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Summary: Energy Independence and Risk Reduction Act

**HISTORY OF LEGISLATIVE ACTIONS**

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5/4/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 6](h:\sj\20230504.docx))

1/16/2024 Senate Referred to Subcommittee: Rankin (ch), Hutto,
Campsen, Adams, Devine

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**VERSIONS OF THIS BILL**

[05/04/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/779_20230504.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTing THE “ENERGY INDEPENDENCE AND RISK REDUCTION ACT”; BY AMENDING SECTION 58‑3‑20, RELATING TO MEMBERSHIP ON THE PUBLIC SERVICE COMMISSION, SO AS TO REVISE THE NUMBER OF COMMISSIONERS FROM SEVEN TO FIVE STATEWIDE, AT-LARGE SEATS WITH CERTAIN RESIDENCY REQUIREMENTS, AND TO PROVIDE FOR THE TERMS; BY AMENDING SECTION 58‑3‑250, RELATING TO FINAL ORDERS AND DECISIONS BY THE PUBLIC SERVICE COMMISSION, SO AS TO REQUIRE THE COMMISSION TO PROVIDE RATIONALES FOR ITS PRIMARY CONCLUSIONS FOR VERBAL DIRECTIVES AND TO REQUIRE PUBLISHED FINAL ORDERS AND DECISIONS WITHIN NINETY DAYS AFTER THE VERBAL DIRECTIVE; BY AMENDING SECTION 58‑4‑10, RELATING TO the PUBLIC INTEREST FOR THE OFFICE OF REGULATORY STAFF, SO AS TO MODIFY THE STANDARD OF PUBLIC INTEREST; BY AMENDING SECTION 58‑4‑40, RELATING TO the CONFLICT OF INTEREST FOR OFFICE OF REGULATORY STAFF EMPLOYEES, SO AS TO EXCLUDE AN OFFICE OF REGULATORY STAFF EMPLOYEE FROM PARTICIPATING IN A MATTER REGULATED BY THE PUBLIC SERVICE COMMISSION INVOLVING THE EMPLOYEE’S FORMER EMPLOYER FOR FIVE YEARS; BY ADDING SECTION 58‑27‑256 SO AS TO REQUIRE ELECTRICAL UTILITIES TO ESTABLISH A TASK FORCE TO ENSURE COMMUNITY-DRIVEN TRANSITION IN THE CLOSING AND DECOMMISSIONing OF COAL GENERATING PLANTS; BY AMENDING SECTION 58‑27‑865, RELATING TO FUEL COSTS, SO AS TO REQUIRE THE PUBLIC SERVICE COMMISSION TO ESTABLISH A FUEL COST RECOVERY MECHANISM WITH CERTAIN REQUIREMENTS; BY AMENDING SECTION 58‑27‑2100, RELATING TO PUBLIC SERVICE COMMISSION FINDINGS AND ORDERS, SO AS TO REQUIRE THE COMMISSION TO PROVIDE RATIONALES FOR ITS PRIMARY CONCLUSIONS FOR VERBAL DIRECTIVES AND TO REQUIRE PUBLISHED FINAL ORDERS AND DECISIONS WITHIN NINETY DAYS AFTER THE VERBAL DIRECTIVE; BY ADDING ARTICLE 25 TO CHAPTER 27, TITLE 58 SO AS TO PERMIT THE ISSUANCE OF RATEPAYER PROTECTION BONDS AND TO PROVIDE FOR STANDARDS AND PROCEDURES RELATED TO THOSE BONDS; BY AMENDING SECTION 58‑31‑227, RELATING TO RENEWABLE ENERGY FACILITIES AND RESOURCES, SO AS TO PROVIDE FOR ENERGY STORAGE FACILITIES AND ANCILLARY SERVICES; BY AMENDING SECTION 58‑33‑110, RELATING TO A CERTIFICATE REQUIRED BEFORE CONSTRUCTION OF A MAJOR UTILITY FACILITY, SO AS TO PERMIT AN ALL-SOURCE BIDDING PROCESS; BY AMENDING SECTION 58‑37‑10, RELATING TO DEFINITIONS, SO AS TO ADD THE TERMS “COST-EFFECTIVE” AND “DEMAND-SIDE MANAGEMENT PILOT PROGRAM”, AND TO CHANGE “DEMAND-SIDE ACTIVITY” TO “DEMAND-SIDE MANAGEMENT PROGRAM”; BY AMENDING SECTION 58‑37‑20, RELATING TO THE PUBLIC SERVICE COMMISSION’S PROCEDURES ENCOURAGING ENERGY EFFICIENCY AND CONSERVATION, SO AS TO PROVIDE FOR A FINDING BY THE GENERAL ASSEMBLY RELATING TO PUBLIC INTEREST RELATED TO DEMAND-SIDE MANAGEMENT PROGRAMS, AND TO REQUIRE INVESTOR-OWNED UTILITIES TO SUBMIT AN ANNUAL REPORT TO THE COMMISSION REGARDING ITS DEMAND-SIDE MANAGEMENT PROGRAMS AND STANDARDS FOR COMMISSION REVIEW; BY AMENDING SECTION 58‑37‑30, RELATING TO REPORTS ON DEMAND-SIDE ACTIVITIES OF GAS AND ELECTRICal UTILITIES, SO AS TO MAKE A TECHNICAL CHANGE; BY ADDING SECTION 58‑37‑35 SO AS TO PROVIDE STANDARDS FOR ELECTRICAL UTILITY PROGRAMS AND CUSTOMER INCENTIVES TO ENCOURAGE DEMAND-SIDE MANAGEMENT PROGRAMS; BY AMENDING SECTION 58‑37‑40, RELATING TO INTEGRATED RESOURCE PLANS, SO AS TO ESTABLISH A GENERAL ASSEMBLY FINDING OF A NEED TO ENCOURAGE ECONOMIC DEVELOPMENT AND INVESTMENTS, ENERGY INDEPENDENCE, AND PROTECT NATURAL RESOURCES, AND TO PROVIDE STANDARDS FOR A UTILITY’S ENERGY TRANSITION AS IT RELATES TO THE PUBLIC INTEREST; BY ADDING SECTION 58‑37‑70 SO AS TO REQUIRE VARIOUS ELECTRICAL UTILITIES TO FILE A LOW-INCOME AFFORDABILITY TARIFF WITH THE PUBLIC SERVICE COMMISSION; BY AMENDING SECTION 58‑41‑10, RELATING TO DEFINITIONS, SO AS TO ESTABLISH THE DEFINITION OF “ENERGY STORAGE FACILITY”; BY AMENDING SECTION 58‑41‑20, RELATING TO PROCEEDINGS FOR ELECTRICAL UTILITIES REGARDING AVOIDED COST METHODOLOGIES, STANDARD OFFERS, FORM CONTRACTS, AND COMMITMENT TO SELL FORMS, SO AS TO PROVIDE THAT THE PUBLIC SERVICE COMMISSION MAY OPEN A GENERIC DOCKET TO CREATE PROGRAMS FOR COMPETITIVE PROCUREMENT OF ENERGY AND CAPACITY FROM ENERGY STORAGE FACILITIES; BY ADDING SECTION 58‑41‑25 SO AS TO ESTABLISH FILING REQUIREMENTS, STANDARDS, AND PROCEEDINGS FOR COMPETITIVE PROCUREMENT PROGRAMS FOR RENEWABLE ENERGY, ENERGY STORAGE FACILITIES, OR THEIR OUTPUT; BY AMENDING SECTION 58‑41‑30, RELATING TO VOLUNTARY RENEWABLE ENERGY PROGRAMS, SO AS TO ESTABLISH CONSIDERATIONS FOR THE PUBLIC SERVICE COMMISSION FOR VOLUNTARY CLEAN ENERGY PROGRAMS AND ESTABLISH REQUIREMENTS FOR THESE PROGRAMS; BY ADDING CHAPTER 43 TO TITLE 58 entitled “Resilient Energy Resources and Renewable Energy Microgrids”SO AS TO PROVIDE STANDARDS AND PROCEDURES FOR RESILIENT ENERGY RESOURCES AND RENEWABLE ENERGY MICROGRIDS; TO REQUIRE THE PUBLIC SERVICE COMMISSION TO REEVALUATE FILING SCHEDULES FOR AN ELECTRICAL UTILITY’S INTEGRATED RESOURCE PLAN; TO PERMIT THE PUBLIC UTILITIES REVIEW COMMITTEE TO RETAIN AN EXPERT TO CONDUCT A STUDY AND PREPARE A REPORT REGARDING OTHER STATES’ COMMISSIONS; and TO REQUIRE THE OFFICE OF REGULATORY STAFF TO STUDY THE POSSIBLE CREATION OF A THIRD-PARTY ADMINISTRATOR FOR ENERGY EFFICIENCY PROGRAMS AND OTHER DEMAND-SIDE MANAGEMENT PROGRAMS.

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

SECTION 1. This act may be cited as the “Energy Independence and Risk Reduction Act”.

SECTION 2.A. Section 58‑3‑20 of the S.C. Code is amended to read:

Section 58‑3‑20. (A) The commission is composed of seven five members to be elected by the General Assembly in the manner prescribed by this chapter. Each member must have:

(1) a baccalaureate or more advanced degree from:

(a) a recognized institution of higher learning requiring face‑to‑face contact between its students and instructors prior to completion of the academic program;

(b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(c) an institution of higher learning chartered before 1962; and

(2) a background of substantial duration and an expertise in at least one of the following:

(a) energy issues;

(b) telecommunications issues;

(c) consumer protection and advocacy issues;

(d) water and wastewater issues;

(e) finance, economics, and statistics;

(f) accounting;

(g) engineering; or

(h) law.

