~ ~~‘Combined proceeding’ means a proceeding to consider all aspects of a combined application.~~

~~(8)~~(5) ‘Construction work in progress’ means capital costs as defined above associated with a base load plant which have been incurred but have not been included in the utility’s plant‑in‑service. ‘Construction work in progress’ shall not include any costs from a plant which fails to commence commercial operations, is abandoned, or is not in compliance with previously approved construction schedules or previously approved capital cost estimates. ‘Construction work in progress’ also shall not include any costs from a plant where the utility fails to prove the prudency of a challenged action or decision or where the commission finds the utility withheld material information related to the plant’s construction schedules or costs.

~~(9)~~(6) ‘General rate proceeding’ means a proceeding under Section 58‑27‑810 and other applicable provisions for the establishment of new electric rates and charges, and where orders in general rate proceedings are referenced in this article, these orders include rate orders issued in proceedings or combined proceedings under this article.

(7) ‘Imprudent’ or ‘imprudence’ includes, but is not limited to, the lack of caution, care, and diligence. Imprudent or imprudence includes, but does not require, a finding of negligence or recklessness.

Imprudence on behalf of any contractor, subcontractor, agent, or person hired to construct a plant shall be attributed to the utility.

Imprudence includes, but is not limited to, any one or more of the following:

(a) failure to timely disclose and provide to the commission or the Office of Regulatory Staff any report, study, analysis, or written communication material to a particular project prepared by a third party it engaged or caused to be engaged and furnished to the utility which brings into question the management, supervision, or oversight of the project, the budgeted costs of the project, the performance of contractors or subcontractors on the project, or the scheduled completion date of the project;

(b) imbalance of the original cost estimates of the project as made by the utility as compared with the final cost estimates or anticipated cost estimates of the project. Where the actual costs of the project to date or the anticipated costs of the project at its completion exceeds one hundred twenty percent or more of the utility’s original cost estimates of the project, it may be presumed that imprudence on the part of the utility is present;

(c) inappropriate or poor management or oversight decisions in the construction or operation of the project including failure to keep knowledgeable utility management or supervisory personnel on the project site to ensure proper supervision and oversight of the project and its construction;

(d) failure of the utility to act in the general public interest in management and oversight decisions in the acquisition, construction, or operation of the project as determined by the commission;

(e) the acceptance of risks in the construction of the project which are inappropriate to the general public interest of the State of South Carolina as determined by the commission; and

(f) any other fact, factor, or relationship which indicates the lack of prudence as defined in this section as determined by the commission.

Imprudent or imprudence as used in this article includes the presence of one or more of the factors enumerated in this item which have occurred since the base load review order or project development order and its attendant finding of prudency.

The utility shall bear the burden of proving the prudency of each individual action or decision challenged. If the utility fails to prove prudency as it relates to any individual action or decision, all costs incurred relating to the project are deemed imprudent. The Office of Regulatory Staff may challenge as imprudent any action or decision relating to the project or in the context of the entire project.

~~(10)~~ ~~‘In‑service expenses’ means reasonably projected expenses recognized under generally accepted principles of regulatory and financial accounting as a result of a plant commencing commercial operation, including:~~

~~(a)~~ ~~expenses associated with operating and maintaining a plant, as well as taxes and governmental charges applicable to the plant including taxes other than income taxes;~~

~~(b)~~ ~~depreciation and amortization expenses related to the plant;~~

~~(c)~~ ~~revenue requirements related to the utility’s cost of capital applied to the investment in supplies, inventories, and working capital associated with the plant; and~~

~~(d)~~ ~~other costs determined by the commission to be appropriate for ratemaking purposes. In‑service expenses include, but are not limited to, labor, supplies, insurance, general and administrative expenses, and the cost of outside services, but do not include costs recovered as fuel costs pursuant to Section 58‑27‑865.~~

~~(11)~~(8) ‘Person’ means any individual, group, firm, partnership, or corporation.

~~(12)~~ ~~‘Preconstruction costs’ means all costs associated with a potential nuclear plant incurred before issuance of a final certificate under the Utility Facility Siting and Environmental Protection Act, including, without limitation, the costs of evaluation, design, engineering, environmental and geotechnical analysis and permitting, contracting, other required permitting including early site permitting and combined operating license permitting, and initial site preparation costs and related consulting and professional costs, and shall include AFUDC associated with those costs. For potential nuclear plants located in other states, the costs must be those incurred before issuance of a certificate by the host state under statutes comparable to the Utility Facility Siting and Environmental Protection Act.~~

~~(13)~~ ~~‘Proceeding’ means the proceeding to consider an application filed under this chapter.~~

~~(14)~~ ~~‘Project development application’ means an application for a project development order.~~

~~(15)~~(9) ‘Project development order’ means an order establishing the prudence of a utility’s decision to incur preconstruction costs associated with a nuclear plant or potential nuclear plant.

~~(16)~~ ~~‘Return on equity’ means the return on common equity established in the base load review order for a plant. But, if the order in the utility’s most recent general rate proceeding was issued no more than five years before the date of filing of the application or combined application, or if such an order is issued after the application, combined application or base load review order related to the plant is filed, then at the utility’s option, the rate of return on common equity established in that order shall be the rate of return used for computing future rate revisions under this article. A project‑specific return on equity set hereunder shall apply exclusively to the establishment of the weighted average cost of capital under this article and shall not be used for reporting or any other purpose.~~

~~(17)~~ ~~‘Revised rates’ means a revised schedule of electric rates and charges reflecting a change to the utility’s then current nonfuel rates and charges to add incremental revenue requirements related to a base load plant as authorized in this article. For a nuclear plant under construction, until it enters commercial operation the rate adjustments related to the plant shall include recovery of the weighted average cost of capital applied to the outstanding balance of capital costs of that plant only and shall not include depreciation or other items constituting a return of capital to the utility. For a coal plant, no revised rates shall be allowed except that an adjustment under Section 58‑33‑280(J)(1) shall be permitted to take effect on or after the date commercial operations of the plant commence.~~

~~(18)~~ ~~‘Revised rates order’ means an order issued by the commission approving, modifying, or denying the utility’s request to charge revised rates under this article, which revised rates order an aggrieved party may contest in an adversarial hearing before the commission.~~

~~(19)~~ ~~‘Revised rates proceedings’ means all proceedings to consider an application for revised rates or review of a revised rates order.~~

(10) ‘Prudent’ or ‘prudence’ means and requires a high standard of care in making decisions and taking actions in order to protect the public interest.

