FREE CONFERENCE COMMITTEE REPORT ADOPTED -- NOT PRINTED

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**H. 4287**

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

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**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.

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

SECTION 1. (A)(1) The Department of Administration shall establish a process to conduct a competitive bidding process for the sale of some or all of the Public Service Authority (“Santee Cooper”) and to receive management proposals that do not involve a sale of Santee Cooper but are designed to improve the efficiency and cost‑effectiveness of Santee Cooper’s electric operations including, but not limited to, a management arrangement, joint venture, or alternative arrangement. This process shall not be limited to the individuals or entities that responded to ICF’s Requests for Expressions of Interest for its February 1, 2019, report to the Public Service Authority Evaluation and Recommendation Committee. Santee Cooper shall also submit a proposal to the department, as an alternative to a sale or management proposal, setting forth its plans for reform, restructuring, and changes in operation. Santee Cooper’s proposal shall be given to the department simultaneously with the sale and management proposal deadline set by the department. This process must be established in accordance with commercially reasonable terms that are customary in connection with bids and proposals of this type. Nothing in this joint resolution precludes the department, through its professional services experts, from negotiating with entities offering bids or management proposals, or Santee Cooper, to improve their proposal. The department shall determine the date when the bids and proposals must be received; however, the process to receive bids, management proposals, and Santee Cooper’s proposal shall be concurrent.

(2)(a) The department shall procure such professional services that are necessary to qualify bids and proposals; conduct a sale; evaluate bids received for a sale, management proposals, and Santee Cooper’s proposal; negotiate contracts for the consummation of a sale or a management proposal; and related activities. These professional services shall include, but may not be limited to, financial institutions, investment bankers, legal counsel, industry consultants, and utility consultants.

(b) The department must not utilize the professional services of an entity with whom the House of Representatives, the Senate, or the Governor has previously engaged to consider the possible sale of Santee Cooper; however, the department or its professional services experts may request information collected by ICF and any reports requested by the Public Service Authority Evaluation and Recommendation Committee regarding ICF’s Requests for Expressions of Interest prior to the effective date of this joint resolution. In addition, the department must not utilize the professional services of an individual or entity that would have a financial interest in the outcome of this process, nor may the department contract or otherwise employ an individual or entity based upon a contingency fee due to the outcome of this process.

(B) Staff from the State Fiscal Accountability Authority’s Procurement Services Division shall assist the department in conducting the competitive bidding process and reviewing management proposals and procuring necessary professional services.

(C) Santee Cooper is directed to provide any and all resources necessary to assist in the process for competitive bids and management proposals, as well as the evaluation of the bids and management proposals received by the department. The department shall have the authority to consult with Santee Cooper’s bondholders, underwriters, financial institutions, and any other advisors to gather information to assist the department in carrying out its responsibilities, and Santee Cooper shall be cooperative in providing the department with access to the bondholders, underwriters, financial institutions, and other advisors. Santee Cooper shall ensure that the bidders have full access to due diligence materials and fair opportunity for access to Santee Cooper staff, and shall ensure that its responses to any inquiries are timely.

SECTION 2. (A) The department shall conduct a thorough evaluation of all bids for the sale of Santee Cooper received through the competitive bidding process. The evaluation must take into account at least the following:

(1) the financial capability of each bidder;

(2) the bidder’s plan to address Santee Cooper’s bonds and other indebtedness, to include, but not be limited to:

(a) satisfaction of any or all of Santee Cooper’s existing debt, to include an opinion letter from a bond attorney as to whether or not the bidder’s plan to satisfy the existing debt would violate any bond provisions or otherwise impact the State;

(b) issuance of new bonds and plans to finance other indebtedness;

(c) the projected financial impact on all customer classes of Santee Cooper’s retail customers for the satisfaction of existing debt and issuance of new bonds and finance of other indebtedness; and

(d) the bidder’s projected capital to debt ratio for the five years following the acquisition of Santee Cooper;

