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COMMITTEE REPORT

January 10, 2018

**H. 4379**

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, Bennett and Arrington

S. Printed 1/10/18--H.

Read the first time January 9, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4379) to amend the Code of Laws of South Carolina, 1976, by adding Article 9 to Chapter 7, Title 1 so as to create the Utilities Consumer Advocate, etc., respectfully

**REPORT:**

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

F. GREGORY DELLENEY for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 7, TITLE 1 SO AS TO CREATE THE UTILITIES CONSUMER ADVOCATE IN THE OFFICE OF THE ATTORNEY GENERAL, AND TO PROVIDE FOR THE DUTIES AND RESPONSIBILITIES OF THE UTILITIES CONSUMER ADVOCATE, AMONG OTHER THINGS; TO AMEND SECTION 58‑4‑10, RELATING TO THE OFFICE OF REGULATORY STAFF AND ITS MISSION, SO AS TO REMOVE THE PRESERVATION OF THE FINANCIAL INTEGRITY OF THE STATE’S PUBLIC UTILITIES, CONTINUED INVESTMENT, AND MAINTENANCE OF FACILITIES FROM THE MISSION; TO AMEND SECTION 58‑4‑50, RELATING TO REGULATORY STAFF DUTIES AND RESPONSIBILITIES, SO AS TO ADD THAT THE OFFICE SHALL PROVIDE RESEARCH, EXPERTISE, AND OTHER ASSISTANCE TO THE UTILITIES CONSUMER ADVOCATE AND MAKE OTHER CONFORMING CHANGES; TO AMEND SECTION 58‑4‑55, RELATING TO THE OFFICE OF REGULATORY STAFF’S ABILITY TO REQUEST CERTAIN INFORMATION, SO AS TO ADD THAT THE OFFICE SHALL HAVE SUBPOENA POWERS AND THAT THE UTILITIES CONSUMER ADVOCATE MAY REQUEST THE EXECUTIVE DIRECTOR TO ISSUE SUBPOENAS ON HIS BEHALF, AND TO PROVIDE A PENALTY FOR FAILURE TO PROVIDE REQUESTED INFORMATION UNDER CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 58‑4‑80, RELATING TO INTERVENTION IN CIVIL PROCEEDINGS BY THE EXECUTIVE DIRECTOR OF THE OFFICE OF REGULATORY STAFF, SO AS TO PROVIDE THAT ON APPEAL THE OFFICE DOES NOT REPRESENT THE PUBLIC SERVICE COMMISSION.

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

SECTION 1. Chapter 7, Title 1 of the 1976 Code is amended by adding:

“Article 9

Section 1‑7‑1310. There is created within the Office of the Attorney General the Utilities Consumer Advocate with duties and responsibilities as provided in this article.

Section 1‑7‑1320. For purposes of this article, the term:

(1) ‘Commission’ and ‘Regulatory Staff’ have the same meaning as provided in Section 58‑4‑5.

(2) ‘Public Utility’ has the same meaning as provided in Section 58‑4‑5, but also shall include in the meaning those electric utilities which are the under the jurisdiction of the Public Service Commission.

Section 1‑7‑1330. (A) The Utilities Consumer Advocate must be appointed by the Attorney General, shall serve at the pleasure of the Attorney General, and must be an attorney qualified to practice in all courts of this State. The Utilities Consumer Advocate shall not report to the Office of Regulatory Staff but may avail himself of the services of the Office of Regulatory Staff as necessary in representing the public utility interests of consumers. The Office of Regulatory Staff shall cooperate with any and all requests by the Utilities Consumer Advocate and Regulatory Staff and shall be available to provide research and expertise to the Utilities Consumer Advocate as requested.

(B) Unless otherwise provided by law, no person may serve as the Utilities Consumer Advocate if the Public Service Commission regulates any utility with which that person is associated. If the commission regulates a business with which the Utilities Consumer Advocate is associated, he must annually file a statement of economic interests notwithstanding the provisions of Section 8‑13‑1110.

(C) No person may serve as the Utilities Consumer Advocate if the Public Service Commission regulates a business with which he is associated and this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

Section 1‑7‑1340. The Utilities Consumer Advocate must be provided office space and be otherwise equipped by the Office of the Attorney General to perform the functions prescribed in this article. Necessary expenses must be paid from appropriations to the Office of the Attorney General provided annually in the General Appropriations Act. The Attorney General shall set the salary of the Utilities Consumer Advocate.

Section 1‑7‑1350. (A) The duties and responsibilities of the Utilities Consumer Advocate are:

(1) to represent the public utility interests of consumers;

(2) to provide legal representation of the consumer interests before the state and federal regulatory agencies which undertake to fix rates or prices for public utilities;

(3) along with the Office of Regulatory Staff, to monitor existing regulations, rate structures, and policies of those agencies of special interest to utility consumers and report to the public through the news media proposed changes under consideration and the effect of those changes on the lives of the citizens of the State; and

(4) to evaluate and act upon requests from consumers concerning the matters provided in items (1) through (3), except that any proceedings initiated by the Utilities Consumer Advocate must be brought on behalf of the public at large and not for individuals; initiation or continuation of any proceedings is in the sole discretion of the Utilities Consumer Advocate.

(B) The Utilities Consumer Advocate shall provide an annual report to the General Assembly on January fifteenth of each year regarding the previous year’s activities on behalf of the interests of utility consumers.

