AMENDED

January 31, 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, Arrington, Daning, Weeks, Henderson and Govan

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Read the first time January 9, 2018.

**A** **BILL**

TO AMEND SECTION 58‑33‑220, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS UNDER THE BASE LOAD REVIEW ACT, SO AS TO ADD CERTAIN DEFINITIONS; TO REPEAL ARTICLES 4 AND 5, CHAPTER 33, TITLE 58, RELATING TO THE BASE LOAD REVIEW ACT, AND TO PROVIDE A SPECIFIC EXCEPTION TO THIS REPEAL; BY ADDING CHAPTER 34 TO TITLE 58 SO AS TO PROVIDE FOR THE MANNER IN WHICH AND PROCEDURES UNDER WHICH ELECTRICITY RATES FOR CERTAIN RATEPAYERS WHO ARE PAYING ADDITIONAL CHARGES UNDER THE BASE LOAD REVIEW ACT FOR THE CONSTRUCTION OF NUCLEAR PLANTS OR PROJECTS SHALL BE REVISED AND DETERMINED; AND TO PROVIDE FOR PROCEDURES AND PROVISIONS OF LAW WHICH APPLY AND DO NOT APPLY IN REGARD TO THE ADJUSTMENT OF ELECTRICITY RATES AS PROVIDED BY CHAPTER 34.

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

SECTION 1. Section 58‑33‑220 of the 1976 Code is amended by adding appropriately numbered items to read:

“( ) ‘Imprudent’ or ‘imprudence’ includes, but is not limited to, lack of caution, care, or diligence as determined by the commission 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. Imprudent or imprudence includes, but does not require, a finding of negligence, carelessness, or recklessness.

Imprudence on behalf of any contractor, subcontractor, agent, or person hired to construct a plant or perform any action or service on behalf of the utility 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 engaged or caused to be engaged by the utility and furnished to the utility which relates to 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) inappropriate or poor management or oversight decisions in the construction of the project including, but not limited to, 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; and

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

( ) ‘Prudent’, ‘prudence’, or ‘prudency’ 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.

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.

‘Prudent’, ‘prudence’, or ‘prudency’ also requires that any action or decision be made in a timely manner.

In determining whether any action or decision was prudent, the commission shall consider, including, but not limited to:

(a) whether the utility acts in a timely manner, with any passage of time which results in increased costs or expense prior to the utility acting or making the decision weighing against a finding of prudency;

(b) whether prior actions or decisions by the utility were imprudent and such imprudent actions led to a decision by the utility that could otherwise be prudent. Such circumstances weigh against a finding of prudency; and

(c) any other relevant factors, including commission of a fraudulent act, which are deemed not to be prudent.

As used in item (c), ‘fraud’ includes, in addition to its normal legal connotation, concealment, omission, misrepresentation, or nondisclosure of a material fact in any proceeding or filing before the commission or Office of Regulatory Staff. Proceedings and filings to which the provisions of this paragraph apply include, but are not limited to, rate or revised rate filings, responsive filings, motions, pleadings, briefs, memoranda, document requests, and other communications before the commission or Office of Regulatory Staff.”

SECTION 2. (A) Articles 4 and 5, Chapter 33, Title 58 of the 1976 Code are repealed on the effective date of this act.

(B) Notwithstanding the provisions of subsection (A), the provisions of Article 4 and 5, Chapter 33, Title 58, continue to apply only to projects or plants begun pursuant to an order issued under Article 4, Chapter 33, Title 58, and such provisions, including any amendments, shall remain in effect for any matters or petitions pending before the Public Service Commission related thereto.

SECTION 3. Title 58 of the 1976 Code is amended by adding:

“CHAPTER 34

Determination of Electricity Rates

Section 58‑34‑10. (A) The investor-owned utility holding the majority interest in the V. C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, has entered into a merger agreement with an out‑of‑state investor-owned utility. This merger agreement contemplates the continuation of rate increases imposed under the Base Load Review Act contained in Article 4, Chapter 33, Title 58.

(B) Pursuant to the authority vested in the General Assembly by Section 1, Article IX of the Constitution of this State, the General Assembly is required to regulate investor owned utilities in order to protect the public interest. The General Assembly has determined that Section 1, Article IX of the Constitution requires that the General Assembly exercise its authority to set certain utility rates for the purpose of protecting the public interest until a determination can be made by the appropriate regulatory and judicial authorities. This rate shall apply to all customers of the investor-owned utility identified in subsection (A), which has imposed nine rate increases for the purpose of funding the V. C. Summer project.

Section 58‑34‑20. Within five calendar days after the effective date of this chapter, the Public Service Commission, by order, is directed to exercise its authority pursuant to Section 58‑27‑870(F) to provide an experimental rate that customers of the utility identified in Section 58‑34‑10 shall pay during the pendency of litigation currently before the commission, or any appeal therefrom or final resolution of any action in a court of competent jurisdiction, or until replaced by an order of the commission under Section 58‑34‑30. This experimental rate shall be the electric utility rates these ratepayers are paying as of the effective date of this section, reduced by all rate increases imposed under the provisions of the Base Load Review Act. The commission’s order shall take effect five calendar days after it is issued and the commission shall serve an attested copy of the order upon all interested parties.

Section 58‑34‑30. Notwithstanding any other provision of law, the experimental rate set pursuant to Section 58‑34‑20 shall remain in full force and effect during the pendency of the matters before the commission. However, the commission shall monitor the net effect of the experimental rate and may alter the experimental rate, on its own motion, only if it determines that an adjustment to the experimental rate is necessary to satisfy constitutional requirements of utility ratemaking. If required to adjust the rate, the commission shall, under applicable provisions of law, determine the just and reasonable rates for these ratepayers after considering all factors and evidence. In determining such rate and in considering the constitutionally allowable zone of reasonableness in which rates may properly fall, the commission is directed to set the lowest possible rate within the zone of reasonableness. Nothing herein prevents the commission from adopting as its own rate the experimental rate directed by the General Assembly in Section 58‑34‑10 and ordered pursuant to Section 58‑34‑20.

Section 58‑34‑40. Any provision of Article 7, Chapter 27, Title 58 in conflict with the provisions of this chapter, including, but not limited to, Section 58‑27‑870(B), are suspended for purposes of the utility rates provided for by this chapter and for any pending matters related to V.C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, pending before the commission on or after the effective date of this chapter. The suspension remains in effect during the pendency of any litigation or appeal concerning the experimental or interim rates directed by the General Assembly or ordered by the Public Service Commission pursuant to this chapter, or related issues surrounding the establishment of these rates, until a final determination of the matter, including any subsequent appeals, is made by the appropriate court.

Section 58‑34‑50. Section 58‑27‑930 and the time limitations contained in Section 58-33-240(A) and (E) are hereby suspended for purposes of the utility rates provided for by this chapter and for any pending matters related to V.C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, pending before the commission on or after the effective date of this chapter. The suspension remains in effect during the pendency of any litigation or appeal concerning the experimental or interim rates directed by the General Assembly or ordered by the Public Service Commission pursuant to this chapter, or related issues surrounding the establishment of these rates, until a final determination of the matter, including any subsequent appeals, is made by the appropriate court.

SECTION 4. The provisions of this act must be liberally construed to further the legislative intent of the General Assembly to provide the maximum ratepayer protection as more fully stated in this act.

SECTION 5. 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 this act and that the holding does not invalidate or render unenforceable another provision of this act.

SECTION 6. 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.

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