(3) consideration, in cash, to be paid by the bidder to the State for the benefit of South Carolina and its taxpayers;

(4) the amount of projected rates and revenue requirements for each customer class of Santee Cooper’s retail customers over the next twenty years and plans demonstrating how these rates can be achieved, and the bidder’s willingness to contractually agree to those rates;

(5) the bidder’s plans for generation, power purchases, and other resources over the next twenty years including, but not limited to:

(a) the forecasted demand;

(b) a timeline of when those plans would be put in place;

(c) the projected financial impact to Santee Cooper’s retail customers; and

(d) the assumptions underlying its plans including, but not limited to, additional infrastructure required to support any generating unit, the projected rate base, debt‑to‑equity ratios, authorized return on equity, inflation and cost escalation rates, fuel costs, tax rates, assumed tax abatements, credits and payments in lieu of taxes, and projected GAAP accounting financial statements of the rate projections;

(6) the bidder’s plans for transmission investment over the next twenty years including, but not limited to:

(a) a timeline of when those investments will be needed;

(b) the projected financial impact to Santee Cooper’s retail customers; and

(c) the assumptions underlying those plans including, but not limited to, projected rate base, debt‑to‑equity ratios, authorized return on equity, inflation and cost escalation rates, fuel costs, tax rates, assumed tax abatements, credits and payments in lieu of taxes, and projected GAAP accounting financial statements of the rate projections;

(7) the bidder’s willingness to bear any costs required by the Federal Energy Regulatory Commission to mitigate market power resulting from an acquisition of Santee Cooper;

(8) the bidder’s provision of reasonable financial and other protections for Santee Cooper employees and retirees in a manner that would not impact South Carolina’s pension system liability or the liability associated with providing health insurance coverage to employees who have retired from employment at Santee Cooper;

(9) a projection of the jobs the bidder expects to eliminate within five years if it acquires Santee Cooper;

(10) the bidder’s proposed location for its headquarters post‑acquisition;

(11) whether the bid included or excluded the assets collectively included under FERC License 199, the wholesale water systems operated by Santee Cooper, undeveloped lands, other natural resources, and recreational assets of Santee Cooper. In the event that the bid excludes the assets listed herein, each bidder shall provide for revenue streams, including the purchase of hydroelectric power generated from Project 199, to provide for the continued operation of Lakes Marion and Moultrie with no loss of quality or access;

(12) the bidder’s capacity and willingness to partner with the State for future economic development projects;

(13) a comparison of the bidder’s service territory in South Carolina, if the bid is successful, with investor‑owned utilities serving South Carolina; and

(14) any terms or conditions the bidder would require to complete the purchase of Santee Cooper.

The bidder must also submit its regulatory filings within the past seven years from each state where the bidder provides electric service that are related to the bidder’s forecasts for electric generation, transmission, and distribution; requests for generation and/or transmission projects; electric rate requests made by the bidder; and requests to acquire, merge with, or manage another electric utility, and the final disposition of each request.

(B) The department must:

(1) verify the information provided by the bidder, to the extent possible, and may request additional information from the bidder if needed to conduct its verification;

(2) for each bid, compile a list of items that would be excluded from the sale of Santee Cooper’s electric utility assets including, but not limited to, the wholesale water systems operated by Santee Cooper, undeveloped lands, other natural resources, and recreational assets of Santee Cooper;

(3) conduct an analysis as to the potential risks to South Carolina taxpayers, Santee Cooper’s retail customers, and Santee Cooper’s bondholders, that could result from the sale of Santee Cooper, either in whole or in part. This analysis must include, but is not limited to, the loss of tax‑exempt status of a buyer, impact on economic development, and whether the bid would preclude South Carolina from recovering the full value of Santee Cooper;

(4) compare the bidder’s financing options for anticipated projects with the financing options currently available to Santee Cooper;

(5) require that the bidder’s projected ratebase for all of Santee Cooper’s retail customers exclude any portion of debt attributed to V.C. Summer nuclear units 2 and 3 that is not considered to be used and useful, as determined by the professional services experts and the Office of Regulatory Staff;

(6) consider if the bidder is committed to keeping its headquarters in South Carolina post‑acquisition;

(7) consider if the bidder intends to, and has the capability to, provide electric services in South Carolina for at least twenty years; and

(8) designate a third party to administer the procurement and dissemination of information from Santee Cooper to third party bidders in order to ensure consistency, proper characterization and accuracy of information provided.

