**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA ENERGY FREEDOM ACT” BY ADDING SECTION 58‑27‑845 SO AS TO ENUMERATE SPECIFIC RIGHTS OWED TO EVERY ELECTRICAL UTILITY CUSTOMER IN SOUTH CAROLINA; BY ADDING SECTION 58‑27‑2350 SO AS TO PROVIDE FOR JUDICIAL REVIEW OF VIOLATIONS OF AN ELECTRICAL UTILITY CUSTOMER’S RIGHTS; BY ADDING CHAPTER 41 TO TITLE 58 SO AS TO DEFINE RELEVANT TERMS, TO REQUIRE PERIODIC HEARINGS TO REVIEW AND APPROVE ELECTRICAL UTILITIES’ AVOIDED COST METHODOLOGIES, STANDARD OFFERS, FORM CONTRACTS, AND COMMITMENT TO SELL FORMS, AND TO ESTABLISH POLICIES AND PROCEDURES FOR THESE HEARINGS, TO REQUIRE EACH ELECTRICAL UTILITY TO FILE A VOLUNTARY RENEWABLE ENERGY PROGRAM FOR THE COMMISSION’S REVIEW AND APPROVAL AND TO ENUMERATE PROGRAM REQUIREMENTS, TO REQUIRE EACH ELECTRICAL UTILITY TO ESTABLISH A NEIGHBORHOOD COMMUNITY SOLAR PROGRAM PLAN WITH A GOAL TO EXPAND ACCESS TO SOLAR ENERGY TO LOW‑INCOME COMMUNITIES AND CUSTOMERS, AND TO ENUMERATE PROGRAM REQUIREMENTS; TO AMEND SECTION 58‑4‑10, AS AMENDED, RELATING TO THE OFFICE OF REGULATORY STAFF, SO AS TO REVISE THE DEFINITION OF “PUBLIC INTEREST”; TO AMEND SECTION 58‑27‑460, RELATING TO THE PROMULGATION OF STANDARDS FOR INTERCONNECTION OF RENEWABLE ENERGY, SO AS TO, AMONG OTHER THINGS, INCREASE THE MAXIMUM GENERATION CAPACITY OF THOSE RENEWABLE ENERGY FACILITIES FOR WHICH THE PUBLIC SERVICE COMMISSION SHALL PROMULGATE INTERCONNECTION STANDARDS; TO AMEND SECTION 58‑27‑2610, RELATING TO LEASES OF RENEWABLE ELECTRIC GENERATION FACILITIES, SO AS TO, AMONG OTHER THINGS, REMOVE THE SOLAR LEASING CAP; TO AMEND SECTION 58‑33‑110, RELATING TO REQUIRED PRECONSTRUCTION CERTIFICATIONS FOR MAJOR UTILITY FACILITIES, SO AS TO PROVIDE THAT A PERSON MAY NOT BEGIN CONSTRUCTION OF A MAJOR UTILITY FACILITY WITHOUT FIRST HAVING MADE A DEMONSTRATION THAT THE FACILITY HAS BEEN SELECTED THROUGH AN INDEPENDENTLY MONITORED, ALL‑SOURCE, PROCUREMENT PROCESS OVERSEEN BY AN INDEPENDENT EVALUATOR CHOSEN BY THE OFFICE OF REGULATORY STAFF; TO AMEND SECTION 58‑33‑140, RELATING TO THE PARTIES TO CERTIFICATION PROCEEDINGS, SO AS TO PROVIDE THAT THE PARTIES SHALL INCLUDE ANY INDEPENDENT POWER PRODUCER THAT IS PROPOSING AN ALTERNATIVE TO THE MAJOR UTILITY FACILITY; TO AMEND SECTION 58‑37‑40, RELATING TO INTEGRATED RESOURCE PLANS, SO AS TO PROVIDE FOR THE EVALUATION OF THE ADOPTION OF RENEWABLE ENERGY, ENERGY EFFICIENCY, AND DEMAND RESPONSE IN INTEGRATED RESOURCE PLANS AND TO PROVIDE FOR CERTAIN REPORTING REQUIREMENTS; TO AMEND SECTION 58‑40‑10, RELATING TO DEFINITIONS APPLICABLE TO NET ENERGY METERING, SO AS TO REVISE THE DEFINITION OF “CUSTOMER‑GENERATOR”; AND TO AMEND SECTION 58‑40‑20, RELATING TO NET ENERGY METERING, SO AS TO REQUIRE ELECTRICAL UTILITIES TO MAKE NET ENERGY METERING AVAILABLE TO CUSTOMER‑GENERATORS UNTIL THE TOTAL INSTALLED NAMEPLATE GENERATING CAPACITY OF NET ENERGY METERING SYSTEMS EQUALS AT LEAST TWO PERCENT OF THE PREVIOUS FIVE‑YEAR AVERAGE OF THE ELECTRICAL UTILITY’S SOUTH CAROLINA RETAIL PEAK DEMAND AND TO PROVIDE FOR A SUCCESSOR NET ENERGY METERING TARIFF.

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

SECTION 1. This act may be cited as the “South Carolina Energy Freedom Act”.

