~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

May 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, Arrington, Daning, Pendarvis, Govan and Toole

S. Printed 5/10/18--S.

Read the first time January 25, 2018.

**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:

Amend Title To Conform

SECTION 1. Section 37‑6‑602 of the 1976 Code of Laws is amended to read:

The Consumer Advocate may be the Administrator of Consumer Affairs or he may be appointed by the administrator with the approval of the Commission on Consumer Affairs. The Consumer Advocate must be an attorney qualified to practice in all courts of this State with a minimum of ~~three~~ eight years’ practice experience.

SECTION 2. Section 37‑6‑604 of the 1976 Code of Laws is amended to read:

(A) The functions and duties of the Division of Consumer Advocacy are:

(1) to provide legal representation of the consumer interest before the state and federal regulatory agencies which undertake to fix rates or prices for consumer products or services or to enact regulations or establish policies related thereto and to provide legal representation of the consumer interest concerning insurance matters, certificates of need for health facilities and services as required for an activity under Section 44‑7‑160, and other health‑related provisions;

(2) to monitor existing regulations, rate structures, and policies of that agency of special interest to consumers and report to the public through the news media proposed changes therein under consideration and the effect of those changes on the lives of the citizens of the State; and

(3) to evaluate and act upon requests from consumers concerning the matters set forth in items (1) and (2), except that any proceedings initiated by the 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 Consumer Advocate.

(B) The annual report required of the Commission on Consumer Affairs must include a report on the activities of the Division of Consumer Advocacy.

(C) ~~After January 1, 2005, the division must not represent consumers in matters arising under Title 58. Matters or appeals under Title 58 that are pending on January 1, 2005, shall be transferred to the Office of Regulatory Staff.~~ The Consumer Advocate shall be provided notice of any matter filed at the Public Service Commission that could impact consumers’ utility rates, and may intervene as a party to advocate for the interest of consumers before the Public Service Commission and appellate courts in such matters as the Consumer Advocate deems necessary and appropriate.

SECTION 3. Section 37‑6‑607 of the 1976 Code of Laws is amended to read:

~~With the exception of matters arising under Title 58, the~~ The 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 agency action that the Consumer Advocate determines may substantially affect the interests of consumers.

SECTION 4. Section 58‑4‑10 of the 1976 Code of Laws 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 the ~~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 reliable and high quality utility services. ‘Public interest’ further includes concerns of the using and consuming public with respect to the procurement of lowest-cost energy from independent power producers.

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

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

“CHAPTER 41

Procurement of Lowest‑Cost Energy from Independent Power Producers

Section 58‑41‑10. This chapter may be cited as the ‘Energy Freedom Act.’

Section 58‑41‑30. As used in this chapter:

(1) ‘AC’ means alternating current as measured at the point of interconnection of the small power producer’s facility to the interconnecting electrical utility’s transmission or distribution system.

(2) ‘Avoided costs’ means an electrical utility’s most recently approved or established avoided cost rates in this State for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act and this chapter.

(3) ‘Commission’ means the South Carolina Public Service Commission.

(4) ‘Electrical utility’ shall be defined as set forth in Section 58‑27‑10(7), provided, however, that electrical utilities serving less than one hundred thousand customer accounts shall be exempt from the provisions of this chapter.

(5) ‘PURPA’ means the Public Utility Regulatory Policies Act of 1978, as amended.

(6) ‘Small power producer’ means a person or corporation owning or operating a ‘qualifying small power production facility’ as defined in 16 U.S.C. Section 796, as amended.

(7) ‘Standard offer’ means avoided cost rates and power purchase agreement terms and conditions approved by the commission and applicable to purchases of energy and capacity by electrical utilities as provided in this chapter from small power producers up to five megawatts AC in size.

Section 58‑41‑40. (A) The commission shall conduct a proceeding not later than ninety days after the effective date of this act, and at least every two years thereafter, to review and approve electrical utilities’ avoided cost methodologies, standard offers, and adherence to commission‑approved interconnection standards and this chapter and to form power purchase agreements consistent with PURPA. Such proceedings shall be separate from the electrical utilities’ annual fuel cost proceedings pursuant to Section 58‑27‑865 and shall include an opportunity for intervention, discovery, testimony, and an evidentiary hearing. The Office of Regulatory Staff shall represent the interests of the public at all proceedings.

(B) In approving the avoided cost methodology, standard offer, and form contract for each electrical utility, the commission shall ensure that, to the extent possible, small power producers are treated on a fair and equal footing with electrical utility‑owned resources through the provision of rates for the purchase of energy and capacity that fully and accurately reflect the electrical utility’s avoided costs and power purchase agreement terms and conditions and that are commercially reasonable and provide the small power producer a reasonable opportunity to attract capital. The commission shall also ensure that each electrical utility’s avoided cost methodology fairly accounts for costs avoided by the electrical utility if the small power producer’s facility includes energy storage equipment. Avoided cost methodologies proposed by electrical utilities and approved by the commission may account for differences in costs avoided based on the geographic location and resource type of a small power producer’s facility.

(C) Every six months, each electrical utility shall submit to the commission for approval updates to the inputs used to calculate its standard offer avoided cost rates based on the commission’s approved avoided cost methodology. After providing interested parties the opportunity to participate fully in the proceeding, the commission shall establish updated standard offer avoided cost rates for the electrical utility.

(D) The avoided cost rates offered by an electrical utility to a small power producer not eligible for the standard offer shall be calculated based on the avoided cost methodology approved by the commission in its most recent proceeding. In the event that a small power producer and an electrical utility are unable to mutually agree on an avoided cost rate, the small power producer shall have the right to have any disputed issues resolved by the commission through arbitration or in a formal complaint proceeding.

(E) In each proceeding required by this chapter, the commission shall approve a standard offer power purchase agreement to be used by each electrical utility in purchasing energy, capacity, and other related services from small power producers eligible for the standard offer. In addition, the commission shall either require the use of the standard offer power purchase agreement or approve a separate form power purchase agreement to be used by each electrical utility in purchasing energy, capacity, and other related services from small power producers not eligible for the standard offer. The commission shall determine what contract length for power purchase agreements between electrical utilities and small power producers is necessary to give such small power producers a commercially reasonable opportunity to attract capital.

(F) In no event shall a power purchase agreement approved by the commission or offered by an electrical utility to a small power producer:

(1) allow for curtailment by the electrical utility of generation from the small power producer’s facility for any reason other than a system emergency as defined in PURPA and the PURPA regulations of the Federal Energy Regulatory Commission;

(2) allow the electrical utility to terminate the power purchase agreement or collect damages from the small power producer due to a delay in achieving commercial operation of the small power producer’s facility if such delay is due to the electrical utility’s delay in connecting the facility to its transmission or distribution system; or

(3) allow the electrical utility to charge, or reduce the price paid to, the small power producer based on costs incurred by the electrical utility to respond to the intermittent nature of electrical generation by the small power producer, which costs shall be recoverable by the electrical utility as part of its annual fuel cost proceedings pursuant to Section 58‑27‑865.

(G) An electrical utility’s standard offer avoided cost rates approved by the commission pursuant to this chapter shall serve as the electrical utility’s avoided costs for the purpose of recovering fuel costs associated with an approved distributed energy resource plan as required under Section 58‑27‑865.”

SECTION 7. This bill takes effect upon approval by the Governor.

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