RECALLED

April 18, 2019

**H. 4287**

Introduced by Reps. Lucas, G.M. Smith, Simrill, Rutherford, McCoy, Ott, Stavrinakis, Gilliard and Caskey

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Read the first time April 4, 2019.

**A** **JOINT RESOLUTION**

TO PROVIDE THAT THE PUBLIC SERVICE AUTHORITY EVALUATION AND RECOMMENDATION COMMITTEE MAY UTILIZE STATE APPROPRIATED OR AUTHORIZED FUNDS, INCLUDING THE USE OF THOSE FUNDS TO RETAIN NECESSARY EXPERTS, LEGAL COUNSEL, BANKING INSTITUTION, OR ANY OTHER FINANCIAL ENTITY, TO EVALUATE AND REVIEW A POTENTIAL, COMPLEX FINANCIAL TRANSACTION FOR THE POTENTIAL SALE OF SANTEE COOPER AND ANY OR ALL OTHER RELATED FINANCIAL TRANSACTIONS NECESSARY FOR USE IN THIS FINANCIAL EVALUATION, WHICH THE COMMITTEE CONSIDERS TO BE IN THE BEST INTERESTS OF THIS STATE AND ITS TAXPAYERS AND RATEPAYERS, TO PROVIDE THAT THE ACTIONS OF THE COMMITTEE ARE SUBJECT TO FINAL APPROVAL BY THE GENERAL ASSEMBLY, AND TO PROVIDE FOR THE MANNER IN WHICH THIS OFFER IS TRANSMITTED TO AND APPROVED OR DISAPPROVED BY THE GENERAL ASSEMBLY, INCLUDING A TIMELINE REQUIREMENT.

WHEREAS, The South Carolina General Assembly created the Public Service Authority Evaluation and Recommendation Committee, the “Committee”, for the purposes of evaluating objectives related to identifying a reasonable path forward for the South Carolina Public Service Authority, “Santee Cooper”, and its residential, wholesale, and industrial ratepayers. The Committee developed a thoughtful, deliberate, and ongoing process after receiving input from multiple experts experienced in multi‑billion‑dollar utility mergers.

That process began with obtaining a completed market analysis and independent valuation of Santee Cooper. That analysis verified significant market interest existed that would allow acquisition of Santee Cooper in such a way that would reduce rates and remove the costs and debt associated with the two abandoned reactors at Jenkinsville, South Carolina, from ever being included in Santee Cooper rates.

This market analysis, dated February 1, 2019, was merely the first step in providing the Committee with the initial information for evaluating the future status of Santee Cooper based on the first round of offers submitted by interested purchasers.

The report also revealed the need for next steps to include further due diligence by the Committee, through experts, to assess the feasibility of the offers and verify that the bid terms could result in reduced rates as compared to the current operations of Santee Cooper. As a result, the Committee voted on February 27, 2019, to move forward by authorizing the due diligence needed to move the process forward to provide the General Assembly with the information needed to evaluate the future of Santee Cooper.

WHEREAS, the General Assembly finds it is necessary to complete the next steps authorized by the Committee in order to receive the information needed to evaluate the current bids and receive a best and final actionable offer for the purpose of evaluating whether a sale is in the best interests of ratepayers and all citizens of South Carolina. Accordingly, the General Assembly by this act authorizes the Committee to receive a best and final offer for the consideration by the General Assembly.

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

SECTION 1. The purpose of this Act is to protect the individual and corporate ratepayers of Santee Cooper and the electric cooperatives of this State who receive electric power from Santee Cooper from rising electric power rates due to grossly excessive debt and costs incurred in the construction of the two abandoned nuclear reactors at Jenkinsville, South Carolina.

SECTION 2. The Committee, created by Paragraph 117.162, Section IB of Act 264 of 2018, through the February 27, 2019 vote, is authorized to receive the information needed to evaluate the current bids and receive a best and final written contractual offer to purchase all assets and assume or satisfy all liabilities of Santee Cooper upon those terms and conditions as the Committee considers in the best interest of the State and its taxpayers and ratepayers, after considering all other offers. It is recommended that any offer submitted by the Committee to the General Assembly for approval must include, but is not limited to, the following terms and conditions:

(1) The final acceptance and approval of the contract of sale is contingent upon its acceptance and approval by the General Assembly in the manner required by this Act.

(2) The obligations and covenants made by the State of South Carolina in Section 58‑31‑360 of the 1976 Code in regard to the bonded and other indebtedness of Santee Cooper must be complied with including complete defeasance of all bonds and other indebtedness of Santee Cooper.

(3) The purchaser must covenant and agree to provide meaningful rate relief in the form of reduced short‑term and long‑term rates for all customer classes.

(4) The purchaser must covenant and agree to provide long‑term resource planning and a diversified generation portfolio to prevent long‑term rate fluctuations.

(5) The purchaser must make suitable and reasonable financial and other protections for Santee Cooper employees and retirees.

(6) The purchaser must set forth a location for the headquarters of Santee Cooper post‑acquisition.