SECTION 2. Article 7, Chapter 27, Title 58 of the 1976 Code is amended by adding:

“Section 58‑27‑845. (A) Every customer of an electrical utility has the right to reduce the energy purchased from the electrical utility by energy cost-saving measures to lower electricity bills, including, but not limited to, installation and utilization of onsite distributed energy resources to meet onsite load, energy conservation practices, adoption of energy efficiency measures, and participation in technology‑enabled demand response programs. A customer’s right to utilize energy cost-saving measures shall not be infringed by:

(1) additional tariff charges or fees that only apply to customers that utilize an energy cost-saving measure;

(2) a requirement to take service on a different rate schedule than would otherwise apply to the customer if they did not utilize an energy cost-saving measure; and

(3) any increase in charges or fees to interconnect or to maintain interconnection to the electrical utility’s grid, notwithstanding the right of the electrical utility to charge a cost‑based application fee to cover the initial costs of interconnecting a distributed energy resource to the distribution system.

(B) Every customer of an electrical utility is entitled to have access to a rate schedule that allows the customer a reasonable opportunity to realize bill savings by utilizing energy cost-saving measures.

(1) For each class of service, an electrical utility should offer at least one rate option that aligns the customer’s ability to achieve bill savings in a manner that supports long‑term reductions in the overall cost the electrical utility will incur in providing electric service, including, but not limited to, time‑variant pricing structures.

(2) Residential customers have a right to a simple, default rate that allows customers to reduce electricity bills by lowering the number of kilowatt hours purchased over a monthly billing period or within time‑of‑day periods. Default residential rates shall not include a bill component based on the customer’s non‑coincident demand or include a fixed charge that exceeds the basic customer costs of providing a service drop, metering, billing, and customer support.

(3) If an electrical utility seeks an increase to its base rates, the commission shall not approve any increase in a fixed customer or basic facilities charge that exceeds, on a percentage basis, the overall retail rate increase within each customer class.

(C) Every customer of an electrical utility has a right to obtain their own electric usage data in a machine‑readable, accessible format. Electrical utilities shall allow customers an electronic means to assent to share the customer’s energy usage data with a third‑party vendor designated by the customer.”

SECTION 3. Article 17, Chapter 27, Title 58 of the 1976 Code is amended by adding:

“Section 58‑27‑2350. A person that is aggrieved by a utility action or a commission order that impairs the rights provided to electric consumers in Section 58‑27‑845(A) and (C) may petition the courts of this State for injunctive and declaratory relief, regardless of whether the aggrieved person was a party to the commission proceeding. The court may, upon reasonable notice and after hearing, issue a stay or suspension of any rate structure change or additional charge or fee that is only applicable to and mandatory for customers that utilize energy cost-saving measures. The stay or suspension shall remain in effect, without bond or security, during the pendency of such proceeding and until such further time as the court may require.”

SECTION 4. Title 58 of the 1976 Code is amended by adding:

“CHAPTER 41

Clean Energy Access

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

Section 58‑41‑20. 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 PURPA and this chapter.

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

(4) ‘Electrical utility’ is defined as set forth in Section 58‑27‑10(7), provided, however, that electrical utilities serving less than one hundred thousand customer accounts must be exempt from the provisions of this chapter. For purposes of this chapter, and notwithstanding any provision of law to the contrary, the South Carolina Public Service Authority constitutes an electrical utility. A renewable energy supplier participating in an electrical utility’s voluntary renewable energy program pursuant to this chapter shall not be considered an electrical utility for purposes of this chapter.

(5) ‘Eligible customer’ means a retail customer with a new or existing contract demand greater than or equal to one megawatt at a single metered location or aggregated across multiple metered locations.

(6) ‘Generation credit’ means a credit applied by an electrical utility to the bill of a participating customer equal to the value to the electrical utility’s system of the energy and capacity provided by a renewable energy facility, as defined herein.

(7) ‘Neighborhood community solar facility’ means a solar photovoltaic electric generating facility with an installed nameplate capacity of one megawatt (AC) or less that is connected to the distribution system of the electrical utility and is participating in the electrical utility’s neighborhood community solar program.

(8) ‘Participating customer’ means an eligible customer that elects to have a portion or all of its electricity needs supplied by a voluntary renewable energy program.

(9) ‘Participating customer agreement’ means an agreement between a participating customer and an electrical utility establishing the customer’s right to participate in the electrical utility’s voluntary renewable energy program.

(10) ‘Power purchase agreement’ means an agreement between an electrical utility and a renewable energy supplier for the purchase and sale of energy, capacity, and environmental attributes from the renewable energy supplier’s renewable energy facility pursuant to this chapter.

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

(12) ‘Renewable energy contract’ means a contract between a participating customer and a renewable energy supplier that commits the parties to participating in an electrical utility’s voluntary renewable energy program.

(13) ‘Renewable energy facility’ means a facility for the production of electrical energy that utilizes a renewable generation resource as defined in Section 58‑39‑120(F), that is placed in service after the effective date of this chapter, and for which costs are not included in an electrical utility’s rates.

(14) ‘Renewable energy supplier’ means the owner or operator of a renewable energy facility, including the affiliate of an electrical utility that contracts with a participating customer.

(15) ‘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.

(16) ‘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 two megawatts AC in size.

(17) ‘Voluntary renewable energy program’ means a tariff filed with the commission by an electrical utility that enables a participating customer to receive and pay for electric service, including the energy and environmental attributes specified in the renewable energy contract, from the electrical utility pursuant to the terms of the tariff.

Section 58‑41‑30. (A) The commission shall conduct a proceeding no later than ninety days after the effective date of this chapter, and at least once every twenty‑four months to review and approve electrical utilities’ avoided cost methodologies, standard offers, form contracts and commitment to sell forms.

