COMMITTEE AMENDMENT ADOPTED AND AMENDED

May 9, 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

S. Printed 5/9/18--S. [SEC 5/10/18 12:22 PM]

Read the first time February 1, 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.

Amend Title To Conform

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.

( ) ‘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 2A. As of the effective date of this act, the Public Service Commission must not accept a base load review application, nor may it consider any requests made pursuant to Article 4, Chapter 33 of Title 58 other than in a docket currently pending before the Commission.

B. The provisions of Article 4, Chapter 33 of Title 58 are repealed upon the conclusion of litigation concerning the abandonment of V.C. Summer Units 2 and 3.

SECTION 3. If any provision of this act is enjoined, 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 injunction or holding does not invalidate or render unenforceable another provision of this act.

SECTION 4. The Public Service Commission shall not hold a hearing on the merits, before November 1, 2018, for a docket in which requests were made pursuant to the Base Load Review Act; however, the Public Service Commission may hold an administrative or procedural hearing for such a docket prior to a hearing on the merits. The Public Service Commission must issue a final order on the merits for a docket in which requests were made pursuant to the Base Load Review Act no later than December 21, 2018.

SECTION 5. Section 58-33-280(G) of the 1976 Code is amended to read:

“(G) Where both Office of Regulatory Staff and the utility agree in writing on the revised rates to be implemented, the commission ~~shall~~ may give ~~substantial~~ weight to the agreement in issuing its revised rates order but may consider additional factors at its discretion.”

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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