In the context of this article, it means a high standard of caution, care, and diligence in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project or any other person acting on behalf of or for the utility affecting the project.

A finding of prudency may be revisited where new information comes available to the commission relating to the prudency finding that was unavailable to the commission at the time the decision was made. Prudency is required in the context of the project as a whole and also as it relates to each individual action or decision affecting the project.

To the extent a utility enters a contract with a third party that delegates some or all decision‑making authority related to the project, the utility retains the burden of establishing the prudency of specific items of cost or specific third party decisions.

~~(20)~~(11) ‘Utility’ means a person owning or operating equipment or facilities for generating, transmitting, or delivering electricity to South Carolina retail customers for compensation but it shall not include electric cooperatives, municipalities, the South Carolina Public Service Authority, or a person furnishing electricity only to himself, itself, its residents, employees, or tenants when the electricity is not resold or used by others. In the context of prudency determinations, ‘utility’ includes all contractors, subcontractors, and other persons acting on behalf of the utility.

~~(21)~~ ~~‘Utility Facility Siting and Environmental Protection Act’ means Section 58‑33‑10 and other applicable provisions of this chapter.~~

~~(22)~~(12) ‘Weighted average cost of capital’ or ‘cost of capital’ means the utility’s average cost of debt and equity capital:

(a) incorporating the return on equity;

(b) incorporating the utility’s current weighted average cost of debt;

(c) weighting (a) and (b) according to the utility’s capital structure for ratemaking purposes, as established in the order in the utility’s last general rate proceeding, updated to reflect the utility’s current levels of debt and equity capital; and

(d) adjusting the result for the effect of income taxes.

Section 58‑33‑225. ~~(A)~~ ~~The provisions of this section apply to the preconstruction costs of a nuclear‑powered facility.~~

~~(B)~~ ~~At any time before the filing of an application or a combined application under this act related to a specific plant, a utility may file a project development application with the commission and the office of regulatory staff.~~

~~(C)~~ ~~In a project development application, the utility shall:~~

~~(1)~~ ~~describe the plant being considered and shall designate:~~

~~(a)~~ ~~the anticipated generation capacity (or range of capacity) of the plant; and~~

~~(b)~~ ~~the projected annual capacity factors or range of factors of the plant;~~

~~(2)~~ ~~provide information establishing the need for the generation capacity represented by the potential plant and the need for generation assets with the indicative annual capacity factors of the potential plant;~~

~~(3)~~ ~~provide information establishing the reasonableness and prudence of the potential fuel sources and potential generation types that the utility is considering for the plant; and~~

~~(4)~~ ~~provide such other information as may be required to establish that the decision to incur preconstruction costs related to the potential nuclear plant is prudent considering the information known to the utility at the time and considering the other alternatives available to the utility for supplying its generation needs.~~

~~(D)~~ ~~The commission shall issue a project development order affirming the prudency of the utility’s decision to incur preconstruction costs for the nuclear plant specified in the application if the utility demonstrates by a preponderance of evidence that the decision to incur preconstruction costs for the plant is prudent. In issuing its project development order, the commission may not rule on the prudency or recoverability of specific items of cost, but shall rule instead on the prudency of the decision to incur preconstruction costs for the nuclear plant described in Section 58‑33‑225(C)(1).~~

~~(E)~~ ~~Unless the record in a subsequent proceeding shows that individual items of cost were imprudently incurred, or that other decisions subsequent to the issuance of a project development order were imprudently made considering the information available to the utility at the time they were made, then all the preconstruction costs incurred for the potential nuclear plant must be properly included in the utility’s plant‑in‑service and must be recoverable fully through rates in future proceedings under this chapter.~~

~~(F)~~ ~~To the extent that a party in a general rate proceeding or revised rates proceeding establishes the imprudence of specific items of cost or of specific decisions made subsequent to the issuance of a project development order as set forth in Section 58‑33‑225(E), then the commission may disallow the resulting costs but only to the extent that a prudent utility would have avoided those costs considering the information available to the utility at the time when they were incurred or the decisions at issue were made.~~

~~(G)~~ If the utility decides to abandon the project after issuance of a prudency determination in the base load review order or project development order, the provisions of Chapter 34, Title 58 apply; provided, however, that if a court of competent jurisdiction determines that it is unconstitutional or unlawful to apply the provisions of Chapter 34, Title 58 in this particular situation, then the provisions of Section 58‑33‑280(A) apply. ~~under this section, then the preconstruction costs related to that project may be deferred, with AFUDC being calculated on the balance, and may be included in rates in the utility’s next general rate proceeding or revised rates proceeding, provided that as to the decision to abandon the plant, the utility shall bear the burden of proving by a preponderance of the evidence that the decision was prudent. Without in any way limiting the effect of Section 58‑33‑225(D), recovery of capital costs and the utility’s cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs. Pending an order in the general rate proceeding or revised rates proceeding, the utility, at its discretion, may commence to amortize to cost of service the balance of the preconstruction costs related to the abandoned project over a period equal to the period during which the costs were incurred, or five years, whichever is greater.~~