(1) Proceedings must be separate from the electrical utilities’ annual fuel cost proceedings.

(2) Proceedings 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 treat small power producers on a fair and equal footing with electrical utility‑owned resources by ensuring that:

(1) rates for the purchase of energy and capacity that fully and accurately reflect the electrical utility’s avoided costs;

(2) power purchase agreement terms and conditions that are commercially reasonable and provide the small power producer a reasonable opportunity to attract capital; and

(3) each electrical utility’s avoided cost methodology fairly accounts for costs avoided by the electrical utility including, but not limited to, energy, capacity, and ancillary services provided by small power producers utilizing 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) The avoided cost rates offered by an electrical utility to a small power producer not eligible for the standard offer must 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.

(D) A small power producer shall have the right to sell the output of its facility to the electrical utility at the rates, and pursuant to the power purchase agreement terms and conditions, then in effect by delivering an executed notice of commitment to sell form to the electrical utility. The commission shall approve a standard notice of commitment to sell form to be used for this purpose that provides the small power producer at least six months from its submittal of the form to execute a power purchase agreement. In no event, however, shall the small power producer, as a condition of preserving the pricing and terms and conditions established by its submittal of an executed commitment to sell form to the electrical utility, be required to execute a power purchase agreement prior to receipt of a final interconnection agreement from the electrical utility.

(E) The commission shall approve standard offer and form contract power purchase agreements to be used by each electrical utility in purchasing energy, capacity, and other related services from small power producers.

(1) The commission shall either require the use of the standard offer power purchase agreement or approve a separate form contract 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.

(2) The standard offer and form contracts approved by the commission pursuant to this section shall have an initial term of at least ten years and that the commission deems necessary 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.

(3) Standard offer and form contract power purchase agreements shall prohibit:

(a) uncompensated curtailment of qualifying facilities other than due to a system emergency as defined in PURPA;

(b) termination of the power purchase agreement, collection of damages from small power producers, or commencement of the term of a power purchase agreement prior to commercial operation, if delays in achieving commercial operation of the small power producer’s facility are due to the electrical utility’s interconnection delays; and

(c) the electrical utility from charging or reducing 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. These costs must be recovered under the electrical utilities’ annual fuel cost proceedings.

Section 58‑41‑40. (A) Each electrical utility shall file a voluntary renewable energy program for review and approval by the commission within ninety days after the effective date of this chapter. The program shall provide that:

(1) the participating customer shall have the right to select the renewable energy facility from which the electrical utility shall procure energy, capacity, and environmental attributes on behalf of the participating customer and to negotiate the power purchase agreement purchase price and contract length with the renewable energy supplier;

(2) the electrical utility shall enter into a power purchase agreement with the renewable energy supplier to purchase energy, capacity, and environmental attributes for the benefit of the participating customer at the purchase price and for the contract length agreed upon by the renewable energy supplier and the participating customer;

(3) the renewable energy contract, power purchase agreement, and participating customer agreement must be of equal duration, ranging between ten years and twenty years, as agreed to by the participating customer and the renewable energy supplier;

(4) the value of the generation credit must be fixed for the duration of the participating customer agreement and shall equal the value of the energy and capacity provided by the renewable energy facility over the contract length, as determined by the electrical utility’s avoided cost rate in effect as of the utility’s filing of its voluntary renewable energy program tariff with the commission and updated no more frequently than once per year;

(5) in addition to paying a retail bill calculated pursuant to the rates and tariffs that would otherwise be applicable to the participating customer, reduced by the amount of the generation credit, a participating customer shall reimburse the electrical utility on a monthly basis for the amount paid by the electrical utility to the renewable energy supplier under the power purchase agreement, plus an administrative fee not to exceed five hundred dollars per month;

(6) the electrical utility shall retire on behalf of the participating customer any environmental attributes procured pursuant to the power purchase agreement; and

(7) eligible customers must be allowed to bundle their demand under a single participating customer agreement and renewable energy contract.

(B) Each electrical utility’s voluntary renewable energy program shall provide standard terms and conditions for the participating customer agreement and the power purchase agreement, subject to commission review and approval.

(C) Each electrical utility shall comply with this section until the aggregated amount of installed nameplate generation capacity procured pursuant to this section equals ten percent of the previous five‑year average of the electrical utility’s South Carolina retail peak demand.

(D) A participating customer must be eligible to annually procure an amount of energy equal to one hundred twenty‑five percent of its most recent annual energy usage.

(E) An electrical utility may not charge any nonparticipating customers for any direct costs incurred pursuant to the provisions of this chapter.

(F) A renewable energy facility may be located anywhere in the electrical utility’s service territory within the State.

Section 58‑41‑50. (A) Each electrical utility shall file for approval by July 1, 2020, an application to establish a neighborhood community solar program plan with a goal to expand access to solar energy to low‑income communities and customers. The aggregate installed capacity of all neighborhood community solar facilities in the electrical utility’s service territory must equal at least one‑half of one percent of the electrical utility’s previous five‑year average of the electrical utility’s South Carolina retail peak demand. The neighborhood community solar program plan shall:

(1) establish a reverse auction process to determine a twenty‑year standard, fixed contract rate for purchases of electricity from neighborhood community solar facilities;

(2) establish a process to compensate community assistance organizations located near a neighborhood community solar facility that help identify qualifying low‑income customers and promote and maintain participation in a specific facility;

(3) identify zones within the service territory with a highest concentration of customers or households below two hundred percent of the federal poverty guidelines to assist optimal location of neighborhood community solar facilities;

(4) establish a plan for encouraging equitable distribution of neighborhood community solar projects between rural and urban areas, including use of a subscription eligibility radius larger than ten‑miles within designated rural zones;

(5) identify additional methods of encouraging development of neighborhood community solar projects if deemed necessary to meet minimum capacity and enrollment targets by December 31, 2024, including grants to community colleges to support solar workforce development and training in impacted communities; and

(6) identify opportunities to link participation in the program to other utility programs such as energy efficiency or demand response.