(B)(1) Beginning in 2004, the members of the Public Service Commission must be elected to staggered terms. In 2004, the members representing the Second, Fourth, and Sixth Congressional Districts must be elected for terms ending on June 30, 2006, and until their successors are elected and qualify. Thereafter, members representing the Second, Fourth, and Sixth Congressional Districts must be elected to terms of four years and until their successors are elected and qualify. In 2004, the members representing the First, Third, and Fifth Congressional Districts and the State at large must be elected for terms ending on June 30, 2008, and until their successors are elected and qualify. Thereafter, members representing the First, Third, and Fifth Congressional Districts and the State at large must be elected to terms of four years and until their successors are elected and qualify. Notwithstanding the provisions of this section, members representing the First, Third, and Fifth Congressional Districts shall serve until the expiration of their terms, and in 2013, members representing the First, Third, and Fifth Congressional Districts must be elected for terms ending on June 30, 2016, and until their successors are elected and qualified.

(2) In the event there are Seven Congressional Districts, the member elected from the State at large shall serve until the expiration of his term, and in 2013, a member representing the Seventh Congressional District must be elected for a term ending on June 30, 2016, and until his successor is elected and qualified. Thereafter, the member representing the Seventh Congressional District must be elected to terms of four years and until his successor is elected and qualified. Upon the election and qualification of the member representing the Seventh Congressional District, the at‑large member elected to satisfy the requirements of subsection (C) immediately shall cease to be a member of the commission.

The commission membership shall be composed of five statewide, at‑large seats. The General Assembly must provide for the elections of commission members as follows:

(a) one member must reside in the Dominion Energy South Carolina balancing authority;

(b) one member must reside in the South Carolina Public Service Authority balancing authority;

(c) one member must reside in the Duke Energy Carolinas balancing authority;

(d) one member must reside in the Duke Energy Progress East balancing authority; and

(e) one member must reside in any of the balancing authorities listed in subitems (a) through (d).

A member of the commission must be a qualified elector in the State of South Carolina and in the balancing area for the seat in which the member serves.

(2)(a) The term for members serving on the commission as of the effective date of this act shall terminate on June 30, 2024.

(b) The initial term for the members residing the Dominion Energy South Carolina balancing authority, South Carolina Public Service Authority balancing authority, and the statewide, at‑large member shall be for the term beginning on July 1, 2024, ending on June 30, 2027, and until their successors are elected and qualify. Thereafter, the members representing these seats shall be elected for a three‑year term and until the successors are elected and qualify.

(c) The initial term for the members residing in the Duke Energy Carolina balancing authority and Duke Energy Progress East balancing authority shall be for the term beginning on July 1, 2024, ending on June 30, 2029, and until their successors are elected and qualify. Thereafter, the members representing these seats shall be elected for a three‑year term and until the successors are elected and qualify.

(C) The General Assembly must provide for the election of the seven‑member commission and elect its members based upon the congressional districts established by the General Assembly pursuant to the latest official United States Decennial Census. If the number of congressional districts is less than seven, additional members must be elected at large to provide for a seven‑member commission. In the event the congressional districts established by the General Assembly are under review by a court for compliance with statutory or constitutional requirements, an election scheduled pursuant to this section shall not be held until a final determination is made by the courts regarding the congressional districts. The inability to hold an election due to judicial review of the congressional districts does not constitute a vacancy on the commission and the commissioners serve until their successors are elected and qualify.

(D) The Governor may fill vacancies in the office of commissioner until the successor in the office for a full term or an unexpired term, as applicable, has been elected by the General Assembly. In cases where a vacancy occurs on the commission when the General Assembly is not in session, the Governor may fill the vacancy by an interim appointment. The Governor must report the interim appointment to the General Assembly and must forward a formal appointment at its next ensuing regular session.

B. Section 58‑3‑250 of the S.C. Code is amended to read:

Section 58‑3‑250. (A) All final orders and decisions of the commission must be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and must include:

(1) findings and conclusions, and the reasons or bases therefor, upon all the material issues of fact or law presented in the record and relied upon for a ruling; and

(2) the appropriate rule, order, sanction, relief, or statement of denial thereof.

(B) A copy of every final order or decision under the seal of the commission must be served by electronic service, registered or certified mail, upon all parties to the proceeding or their attorneys. Service of every final order or decision upon a party or upon the attorney must be made by emailing a copy of the order to the party's email address provided to the commission or by mailing a copy to the party's last known address. If no email or other address is known, however, service shall be made by leaving a copy with the chief clerk of the commission. The order takes effect and becomes operative when served unless otherwise designated and continues in force either for a period designated by the commission or until changed or revoked by the commission. If, in the judgment of the commission, an order cannot be complied with within the time designated, the commission may grant and prescribe additional time as is reasonably necessary to comply with the order and, on application and for good cause shown, may extend the time for compliance fixed in its order.

(C) When the commission issues a verbal directive at a business meeting, it must provide a legal and factual rationale for each of its primary conclusions. All final orders and decisions of the commission must be published and served on the parties within ninety days following the presentation of a verbal directive at a commission business meeting.

SECTION 3.A. Section 58‑4‑10(B) of the S.C. Code is amended to read:

(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 only, “public interest” means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer or the form of electric service customers elect to pursue as protected by Section 58‑27‑845, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services including approval of the recovery of such prudent utility costs as are necessary to provide safe, affordable, reliable, and high‑quality utility services.

B. Section 58‑4‑40(C) of the S.C. Code is amended to read:

(C) No person may be an employee of the Office of Regulatory Staff if the Public Service Commission regulates a business with which he is associated and this relationship creates a continuing or frequent conflict with the performance of his official responsibilities. If the commission regulates a business with which an employee of the Office of Regulatory Staff was formerly employed, the employee must be excluded from involvement in proceedings concerning that business for five years from the starting date of employment at the Office of Regulatory Staff.

SECTION 4. Article 1, Chapter 27, Title 58 of the S.C. Code is amended by adding:

Section 58‑27‑256. As part of the process of retiring coal units, electrical utilities must establish a task force to ensure a community‑driven transition in the closing and decommissioning of the utilities’ coal‑fired generating plants. The task force must be composed of the following stakeholders: local government representation, environmental, business, community‑based, and economic development organizations. The task force composition must represent the race, gender, and income demographics of the communities surrounding coal plant closures. Working with the task force, electrical utilities must develop and implement a plan, with community engagement and participation that includes, but is not limited to:

(1) allowing employees in good standing who would be directly affected by the closure of the unit to be retained by the electrical utility, or providing training opportunities for related employment to affected employees in good standing who are not retained;

(2) providing an opportunity for economic development and job attraction in the communities where the retired coal units are located;

(3) providing a remediation plan for the site including, but not limited to, methods and tests used, testing frequency, target levels for remediation, and progress reporting;

(4) requiring an environmental impact analysis for all new energy generation facilities proposed for the site to ensure that projects do not negatively impact communities surrounding the former coal plant site.

Annual written status reports must be provided to the commission and the Public Utilities Review Committee.

SECTION 5. Section 58‑27‑865 of the S.C. Code is amended to read:

Section 58‑27‑865. (A)(1) The term “fuel cost” as used in this section includes the cost of fuel, cost of fuel transportation, and fuel costs related to purchased power. “Fuel cost” also shall include the following variable environmental costs: (a) the cost of ammonia, lime, limestone, urea, dibasic acid and catalysts consumed in reducing or treating emissions, and (b) the cost of emission allowances, as used, including allowance for SO2, NOx, mercury, and particulates. Upon application of the utility, and after a hearing at which all interested parties may appear and present evidence, the commission may, if it determines such action to be just and reasonable, allow the variable costs of other environmental reagents, other environmental allowances or emissions‑related taxes to be recovered as a component of fuel costs, but only to the extent these variable environmental costs are required to be incurred in relation to the consumption of fuel and the air emissions caused thereby. Alternatively, the commission may decide that the costs related to these other variable environmental costs may only be recovered through base rates established under Sections 58‑27‑860 and 58‑27‑870. All variable environmental costs included in fuel costs shall be recovered from each class of customers as a separate environmental component of the overall fuel factor. The specific environmental component for each class of customers shall be determined by allocating such variable environmental costs among customer classes based on the utility's South Carolina firm peak demand data from the prior year. Fuel costs must be reduced by the net proceeds of any sales of emission allowances by the utility. If capacity costs are permitted to be recovered through the fuel factor, such costs shall be allocated and recovered from customers under a separate capacity component of the overall fuel factor based on the same method that is used by the utility to allocate and recover variable environmental costs. The incremental and avoided costs of distributed energy resource programs and net metering as authorized and approved under Chapters 39 and 40, Title 58 shall be allocated and recovered from customers under a separate distributed energy component of the overall fuel factor that shall be allocated and recovered based on the same method that is used by the utility to allocate and recover variable environmental costs.

(2) In order to clarify the intent of this section, “fuel costs related to purchased power”, as used in subsection (A)(1) shall include:

(a) costs of “firm generation capacity purchases”, which are defined as purchases made to cure a capacity deficiency or to maintain adequate reserve levels; costs of firm generation capacity purchases include the total delivered costs of firm generation capacity purchased and shall exclude generation capacity reservation charges, generation capacity option charges, and any other capacity charges;

(b) the total delivered cost of economy purchases of electric power including, but not limited to, transmission charges; “economy purchases” are defined as purchases made to displace higher cost generation, at a price which is less than the purchasing utility's avoided variable costs for the generation of an equivalent quantity of electric power; and

(c) avoided costs under the Public Utility Regulatory Policy Act of 1978, also known as PURPA.