~~(H)~~ ~~Prudency determinations under Section 58‑33‑225(D) may not be challenged or reopened in any subsequent proceeding including proceedings under Section 58‑27‑810 and other applicable provisions and Section 58‑33‑220 and other applicable provisions of this article.~~

~~(I)~~ ~~At any time after an initial project development order has been issued, a utility may file an amended project development application seeking a determination of the prudency of the utility’s decision to continue to incur preconstruction costs considering changed circumstances or changes in the type or location of nuclear plant that the utility is pursuing or considering other characteristics or decisions related to the plant. The amended project development application must be considered in a separate docket; however, the testimony and other evidence of the prior docket must be considered to be part of the new docket.~~

~~(J)~~ ~~Pursuant to Section 58‑33‑240, the commission shall enter an order granting or denying a project development order or amended project development order within six months of the filing of the application. If the commission fails to issue an order within the period prescribed in this section, a party may move that the commission issue an order granting or denying the application. If the commission fails to issue an order within ten days after the motion is served, the application will be considered granted.~~

Section 58‑33‑230. ~~(A) Any utility proposing to construct a plant, individually or jointly with other parties, may elect to come under the terms of this article by filing an application or combined application with the commission, and by serving a copy of that application or combined application on the Office of Regulatory Staff.~~

~~(B)~~ ~~If the plant is to be located in South Carolina and no application for a certificate under the Utility Facility Siting and Environmental Protection Act has previously been granted or is then pending, the utility shall file a combined application under this article.~~

~~(C)~~ ~~If the plant is to be located outside South Carolina but will serve retail customers in this State, the utility shall file a combined application, but as to the Utility Facility Siting and Environmental Protection Act, the combined application shall address only the requirements of Section 58‑33‑160(1)(a), (d), and (f), and information pertaining to the environmental impacts of the plant may not be included in the combined application. In issuing the resulting order as to the Utility Facility Siting and Environmental Protection Act, the commission shall make the determinations required under Section 58‑33‑160(1)(a), (d) and (f) only.~~

~~(D)~~ ~~For plants located outside South Carolina that will serve retail customers in this State, the issuance of a certificate for the plant by the host state after a review of issues comparable to those considered under Section 58‑33‑160(1)(a), (d) and (f) of the Utility Facility Siting and Environmental Protection Act shall create a rebuttable presumption that the requirements of those sections are satisfied.~~

~~(E)~~ ~~An application or combined application may be combined with a general rate proceeding application at the utility’s option.~~

~~(F)~~ The Office of Regulatory Staff shall safeguard the public interest in all matters arising under this article. It shall have full audit rights related to all matters arising under this article and shall review the reasonableness and necessity of all costs to be recovered under this article.

Section 58‑33‑235. (A) On and after the effective date of this section, no electricity rate increases may be imposed or approved and no costs may be recovered through rate increases or otherwise from the ratepayers for preconstruction costs, construction work in progress costs, capital costs, AFUDC expenses, finance charges for the payment of debt service relating to these costs or any other costs in regard to base load plants which are not used and useful in service to the public. The General Assembly declares that the revised provisions of this article are intended to clarify previously undefined terms consistent with what was intended in the original enactment of this article, to supplement previously uncodified standards or requirements consistent with the General Assembly’s original intent, and to set out procedural requirements and guidance for the commission to follow when administering those electricity rate increases which were previously approved and imposed under this article.

(B) If a construction project under this article is abandoned, the Office of Regulatory Staff shall file a petition to remove rate increases previously approved by the commission related to the project. If such a filing occurs, the commission, after hearing and notice, may issue a temporary order requiring new revised rates to take effect immediately which shall remain in effect during any appeals and which shall not include any of the previously granted rate increases under this article pending the final outcome including appeals of the filing by the Office of Regulatory Staff, if the commission finds in its temporary order that the utility acted or there is a reasonable possibility that the utility may have acted with imprudence as defined in this article in any aspect of the project since the base load review order or project development order. The temporary order shall not include any of the costs referenced in subsection (A).

(C) This section applies to any actions, cases, or petitions pending on or after the effective date of this section.

Section 58‑33‑240. (A) Except as otherwise specified in this article, all procedural requirements that apply to general rate proceedings by law or regulation shall apply to rate proceedings ~~and combined proceedings, to revised rates proceedings,~~ and to the judicial review of orders issued under this article. ~~The requirements related to the form and content of applications in general rate proceedings, however, only shall apply to proceedings or combined proceedings which include an application for new electric rates under Section 58‑27‑860 and only shall apply to that part of the application or combined application which is filed under Section 58‑27‑860.~~

~~(B) As to combined proceedings, the procedural requirements related to general rate proceedings shall control over any inconsistent provisions in other statutes; provided, however, that provisions of Section 58‑33‑140 of the Utility Facility Siting and Environmental Protection Act related to parties and appearances shall apply to proceedings involving facilities located in this State to the extent parties seek to appear to raise issues arising under that act.~~

~~(C) In proceedings to review revised rates orders, no further notice to the public, customers, and others is required additional to that provided upon filing of the proceeding or combined proceeding. In proceedings to review revised rates orders, the utility’s revised rates filing shall serve as the application and the utility must be considered to be the applicant.~~

~~(D)~~(B) ~~In proceedings and combined proceedings,~~ The utility ~~shall have the burden of proving that the decision to build the plant was prudent, and~~ by a preponderance of the evidence shall have the burden of proof as to all matters on which the commission is required to enter findings ~~under Section 58‑33‑270(A), (B), (C), (D), and (E). Without in any way limiting the conclusive effect of determinations under Section 58‑33‑225 and Section 58‑33‑275, in cases where this statute allows a party to challenge the prudency of any transaction, cost, or decision of the utility, that party shall be required to make a prima facie case establishing imprudence, and thereafter the burden of proof shall shift to the utility to demonstrate the prudence of the transaction cost, or decision by a preponderance of the evidence~~. In addition, in proceedings concerning rate increases previously approved under the provisions of this article, the utility by a preponderance of the evidence shall have the burden of proving and must prove that its decision to build the plant and all other decisions it made, including decisions and actions of contractors and subcontractors regarding the plant after issuance of the based load review order or the project development order were prudent as it relates to each individual cost and decision and as it relates to the project as a whole in order for these previously approved rate increases to continue after the provisions of Section 58‑33‑235 take effect.