(B) After commission approval of a neighborhood community solar plan, an electrical utility shall hold a competitive auction to establish the neighborhood community solar standard fixed contract price for subscribed energy and file that rate with the commission. The electrical utility shall make a standard program contract available to neighborhood community solar facility developers on a first‑come, first‑served basis until the electrical utility has executed contracts totaling the minimum capacity targets in subsection (A) or any commission approved target that exceeds those minimum requirements. The twenty‑year standard power purchase agreement shall provide that:

(1) the neighborhood community solar facility will be compensated for the subscribed portion of the facility at the neighborhood community solar standard fixed contract price; and

(2) the neighborhood community solar facility must be compensated for the unsubscribed portions of the facility at the prevailing published avoided cost rate in effect at the time of contract execution.

(C) Low‑income customers or households that are below two hundred percent of the federal poverty level and that have a residential account for electric service from the interconnected electrical utility within ten miles of a neighborhood community solar facility, unless otherwise designated within a rural zone approved by the commission, are eligible to subscribe to the facility. Eligible customers may apply, directly with the electrical utility or through a participating local community assistance organization, on a first‑come, first‑served basis to receive a subscription for a single, five kilowatt (AC) capacity block for a period of twenty years from the date of initial commercial operation of the facility. Eligible customers may not participate in more than one neighborhood community solar facility at any given time. A qualifying low‑income customer’s bill must be calculated in the following manner:

(1) the subscriber’s monthly pro rata share of generation from the neighborhood community solar facility must be calculated and purchased from the electrical utility at the published program fixed price;

(2) the subscriber shall pay the otherwise applicable retail rate for all kilowatt‑hours delivered by the electrical utility that exceed the number of kilowatt‑hours purchased by the customer through subscription to the neighborhood community solar project for that monthly billing period;

(3) any excess subscription credits shall carry forward to apply in future billing periods;

(4) an administrative fee of not more than five dollars per month shall apply to contribute to administrative expenses of program administration, including billing and marketing expenses; and

(5) all monthly fixed charges and other non‑bypassable charges for delivered electricity are assessed according to the otherwise applicable rate schedule and are not offset by subscribed kilowatt‑hours.

(D) A tax‑exempt entity that agrees to provide land or roof space to host a neighborhood community solar facility, and that provides a no‑cost or a below market lease to the facility developer for the twenty‑year contract term of the facility, shall have the right of first refusal to subscribe to up to twenty percent of the five kilowatt subscription blocks from the hosted neighborhood community solar facility. The tax‑exempt entity’s electric bill must be calculated in the same manner provided for eligible low‑income customers in subsection (C), provided that the administrative charge in subsection (C)(4), must be multiplied by the number of five kilowatt blocks the tax‑exempt facility host opts to subscribe.

(E) A qualifying low‑income customer may terminate subscription to the neighborhood community solar facility at any time without penalty. A qualifying low‑income customer that moves and transfers electric service to another residence within the service territory of the electrical utility may transfer the subscription to the new account. An electrical utility may terminate participation in the neighborhood community solar facility for nonpayment for any qualifying low‑income customer that is more than two months in arrears.

(F) An electrical utility shall recover the purchases of all generation from neighborhood community solar facilities at the published avoided cost rate in effect at the time of contract execution for the duration of the power purchase agreement and, notwithstanding the administrative fee in subsection (C)(5) and Section 58‑41‑60, may not recover any other incremental amounts.

Section 58‑41‑60. The commission may allow an electrical utility that achieves full enrollment of low‑income customers under the minimum program capacity target specified in this chapter by December 31, 2024, to include in base rates and earn an enhanced rate of return of fifty basis points above the currently approved rate of return on equity for the incurred Neighborhood Community Solar Program costs the commission deems reasonable and prudent in a general rate case proceeding, including administrative costs, grants to local assistance organizations, and reduced revenue contributions from subscribing customers.”

SECTION 5. Section 58‑4‑10 of the 1976 Code, as last amended by Act 258 of 2018, is further 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 concerns of the using and consuming public with respect to public utility services, regardless of the class of customer, including open and nondiscriminatory access to the electric grid by small power production facilities as defined in 16 U.S.C. Section 796(17)(E), and preservation of continued investment in and maintenance of utility facilities so as to provide 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 6. Section 58‑27‑460 of the 1976 Code is amended to read:

“Section 58‑27‑460. (A) The commission shall promulgate standards for interconnection of renewable energy facilities and other nonutility‑owned generation with a generation capacity of ~~two thousand kilowatts (2,000 kW AC)~~ seventy‑five megawatts (75 MW AC) or less to an electrical utility’s distribution and transmission system. Each electrical utility shall provide open and nondiscriminatory access to its distribution and transmission system to interconnection customers.