(B) The commission shall direct each electrical utility which incurs fuel cost for the sale of electricity to submit to the commission and to the Office of Regulatory Staff, within such time and in such form as the commission may designate, its estimates of fuel costs for the next twelve months. The commission may hold a public hearing at any time between the twelve‑month reviews to determine whether an increase or decrease in the base rate amount designed to recover fuel cost should be granted. Upon conducting public hearings in accordance with law, the commission shall, subject to the provisions of subsection (G), direct each company to place in effect in its base rate an amount designed to recover, during the succeeding twelve months, the fuel costs determined by the commission to be appropriate for that period, adjusted for the over‑recovery or under‑recovery from the preceding twelve‑month period. The commission shall direct the electrical utilities to send notice to the utility customers with the antecedent billing of the time and place of the public hearings to be held every twelve months, and the commission shall again direct the electrical utilities to send notice to the utility customers with the next billing if the utility is granted a rate increase by the commission.

(C) The commission shall direct the electrical utilities to account monthly for the differences between the recovery of fuel costs through base rates and the actual fuel costs experienced, by booking the difference to unbilled revenues with a corresponding deferred debit or credit, the balance of which will be included in the projected fuel cost component of the base rates for the succeeding period, subject to the provisions of subsection (G). The commission shall direct the electrical utilities to submit to the Office of Regulatory Staff monthly reports of fuel costs and monthly reports of all scheduled and unscheduled outages of generating units with a capacity of one hundred megawatts or greater.

(D) Upon request by the regulatory staff or the electrical utilities, a public hearing must be held by the commission at any time between the twelve‑month reviews to determine whether an increase or decrease in the base rate amount designed to recover fuel costs should be granted. If the request is by an electrical utility for a rate increase, the commission shall direct the utility to send notice of the request and hearing to all customers with the next billing, and if the commission grants the rate request subsequent to the request and hearing, the commission shall direct the utility to send notice of the amount of the increase or decrease to all customers with the next billing.

(E) The commission may offset, to the extent considered appropriate, the cost of fuel recovered through sales of power pursuant to interconnection agreements with neighboring electrical utilities against fuel costs to be recovered.

(F) The commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility, including decisions related to its generation resource mix, resulting in unreasonable fuel costs, giving due regard to reliability of service, economical generation mix, unreasonable exposure to fuel cost risk, generating experience of comparable facilities, and minimization of the total cost of providing service. There shall be a rebuttable presumption that an electrical utility made every reasonable effort to minimize cost associated with the operation of its nuclear generation facility or system, as applicable, if the utility achieved a net capacity factor of ninety‑two and one‑half percent or higher during the period under review. The calculation of the net capacity factor shall exclude reasonable outage time associated with reasonable refueling, reasonable maintenance, reasonable repair, and reasonable equipment replacement outages; the reasonable reduced power generation experienced by nuclear units as they approach a refueling outage; the reasonable reduced power generation experienced by nuclear units associated with bringing a unit back to full power after an outage; Nuclear Regulatory Commission required testing outages unless due to the unreasonable acts of the utility; outages found by the commission not to be within the reasonable control of the utility; and acts of God. The calculation also shall exclude reasonable reduced power operations resulting from the demand for electricity being less than the full power output of the utility's nuclear generation system. If the net capacity factor is below ninety‑two and one‑half percent after reflecting the above specified outage time, then the utility shall have the burden of demonstrating the reasonableness of its nuclear operations during the period under review.

(G) The commission is authorized to promulgate, in accordance with the provisions of this section, all regulations necessary to allow the recovery by electrical utilities of all their prudently incurred fuel costs as precisely and promptly as possible, in a manner that tends to assure public confidence and minimize abrupt changes in charges to consumers. The commission shall, within the fuel cost recovery proceedings conducted pursuant to subsection (B), establish a fuel cost recovery mechanism that allows each electrical utility to pass through to customers ninety percent of its underrecovered or overrecovered fuel costs, in order to:

(1) fairly share the risk of fuel cost changes between the electrical utility and its customers;

(2) provide the electrical utility with sufficient incentive to reasonably manage or lower its fuel costs and encourage greater use of renewable energy; and

(3) provide the electrical utility with sufficient incentives to mitigate the risk of sudden or frequent fuel cost changes that cannot otherwise reasonably be mitigated through commercially available means, such as through fuel hedging contracts.

SECTION 6. Section 58‑27‑2100 of the S.C. Code is amended to read:

Section 58‑27‑2100. After the conclusion of a hearing the commission shall make and file its findings and order with its opinion, if any. Its findings shall be in sufficient detail to enable the court on review to determine the controverted questions presented by the proceeding and whether proper weight was given to the evidence. If the commission issues a verbal directive at a business meeting prior to publishing the final written order, it must publish the final written order within ninety days of the presentation of the verbal directive. All verbal directives must include a legal and factual rationale for each of the primary conclusions.

SECTION 7. Chapter 27, Title 58 of the S.C. Code is amended by adding:

Article 25

Energy Transition Ratepayer Protections

Section 58‑27‑2800. When used in this article:

(1) “Ancillary agreement” means a bond, insurance policy, letter of credit, reserve account, surety bond, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with ratepayer protection bonds.

(2) “Assignee” means a legally recognized entity to which an electrical utility assigns, sells, or transfers, other than as a security, all or a portion of its interest in or right to qualified electric property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to qualified electric property.

(3) “Bondholder” means a person who holds a ratepayer protection bond authorized by this article.

(4) “Code” means the Uniform Commercial Code, Title 36 of the South Carolina Code of Laws.

(5) “Commission” means the Public Service Commission of South Carolina.

(6) “Early retirement” means the permanent closure, decommissioning or retirement of a coal‑fired generation plant on a schedule that is earlier than its previously scheduled retirement with the result that the electrical utility has not recovered the entire commission approved investment in the facility by the time of its retirement.

(7) “Early retirement costs” means the pretax costs that the electrical utility has incurred or will incur that are caused by or associated with the retirement of coal‑fired generation facilities currently included in the rate base of an electrical utility, and commission approved costs related to clean up or remediation of any coal combustion residuals. “Early retirement costs” does not include litigation expenses related to defending coal ash lawsuits or costs solely attributable to the North Carolina Coal Ash Management Act.

(8) “Electrical utility” is as defined in Section 58‑27‑10(7).

(9) “Financing costs” includes all of the following:

(a) interest and acquisition, defeasance, or redemption premiums payable on ratepayer protection bonds;

(b) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to ratepayer protection bonds;

(c) any other cost related to issuing, supporting, repaying, refunding, and servicing ratepayer protection bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of ratepayer protection bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

(d) any taxes and license fees or other fees imposed on the revenues generated from the collection of the qualified electric charges or otherwise resulting from the collection of qualified electric charges, in any such case whether paid, payable, or accrued;

(e) any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued;

(f) any costs incurred by the commission or the Office of Regulatory Staff for any outside consultants, including counsel and advisors, retained in connection with the securitization of qualified energy costs.

(10) “Financing order” means an order that authorizes the issuance of ratepayer protection bonds; the imposition, collection, and periodic adjustments of a qualified electric charge; the creation of qualified electric property; the sale, assignment, or transfer of qualified electric property to an assignee; a requirement for the applicant to reduce its base rates to the extent that the applicant’s base rates already reflect the revenue requirement of qualified energy costs being financed with ratepayer protection bonds.

(11) “Financing party” means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.

(12) “Financing statement” is as defined in Section 36‑9‑102(39).

(13) “Pledgee” means a financing party to which an electrical utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to qualified electric property.

(14) “Qualified electric activity” means an activity or activities by an electrical utility, its affiliates, or its contractors directly and specifically in connection with the early retirement of a coal‑fired generating plant.

(15) “Qualified electric charge” means the amounts authorized by the commission to repay, finance, or refinance qualified energy costs and financing costs and that are nonbypassable charges:

(a) imposed on and part of all retail customer bills;

(b) collected by an electrical utility or its successors or assignees, or a collection agent, in full, separate and apart from the electrical utility's base rates, and

(c) paid by all existing or future retail customers receiving transmission or distribution service, or both, from the electrical utility or its successors or assignees under commission approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of electrical utilities in this State.

(16) “Qualified energy costs” means:

(a) the pretax costs that the electrical utility has incurred or will incur caused by or associated with the retirement of coal‑fired generation facilities which are included in the electrical utility’s rate base;

(b) the net of applicable insurance proceeds, tax benefits, and any other amounts intended to reimburse the electrical utility for qualified electric activities, such as government grants or aid of any kind determined appropriate by the commission, and early retirement costs. It may also include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the electrical utility's most recent general rate proceeding; and

(c) for qualified energy costs that the electrical utility expects to incur, any difference between costs expected to be incurred and actual, reasonable and prudent costs incurred, or any other rate‑making adjustments appropriate to fairly and reasonably assign or allocate qualified energy costs recovery to customers over time, must be addressed in a future general rate proceeding, as may be facilitated by other orders of the commission issued at the time or prior to such proceeding; provided, however, that the commission's adoption of a financing order and approval of the issuance of ratepayer protection bonds may not be revoked or otherwise modified.