~~(E)~~ ~~In proceedings and combined proceedings, the deadlines contained in Section 58‑27‑870(B) and (C) shall be nine months~~.

~~Section 58‑33‑250.~~ ~~The application for a base load review order under this article shall include:~~

~~(1) information showing the anticipated construction schedule for the plant;~~

~~(2) information showing the anticipated components of capital costs and the anticipated schedule for incurring them;~~

~~(3) information showing the projected effect of investment in the plant on the utility’s overall revenue requirement for each year during the construction period;~~

~~(4) information identifying:~~

~~(a) the specific type of units selected for the plant;~~

~~(b) the suppliers of the major components of the plant; and~~

~~(c) the basis for selecting the type of units, major components, and suppliers;~~

~~(5) information detailing the qualification and selection of principal contractors and suppliers, other than those listed in item (4)(c) above, for construction of the plant;~~

~~(6) information showing the anticipated in‑service expenses associated with the plant for the twelve months following commencement of commercial operation adjusted to normalize any atypical or abnormal expense levels anticipated during that period;~~

~~(7) information required by Section 58‑33‑270(B)(6);~~

~~(8) information identifying risk factors related to the construction and operation of the plant;~~

~~(9) information identifying the proposed rate design and class allocation factors to be used in formulating revised rates;~~

~~(10) information identifying the return on equity proposed by the utility pursuant to Section 58‑33‑220(16); and~~

~~(11) the revised rates, if any are requested, that the utility intends to put in place after issuance of the resulting base load review order.~~

~~Section 58‑33‑260. Combined application; contents.~~

~~(A) A combined application must contain:~~

~~(1) an introduction;~~

~~(2) material required by law or regulation to be contained in an application filed under the Utility Facility Siting and Environmental Protection Act, except that combined applications associated with plants located outside South Carolina shall address only Section 58‑33‑160(1)(a), 58‑33‑160(1)(d), and 58‑33‑160(1)(f) and information pertaining to the environmental impacts of the plant may not be included in the combined application;~~

~~(3) the material required by law or regulation to be contained in an application under this article, including the material required under Section 58‑33‑250;~~

~~(4) if combined with a general rate proceeding, the material required to be filed by law or regulation in applications for the establishment of new rates under Section 58‑27‑860; and~~

~~(5) if the plant is located outside South Carolina, a copy of the order from the host state granting a certificate or other authorization similar to that granted under the Utility Facility Siting and Environmental Protection Act.~~

~~(B) Where the same information is required in different sections of the combined application, it may be set forth once and cross‑referenced as appropriate.~~

Section 58‑33‑270. ~~(A)~~ ~~After the hearing, the commission shall issue a base load review order approving rate recovery for plant capital costs if it determines:~~

~~(1)~~ ~~that the utility’s decision to proceed with construction of the plant is prudent and reasonable considering the information available to the utility at the time;~~

~~(2)~~ ~~for plants located in this State, that the utility has satisfied the requirements of Section 58‑33‑160 of the Utility Facility Siting and Environmental Protection Act, either in a past proceeding or in the current proceeding if the current proceeding is a combined proceeding; and~~

~~(3)~~ ~~for plants located outside South Carolina, that the utility has satisfied the requirements of Section 58‑33‑160(1)(a), 58‑33‑160(1)(d), and 58‑33‑160(1)(f) of the Utility Facility Siting and Environmental Protection Act.~~

~~(B)The base load review order shall establish:~~

~~(1)~~ ~~the anticipated construction schedule for the plant including contingencies;~~

~~(2)~~ ~~the anticipated components of capital costs and the anticipated schedule for incurring them, including specified contingencies;~~

~~(3)~~ ~~the return on equity established in conformity with Section 58‑33‑220(16);~~

~~(4)~~ ~~the choice of the specific type of unit or units and major components of the plant;~~

~~(5)~~ ~~the qualification and selection of principal contractors and suppliers for construction of the plant; and~~

~~(6)~~ ~~the inflation indices used by the utility for costs of plant construction, covering major cost components or groups of related cost components. Each utility shall provide its own indices, including: the source of the data for each index, if the source is external to the company, or the methodology for each index which is compiled from internal utility data, the method of computation of inflation from each index, a calculated overall weighted index for capital costs, and a five‑year history of each index on an annual basis.~~

~~(C)~~ ~~If revised rates are requested, the base load review order shall specify initial revised rates reflecting the utility’s current investment in the plant which must be determined using the standards set forth in Section 58‑33‑280(B) and implemented according to Section 58‑33‑280(D).~~

~~(D)~~ ~~The base load review order shall establish the rate design and class allocation factors to be used in calculating revised rates related to the plant. In establishing revised rates, all factors, allocations, and rate designs shall be as determined in the utility’s last rate order or as otherwise previously established by the commission, except that the additional revenue requirement to be collected through revised rates shall be allocated among customer classes based on the utility’s South Carolina firm peak demand data from the prior year.~~

~~(E)~~ ~~As circumstances warrant, the utility may petition the commission, with notice to the Office of Regulatory Staff, for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form part of any base load review order issued under this section. The commission shall grant the relief requested if, after a hearing, the commission finds:~~

~~(1)~~ ~~as to the changes in the schedules, estimates, findings, or conditions, that the evidence of record justifies a finding that the changes are not the result of imprudence on the part of the utility; and~~