(B) No customer‑generator or customer‑generator lessee shall connect or operate an electric generation unit in parallel phase and synchronization with any electrical utility without written approval by the electrical utility that all of the commission’s requirements have been met. For a customer‑generator or customer‑generator lessee who violates this provision, an electrical utility immediately may and without notice disconnect the electric facilities of the customer‑generator or customer‑generator lessee and terminate the customer‑generator’s or customer‑generator lessee’s electric service.

(C) The interconnection standards as adopted by the commission shall govern interconnection to the electric grid for independent power producers with a generation capacity of seventy‑five megawatts (75 MW AC) or less in this State. In the event of any dispute between an interconnection customer and the electrical utility on any issue relating to interconnection, the parties shall first attempt to resolve the claim or dispute using any dispute resolution procedures provided for under the applicable interconnection standards promulgated by the commission. If the parties are unable to resolve such claim or dispute using those procedures, then either party may petition the commission for determination of the appropriate terms and conditions for interconnection. The commission shall determine the appropriate terms and conditions for interconnection within three months from the filing of the petition in accordance with the terms of applicable state and federal law. The regulatory staff shall represent the public interest in any matter undertaken pursuant to this subsection unless the Executive Director of the Office of Regulatory Staff chooses to opt out as a participant pursuant to Section 58‑4‑50.”

SECTION 7. Section 58‑27‑2610 of the 1976 Code is amended to read:

“Section 58‑27‑2610. (A) An entity that owns a renewable electric generation facility, located on a premises or residence owned or leased by an eligible customer‑generator lessee to serve the electric energy requirements of that particular premises or residence or to enable the customer‑generator lessee to obtain a credit for or engage in the sale of energy from the renewable electric generation facility to that customer‑generator lessee’s retail electric provider or its designee, shall be permitted to lease such facility exclusively to a customer‑generator lessee under a lease, provided that the entity complies with the terms, conditions, and restrictions set forth within this article and holds a valid certificate issued by the Office of Regulatory Staff. An entity owning renewable electric generation facilities in compliance with the terms of this article shall not be considered an “electrical utility” under Section 58‑27‑10 if the renewable electric generation facilities are only made available to a customer‑generator lessee for the customer‑generator lessee’s use on the customer‑generator lessee’s premises or the residence where the renewable electric generation facilities are located, or for the sale of energy to that customer‑generator lessee’s retail electric provider or its designee, and pursuant to a lease.

(B) ~~All customer‑generator lessees that interconnect renewable electric generation facilities to a retail electric provider’s transmission or distribution system must enroll in the applicable rate schedules made available by that retail electric provider, subject to the participation limitations set forth therein or in the policy adopted by the retail electric provider not subject to Section 58‑40‑20(B), and the customer‑generator lessee shall otherwise comply with all requirements of Section 58‑40‑10, et seq., or the policy adopted by the retail electric provider not subject to Section 58‑40‑10, et seq.~~

~~(C)~~ To comply with the terms of this article, each customer‑generator lessee renewable electric generation facility shall serve only one premises or residence, and shall not serve multiple customer‑generator lessees or multiple premises or residences.

~~(D)~~(C) Any lease of a renewable electric generation facility not entered into pursuant to this article is prohibited. The owner of a renewable electric generation facility subject to any lease entered into outside of this program shall be considered an “electrical utility” under Section 58‑27‑10.

~~(E)~~(D) This section shall not be construed as allowing any sales of electricity from renewable electric generation facilities directly to any customer of any retail electric provider by the owner. This article shall not be construed as abridging or impairing any existing rights or obligations, established by contract or statute, of retail electric providers to serve South Carolina customers. The electrical output from any renewable electric generation unit leased pursuant to this program shall be the sole and exclusive property of the customer‑generator lessee.

~~(F)~~(E) An entity and its affiliates that lawfully provide retail electric service to the public may offer leases of renewable generation facilities in those areas or territories where it provides retail electric service. No such provider or affiliate shall offer or enter into leases of renewable generation facilities in areas served by another retail electric provider.

~~(G)~~(F) The costs an electrical utility incurs in marketing, installing, owning, or maintaining solar leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating electrical utility customers through rates, provided, however, that an electrical utility and the customer‑generator lessees which lease facilities from it may participate on an equal basis with other lessors and lessees in any applicable programs provided pursuant to Chapter 39 and nothing in this section shall prevent the reasonable and prudent costs of a utility’s distributed energy resource programs, including the provision of incentives to its own lessees and other allowable costs, from being reflected in a utility’s rates as provided for in Chapter 39 or as otherwise permitted under generally applicable regulatory principles.

~~(H)~~ ~~The total installed capacity of all renewable electric generation facilities on a retail electric provider’s system that are leased pursuant to this article shall not exceed two percent of the previous five‑year average of the retail electric provider’s South Carolina residential and commercial contribution to coincident retail peak demand and two percent of the previous five‑year average of the retail electric provider’s South Carolina industrial contribution to coincident retail peak demand. A provider may refuse to interconnect with customers where to do so would result in this limitation being exceeded. Every retail electric provider must establish a program for new installations of leased equipment to permit the reservation of capacity on its system including provisions to prevent or discourage abuse of such programs. Such programs must provide that only prospective individual customer‑generator lessees may apply for, receive, and hold reservations. Each reservation shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned except as part of the sale of the underlying premises. Requests for reservations to electrical utilities as defined in Section 58‑27‑10 shall accompany applications for interconnection of the leased facilities pursuant to Chapter 40, Title 58 and the reservation shall remain in force only so long as the application or permit for interconnection remains active. Electrical utilities as defined in Section 58‑27‑10 shall submit programs establishing the terms of such reservations to the commission for approval.~~