(17) “Qualified electric property” includes all of the following:

(a) all rights and interests of an electrical utility or successor or assignee of the electrical utility under a financing order, including the right to impose, bill, charge, collect, and receive qualified electric charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order; and

(b) all revenues, collections, claims, rights to payments, payments, monies, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, monies, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

(18) “Ratepayer protection bonds” means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by an electrical utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance commission approved qualified energy costs and financing costs, and that are secured by or payable from qualified electric property. If certificates of participation or ownership are issued, references in this article to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

Section 58‑27‑2805. (A) The commission may by order authorize alternative financing mechanisms, including the issuances of ratepayer protection bonds in accordance with this article, to reduce the total amount of costs being included in customer rates for the purpose of recovering the costs of commission-approved investment in electric generation facilities that are retired before their scheduled closure date or for the purpose of recovering commission-approved costs related to cleanup or remediation of any coal combustion residuals, not including litigation expenses related to defending coal ash lawsuits or costs solely attributable to the North Carolina Coal Ash Management Act of 2014.

(B) In addition to the other requirements of this article, prior to approving any such financing order, the commission must find that the proposed issuance of ratepayer protection bonds and the imposition and collection of qualified electric charges:

(1) are just and reasonable;

(2) are consistent with the public interest;

(3) constitute a prudent and reasonable mechanism for the financing of approved costs; and

(4) will provide substantial, tangible, and quantifiable net present value savings or other benefits to customers that are greater than the benefits that would have been achieved absent the issuance of such bonds.

(C) The provisions of the financing order must ensure that the proposed structuring, marketing, and pricing of the ratepayer protection bonds will:

(1) materially lower overall costs to customers or avoid or mitigate rate impacts to customers relative to traditional methods of financing and recovering costs from customers; and

(2) achieve the maximum net present value of customer savings, as determined by the commission in a financing order, consistent with market conditions at the time of sale and the terms of the financing order.

Section 58‑27‑2810. (A) An electrical utility may petition the commission for a financing order. The petition shall include all of the following:

(1) a description of the qualified electric activities that the electrical utility has undertaken or proposes to undertake and the reasons for undertaking the activities, or if the electrical utility is subject to a settlement agreement as described in subsection (B), a description of the settlement agreement;

(2) the qualified energy costs and an estimate of the costs of any qualified electric activities that are being undertaken but are not completed;

(3) an indicator of whether the electrical utility proposes to finance all or a portion of the qualified energy costs using ratepayer protection bonds. If the electrical utility proposes to finance a portion of such costs, the electrical utility must identify the specific portion in the petition. By electing not to finance a portion of the qualified energy costs using ratepayer protection bonds, an electrical utility shall not be deemed to waive its right to seek to recover such costs pursuant to a separate proceeding with the commission;

(4) an estimate of the financing costs related to the ratepayer protection bonds;

(5) an estimate of the qualified electric charges necessary to recover the qualified energy costs and financing costs and the period for recovery of such costs;

(6) when ratepayer protection bonds are used to recover the remaining undepreciated capital invested in a generating facility, the estimated annual revenue requirement currently collected in rates related to the investment being retired;

(7) a comparison between the net present value of the costs to customers that are estimated to result from the issuance of ratepayer protection bonds and the net present value of costs that would result from the application of the traditional method of financing and recovering qualified energy costs from customers. The comparison should demonstrate that the issuance of ratepayer protection bonds and the imposition of qualified electric charges are expected to provide the maximum quantifiable benefits to customers; and

(8) advance notice and direct testimony and exhibits supporting the petition.

(B) If an electrical utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in qualified energy costs and the electrical utility proposes to finance all or a portion of the principal costs using ratepayer protection bonds, then the electrical utility must file a petition with the commission for review and approval of those costs no later than ninety days before filing a petition for a financing order pursuant to this section.

(C)(1) Proceedings on a petition for a financing order submitted pursuant to this section begin with the petition by an electrical utility, filed subject to the time frame specified in subsection (B), if applicable, and shall be disposed of in accordance with the requirements of this chapter and the rules of the commission, except as follows:

(a) within fourteen days after the date the petition is filed, the commission shall establish a procedural schedule that permits a commission decision no later than two hundred seventy days after the date the petition is filed and deemed to be complete; and

(b) no later than two hundred seventy days after the date the petition is filed and deemed complete, the commission shall issue a financing order or an order modifying or rejecting the petition. A party to the commission proceeding may petition the commission for reconsideration of the financing order within five days after the date of its issuance.

(2) A financing order issued by the commission to an electrical utility shall include all of the following:

(a) except for changes made pursuant to the formula‑based mechanism authorized pursuant to this section, the amount of qualified energy costs to be financed using ratepayer protection bonds. The commission shall describe and estimate the amount of financing costs that may be recovered through qualified electric charges and specify the period over which qualified energy costs and financing costs may be recovered;

(b) a finding that the proposed issuance of ratepayer protection bonds and the imposition and collection of a qualified electric charge are expected to provide substantial and quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of ratepayer protection bonds;

(c) a requirement that the ratepayer protection bonds:

(i) have a scheduled final maturity of no longer than thirty years and a final legal maturity date that is no later than thirty‑two years from the issue date; and

(ii) be rated AA or better, or the equivalent, by a major independent credit‑rating agency at the time of issuance;

(d) a finding that the structuring and pricing of the ratepayer protection bonds are reasonably expected to result in the lowest qualified electric charges and maximum customer benefits consistent with market conditions at the time the ratepayer protection bonds are priced and the terms set forth in such financing order;

(e) a requirement that, for so long as the ratepayer protection bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of qualified electric charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the electrical utility or its successors or assignees under commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of electrical utilities in this State;

(f) when ratepayer protection bonds are used to recover undepreciated investment in a generating facility, or to recover the costs of cleanup or remediation of any coal combustion residuals, a requirement that the electrical utility reduce its base rates to the extent that the cost of the generating facility or the cleanup or remediation costs are currently reflected in base rates;

(g) a formula‑based true‑up mechanism for making, at least annually, expeditious periodic adjustments in the qualified electric charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of ratepayer protection bonds, financing costs, and other required amounts and charges payable in connection with the ratepayer protection bonds;

(h) the qualified electric property that is or shall be created in favor of an electrical utility or its successors or assignees that shall be used to pay or secure ratepayer protection bonds and all financing costs;

(i) the degree of flexibility to be afforded to the electrical utility in establishing the terms and conditions of the ratepayer protection bonds including, but not limited to, repayment schedules, expected interest rates, and other financing costs;

(j) how qualified electric charges will be allocated among customer classes;

(k) a requirement that, after the final terms of an issuance of ratepayer protection bonds have been established and before the issuance of ratepayer protection bonds, the electrical utility determines the resulting initial qualified electric charge in accordance with the financing order and that such initial qualified electric charge be final and effective upon the issuance of such ratepayer protection bonds without further commission action so long as the qualified electric charge is consistent with the financing order. Nothing in this subsection prohibits the commission from determining a preissuance review process is necessary to protect the public interest;

(l) a method of tracing funds collected as qualified electric charges, or other proceeds of qualified electric property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any qualified electric property subject to a financing order under applicable law; and

(m) any other conditions that the commission determines are in the public interest.

(3) A financing order issued to an electrical utility may provide that creation of the electrical utility's qualified electric property is conditioned upon, and simultaneous with, the sale or other transfer of the qualified electric property to an assignee and the pledge of the qualified electric property to secure ratepayer protection bonds.

(4) If the commission issues a financing order, the electrical utility shall file with the commission at least annually a petition or a letter applying the formula‑based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula‑based mechanism relating to the appropriate amount of any overcollection or undercollection of qualified electric charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges with respect to ratepayer protection bonds approved under the financing order. Within ninety days after receiving an electrical utility's request pursuant to this item, the commission shall either approve the request or inform the electrical utility of any mathematical or clerical errors in its calculation. If the commission informs the electrical utility of mathematical or clerical errors in its calculation, the electrical utility may correct its error and refile its request. The time frames previously described in this item shall apply to a refiled request.

(5) Subsequent to the transfer of qualified electric property to an assignee or the issuance of ratepayer protection bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except for changes made pursuant to the formula‑based mechanism authorized in this article, the commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust qualified electric charges approved in the financing order. After the issuance of a financing order, the electrical utility retains sole discretion regarding whether to assign, sell, or otherwise transfer qualified electric property or to cause ratepayer protection bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.

(6) If required by the commission in a financing order, within one business day after the final terms of the ratepayer protection bonds are determined, the electrical utility shall provide an issuance advice letter to the commission. No later than the date the issuance letter is filed, each lead underwriter of the ratepayer protection bonds and any ratepayer protection bonds securities shall file with the commission an independent certification confirming that the structuring, marketing, and pricing of the ratepayer protection bonds and any associate securities in fact resulted in the lowest charges consistent with market conditions at the time the ratepayer protection bonds were priced and the terms set forth in the financing order.

(a) The issuance advice letter must be in the form approved in a financing order and include the final terms of the ratepayer protection bonds issuance, up‑front financing costs, and ongoing financing costs. The issuance advice letter must include a certification from the electrical utility, as a condition to closing, certifying the sale of ratepayer protection bonds complies with the requirements of this article and the financing order.

(b) By no later than noon on the fourth business day after the final terms of the ratepayer protection bonds are determined, the commission shall either approve the issuance advice letter or deliver an order to the electrical utility to prevent the issuance of the ratepayer protection bonds. To the extent the commission does not respond to the issuance advice letter or deliver an order to prevent the issuance of the ratepayer protection bonds within the time period proscribed in the financing order, the ratepayer protection bonds may be issued without further action of the commission.

(D) At the request of an electrical utility, the commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding ratepayer protection bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in this article for a financing order. Effective upon retirement of the refunded ratepayer protection bonds and the issuance of new ratepayer protection bonds, the commission shall adjust the related qualified electric charges accordingly.