SECTION 3. (A) The department shall conduct a thorough evaluation of all management proposals for Santee Cooper. The evaluation must take into account at least the following:

(1) terms and conditions of the proposal, including the proposed time period for the management proposal;

(2) the amount of projected rates for each customer class of Santee Cooper’s retail customers over the next twenty years and plans demonstrating how these rates can be achieved;

(3) fees and costs to be paid by Santee Cooper retail customers for the management proposal, as well as any other benefits to that entity resulting from the proposal;

(4) projected needs for generation, transmission, and distribution during the period of the proposal and how those needs would be met;

(5) an opinion letter from a bond attorney that the management proposal would neither violate nor alter the terms of Santee Cooper’s bonds and other indebtedness;

(6) an opinion letter from a tax attorney that the proposal would not impact Santee Cooper’s current tax status;

(7) the proposing entity’s experience with the type of arrangement as proposed with an investor‑owned utility and a publicly owned utility;

(8) the impact the management proposal would have on Santee Cooper’s employees including, but not limited to, any projected elimination of positions within the next five years, if any;

(9) the financial capability of the entity offering the proposal;

(10) a comparison of the service territory in South Carolina of the entity offering the proposal, if the proposal is successful, with investor‑owned utilities serving South Carolina; and

(11) an agreement that if the management proposal is awarded, the entity offering the proposal will submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the implementation of the management plan including, but not limited to, plans for the next calendar year and accomplishments and challenges for the prior calendar year.

(B) The department must:

(1) verify the information provided by the entity submitting the management proposal, to the extent possible, and may request additional information if needed to conduct its verification;

(2) conduct an analysis as to the potential risks to South Carolina taxpayers, Santee Cooper’s retail customers, and Santee Cooper’s bondholders, that could result from the management proposal;

(3) compare the proposing entity’s financing options for anticipated projects with the financing options currently available to Santee Cooper; and

(4) consider if the proposing entity offers to pay a franchise fee or another form of consideration to the State of South Carolina as a condition of the management proposal.

SECTION 4. (A) Santee Cooper must submit a proposal to the department for reform, restructuring, and changes in operation that must include, but is not limited to:

(1) its plans for generation, power purchases, and other resources over the next twenty years including, but not limited to:

(a) the forecasted demand;

(b) a timeline of when those plans would be put in place;

(c) the projected financial impact to all customer classes of ratepayers;

(d) the assumptions underlying its plans including, but not limited to, additional infrastructure required to support any generating unit, projected financial ratios including debt‑to‑equity and debt service coverage ratios, projected contribution percentages to the Capital Improvement Fund, inflation and cost escalation rates, fuel costs, payments to the State and other sums in lieu of taxes, and projected GAAP accounting financial statements of the rate projections; and

(e) the amount of projected rates and revenue requirements for each customer class of Santee Cooper’s retail customers over the next twenty years and plans demonstrating how these rates can be achieved;

(2) its plans for transmission investment over the next twenty years including, but not limited to:

(a) a timeline of when those investments will be needed;

(b) the projected financial impact to all classes of its retail customers; and

(c) the assumptions underlying its plans including, but not limited to, projected financial ratios, including debt‑to‑equity and debt service coverage ratios, projected contribution percentages to the Capital Improvement Fund, inflation and cost escalation rates, fuel costs, payments to the State and other sums in lieu of taxes, and projected GAAP accounting financial statements of the rate projections;

(3) its plans to address the V.C. Summer debt and the projected impact to all customer classes of its ratepayers;

(4) a proposal for Santee Cooper reform, restructuring, and operational changes;

(5) any other information Santee Cooper deems relevant as to future operations as a state asset;

(6) the projected financial impact on all customer classes of Santee Cooper’s retail customers for the satisfaction of existing debt and issuance of new bonds and finance of other indebtedness; and

(7) a projection of the jobs Santee Cooper expects to eliminate within five years.