~~(I)~~ ~~Notwithstanding the provisions of subsection (H), for an electrical utility for which more than fifty percent of the electricity that it generates in South Carolina comes from renewable resources, the total installed capacity of all renewable electric generation facilities on its system that are leased pursuant to this article shall not exceed one‑tenth of one percent of the previous five‑year average of the electrical utility’s South Carolina residential and commercial contribution to coincident retail peak demand and one‑tenth of one percent of the previous five‑year average of the electrical utility’s South Carolina industrial contribution to coincident retail peak demand. Electrical utilities meeting the requirements of this subsection shall not be required to establish a capacity reservation program as required by subsection (H).~~

~~(J)~~(G)(1) The provisions of this Article 23 related to leased generation facilities shall not apply to:

(a) facilities serving a single premises that are not interconnected with a retail electric provider;

(b) facilities owned by customer‑generators but financed by a third party; or

(c) facilities used exclusively for standby emergency service or participation in an approved standby generation program operated by a retail electric provider.

(2) The commission may promulgate regulations consistent with this section interpreting the scope of these exemptions as to electrical utilities.”

SECTION 8. Section 58‑33‑110 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) A person may not begin construction of a major utility facility without first having made a demonstration that the facility has been selected through an independently monitored, all‑source, procurement process overseen by an independent evaluator chosen by the Office of Regulatory Staff and conducted in accordance with a commission-approved process that includes:

(a) access by the independent evaluator to all documents and data reviewed, used, or produced by the utility in preparation of its request for proposals and screening criteria and in its bid solicitation, evaluation, and selection process and to the bid evaluation results and modeling runs to verify those results and evaluate options not considered;

(b) a report from the independent evaluator to the commission regarding the transparency, completeness, and integrity of the bidding process and the evaluation of bids;

(c) a reasonable period for interested parties to review and comment on proposed request for proposals, bid instructions, and bid evaluation criteria prior to finalization and issuance;

(d) independent evaluator access and review of final bid evaluation criteria and pricing information for any utility‑constructed, utility‑owned and utility‑operated projects to be evaluated in comparison to the request for proposal bids received;

(e) full access through discovery, subject to appropriate confidentiality restrictions, for parties to this proceeding to documents developed in preparing the certificate of public convenience and necessity application; and

(f) treatment of utility affiliates in the same manner as nonaffiliates participating in the request for the proposal process.”

SECTION 9. Section 58‑33‑140(1) of the 1976 Code is amended to read:

“(1) The parties to a certification proceeding shall include:

(a) the applicant;

(b) the Office of Regulatory Staff, the Department of Health and Environmental Control, the Department of Natural Resources, and the Department of Parks, Recreation and Tourism;

(c) each municipality and government agency entitled to receive service of a copy of the application under subsection (2) of Section 58‑33‑120 if it has filed with the commission a notice of intervention as a party within thirty days after the date it was served with a copy of the application; ~~and~~

(d) any person residing in a municipality entitled to receive service of a copy of the application under subsection (2) of Section 58‑33‑120, any domestic nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health, or other biological values, to preserve historical sites, to promote consumer interest, to represent commercial and industrial groups, or to promote the orderly development of the area in which the facility is to be located; or any other person, if such a person or organization has petitioned the commission for leave to intervene as a party, within thirty days after the date given in the published notice as the date for filing the application, and if the petition has been granted by the commission for good cause shown~~.~~; and

(e) any independent power producer that is proposing an alternative to the major utility facility pursuant to Section 58‑33‑120(1)(d).”

SECTION 10. Section 58‑37‑40 of the 1976 Code is amended by adding appropriately lettered subsections at the end to read:

“( ) An integrated resource plan must evaluate low, medium, and high cases for adoption of renewable energy, energy efficiency, and demand response, including consideration of the following:

(1) customer energy efficiency and demand response programs;

(2) electrification of vehicles and programs to optimize electric vehicle charging patterns;

(3) customer‑sited distributed energy resources and programs that aggregate distributed energy resources to provide grid services;

(4) renewable energy resources larger than one megawatt, including facilities where energy storage is installed to enhance the operational characteristics and capabilities of the facility;

(5) accelerated closure of the least efficient generating units considered in the integrated resource plan; and

(6) sensitivity analyses related to fuel costs and carbon regulations.

( ) The integrated resource plan shall report the relative cost of each resource portfolio, annually and over the planning horizon, with the purpose of determining the least cost, best‑fit plan to meet the utility’s service obligations, taking into account:

(1) reliability;

(2) affordability;

(3) all existing, retiring, uneconomic, and reasonably available resources;

(4) changing technology;

(5) economic, environmental, and regulatory risks; and

(6) other foreseeable conditions potentially affecting the cost of service.

( ) The integrated resource plan may include distribution resource or integrated system operation plans.”

SECTION 11. Section 58‑40‑10(C) of the 1976 Code is amended to read:

“(C) ‘Customer‑generator’ means the owner, operator, lessee, or customer‑generator lessee of an electric energy generation unit which:

(1) generates or discharges electricity from a renewable energy resource, including an energy storage device configured to receive electrical charge solely from an onsite renewable energy resource;

(2) has an electrical generating system with a capacity of:

(a) not more than the lesser of one thousand kilowatts (1,000 kW AC) or one hundred percent of contract demand if a nonresidential customer; or

(b) not more than twenty kilowatts (20 kW AC) if a residential customer;

(3) is located on a single premises owned, operated, leased, or otherwise controlled by the customer;

(4) is interconnected and operates in parallel phase and synchronization with an electrical utility and complies with the applicable interconnection standards;

(5) is intended primarily to offset part or all of the customer‑generator’s own electrical energy requirements; and

(6) meets all applicable safety, performance, interconnection, and reliability standards established by the commission, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the federal Energy Regulatory Commission, and any local governing authorities.”