~~(2)~~ ~~as to the changes in the class allocation factors or rate designs, that the evidence of record indicates the proposed class allocation factors or rate designs are just and reasonable.~~

~~(F)~~ ~~The commission shall consider a request under Section 58‑33‑270(E) in a new docket which pursuant to Section 58‑33‑240 must be subject to the requirement that the relief requested in this article is considered granted if not denied by order within six months of the date of filing. If the commission fails to issue an order within the period prescribed in this section, a party may move that the commission issue an order granting or denying the application. If the commission fails to issue an order within ten days after the motion is served, the application will be considered granted.~~

~~(G)~~ ~~The commission promptly shall schedule a hearing to consider any settlement agreement entered into between the Office of Regulatory Staff, as the party representing the public interest in the proceedings, and the utility applicant, provided that all parties shall have been given a reasonable opportunity to conduct discovery in the docket by the time the hearing is held. The commission may accept the settlement agreement as disposing of the matter, and issue an order adopting its terms, if it determines that the terms of the settlement agreement comport with the terms of this act.~~

(A) Nothing contained in this article limits the authority of the commission to disallow prospectively all rate increases previously granted or approved in accordance with the provisions of this article where the commission later receives, discovers, or is provided with information or documentation that the utility acted imprudently as it relates to any action or decision pertaining to the project since the base load review order or project development order and its attendant finding of prudency.

(B) For as long as rates imposed and approved under this article remain in effect and in addition to all other provisions in this article relating to prudency or the lack thereof, the commission, upon receipt or discovery of material information relating to the prudency of any decisions or actions related to the project or the discovery that previous information was withheld or inaccurately provided, shall make a determination after hearing and notice in regard to whether or not the utility acted imprudently since the base load review order or project development order based on this new information.

(C) The commission’s finding of prudence in proceedings under this article does not preclude a finding of imprudence at a later stage. If a finding of imprudence occurs at a later stage, any act of subsequent imprudence means that the utility has not acted prudently with regard to the project justifying the cancellation prospectively of any rate increases previously approved under the provisions of this article.

(D) Upon disallowance of a previously approved rate increase, the preconstruction costs, construction work in progress costs, capital costs, AFUDC expenses, and finance charges for the payment of debt service related to these costs associated with the base load project cannot be included in future rate bases and the project cannot be considered to be ‘properly held for future use’ for purposes of future rate determinations.

Section 58‑33‑275. (A) A base load review order shall constitute a final and binding determination that a plant ~~is~~ upon completion and placed into service will be used and useful for utility purposes, and that its capital costs unless subsequent evidence of imprudency is found are prudent utility costs and expenses and are properly included in approved rates so long as the plant is constructed or is being constructed within the parameters of:

(1) the approved construction schedule including contingencies; and

(2) the approved capital ~~costs~~ cost estimates including specified contingencies.

(B) Determinations under ~~Section 58-33-275~~ subsection (A) may not be challenged or reopened in any subsequent proceeding, ~~including proceedings under Section 58‑27‑810 and other applicable provisions and Section 58‑33‑280 and other applicable provisions of this article~~ unless there is evidence that:

(1) the plant is being constructed or forecasted to be constructed outside the parameters of the approved construction schedule or the approved cost estimates;

(2) information material to the project was withheld from the commission or the Office of Regulatory Staff; or

(3) any decisions or actions taken by the utility or third parties acting on behalf of the utility were imprudent.

If the commission finds there is any evidence supporting the factors enumerated in items (1), (2), and (3) of this subsection or if there is evidence of imprudency as determined under subsection (A), these determinations may be challenged or reopened at any time. In addition, judicial review of the commission’s decisions or orders including those of prudency or lack of prudency by the utility in regard to the project is permitted in the manner provided by Section 58‑33‑310 and 58‑33‑320.

~~(C)~~ ~~So long as the plant is constructed or being constructed in accordance with the approved schedules, estimates, and projections set forth in Section 58‑33‑270(B)(1) and 58‑33‑270(B)(2), as adjusted by the inflation indices set forth in Section 58‑33‑270(B)(5), the utility must be allowed to recover its capital costs related to the plant through revised rate filings or general rate proceedings.~~

~~(D)~~ ~~Changes in fuel costs will not be considered in conducting any evaluation under this section.~~

~~(E)~~ ~~In cases where a party proves by a preponderance of the evidence that there has been a material and adverse deviation from the approved schedules, estimates, and projections set forth in Section 58‑33‑270(B)(1) and 58‑33‑270(B)(2), as adjusted by the inflation indices set forth in Section 58‑33‑270(B)(5), the commission may disallow the additional capital costs that result from the deviation, but only to the extent that the failure by the utility to anticipate or avoid the deviation, or to minimize the resulting expense, was imprudent considering the information available at the time that the utility could have acted to avoid the deviation or minimize its effect.~~

Section 58‑33‑277. (A) After issuance of a base load review order approving rate recovery for capital costs related to the plant, the utility will file reports with the Office of Regulatory Staff quarterly until the plant begins commercial operation. These reports must be filed no later than ~~forty‑five~~ thirty days after the close of a quarter, shall not be combined with any other filing, and shall contain the following information:

(1) the progress of construction of the plant;

(2) updated construction schedules;

(3) schedules of the capital costs incurred including updates to ~~the~~ this information ~~required by Section 58‑33‑270(B)(5)~~;

(4) updated schedules of the anticipated capital costs; and

(5) other information as the Office of Regulatory Staff may require.

These reports must be filed under oath by an officer of the utility authorized to file the reports.

(B) The Office of Regulatory Staff shall conduct on‑going monitoring of the construction of the plant and expenditure of capital through review and audit of the quarterly reports under this article, and shall have the right to inspect the books and records regarding the plant and ~~the physical progress of construction upon reasonable notice to the utility~~ shall have independent access to the construction site.