Section 1‑7‑1360. In the performance of his assigned functions, the Utilities Consumer Advocate shall have reasonable access to records of the Office of Regulatory Staff and any other state agency, as necessary, which are not classified by law as confidential, and those state agencies must cooperate with the Utilities Consumer Advocate in the performance of his duties. In addition, the Utilities Consumer Advocate must have reasonable access to confidential records and information if he enters a proprietary agreement to ensure their confidentiality. During the course of a ratemaking or other proceeding initiated before the Public Service Commission relating to public utilities, the Utilities Consumer Advocate, as a party of record, may request in writing, in addition to all other methods of discovery as provided by law, the issuance of an order compelling a witness or company to either produce or allow inspection of documentary evidence relevant to the matter. If an order is not issued, the aggrieved party may appeal. The written request, in addition to showing a general relevance and reasonable scope of the evidence sought, also must specify with particularity the books, accounts, papers, records, or other materials of the business desired and the facts expected to be proved. In lieu of a written request, the request for such an order may be made orally upon the record at the hearing, for good cause shown. Any objections to the issuance of the order must be filed within three days of being notified of the written request or the order. Any objections so filed must list the specific grounds for objection. Objections must be ruled on within ten days or the objection is denied.

Section 1‑7‑1370. The Utilities Consumer Advocate is considered to have an interest sufficient to maintain actions for judicial review and may, as of right and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of an action that the Utilities Consumer Advocate determines may substantially affect the interests of public utility consumers.

Section 1‑7‑1380. Decisions of the Utilities Consumer Advocate respecting whether, when, or how to initiate, continue, or intervene in proceedings pursuant to this article, are in the sole discretion of the Utilities Consumer Advocate, except as modified by order of a court of competent jurisdiction. All prior references to the Consumer Advocate’s role in so far as it conflicts with the Utilities Consumer Advocate’s role are considered to be the responsibility of the Utilities Consumer Advocate.

Section 1‑7‑1390. The Utilities Consumer Advocate must not interview or seek employment with a public utility while serving as the Utilities Consumer Advocate. The Utilities Consumer Advocate may not represent or appear on behalf of a public utility in any proceeding before the commission in any matter within the commission’s jurisdiction for one year after serving as the Utilities Consumer Advocate. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.”

SECTION 2. Section 58‑4‑10 of the 1976 Code is amended to read:

“Section 58‑4‑10. (A) There is hereby created the Office of Regulatory Staff as a separate agency of the State with the duties and organizations as hereinafter provided.

(B) Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before the commission. The regulatory staff must represent the public interest of South Carolina before the commission. For purposes of this chapter, ‘public interest’ means a balancing of the following:

(1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;

(2) economic development and job attraction and retention in South Carolina; and

(3) ~~preservation of the financial integrity of the state’s public utilities and continued investment in and maintenance of utility facilities so as to provide~~ preservation of reliable and high quality utility services.

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

SECTION 3. Section 58‑4‑50 of the 1976 Code is amended to read:

“Section 58‑4‑50. (A) It is the duty and responsibility of the regulatory staff to:

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

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

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

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

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

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

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

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

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

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

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

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

(C) The Executive Director of the Office of Regulatory Staff and regulatory staff employees shall provide research, expertise, and any other assistance requested by the Utilities Consumer Advocate as provided in Article 9, Chapter 7, Title 1.

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

SECTION 4. Section 58‑4‑55 of the 1976 Code is amended to read:

“Section 58‑4‑55. (A) The regulatory staff, in accomplishing its responsibilities under Section 58‑4‑50~~,~~ and the provisions of Article 9, Chapter 7, Title 1, shall have necessary subpoena powers and may require the production of books, records, and other information that, upon request of the regulatory staff, must be submitted under oath. If the books, records, or other information provided do not appear to disclose full and accurate information and, if such apparent deficiencies are not cured after reasonable notice, the regulatory staff may require the attendance and testimony under oath of the officers, accountants, or other agents of the parties having knowledge thereof at such place as the regulatory staff may designate and the expense of making the necessary examination or inspection for the procuring of the information must be paid by the party examined or inspected, to be collected by the regulatory staff by suit or action, if necessary. If, however, the examination and inspection and the reports thereof disclose that full and accurate information had previously been made, the expense of making the examination and inspection must be paid out of the funds of the regulatory staff.

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

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

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

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

(D) Nothing in this section restricts the regulatory staff’s ability to serve discovery in a contested case proceeding that seeks the type of documents or information the regulatory staff has obtained in the course of any review, investigation, inspection, audit, or examination, nor does anything in this section restrict the ability of any public utility to object to such discovery or to seek relief regarding such discovery, including without limitation the entry of a protective order. At the request of the Utilities Consumer Advocate, the Executive Director of the Office of Regulatory Staff shall issue subpoenas in accordance with the reviews delineated in this chapter and in Article 9, Chapter 7, Title 1.

(E) Failure to provide information requested by the Executive Director of the Office of Regulatory Staff or the regulatory staff pursuant to the provisions of this chapter or failure to provide information requested by the Utilities Consumer Advocate is a misdemeanor punishable by thirty days imprisonment or a five hundred dollar fine. The offense contained in this section is a separate offense and is in addition to any other offense for which the person may be convicted.”

SECTION 5. Section 58‑4‑80 of the 1976 Code is amended to read:

“Section 58‑4‑80. The executive director representing the regulatory staff is considered to have an interest sufficient to maintain actions for judicial review from commission orders or decisions and may, as of right and in a manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of commission action that the executive director determines may substantially affect the public interest. This right includes intervention in any action for judicial review from commission orders or decisions that are pending at any stage of the action. The executive director representing the regulatory staff has the same rights of appeal from commission orders or decisions as other parties to commission proceedings. On appeal, the Office of Regulatory Staff does not represent the commission.”

SECTION 6. The provisions of this act take effect ten days after approval by the Governor, and the Attorney General shall appoint the Utilities Consumer Advocate by the effective date of this act.

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