(7) The purchaser must agree to comply with all applicable federal and state environmental protections regarding Lakes Marion and Moultrie, their rivers and tributaries, and other recreational assets of Santee Cooper, including a covenant to maintain the present status quo regarding these lakes and other resources and the quality of and access to them.

(8) The purchaser must agree to partner with the State for future economic development projects.

(9) The Committee can include any or all other terms and conditions as authorized by Paragraph 117.162, Section IB of Act 264 of 2018 that would be in the best interest of Santee Cooper ratepayers and South Carolina taxpayers.

SECTION 3. The Committee shall hire appropriate legal and technical experts to negotiate on behalf of the Committee with the qualified bidders for the purposes of receiving a best and final offer. The co‑chairmen of the Committee shall submit to the Chairman of the House Ways and Means Committee and Chairman of the Senate Finance Committee an estimate of the expenses associated with hiring experts necessary to carry out the obligations under this Act. The experts shall report to and receive guidance from the Committee, which is charged with representing the House, Senate, and the Governor’s office in the negotiations.

SECTION 4. (A) When the Committee receives and approves a signed offer in accordance with the terms set forth in Section 2 herein and the Committee considers to be the most advantageous for and in the best interest of this State and its citizens and ratepayers, the co‑chairmen of the Committee shall notify the Speaker of the House of Representatives and the President of the Senate of this decision in writing. The co‑chairmen of the Committee also shall attach to this written notification a copy of the applicable contract of sale executed by the purchaser and all supporting documents. If the General Assembly is in regular session when this notification is provided, it must remain in session until a decision to approve or disapprove the contract of sale is made in the manner required by this Act. If the written notification is provided while the General Assembly is not in regular session, the General Assembly shall return in statewide session at the call of the Governor, but not earlier than thirty days after receipt of the written notification, to approve or disapprove the sale, and the General Assembly must remain in statewide session until a decision to approve or disapprove is made.

(B) The Speaker of the House and the President of the Senate shall transmit the written notification, together with the contract of sale executed by the purchaser and all supporting documents to the desk of their respective chamber to be placed on the calendar for approval or disapproval by that chamber. The question before each house shall then be the approval or disapproval of the contract of sale which must be decided by a vote of “yeas” or “nays”. If the contract of sale is approved by both houses, the Governor and other appropriate officials of this State then shall sign the contract of sale on behalf of the State of South Carolina as the seller and then at the closing of the sale, execute the deeds and other necessary documents to effectuate the sale. The proceeds of the sale must then be deposited in the State general fund pending further action by the General Assembly.

SECTION 5. The provisions of the Consolidated Procurement Code in Chapter 35, Title 11 of the 1976 Code, the provisions of Chapter 31, Title 58 relating to the South Carolina Public Service Authority, and any other provisions of the general law of this State in conflict with the provisions of this Act, are hereby suspended for purposes of this sale only, it being the intent of the General Assembly that this Act, to the extent of its provisions, is the sole governing instrument regarding this sale and that a vote of the General Assembly in favor of approving the sale in Section (4)(B) of this Act is sufficient to authorize the Governor to execute the sale.

SECTION 6. (a) The Committee shall concurrently review all of the non‑full acquisition proposals, reform proposals, and management proposals (collectively “Proposals”) received by the Committee. The Committee received eight such Proposals that included partial acquisition, management and/or operations agreements, requirement or other power sales contracts, and any such hybrid combinations.

(B) The Committee is authorized to hire appropriate legal and technical experts to negotiate with the eight entities submitting a Proposal in order to obtain a best, final, and binding non‑sale proposal. The experts shall report to and receive guidance from the Committee, which is charged with representing the House, the Senate, and the Governor’s Office in the negotiations. The co‑chairmen of the Committee shall submit to the Chairman of the House Ways and Means Committee and Chairman of the Senate Finance Committee an estimate of the expenses associated with hiring experts necessary to carry out the obligations under this section.

(C) The Committee, through its experts, shall also evaluate and compare the Proposals based on evaluative criteria established by the Committee. The evaluative criteria must include, but is not limited to, how each proposal will:

(1) resolve the debt repayment related to the two abandoned reactors and how the proposed treatment of such costs and associated debt with impact rates and price;

(2) assess the impact of such a proposal on the Santee Cooper contract with Central;

(3) coordinate with Santee Cooper to ensure necessary information is provided to the Committee for evaluation of these proposals;

(4) assess the impact of these proposals on Santee Cooper bond covenants and advise as to whether bond counsel should be retained to analyze those bond covenants; and

(5) implement any or all other terms and conditions as authorized by Paragraph 117.162, Section IB of Act 264 of 2018, to determine if such proposals would be in the best interest of Santee Cooper ratepayers and South Carolina taxpayers if such a proposal were adopted by the General Assembly.

(D) The Committee can determine which of the Proposals, if any, would be the most advantageous for and in the best interest of this State and its citizens and ratepayers if such proposal is accepted by the General Assembly. If such recommendation is made by the Committee, the Committee shall draft the legislation necessary to allow the General Assembly to effectuate the proposal. Such draft legislation must require that the question before each body shall then be the approval or disapproval of the proposal which must be decided by a vote of “yeas” or “nays”.

SECTION 7. This joint resolution takes effect upon approval by the Governor.

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