(E) Within sixty days after the commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within thirty days after the commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of South Carolina. Review on appeal shall be based solely on the record before the commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and to state and federal law, and is within the authority of the commission under this article.

(F)(1) A financing order remains in effect and qualified electric property under the financing order continues to exist until ratepayer protection bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all commission-approved financing costs of the ratepayer protection bonds have been recovered in full.

(2) A financing order issued to an electrical utility remains in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, merger, or sale of the electrical utility or its successors or assignees.

Section 58‑27‑2815. (A) The commission may adopt rules to implement the provisions of this article.

(B) The commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this chapter, consider the ratepayer protection bonds issued pursuant to a financing order to be the debt of the electrical utility other than for federal income tax purposes, consider the qualified electric charges paid pursuant to the financing order to be the revenue of the electrical utility for any purpose, or consider the qualified energy costs or financing costs specified in the financing order to be the costs of the electrical utility. The commission may not determine any action taken by an electrical utility which is consistent with the financing order to the unjust or unreasonable.

Section 58‑27‑2820. The commission is authorized to establish an energy transition reserve fund for energy transition costs funded by a portion of the savings, on a net present value basis, to customers resulting from the issuance of ratepayer protection bonds pursuant to this article. An energy transition reserve fund must be a restricted, segregated fund, the use of which may be limited by the commission to specific types of incurred or future energy transition costs for the electrical utility which is the subject of the financing order, such as future employee payments, job training costs, county or municipal revenue deficits, or future closure or remediation costs for an eligible electric generating facility and associated facilities identified in a financing order issued pursuant to this article. The commission may adopt rules and promulgate regulations to identify and limit eligible costs which may be covered by an energy transition reserve fund.

Section 58‑27‑2825. The electric bills of an electrical utility that has obtained a financing order and caused ratepayer protection bonds to be issued must comply with the provisions of this section; however, the failure of an electrical utility to comply with this section does not invalidate, impair, or affect any financing order, qualified electric property, qualified electric charge, or ratepayer protection bonds. The electrical utility must do the following:

(1) explicitly reflect that a portion of the charges on the bill represents qualified electric charges approved in a financing order issued to the electrical utility and, if the qualified electric property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to qualified electric charges and that the electrical utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the qualified electric charge and the ownership of the charge; and

(2) include the qualified electric charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.

Section 58‑27‑2830. (A) The following provisions apply to qualified electric property:

(1) All qualified electric property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of qualified electric charges depends on the electrical utility to which the financing order is issued performing its servicing functions relating to the collection of qualified electric charges and on future electricity consumption. The property exists (a) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (b) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the electrical utility or its successors or assignees and the future consumption of electricity by customers.

(2) Qualified electric property specified in a financing order exists until ratepayer protection bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such ratepayer protection bonds have been recovered in full.

(3) All or any portion of qualified electric property specified in a financing order issued to an electrical utility may be transferred, sold, conveyed, or assigned to a successor or assignee, that is wholly owned, directly or indirectly, by the electrical utility and created for the limited purpose of acquiring, owning, or administering qualified electric property or issuing ratepayer protection bonds under the financing order. All or any portion of qualified electric property may be pledged to secure ratepayer protection bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of qualified electric property by an electrical utility or an affiliate of the electrical utility, to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the commission.

(4) If an electrical utility defaults on any required payment of charges arising from qualified electric property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the qualified electric property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electrical utility or its successors or assignees.

(5) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in qualified electric property specified in a financing order issued to an electrical utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the electrical utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the electrical utility or any other entity.

(6) Any successor to an electrical utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of electrical utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the electrical utility under the financing order in the same manner and to the same extent as the electrical utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the qualified electric property. Nothing in this subsection is intended to limit or impair any authority of the commission concerning the transfer or succession of interests of electrical utilities.

(7) Ratepayer protection bonds must be nonrecourse to the credit or any assets of the electrical utility other than the qualified electric property as specified in the financing order and any rights under any ancillary agreement.

(B) The following provisions apply to security interests:

(1) The creation, perfection, and enforcement of any security interest in qualified electric property to secure the repayment of the principal and interest and other amounts payable in respect of ratepayer protection bonds, amounts payable under any ancillary agreement, and other financing costs are governed by this section and not by the provisions of the code.

(2)(a) A security interest in qualified electric property is created, valid, and binding and perfected at the later of when:

(i) the financing order is issued;

(ii) a security agreement is executed and delivered by the debtor granting such security interest;

(iii) the debtor has rights in the qualified electric property or the power to transfer rights in the qualified electric property; or

(iv) value is received for the qualified electric property.

(b) The description of qualified electric property in a security agreement is sufficient if the description refers to this article and the financing order creating the qualified electric property.

(3) A security interest shall attach without any physical delivery of collateral or other act, and, upon the filing of a financing statement with the Office of the Secretary of State, the lien of the security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the qualified electric property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, and shall have priority over all competing claims other than any prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this section.

(4) The Secretary of State shall maintain any financing statement filed to perfect any security interest under this article in the same manner that the secretary maintains financing statements filed by transmitting utilities under the code. The filing of a financing statement under this article shall be governed by the provisions regarding the filing of financing statements in the code.

(5) The priority of a security interest in qualified electric property is not affected by the commingling of qualified electric charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all qualified electric charges that are deposited in any cash or deposit account of the qualifying utility in which qualifying electric charges have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

(6) No application of the formula‑based adjustment mechanism as provided in this article will affect the validity, perfection, or priority of a security interest in or transfer of qualified electric property.

(7) If a default or termination occurs under the ratepayer protection bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any qualified electric property as if they were secured parties with a perfected and prior lien under the code, and the commission may order amounts arising from qualified electric charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Circuit Court of Richland County shall order the sequestration and payment to them of revenues arising from the qualified electric charges.

(C) The following provisions apply to the sale, assignment, or transfer of qualified electric property:

(1) Any sale, assignment, or other transfer of qualified electric property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to, and under the qualified electric property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and state income tax purposes. For all purposes other than federal and state income tax purposes, the parties' characterization of a transaction as a sale of an interest in qualified electric property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in qualified electric property may be created only when all of the following have occurred:

(a) the financing order creating the qualified electric property has become effective;

(b) the documents evidencing the transfer of qualified electric property have been executed by the assignor and delivered to the assignee; and

(c) value is received for the qualified electric property.

After such a transaction, the qualified electric property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the qualified electric property perfected in accordance with this section.

(2) The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall not be affected or impaired by the occurrence of any of the following factors:

(a) commingling of qualified electric charges with other amounts;

(b) the retention by the seller of:

(i) a partial or residual interest, including an equity interest, in the qualified electric property, whether direct or indirect, or whether subordinate or otherwise; or

(ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of qualified electric charges;

(c) any recourse that the purchaser may have against the seller;

(d) any indemnification rights, obligations, or repurchase rights made or provided by the seller;

(e) the obligation of the seller to collect qualified electric charges on behalf of an assignee;

(f) the transferor acting as the servicer of the qualified electric charges or the existence of any contract that authorizes or requires the electrical utility, to the extent that any interest in qualified electric property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the qualified electric charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party;

(g) the treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes;

(h) the granting or providing to bondholders a preferred right to the qualified electric property or credit enhancement by the electrical utility or its affiliates with respect to such ratepayer protection bonds; or

(i) any application of the formula‑based adjustment mechanism as provided in this article.

(3)(a) Any right that an electrical utility has in the qualified electric property before its pledge, sale, or transfer or any other right created under this article or created in the financing order and assignable under this article or assignable pursuant to a financing order is property in the form of a contract right or a chose in action.

(b) Transfer of an interest in qualified electric property to an assignee is enforceable only upon all of the following items having occurred:

(i) the issuance of a financing order;

(ii) the assignor having rights in the qualified electric property or the power to transfer rights in the qualified electric property to an assignee;

(iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of ratepayer protection bonds; and

(iv) the receipt of value for the qualified electric property.

(c) An enforceable transfer of an interest in qualified electric property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with this section. The transfer is perfected against third parties as of the date of filing.

(4) The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of qualified electric property under this section in the same manner that the secretary maintains financing statements filed by transmitting utilities under the code. The filing of any financing statement under this article shall be governed by the provisions regarding the filing of financing statements in the code. The filing of such a financing statement is the only method of perfecting a transfer of qualified electric property.

(5) The priority of a transfer perfected under this article is not impaired by any later modification of the financing order or qualified electric property or by the commingling of funds arising from qualified electric property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected pursuant to this section, is terminated when they are transferred to a segregated account for the assignee or a financing party. If qualified electric property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.

(6) The priority of the conflicting interests of assignees in the same interest or rights in any qualified electric property is determined as follows:

(a) conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with this subsection;

(b) a perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee;

(c) a perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.

Section 58‑27‑2835. The description of qualified electric property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the financing order that created the qualified electric property and states that the agreement or financing statement covers all or part of the property described in the financing order. This section applies to all purported transfers of, and all purported grants or liens or security interests in, qualified electric property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.

Section 58‑27‑2840. All financing statements referenced in this article are subject to Part 5 of Chapter 9 of the code, except that the requirement as to continuation statements does not apply.

Section 58‑27‑2845. The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any qualified electric property shall be the laws of this State.