Section 58‑33‑280. ~~(A)~~ ~~No earlier than one year after filing the application or combined application, and no more frequently than annually thereafter, the utility may file with the commission and serve on the Office of Regulatory Staff requests for the approval of revised rates subsequent to those approved in the base load review order.~~

~~(B)~~ ~~A utility must be allowed to recover through revised rates its weighted average cost of capital applied to all or, at the utility’s option, part of the outstanding balance of construction work in progress, calculated as of a date specified in the filing. Any construction work in progress not included in any specific filing for revised rates shall continue to earn AFUDC and may be included in rates through future filings. The revised rates filing shall include the most recent monitoring report filed under Section 58‑33‑277(A) updated to reflect information current as of the date specified in the filing.~~

~~(C)~~ ~~Written comments to the commission and the Office of Regulatory Staff concerning the revised rates and the information supporting them shall be allowed within one month of the revised rates filing.~~

~~(D)~~ ~~The Office of Regulatory Staff shall review and audit the revised rates and the information supporting them to determine their compliance with the terms of this article. No later than two months after the date of the revised rates filing, the Office of Regulatory Staff shall serve on the commission and all intervenors and parties of record a report indicating the results of its review and audit and proposing any changes to the revised rates or the information supporting them that the Office of Regulatory Staff determines to be necessary to comply with the terms of this article.~~

~~(E)~~ ~~Written comments related to the report may be filed with the commission within one month from the date of the filing of the report. Comments must be served on the Office of Regulatory Staff and simultaneously mailed or electronically transmitted to the utility and to all intervenors and parties of record who previously appeared and filed comments. The Office of Regulatory Staff may revise its report considering comments filed.~~

~~(F)~~ ~~No later than four months after the date of the revised rates filing, the commission shall issue a revised rates order granting, modifying, or denying revised rates as filed by the utility. In the absence of such a revised rates order, the revised rates shall be considered to be approved as filed. If the commission fails to issue an order within the period prescribed in this section, a party may move that the commission issue an order granting or denying the application. If the commission fails to issue an order within ten days after the motion is served, the application will be considered granted.~~

~~(G)~~ ~~Where both Office of Regulatory Staff and the utility agree in writing on the revised rates to be implemented, the commission shall give substantial weight to the agreement in issuing its revised rates order.~~

~~(H)~~ ~~If the utility is granted a rate increase in the revised rates order, the utility shall provide notice to its customers with the next billing. The utility may implement revised rates for bills rendered on or after a date selected by the utility, which may not be sooner than thirty days after revised rates are approved.~~

~~(I)~~ ~~Upon implementation of revised rates under this article, the utility will cease to accrue AFUDC on that component of its construction work in progress on which it is recovering its weighted average cost of capital through revised rates.~~

~~(J)~~ ~~Other provisions of this article notwithstanding:~~

~~(1)~~ ~~The utility may file a final set of revised rates for a plant to go into effect upon commercial operation of the plant, the filing to be made no sooner than seven months before the projected date that the plant is to commence commercial operations. In the final revised rates the utility may include recovery of the weighted average cost of capital applied to all or part of the capital costs associated with the plant. In all cases, the decision to seek recovery in revised rates of less than the full amount of its cost must be at the utility’s sole discretion. Rate adjustments to reflect the revenue requirements related to in‑service expenses must be included in the final revised rates and shall be based on the utility’s most current budget estimates of those expenses for the succeeding twelve‑month period at the time the final revised rates are filed or actual expenses, if available.~~

~~(2)~~ ~~If the commission rejects a revised rate filing on grounds that may be corrected in a subsequent filing, or if the utility withdraws a revised rate filing before a revised rates order is issued, the utility may file a subsequent request for revised rates at any time thereafter.~~

~~(3)~~ ~~The utility may seek to recover any capital costs, in‑service expenses, or other costs not included in revised rates through future general rate proceedings.~~

~~(4)~~ ~~Revised rates shall not be allowed, under Section 58‑33‑270(C) or under Section 58‑33‑280, for coal plants located in South Carolina that were certificated for construction under the Utility Facility Siting and Environmental Protection Act before December 31, 2007, or for coal plants located outside of South Carolina if certificated under a state statute analogous to the Utility Facility Siting and Environmental Protection Act before December 31, 2007.~~

~~(K)~~(A) Where a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance of the evidence that:

(1) the decision to abandon construction of the plant was prudent;

(2) all actions and decisions, including those of any subcontractors, contractors, or any other third party acting on behalf of the utility, related to the construction of the plant were prudent;

(3) all preconstruction costs, construction work in progress costs, capital costs, AFUDC expenses and finance costs relating the project are shown and proved to be prudently incurred;

(4) there was no imprudence on the part of the utility since the base load review order or project development order;

(5) the utility’s decision to abandon was made in a prudent and timely manner and the utility notified the commission and the Office of Regulatory Staff of the decision in a prudent and timely manner; and

(6) the utility avoided potential further costs to the ratepayers upon the decision to abandon.

If the utility fails to prove any of these conditions, none of the preconstruction costs, construction work in progress costs, capital costs, AFUDC expenses, finance charges, and abandonment costs may be recovered though rate increases or otherwise.

The provisions of this subsection apply in the manner and under the conditions stipulated in Section 58‑33‑225.

~~Without limiting the effect of Section 58‑33‑275(A), recovery of capital costs and the utility’s cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs. The commission shall order the amortization and recovery through rates of the investment in the abandoned plant as part of an order adjusting rates under this article.~~

~~(L)~~(B) After completion or abandonment of a plant that is subject to a base load review order, the Office of Regulatory Staff shall conduct an audit of the utility revenues, expenses, and rates consistent with the audits conducted of filings for new electric rates under Section 58‑27‑860. The audit must be ~~based on a twelve‑month test period ending~~ concluded no later than December thirty‑first of the calendar year following the year in which the plant entered commercial operation or no later than ninety days after the plant was abandoned, and must be filed with all parties to the base load review proceeding ~~within four months of the conclusion of the test period~~ upon completion of the audit.