SECTION 12. Section 58‑40‑20 of the 1976 Code is amended to read:

“Section 58‑40‑20. ~~(A)~~ ~~Net energy metering rates approved by the commission under the terms of this chapter shall be the exclusive net energy metering rates available to customer‑generators. Upon commission approval, such net energy metering rates shall supersede all prior net energy metering rates. Customer‑generators whose net energy metering facilities were energized prior to the availability of net energy metering rates approved by the commission under the terms of this chapter may remain in historic net energy metering programs through December 31, 2020.~~

~~(B)~~ ~~An electrical utility shall make net energy metering available to customer‑generators on a first‑come, first‑served basis until the total nameplate generating capacity of net energy metering systems equals two percent of the previous five‑year average of the electrical utility’s South Carolina retail peak demand. No electrical utility shall be required to approve any application for interconnection from net energy metering customer‑generators if the total rated generating capacity of all applications for interconnection from net energy metering customer‑generators already approved to date by the electrical utility equals or exceeds two percent of the previous five‑year average of the electrical utility’s South Carolina retail peak demand.~~

~~(C)~~ ~~If determined to be prudent by the commission, the electrical utility may furnish, install, own, and maintain metering equipment needed to measure the kilowatt‑hours purchased by the customer‑generator from the utility, the kilowatt‑hours generated or delivered to the electrical utility, and, if applicable under the utility’s tariffs, to measure the kilowatt demand delivered by the electrical utility to the customer‑generator. The electrical utility shall have the right to install special metering and load research devices on the customer‑generator’s equipment and the right to use the customer‑generator’s communication devices for communication with electrical utility’s and the customer‑generator’s equipment.~~

~~(D)~~ ~~The net electrical energy measurement shall be calculated in the following manner:~~

~~(1)~~ ~~For a customer‑generator, an electrical utility shall measure the net electrical energy produced or consumed during the billing period in accordance with normal metering practices for customers in the same rate class, either by employing a single, bidirectional meter that measures the amount of electrical energy produced and consumed, or by employing multiple meters that separately measure the customer‑generator’s consumption and production of electricity;~~

~~(2)~~ ~~If the electricity supplied by the electrical utility exceeds the electricity generated by the customer‑generator during a billing period, the customer‑generator shall be billed for the net electricity supplied by the electrical utility in accordance with normal practices for customers in the same rate class;~~

~~(3)~~ ~~Any energy generated by the customer‑generator that exceeds the energy supplied by the electrical utility during a billing period shall not be used to offset the nonvolumetric electricity charges for that billing period;~~

~~(4)~~ ~~The utility shall maintain an account of any net excess kWh credits accruing from the customer‑generator’s excess generation and allow those kWh credits to be used to offset the customer‑generator’s energy usage during future billing periods. Annually, the utility shall pay the customer‑generator for any accrued net excess generation at the utility’s avoided cost for qualified facilities, zeroing‑out the customer‑generator’s account of net excess kWh credits.~~

~~(E)~~ ~~Each electrical utility shall submit an annual net metering report to the Public Service Commission, with a copy to the Office of Regulatory Staff, including the following information for the previous calendar year:~~

~~(1)~~ ~~the total number of customer‑generator facilities;~~

~~(2)~~ ~~the estimated gross generating capacity of its net‑metered customer‑generators;~~

~~(3)~~ ~~the estimated net kilowatt hours received from customer‑generators.~~

~~(F)~~ ~~Any and all costs prudently incurred pursuant to the provisions of this chapter by an electrical utility as approved by the commission and any and all commission approved benefits conferred by a customer‑generator shall be recoverable by each entity respectively in the electrical utility’s rates in accordance with these provisions:~~

~~(1)~~ ~~The electrical utility’s general rates, tariffs, and any additional monthly charges or credits, in addition to any other charges or credits authorized by law, to recover the costs and confer the benefits of net energy metering shall include such measures necessary to ensure that the electrical utility recovers its cost of providing electrical service to customer‑generators and customers who are not customer‑generators.~~

~~(2)~~ ~~Any charges or credits prescribed in item (1), and the terms and conditions under which they may be assessed shall be in accordance with a methodology established through the proceeding described in item (4). The methodology shall be supported by an analysis and calculation of the relative benefits and costs of customer generation to the electrical utility, the customer‑generators, and those customers of the electrical utility that are not customer‑generators.~~

~~(3)~~ ~~Upon approval of the methodology provided for in item (4), each electrical utility shall file its analysis of the net cost to serve customer‑generators using the approved methodology and shall propose new net energy metering rates.~~

~~(4)~~ ~~No later than thirty days after the enactment of this act, the commission shall initiate a generic proceeding for purposes of implementing the requirements of this chapter with respect to the net energy metering rates, tariffs, charges, and credits of electrical utilities, specifically to establish the methodology to set any necessary charges and credits as required under items (1) and (2). All interested parties shall be allowed to participate. In its notice initiating such proceeding the commission must require the electrical utilities to propose methodologies required by item (1) and shall allow intervening parties to propose methodologies required by item (2). The Office of Regulatory Staff, pursuant to the requirements of Section 58‑4‑50, shall represent the public interest in this proceeding and shall serve as a facilitator to resolve disputes and issues between the parties to this proceeding.~~