(B) The department must verify the information provided by Santee Cooper, to the extent possible, and may request additional information if needed to conduct its verification. The department must also conduct an analysis to determine if the proposal is feasible.

As part of the analysis, the department will:

(1) compare Santee Cooper’s rate projections with all other proposals on a comparable basis and assess the risks associated with Santee Cooper’s projections of revenue requirements and consumer rates; and

(2) conduct an analysis as to the potential risk to South Carolina taxpayers, Santee Cooper’s retail customers, and Santee Cooper’s bondholders.

(C) If Santee Cooper’s proposal to reform its operations is accepted by the General Assembly, Santee Cooper will submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the implementation of its plan.

SECTION 5. The department shall establish a process in which its professional services experts conduct confidential negotiations between Central Electric Power Cooperative, Inc. (“Central”) and each entity that submitted a qualified bid or qualified proposal after all the bids and proposals have been submitted. No negotiations or any form of discussion regarding potential terms or conditions for an agreement with Central can occur outside of the process established by the department. The department shall require that the parties enter into a contract to negotiate in good faith, as well as any other conditions for negotiation as determined by the department. Each entity that submitted a qualified bid or qualified proposal, as well as Santee Cooper, must individually negotiate with Central to determine terms for a binding contract between Central and that entity in the event the entity’s bid or proposal is successful. If the professional services experts conducting the negotiations determine that one or more parties, including Central, is not negotiating in good faith, that negotiation shall be terminated and the professional services experts may submit terms they determine to be reasonable and in the best interests of Santee Cooper’s customers and of the State of South Carolina and its taxpayers to the General Assembly. The General Assembly may consider a party’s failure to negotiate in good faith as a disqualification of the bid or proposal.

SECTION 6. In the event of the successful sale of Santee Cooper and the purchasing entity’s contract contains projections of future rates, the General Assembly’s approval of such sale on such terms does not indicate its intent to bind the Public Service Commission or Office of Regulatory Staff to the projected rate figures. The successful bidder shall be subject to the same statutory and regulatory authority of the Public Service Commission and Office of Regulatory Staff as all other investor‑owned electrical utilities.

SECTION 7. Following the negotiations between Central and each entity which submitted a bid or proposal, the professional services experts shall review the projected financial impact on Santee Cooper’s retail customers to ensure that any increases or decreases to current rates for the retail and wholesale customers are initially proportionate.

SECTION 8. To protect the integrity of the process, information received during this process and ensuing negotiations must be confidential prior to the department providing its professional services experts’ recommendations to the General Assembly. Each individual and entity involved in the process shall handle the information with sufficient care to prevent disclosure of information submitted, received, or reviewed during the process. After the department has provided its professional services experts’ recommendations to the General Assembly, only information regarding those recommendations shall be released in accordance with the provisions of the Freedom of Information Act, provided that information described in Section 30‑4‑40 must not be released without the written permission of the entity whose bid or proposal was recommended. In order to effectuate the purposes of this section, the department shall require nondisclosure agreements which must be entered into by each individual or entity involved in the process including, but not limited to, an individual or entity that submits a bid or proposal, or receives or reviews any part of the submission. The nondisclosure agreement must also contain a provision in which the signer agrees that neither it nor its agents, servants, officers, directors, or employees shall advocate for or against, directly or indirectly, a recommendation provided by the department to the General Assembly pursuant to SECTION 9. Members of the General Assembly, the Governor, and their respective staff must not be provided with, or have access by any means to, the information obtained during this process except as provided in this section.