Section 58‑33‑285. ~~(A)~~ ~~Within thirty days of the issuance of a revised rates an order pursuant to Section 58‑33‑280(E) of this article, or within thirty days of the failure by the commission to issue a revised rates such an order as required pursuant to Section 58‑33‑280(E), any aggrieved party may petition the commission for review of the revised rates order or of the failure to issue a revised rates the order.~~

~~(B)~~ ~~The Office of Regulatory Staff and the utility must be automatic parties to any proceedings under this section.~~

~~(C)~~ ~~In filing for intervention under this section, intervenors shall identify with particularity the specific issues they intend to raise with regard to the revised rates order.~~

~~(D)~~ ~~The party seeking review of the revised rates order shall serve a copy of such petition on the Office of Regulatory Staff and the utility on the same day and by the same means as it is provided to the commission.~~

~~(E)~~ ~~Any filing under this section must be considered a new proceeding subject to the provisions of Section 58‑33‑240. The commission shall open a single new docket for all filings related to any one set of revised rates filed under this article.~~

After an order or decision has been made by the commission, any party to the proceedings, within ten days after service of notice of the entry of the order or decision may apply for a rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing, and the commission may, in case it appears to be proper, grant and hold the rehearing. The commission shall either grant or refuse an application for rehearing within twenty days, and a failure by the commission to act upon the application within that period must be considered a refusal of the application. If the application is granted, the commission’s order is considered vacated, and the commission shall enter a new order after the rehearing has been concluded.

~~Section 58‑33‑287.~~ ~~(A)~~ ~~The commission shall issue its order ruling upon a petition for review of a revised rates order within six months. If the petition for review has been resolved among the parties by settlement agreement, the commission shall consider and accept or reject any settlement agreement entered into by the parties within forty‑five days. If a settlement agreement is reached between some but not all parties, then the settlement agreement, if approved by the commission, must be deemed to dispose of any issues resolved in it that have not been raised by other parties to the proceeding pursuant to Section 58‑33‑285(C).~~

~~(B)~~ ~~Proceedings pursuant to Section 58‑33‑285 are limited to issues related to whether the revised rates filed by the utility comply with the terms of the commission order issued pursuant to Section 58‑33‑270 and with the specific requirements of Section 58‑33‑280. Matters determined in orders issued pursuant to the Utility Facility Siting and Environmental Protection Act, Section 58‑27‑810, and other applicable provisions or Section 58‑33‑270 are not subject to review in proceedings under this section.~~

~~(C)~~ ~~In proceedings pursuant to Section 58‑33‑285, the commission shall allow limited discovery, and restrict the issues for discovery and hearing to whether the revised rates comply with the terms of the commission order issued pursuant to Section 58‑33‑270 and compliance with the specific requirements of Section 58‑33‑280.~~

~~(D)~~ ~~The commission shall issue such motions to strike, protective orders, motions to quash, motions for costs and sanctions, and other rulings as are necessary to enforce the terms of this limitation.~~

~~(E)~~ ~~The commission shall dismiss as a party any intervenor who, after notice, fails to abide by the limitations contained in this section.~~

~~(F)~~ ~~The failure of the commission to enforce the terms of this section may be remedied by petition for writ of mandamus or supersedeas in the circuit court, which petition the court shall advance over all other matters on its docket and hear on an emergency basis, without the requirement of a formal answer or other return, such hearing to be held as soon as practicable upon twenty‑four hours notice to the party against whom relief is sought. Proceedings related to the petitions may not serve to stay or delay proceedings before the commission.~~

~~(G)~~ ~~The commission shall issue a final order that:~~

~~(1)~~ ~~sets forth any changes that are required to the rates approved in the revised rates order;~~

~~(2)~~ ~~determines the amount of any overcollection or undercollection of the revenues by the utility that resulted from application of the rates authorized in the revised rates 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 an overcollection or a surcharge to collect the amount of an undercollection of revenues that arose during the time that the rates approved in the revised rates order, or imposed due to a failure of the commission to issue a revised rates order, were applicable and requires the utility to apply the credit or surcharge until such time as the overcollection or undercollection is exhausted.~~

~~(H)~~ ~~If the final order increases the amount of capital costs for which the utility may recover its weighted average cost of capital through revised rates, the AFUDC booked on those capital costs between the issuance of the revised rates order and the final order shall remain on the books of the utility and shall not be reversed or adjusted. Surcharges related to undercollection of costs must be calculated without consideration of AFUDC amounts recognized on the capital costs during this period.~~

~~(I)~~ ~~If the final order reduces the amount of capital cost for which the utility may recover its weighted average cost of capital through revised rates for reasons other than the conclusive finding that the capital costs were imprudently incurred, then the utility may resume accrual of AFUDC on any capital costs that were not included in rate recovery and may book an amount of AFUDC equal to the AFUDC not recognized during the time the rates approved in the revised rates order were in effect.~~

~~Section 58‑33‑290.~~  ~~The denial of a project development application, application, or combined application under this article shall not preclude the utility from filing a new or amended project development application, application, or combined application at any time. A utility may proceed to construct a plant even if assurance of prudency or cost recovery under this article is not sought or is denied, and the failure to seek or obtain such an assurance may not be used as evidence or precedent in any future proceeding.~~

Section 58‑33‑295. (A) The Office of Regulatory Staff is authorized to create additional positions for purposes of performing its duties under this article as follows:

(1) two additional positions when there is one nuclear unit that is subject to an application for a project development order, an application or a combined application under this article, or that is under construction or abandonment and eligible for entry of future revised rates orders; and

(2) one additional position for each additional nuclear unit thereafter.