Section 58‑27‑2850. Neither the State, its agencies, and instrumentalities, nor its political subdivisions are liable on any ratepayer protection bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions, agencies, or instrumentalities nor are they special obligations or indebtedness of the State, its agencies, or its political subdivisions. An issue of ratepayer protection bonds does not, directly, indirectly, or contingently obligate the State or its agencies, instrumentalities, or political subdivisions, to levy any tax or make any appropriation for payment of the ratepayer protection bonds, other than in their capacities as consumers of electricity. All ratepayer protection bonds must contain on the face thereof a statement to the following effect: “Neither the full faith and credit nor the taxing power of the State of South Carolina is pledged to the payment of the principal of, or interest on, this bond, nor shall the holder of this bond have any recourse against the State, its agencies, instrumentalities, or political subdivisions for the payment of the principal of, or interest on, this bond.”

Section 58‑27‑2855. All of the following entities may legally invest any sinking funds, monies, or other funds in ratepayer protection bonds:

(1) the South Carolina Pooled Investment Fund established pursuant to Section 6‑6‑10;

(2) banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business;

(3) personal representatives, guardians, trustees, and other fiduciaries; and

(4) all other persons authorized to invest in bonds or other obligations of a similar nature.

Section 58‑27‑2860. (A) The State and its agencies, including the commission, pledge and agree with bondholders, the owners of the qualified electric property, and other financing parties that the State and its agencies will not take any action listed in this section as to any outstanding ratepayer protection bonds, qualified electric charges, or qualified electric property. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the qualified electric charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the electrical utility. The prohibited actions are as follows:

(1) altering the provisions of this article, which authorize the commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create qualified electric property, and make the qualified electric charges imposed by a financing order irrevocable, binding, or nonbypassable charges;

(2) taking or permitting any action that impairs or would impair the value of qualified electric property or the security for the ratepayer protection bonds, or revises the qualified energy costs for which recovery is authorized;

(3) in any way impairing the rights and remedies of the bondholders, assignees, and other financing parties; and

(4) except for changes made pursuant to the formula‑based adjustment mechanism authorized under this article, reducing, altering, or impairing qualified electric charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed in connection with the related ratepayer protection bonds, have been paid and performed in full.

(B) Any person or entity that issues ratepayer protection bonds may include the language specified in this section in the ratepayer protection bonds and related documentation.

Section 58‑27‑2865. An assignee or financing party is not an electrical utility or person providing electric service by virtue of engaging in the transactions described in this article.

Section 58‑27‑2870. If there is a conflict between this article and any other law regarding the attachment, assignment, perfection, effect of perfection, priority of, assignment or transfer of, or security interest in qualified electric property, this article shall govern.

Section 58‑27‑2875. In making determinations under this article, the commission may engage independent outside consultants, including legal counsel, to serve as an advisor or counselor to the commission. Any independent outside consultant must be subject to the communication restrictions pursuant to Section 58‑3‑260(C)(8) that are applicable to commission employees.

Section 58‑27‑2880. A violation of this article or of a financing order issued under this article subjects the electrical utility that obtained the order to penalties of no more than five thousand dollars for each offense, and to any other penalties or remedies that the commission determines are necessary to achieve the intent of this article and the intent and terms of the financing order and to prevent any increase in financial impact to the utility's ratepayers above that set forth in the financing order. If the commission orders a penalty or a remedy for a violation, the monetary penalty or remedy and the costs of defending against the proposed penalty or remedy may not be recovered from the ratepayers. The commission may not make adjustments to qualified electric charges for any such penalties or remedies.

Section 58‑27‑2885. If any provision of this article is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this article which is taken by an electrical utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all ratepayer protection bonds issued or authorized in a financing order issued under this article before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.

SECTION 8. Section 58‑31‑227 of the S.C. Code is amended to read:

Section 58‑31‑227. (A) The Public Service Authority shall file for commission approval of a program for the competitive procurement of energy, capacity, ancillary services, and environmental attributes from renewable energy facilities and energy storage facilities to meet needs for new generation resources and energy storage resources identified by the Authority in its Integrated Resource Plans or other planning processes. A competitive procurement program may be used to procure any subset of energy, capacity, ancillary services, and environmental attributes, as determined appropriate by the commission. The commission may not grant approval unless the commission finds and determines that the Public Service Authority satisfied all requirements of this section and the proposed program is in the best interests of the customers of the Public Service Authority. The commission may adopt procedures to implement the requirements of this section and shall retain continuing oversight and approval authority over all aspects of an approved program to ensure any approved program complies with this section and is in the best interests of the customers of the Public Service Authority. For purposes of this section, “energy storage facility” means commercially available technology that is capable of absorbing energy and storing it for a period of time for use at a later time. This includes, but is not limited to, electrochemical, thermal, and electromechanical technologies, but does not include hydroelectric generating facilities over which the Federal Power Commission has licensing jurisdiction.

(B) The Public Service Authority shall procure renewable energy resources and energy storage resources, or the output of those facilities, subject to the following requirements:

(1) Renewable energy resources and energy storage resources procured by the Public Service Authority shall be procured via a competitive solicitation process open to all independent market participants that meet minimum eligibility requirements.

(2) The Public Service Authority shall issue public notification of its intention to issue a competitive renewable solicitation at least ninety days prior to the release of each solicitation, including the proposed procurement volume, process, and timeline.

(3) Renewable energy facilities eligible to participate in a competitive procurement are those that have a valid interconnection request on file and that use renewable energy resources identified in Section 58‑39‑120(F) and may include battery storage devices charged exclusively by renewable energy.

(4) Energy storage facilities eligible to participate in a competitive procurement are those described in subsection (A).

(C) The Public Service Authority shall make publicly available at least forty‑five days prior to each competitive solicitation:

(1) A pro forma contract to inform market participants of the procurement terms and conditions. The pro forma contract will (i) include standardized and commercially reasonable requirements for contract performance security consistent with market standards; (ii) define limits and compensation for resource dispatch and curtailments that limit uncompensated curtailment to a specified portion of estimated annual output.

(2) A bid evaluation methodology that ensures all bids are treated equitably, including price and nonprice evaluation criteria. Nonprice criteria will at minimum include consideration of diversity in resource size and geographic location.

(3) Interconnection requirements and study methodology, including how bids without existing interconnection studies will be treated for purposes of evaluation.

(D) After bids are submitted and evaluated, winning bids will be selected based upon the published evaluation methodology.

(E) The Public Service Authority shall issue a public report summarizing the results of each competitive solicitation within sixty days of the award notifications. The report will include, at minimum, a summary of the submitted bids and an anonymized list of the project awards, including their size, location, average award price and tenor, and award price range.

SECTION 9. Section 58‑33‑110(8) of the S.C. Code is amended to read:

(8)(a) Notwithstanding the provisions of item (7), and not limiting the provisions above, a person an electrical utility may not commence construction of a major utility facility for generation in the State of South Carolina, unless that major utility facility was awarded a bid during a competitive procurement process, without first having made a demonstration that the facility to be built has been compared to other generation options in terms of through an all‑source bidding process that considers cost, risk, reliability, and any other regulatory implications deemed legally or reasonably necessary for consideration by the commission. The commission is authorized to adopt rules or procedures for such evaluation of other generation options through an all‑source bidding process.

(b) The commission may, upon a showing of a need, require a commission‑approved must implement a process that includes, but is not limited to:

(i) the assessment of an unbiased independent evaluator retained by the Office of Regulatory Staff as to reasonableness of any certificate sought under this section for new generation;

(ii) a report from the independent evaluator to the commission regarding the transparency, completeness, and integrity of the all‑source bidding processes, if any;

(iii) a reasonable period for interested parties to review and comment on proposed requests for proposals, bid instructions, and bid evaluation criteria, if any, prior to finalization and issuance, subject to any trade secrets that could hamper future negotiations; however, the independent evaluator may access all such information;

(iv) independent evaluator access and review of final bid evaluation criteria and pricing information for any and all projects to be evaluated in comparison to the request for proposal bids received;

(v) access through discovery, subject to appropriate confidentiality, attorney‑client privilege or trade secret restrictions, for parties to this proceeding to documents developed in preparing the certificate of public convenience and necessity application;

(vi) a demonstration that the facility is consistent with an integrated resource plan approved by the commission; and

(vii) treatment of utility affiliates in the same manner as nonaffiliates participating in the request for proposal all‑source bidding process.

(c) A resource selected in an all‑source bidding process conducted pursuant to this item is deemed to have fulfilled all requirements established in this item.

SECTION 10. Section 58‑37‑10 of the S.C. Code is amended to read:

Section 58‑37‑10. As used in this chapter unless the context clearly requires otherwise:

(1) “Demand‑side activity management program” means a program conducted or proposed by a producer, supplier, or distributor of energy for the reduction or more efficient use of energy requirements of the producer's, supplier's, or distributor's customers, through measures including, but not limited to, conservation and energy efficiency, load management, cogeneration, and renewable energy technologies.

(2) “Integrated resource plan” means a plan which contains the demand and energy forecast for at least a fifteen‑year period, contains the supplier's or producer's program for meeting the requirements shown in its forecast in an economic and reliable manner, including both demand‑side and supply‑side options, with a brief description and summary cost‑benefit analysis, if available, of each option which was considered, including those not selected, sets forth the supplier's or producer's assumptions and conclusions with respect to the effect of the plan on the cost and reliability of energy service, and describes the external environmental and economic consequences of the plan to the extent practicable. For electrical utilities subject to the jurisdiction of the South Carolina Public Service Commission, this definition must be interpreted in a manner consistent with the integrated resource planning requirements pursuant to Section 58‑37‑40 and any process adopted by the commission. For electric cooperatives subject to the regulations of the Rural Electrification Administration, this definition must be interpreted in a manner consistent with any integrated resource planning process prescribed by Rural Electrification Administration regulations.