~~(5)~~ ~~In evaluating the benefits and costs of customer generation as required by item (2), and the methodology for calculating such benefits and costs, the Office of Regulatory Staff may engage third parties with relevant prior experience conducting distributed generation cost‑benefit studies. The cost of any experts and consultants engaged by the Office of Regulatory Staff for purposes of this proceeding shall be assessed to the electrical utilities pro rata based on their five‑year average of retail peak demand and shall be recoverable by those electrical utilities through the base rate for fuel costs established pursuant to Section 58‑27‑865.~~

~~(6)~~ ~~In the event that the commission determines that future benefits from net energy metering are properly reflected in net metering rates because they provide quantifiable benefits to the utility system, its customers, or both, and to the degree such benefits are not then being recovered by the electrical utility in its base rates, then such future benefits shall be deemed an avoided cost and shall be recoverable pursuant to Section 58‑27‑865 by the electrical utility as an incremental cost of the distributed energy resource program.~~

~~(G)~~ ~~In no event shall the net energy metering provisions of this chapter be construed as allowing customer‑generators to engage in meter aggregation, group/joint billing projects, and/or virtual net metering.~~

~~(H)~~ ~~The commission shall approve an electrical utility’s proposed net energy metering rates that meet the requirements of this chapter, provided that the commission has previously approved that electrical utility’s application to participate in a distributed energy resource program pursuant to Chapter 39, Title 58.~~

(A) An electrical utility shall make net energy metering available to customer‑generators on a first‑come, first‑served basis, according to the terms and rights provided to customer‑generators in Commission Order No. 2015‑194, until the total installed nameplate generating capacity of net energy metering systems equals at least two percent of the previous five‑year average of the electrical utility’s South Carolina retail peak demand.

(B) No later than thirty days after the effective date of this section, each electrical utility shall file an application with the commission to establish a successor net energy metering tariff as described in this section. After the total nameplate generating capacity of net energy metering systems equals at least two percent of the previous five‑year average of the electrical utility’s South Carolina retail peak demand, all new customer‑generators shall take service under the electrical utility’s successor net energy metering tariff. If an electrical utility reaches the two percent threshold prior to the date of the commission order approving the successor net energy metering tariff, the electrical utility shall continue accepting application for net energy metering service according to the terms and rights provided to customer‑generators in Commission Order No. 2015‑194.

(C) The successor net energy metering tariff referenced in subsection (B) shall include an accompanying net metering contract to extend the terms of service for a period of at least twenty‑five years, including the right of the customer‑generator to have access to the otherwise applicable default rate schedule that would apply if the customer did not engage in net energy metering. The net electrical energy measurement for the successor net energy metering tariff must be accomplished in the following manner:

(1) For a customer‑generator, an electrical utility shall measure the net electrical energy produced or consumed during the billing period in accordance with normal metering practices for customers in the same rate class, either by employing a single, bidirectional meter that measures the amount of electrical energy produced and consumed, or by employing multiple meters that separately measure the customer‑generator’s consumption and export of electricity.

(2) If the electricity supplied by the electrical utility exceeds the electricity generated by the customer‑generator and exported to the electrical utility by the customer‑generator during a billing period, the customer‑generator must be billed for the net electricity supplied by the electrical utility in accordance with normal practices for customers in the same rate class.

(3) Any energy generated by the customer‑generator and exported to the electrical utility’s grid that exceeds the energy supplied by the electrical utility over the course of a monthly billing period must be valued and credited to the customer‑generator’s electric bill according to the commission’s most recently approved distributed energy resource rate using the valuation methodology adopted by the commission in Docket No. 2014‑246‑E. Any unused bill credits must be carried forward for use in future billing periods but may not be used to offset the nonvolumetric electricity charges for that or future billing periods and shall have no redeemable cash value if the customer‑generator terminates electric service with the electrical utility.

(D) If determined to be prudent by the commission, the electrical utility may furnish, install, own, and maintain metering equipment needed to measure the kilowatt‑hours purchased by the customer‑generator from the utility, the kilowatt‑hours generated or delivered to the electrical utility, and, if applicable under the utility’s tariffs, to measure the kilowatt demand delivered by the electrical utility to the customer‑generator. The electrical utility shall have the right to install special metering and load research devices on the customer‑generator’s equipment and the right to use the customer‑generator’s communication devices for communication with electrical utility’s and the customer‑generator’s equipment, provided that such use does not interfere with the customer‑generator’s own production, consumption, or export of energy. A customer‑generator is not responsible for any of the costs associated with telemetry equipment that the electrical utility deems necessary to monitor the load and generation associated with the customer‑generator.

(E) Notwithstanding another provision of law and any method of allocating revenue requirements in a general rate case, customers of the electrical utility are not required to reimburse the electrical utility for its loss of revenue that results from customer‑generators who reduce purchases of electricity from the electrical utility. Nothing in this section, however, prohibits an electrical utility from continuing to recover distributed energy resource program costs in the manner and amount approved by Commission Order No. 2015‑914 for customer‑generators enrolling before the two percent threshold in subsection (A) is reached.”

SECTION 13. This act takes effect upon approval by the Governor.

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