The utility or utilities electing to file an application, project development order, or combined application under this article shall bear the costs associated with these positions, including all salaries, benefits, expenses, and charges, in proportion to the number of these units that they own in whole or in part as a percentage of the total number of these units in the regulatory process under this article at the time. The Office of Regulatory Staff annually must certify to the Department of Revenue by May first the amounts to be assessed. By July first of each year, the Department of Revenue shall assess each utility for its assessment, which assessment must be due and payable by July fifteenth. The assessments must be charged against a utility by the Department of Revenue and collected in the manner provided by law for the collection of taxes from utilities, including the enforcement and collection provisions of Article 1, Chapter 54, ~~of~~ Title 12, and paid into the State Treasury as are other taxes collected by the Department of Revenue for the State less the Department of Revenue’s actual incremental increase in the cost of administration. These assessments are in addition to any amounts assessed pursuant to Sections 58‑4‑60 and 58‑5‑480 and must be deposited in a special fund in the State Treasury from which the salaries, benefits, expenses, and charges must be paid.

(B) The Executive Director of the Office of Regulatory Staff is authorized to employ expert witnesses and other professional engineering, construction, or other experts or consultants as the executive director considers necessary to assist the regulatory staff in its review and audit of project development order applications, applications, combined applications, and applications for revised rates orders; participation in proceedings under this article; and in auditing and monitoring on‑going construction of plants eligible for revised rates orders. The compensation paid to these persons may not exceed the compensation ordinarily paid by the regulated industry for these specialists. Upon agreement between the utility and the Office of Regulatory Staff or upon approval of the review committee established under Section 58‑3‑20, the compensation and expenses must be paid by the utility ~~or utilities filing an application under this article~~ involved.

~~(C)~~ ~~Compensation and expenses paid by the utility under this article must be treated as capital costs of the plant for ratemaking purposes.~~

Section 58‑33‑297. The provisions of this article as revised in the manner provided by this act apply to all cases, proceedings, petitions, or matters pending on and after the effective date of this section.

~~Section 58‑33‑298.~~  ~~Filings under this article may not be considered in applying the limitations on rate filings contained in Section 58‑27‑870(E).~~

Article 5

Judicial Review

Section 58‑33‑310. Any party to a proceeding under Article 4 may appeal, in accordance with Section 1‑23‑380, from all or any portion of any final order or decision of the commission~~, including conditions of the certificate required by a state agency under Section 58‑33‑160 as provided by Section 58‑27‑2310~~. Any appeals may be called up for trial out of their order by either party. The commission must not be a party to an appeal.

Section 58‑33‑320. (A) Except as ~~expressly set forth~~ provided in Section 58‑33‑310 and this section, no court of this State shall have jurisdiction to hear or determine any issue, case, or controversy concerning any matter arising or which should arise under Article 4 of this chapter which was or ~~could~~ should have first been determined in a proceeding before the commission ~~under this chapter or to stop or delay the construction, operation, or maintenance of a major utility facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder, and any such action shall be brought only by the Office of Regulatory Staff~~. ~~Provided,~~ However, nothing ~~herein~~ contained in this section ~~shall~~ must be construed to abrogate or suspend the right of any individual or corporation not a party to maintain any action which he might otherwise have been entitled.

(B) The commission in any order issued by it after the effective date of this subsection where prudency or the lack of prudency on the part of the utility is an issue shall state in the order whether or not the actions or decisions of the utility were prudent or imprudent in that particular instance and its reasons for the findings in order to create a record which courts of competent jurisdiction can consider on appeal. The provisions of this subsection are enacted by the General Assembly in order to give full effect to the provisions of Section 1, Article IX of the Constitution of this State requiring the General Assembly t regulate publicly owned utilities to the extent required by the public interest in order to protect the public interest and safeguard the general public from the failure to be prudent on the part of the utility. As stated in Section 1(A), Act 16 of 2007, ‘The purpose of Article 4, Chapter 33, Title 58, added by Section 2 of this act, is to provide for the recovery of the prudently incurred costs associated with new base load plants, as defined in Section 58‑33‑220 of Article 4, when constructed by investor‑owned electrical utilities, while at the same time protecting customers of investor‑owned electrical utilities from responsibility for imprudent financial obligations or costs’.”

SECTION 4. Section 58‑27‑850 of the 1976 Code is amended to read:

“Section 58‑27‑850. (A) Whenever the commission after a hearing finds that the existing rates in effect and collected by any electrical utility for any service, product, or commodity are unjust, unreasonable, insufficient, unreasonably discriminatory, or in any way in violation of any provision of law, the commission shall determine the just, reasonable, and sufficient rates to be thereafter observed and in force and shall fix the rates by its order.

(B) In determining rates for purposes of certain utility plants as defined in Section 58‑34‑100(B)(2), the provisions of Chapter 34 shall supplement the provisions of this article and to the extent of any conflict between Article 7, Chapter 27 and Chapter 34 of this title, the provisions of Chapter 34 shall control.”

SECTION 5. Articles 1, 3, and 7 of Chapter 33, Title 58 of the 1976 Code are deleted. The caption to Chapter 33, Title 58 is changed from “Utility Facility Siting and Environmental Protection” to “Revised Base Load Review Act”.

SECTION 6. The provisions of this act must be liberally construed to further the legislative intent of the General Assembly as stated in this act.

SECTION 7. If any provision of this act is held or determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, it is the intention of the General Assembly that the provision is severable from the remaining provisions of the chapter and that the holding does not invalidate or render unenforceable another provision of the chapter.

SECTION 8. This act takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending on or after the effective date of this act.

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