(3) “Cost‑effective” means that the net present value of the benefits of a program or portfolio exceeds the net present value of the costs of the program or portfolio, as determined by the program or portfolio which passes any two of the following four tests:

(a) Utility Cost Test, also referred to as the Program Administrator Test;

(b) Total Resource Cost Test;

(c) Participant Cost Test; and

(d) Ratepayer Impact Measure Test.

In evaluating the cost‑effectiveness of a program or portfolio, a utility or program administrator must present the results of all four tests.

(4) “Demand‑side management pilot program” means a demand‑side management program that is of limited scope, cost, and duration that is intended to determine whether a new or substantially revised program or technology would be cost‑effective.

SECTION 11. Section 58‑37‑20 of the S.C. Code is amended to read:

Section 58‑37‑20. (A) The General Assembly hereby declares that expanding utility investment in and customer access to demand‑side management programs to the maximum extent possible will result in more efficient use of existing resources, promote lower energy bills, protect the public health and safety, and stimulate economic development and employment, and is therefore in the public interest.

(B) The South Carolina Public Service Commission may must adopt procedures that encourage require electrical utilities and encourage public utilities providing gas services subject to the jurisdiction of the commission to plan for and invest in all available energy efficiency and demand‑side resources that are cost‑effective energy efficient technologies and energy conservation programs. If adopted, These procedures must: provide incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end‑use technologies that are cost‑effective, environmentally acceptable, and reduce energy consumption or system or local coincidental peak demand; allow energy suppliers and distributors to recover costs and obtain a reasonable rate of return on their investment in qualified demand‑side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities; require the Public Service Commission to establish rates and charges that ensure that the net income of an electrical or gas utility regulated by the commission after implementation of specific cost‑effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented. For purposes of this section only, the term “demand‑side activity” means a program conducted by an electrical utility or public utility providing gas services for the reduction or more efficient use of energy requirements of the utility or its customers including, but not limited to, utility transmission and distribution system efficiency, customer conservation and efficiency, load management, cogeneration, and renewable energy technologies.

(C) Each investor‑owned electrical utility must submit an annual report to the commission describing the demand‑side management programs implemented by the electrical utility in the previous year. The report must document the following:

(1) achieved savings levels from the utility’s portfolio of programs in the prior year, reported as a percentage of the utility’s total annual sales;

(2) program expenditures, including incentive payments;

(3) peak demand and energy savings impacts and the techniques used to estimate those impacts;

(4) avoided costs and the techniques used to estimate those costs;

(5) the estimated cost‑effectiveness of the demand‑side management programs;

(6) the net economic benefits of the demand‑side management programs;

(7) the number of customers eligible to opt out of the electrical utility’s demand‑side management programs, the percentage of those customers that opted out in the previous year, and the annual sales associated with those opt-out customers; and

(8) any other information required by the commission.

(D) To ensure prudent investments by an electrical utility in energy efficiency and demand response, as compared to potential investments in generation, transmission, distribution, and other supply-related utility equipment and resources, the commission must review each investor‑owned electrical utility’s portfolio of demand‑side management programs on at least a triennial basis to align with review of each utility’s integrated resource plan pursuant to Section 58‑37‑40. The commission is authorized to order modifications to a utility’s demand‑side management portfolio, including program budgets, if it determines that doing so is in the public interest. In evaluating a utility’s portfolio of demand‑side management programs to assure reasonableness, promotion of the public interest, and consistency with the objectives of Section 58‑27‑845 and 58‑37‑20, the commission must ensure that:

(1) the utility demonstrated it is pursuing all available and cost‑effective energy efficiency and demand‑side resources;

(2) the utility’s portfolio of demand‑side management programs gives all classes of customers an opportunity to participate and gives due regard to the urgent need for demand‑side management programs that serve the needs of low‑income customers;

(3) utility demand‑side management programs are cost‑effective, except:

(a) demand‑side management programs targeting low‑income customers or populations need not be cost‑effective if a utility’s portfolio of demand‑side management programs is cost‑effective as a whole;

(b) the commission may waive cost‑effectiveness reviews as it concerns resilient energy resource programs targeting critical facilities pursuant to Section 58‑43‑20; and

(c) the commission may approve demand‑side management pilot programs that it determines are in the public interest.

SECTION 12. Section 58‑37‑30 of the S.C. Code is amended to read:

Section 58‑37‑30. (A) The South Carolina Public Service Commission must report annually to the General Assembly on available data regarding the past, on‑going, and projected status of demand‑side activities management programs and purchase of power from qualifying facilities, as defined in the Public Utilities Regulatory Policies Act of 1978, by electrical utilities and public utilities providing gas services subject to the jurisdiction of the Public Service Commission.

(B) Electric cooperatives providing resale or retail services, municipally‑owned electric utilities, and the South Carolina Public Service Authority shall report annually to the State Energy Office on available data regarding the past, on‑going, and projected status of demand‑side activities management programs and purchase of power from qualifying facilities. For electric cooperatives, submission to the State Energy Office of a report on demand‑side activities management programs in a format complying with then current Rural Electrification Administration regulations constitutes compliance with this subsection. An electric cooperative providing resale services may submit a report in conjunction with and on behalf of any electric cooperative which purchases electric power and energy from it. The State Energy Office must compile and submit this information annually to the General Assembly.

(C) The State Energy Office may provide forms for the reports required by this section to the Public Service Commission and to electric cooperatives, municipally‑owned electric utilities, and the South Carolina Public Service Authority. The office shall strive to minimize differing formats for reports, taking into account the reporting requirements of other state and federal agencies. For electrical utilities and public utilities providing gas services subject to the jurisdiction of the commission, the reporting form must be in a format acceptable to the commission.

SECTION 13. Chapter 37, Title 58 of the S.C. Code is amended by adding:

Section 58‑37‑35. (A) An electrical utility may propose programs and customer incentives to encourage or promote demand‑side management programs whereby a customer uses a customer‑sited distribution energy resource, as defined in Section 58‑39‑120(C), or combination of such resources, to: (1) reduce the customer’s electrical consumption or demand from the electric grid, or (2) beneficially shape the customer’s electric consumption or demand in a manner that serves to reduce the customer’s contribution to the electrical utility’s system or local coincidental peak demand, subject to the associated load to utility management for reliability or economic purposes, or serve to reduce future electrical utility system costs to serve its customers. Programs authorized pursuant to this section may also include distributed energy resources that draw additional power from the electric grid including, but not limited to, electric vehicles, electric vehicle service equipment, electric heat pumps with programmable or utility‑controlled thermostats, electric heat pump water heaters controlled through utility programs, smart home panels, advanced inverters, and energy storage device located on the customer’s side of the meter, provided that any programs or customer incentives otherwise meet the requirements of this section. These programs may also include aggregation of resources, including renewable energy microgrids, to provide economic benefits to the utility system or to help address specific transmission or distribution issues that would otherwise require significant capital investment.

(B) In evaluating a program or customer incentive proposed pursuant to this section to assure reasonableness, promotion of the public interest, and consistency with the objectives of Sections 58‑27‑845 and 58‑37‑20, the commission must apply the procedure approved pursuant to Section 58‑37‑20. An electrical utility must use standard utility practices for determining the percentage of customers that would or would not have adopted a distributed energy resource without any incentive allowed under this section to install and utilize the distributed energy resource as part of the associated demand‑side management program. The electrical utility must designate the expected useful life of the distributed energy resource and evaluate the costs and benefits of demand‑side measures over their useful lives in the program application based on industry-accepted standards. All initial program costs, benefits, and participation assumptions used in the electrical utility’s cost‑effectiveness evaluations must be reviewed by the commission to assure the electrical utility has presented a reasonable basis for its calculation. Electrical utilities must update the cost‑effectiveness analysis based on the actual program costs, benefits, and participation as soon as practicably possible based on standard evaluation, measurement, and verification protocols, and the electrical utility’s cost recovery must be reconciled accordingly.

(C) For demand‑side programs or customer incentives proposed in this section, the electrical utility may recover costs through the procedures in Section 58‑37‑20. The prohibition in Section 58‑40‑20(I) against recovery of lost revenues associated with distributed energy resources pursuant to Chapter 39, Title 58 is inapplicable to recovery of net lost revenues associated with a distributed energy resource that is installed as a result of a demand‑side program incentive pursuant to this section or Section 58‑37‑20. An electrical utility may only recover costs associated with resilient energy resources installed as part of a resilient energy resource customer program pursuant to the provisions of Section 58‑43‑30(D).

(D) For any demand‑side programs or customer incentives submitted under this section with projected annual customer incentive amounts less than five million dollars per year for each of the first two program years, the commission must issue an order as expeditiously as practicable on the written submissions of the electrical utility but may require an evidentiary hearing where novel or complex issues of fact require special review by the commission. The commission must ensure that such programs are cost‑effective. Nothing in this section prevents the commission from ordering an electrical utility to modify or terminate a program approved pursuant to this section based on the results of standard evaluation, measurement, and verification protocols.

(E) The Office of Regulatory Staff must develop and publish materials intended to inform and educate the public regarding programs available to a customer pursuant to this section. The Office of Regulatory Staff must maintain a list of approve vendors who are qualified and in good standing to provide services associated with these programs including, but not limited to, installation or operation of solar energy systems, battery storage systems, and electric vehicle service equipment.

