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COMMITTEE REPORT

May 1, 2018

**S. 890**

Introduced by Senators Davis, Fanning, Rice, Leatherman, Talley, Timmons, Shealy, Jackson, Gregory, Senn, Turner and Young

S. Printed 5/1/18--S. [SEC 5/2/18 1:57 PM]

Read the first time January 11, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 890) to amend Title 58 of the 1976 Code of Laws, relating to public utilities, services and carriers, by adding Chapter 41, to provide for the procurement, etc., respectfully

**REPORT:**

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

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 11, 2018**

**State Expenditure**

This bill requires the Public Service Commission (PSC) to conduct a proceeding to review and approve electrical utilities’ avoided cost methodologies, standard offers, and adherence to commission approved interconnection standards and to form power purchase agreements consistent with the Public Utility Regulatory Policies Act (PURA) of 1978. The proceeding must take place no later than ninety days after the effective date of this act and at least every two years thereafter. The proceedings must be separate from the electrical utilities’ annual fuel cost proceedings and must include an opportunity for intervention, discovery, testimony, and an evidentiary hearing. Also, every six months, each electrical utility must submit to PSC for approval updates to the inputs used to calculate its standard offer avoided cost rates. After providing interested parties the opportunity to participate in the proceeding, PSC must establish updated standard offer avoided cost rates for the electrical utility. Additionally, PSC must 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. PSC must either require the use of the standard power purchase agreement or approve a separate form power purchase agreement to be used by each electrical utility. Further, an electrical utility’s standard offer avoided cost rates must serve as its avoided costs for the purpose of recovering fuel costs associated with an approved distributed energy resource plan. The bill takes effect upon approval by the Governor.

**Public Service Commission (PSC).** PSC indicates that this bill will increase other funds expenses by approximately $262,000 in FY 2018-19. Of this amount, $202,000 in recurring expenses is for 3 FTEs, including an economist, a rate analyst, and a statistician. Recurring operating expenses are expected to total $31,000 for IT equipment rentals, office supplies, training, and professional development. Nonrecurring other funds expenses are expected to total $29,000 for IT equipment purchases, office furniture, and office renovations.

**Office of Regulatory Staff (ORS).** ORS indicates that this bill will increase the agency’s caseload by three cases and will require an annual review. Therefore, the bill could increase recurring other funds expenses by approximately $648,000 in FY 2018-19. Of this amount, $192,000 is for 2 FTEs, including a utilities rates manager and a utilities rates analyst. An additional $456,000 is needed for computers, phones, travel, and training for the new FTEs and to retain an expert to aid in the implementation of the bill.

**Public Service Authority (PSA).** PSA indicates that this bill does not operationally or fiscally impact the agency. Therefore, the bill will have no expenditure impact on the general fund, other funds, or federal funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND TITLE 58 OF THE 1976 CODE OF LAWS, RELATING TO PUBLIC UTILITIES, SERVICES AND CARRIERS, BY ADDING CHAPTER 41, TO PROVIDE FOR THE PROCUREMENT OF LOWEST-COST ENERGY FROM INDEPENDENT POWER PRODUCERS; AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. 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. § 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 under Section 58‑27‑865 and shall include an opportunity for intervention, discovery, testimony, and an evidentiary hearing.

(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 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 standard offer and form power purchase agreements approved by the commission pursuant to this section shall have an initial term of at least fifteen years, or longer if the commission deems it necessary in order to comply with subsection (B), and shall provide the small power producer the option of selling the output of its facility to the electrical utility at rates fixed for the initial term of the agreement.

(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 2. Section 58-39-120(A) and (B) of the 1976 Code is amended to read:

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

(B) ‘Avoided costs’ means ~~payments for purchases of electricity made according to an electrical utility’s most recently approved or established avoided cost rates in this State or rates negotiated pursuant to PURPA, in the year the costs are incurred, for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act, said costs to be calculated as set forth in Section 58 39 140(A)(1)~~ costs as defined pursuant to Section 58-41-30(2).”

SECTION 3. This act takes effect upon approval by the Governor.

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