SECTION 9. (A)(1) At the conclusion of the evaluation of the bids and proposals, and negotiations, as required by this joint resolution, but no later than January 15, 2020, and subject to a one‑time sixty‑day extension upon written notice from the department to the Chairman of House Ways and Means and the Chairman of Senate Finance for the need of this extension, the department shall concurrently present a recommendation by its professional service experts of one bid for sale and one management proposal that the professional service experts consider to be in the best interests of the State, its taxpayers, and the customers of Santee Cooper, as well as the recommendation for Santee Cooper’s proposal. Each recommendation must include justifications for the recommendation; also, the recommendations in regard to the sale and management proposal must include a contract for each recommended bidder obligating the bidder to comply with terms of its bid in the event it is approved by the General Assembly, along with a proposed contract to execute the sale or management proposal, and any supporting documents. The proposed contracts must include covenants that the bidder will abide by the terms of its bid for sale or its proposal, as applicable. The department must also present a full evaluation of each recommendation and for Santee Cooper’s proposal. An evaluation must include, but not be limited to: (a) a description of each item listed in SECTIONS 2, 3, or 4, as applicable, along with a copy of an opinion letter submitted by a bond attorney and/or tax attorney; (b) a proposed contract with Central Power Electric Cooperative, Inc., including a statement from the professional service experts involved in the negotiations that each party did or did not negotiate in good faith; (c) any recommendations or concerns from the department’s professional services; and (d) any supporting documents.

(2) The department must enter into a contract with each entity that submitted a bid for sale or management proposal that establishes penalties for failure to proceed with finalizing the sale or management proposal in the event the bid or proposal is selected by the General Assembly. This contract must include, but is not limited to, earnest money to be paid upon a recommendation of that entity being made to the General Assembly and penalties for failure to finalize the terms of the bid or proposal upon selection by the General Assembly.

(B) The department shall present to the Chairman of the Senate Finance Committee and the Chairman of the House of Representatives Ways and Means Committee the documents described in (A). The Finance Committee and the Ways and Means Committee shall each meet as soon as practicable to review each recommendation presented by the department. Each committee shall make a recommendation within thirty days of receipt of the recommendations presented by the department. However, nothing in this joint resolution shall be construed as a waiver of any House or Senate Rules. Upon receipt of the recommendation from their respective committees, the President of the Senate and the Speaker of the House shall convene their respective bodies to consider any legislation to effectuate the sale or management proposal or to implement reform, restructuring, and changes in operation at Santee Cooper. Such legislation shall be in the form of a resolution approving the contract for sale or management or a bill to implement reform at Santee Cooper.

(C)(1) In the event that the General Assembly approves the sale of Santee Cooper, the department must execute any documents necessary in order to effectuate the sale upon the enactment of a joint resolution approving the sale. The net proceeds of the sale shall be deposited in a distinct numbered account separate from General Fund revenues in which such amount shall not be appropriated in a General Appropriations bill. Disposition of those funds shall be made by further actions of the General Assembly. These amounts shall never be recoverable in rates or otherwise by the purchaser.

(2) In the event that the General Assembly approves a management proposal, the department must execute any documents necessary in order to effectuate the proposal upon the enactment of a joint resolution approving the proposal.

SECTION 10. The provisions of the Consolidated Procurement Code in Chapter 35, Title 11 of the 1976 Code and any other provisions of the general law of this State in conflict with the provisions of this joint resolution are hereby suspended with regard to the activities undertaken pursuant to this joint resolution.

SECTION 11. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this joint resolution is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this joint resolution, the General Assembly hereby declaring that it would have passed this joint resolution, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 12. This joint resolution takes effect upon approval by the Governor.

/s/Sen. Nikki G. Setzler /s/Rep. James H. Lucas

/s/Sen. Luke A. Rankin /s/Rep. G. Murrell Smith, Jr.

/s/Sen. A. Shane Massey /s/Rep. Russell L. Ott

On Part of the Senate. On Part of the House.

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