SECTION 14. Section 58‑37‑40(B) of the S.C. Code is amended to read:

(B)(1) An integrated resource plan shall include all of the following:

(a) a long‑term forecast of the utility's sales and peak demand under various reasonable scenarios;

(b) the type of generation technology proposed for a generation facility contained in the plan and the proposed capacity of the generation facility, including fuel cost sensitivities under various reasonable scenarios;

(c) projected energy purchased or produced by the utility from a renewable energy resource;

(d) a summary of the electrical transmission investments planned by the utility;

(e) several resource portfolios developed with the purpose of fairly evaluating the range of demand‑side, supply‑side, storage, and other technologies and services available to meet the utility's service obligations. Such portfolios and evaluations must include an evaluation of low, medium, and high cases for the adoption of renewable energy and cogeneration, energy efficiency, and demand response measures, including consideration of the following:

(i) customer energy efficiency and demand response programs;

(ii) facility retirement assumptions; and

(iii) sensitivity analyses related to fuel costs, environmental regulations, and other uncertainties or risks;

(f) data regarding the utility's current generation portfolio, including the age, licensing status, and remaining estimated life of operation for each facility in the portfolio;

(g) plans for meeting current and future capacity needs with the cost estimates for all proposed resource portfolios in the plan;

(h) an analysis of the cost and reliability impacts of all reasonable options available to meet projected energy and capacity needs; and

(i) a forecast of the utility's peak demand, details regarding the amount of peak demand reduction the utility expects to achieve, and the actions the utility proposes to take in order to achieve that peak demand reduction.

(2) An integrated resource plan may include distribution resource plans or integrated system operation plans.

(3) The General Assembly finds that there is a need to encourage economic development, investment in this State, energy independence, and to protect the state’s natural resources. For purposes of the commission’s approval of an integrated resource plan subject to this section, a utility’s energy transition goal that meets the following conditions is in the public interest:

(a) reducing greenhouse gas emissions by at least eighty percent compared to 2005 levels;

(b) significantly reducing long‑term risk for ratepayers relative to exposure to fossil fuel cost volatility; and

(c) achieving the goal in the most cost‑effective way by implementing all‑source procurement of generation resources, participating in regional markets to avoid new fossil fuel generation build, or by utilizing independent power producers through third‑party power purchase agreements.

SECTION 15. Chapter 37, Title 58 of the S.C. Code is amended by adding:

Section 58‑37‑70. Electrical utilities, electric cooperatives, municipally owned electric utilities, and the South Carolina Public Service Authority must file a low‑income affordability tariff following stakeholder engagement to determine criteria and design. This tariff must be filed with the commission for its review within one year after the effective date of this act and is subject to commission approval. An electrical utility, electric cooperative, municipally owned electric utility, or the South Carolina Public Service Authority may petition the commission for an exemption for this tariff upon a showing that such a tariff would result in an effective intraclass increase on the average noneligible customer’s monthly bill of more than fifty basis points.

SECTION 16.A. Section 58‑41‑10 of the S.C. Code is amended by adding:

(17) “Energy storage facility” means commercially available technology that is capable of absorbing energy and storing it for a period of time for use at a later time including, but not limited to, electrochemical, thermal, and electromechanical technologies. However, this does not include a hydroelectric generating facility over which the Federal Power Commission has licensing jurisdiction.

B. Section 58‑41‑20(E)(2) of the S.C. Code is amended to read:

(2) The commission is authorized to open a generic docket for the purposes of creating programs for the competitive procurement of energy and capacity from renewable energy facilities and energy storage facilities by an electrical utility within the utility's balancing authority area if the commission determines such action to be in the public interest.

C. Chapter 41, Title 58 of the S.C. Code is amended by adding:

Section 58‑41‑25.(A) Unless an electrical utility makes an application pursuant to subsection (F) or (G), each electrical utility must file for commission approval of a program for the competitive procurement of renewable energy and energy storage facilities, or their output including any subset, as determined appropriate by the commission, of energy, capacity, ancillary services, and environmental and renewable attributes from renewable energy facilities and energy storage facilities located in the electrical utility’s balancing authority area to meet needs for new generation and energy storage resources identified by the electrical utility’s Integrated Resource Plan or other planning process. The commission may not grant approval unless the commission finds and determines that the electrical utility satisfied the requirements of this section and the proposed program is just and reasonable and in the best interests of the customers of the electrical utility. The commission may adopt procedures to implement the requirements of this section.

(B) An electrical utility’s competitive procurement program filed pursuant to this section must describe the solicitation process, eligibility criteria, timelines, bid evaluation methodology, and identify whether resources procured are intended to also service customer‑directed renewable energy procurement programs. The program must be designed to procure renewable energy facilities and energy storage resources/facilities, or the output of those facilities, subject to the following requirements:

(1) renewable energy and energy storage resources, or their output, procured by electrical utilities must be procured via a competitive solicitation process open to all independent market participants that meet stated and reasonable eligibility requirements;

(2) the electrical utility must issue public notice of its intention to issue a competitive solicitation to procure renewable energy or storage facilities at least ninety days prior to the release of each solicitation, including identifying the proposed target procurement volume, process, and timeline for administering the solicitation;

(3) renewable energy facilities eligible to participate in a competitive procurement are those that use renewable energy resources identified in Section 58‑39‑120(F), subject to the capability of such facilities to satisfy that electrical utility’s capacity or operational needs;

(4) energy storage facilities eligible to participate in a competitive procurement are those identified in Section 58‑41‑10(17);

(5) use of an independent evaluator or independent administrator as determined appropriate by the commission.

(C) An electrical utility must make publicly available for at least forty‑five days prior to each competitive solicitation:

(1) a commission‑approved pro forma contract to inform prospective market participants of the procurement terms and conditions. The pro forma contract must:

(a) include standardized and commercially reasonable requirements for contract performance security consistent with market standards; and

(b) define limits and compensation for resource dispatch and curtailments;

(2) a commission‑approve bid evaluation methodology that ensures all bids are treated equitably, including price and nonprice evaluation criteria;

(3) interconnection requirements and study methodology, including specification of how bids without existing interconnection agreements will be treated for purposes of evaluation.

(D) After bids are submitted and evaluated, winning bids will be selected based upon the published evaluation methodology.

(E) An electrical utility must issue and file with the commission a public report summarizing the results of each competitive solicitation within sixty days of the award notifications. The report must include, but not be limited to, a summary of the submitted bids and an anonymized list of the project awards, including their size, location, average award price and tenor, and award price rage.

(F) Notwithstanding the requirements of subsections (B) and (C), the results of competitive procurement programs within an electrical utility’s balancing area outside of South Carolina that serve customers in the electrical utility’s balancing area within South Carolina and is open to equal participation by renewable energy facilities located within South Carolina may be approved by the commission if such programs are determined to enable economic, reliable, and safe operation of the electricity grid in a manner consistent with the public interest. Any electrical utility that requests acceptance of a system‑wide procurement pursuant to this section mush demonstrate to the commission that it has adhered to subsection (D) and submit the postsolicitation report to the commission, pursuant to subsection (E).

(G) The commission may determine that a competitive procurement program within an electrical utility’s balancing authority outside of South Carolina that serves customers in the utility’s balancing authority within South Carolina and is open to equal participation by renewable energy facilities located within South Carolina satisfies the requirements of this section.

(H) Electrical utilities are permitted to recover costs incurred through competitive procurement of renewable energy programs accepted or approved by the commission pursuant to this section through rates established pursuant to Section 58‑27‑865 or otherwise through rates established pursuant to Section 58‑27‑870.

SECTION 17. Section 58‑41‑30 of the S.C. Code is amended to read:

Section 58‑41‑30. (A) The commission shall be responsive to the clean energy needs of customers and the economic development implications for the State and be fair to customers, developers, and utilities when reviewing and approving voluntary clean energy programs. The commission must consider updates to voluntary clean energy programs on an ongoing basis.

(B) Within one hundred and twenty days of the effective date of this chapter, subject to subsection (F), each electrical utility shall file a proposed voluntary renewable energy program for review and approval by the commission. The commission shall conduct a proceeding to review the program and establish reasonable terms and conditions for the program. Interested parties shall have the right to participate in the proceeding. The commission may periodically hold additional proceedings to update the program. At a minimum, the program shall provide that a utility must file or otherwise have available at the time this act is effective at least one program that provides:

(1) the participating customer shall have the right to select the renewable energy facility and negotiate with the renewable energy supplier on the price to be paid by the participating customer for the energy, capacity, if applicable, and environmental attributes of the renewable energy facility and the term of such agreement so long as such terms are consistent with the voluntary renewable program service agreement as approved by the commission;

(2) the renewable energy contract and the participating customer agreement must be of equal duration;

(3) in addition to paying a retail bill calculated pursuant to the rates and tariffs that otherwise would apply 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 pursuant to the participating customer agreement and renewable energy contract, plus an administrative fee approved by the commission; and

a participating customer must reimburse the electrical utility for amounts paid by the electrical utility to the renewable energy supplier pursuant to this section, plus an administrative fee approved by the commission, if applicable;

(4) eligible customers must be allowed to bundle their demand under a single participating customer agreement and renewable energy contract and must be eligible annually to procure an amount of capacity as approved by the commission.

(B)(C) The commission may approve a program that provides for options that include, but are not limited to, both variable and fixed generation credit options.

(C)(D) The commission may limit the total portion of each electrical utility's voluntary renewable energy program that is eligible for the program at a level consistent with customer demand and the public interest and shall provide standard terms and conditions for the participating customer agreement and the renewable energy contract, subject to commission review and approval.

(D)(E) A participating customer shall bear the burden of any reasonable costs associated with participating in a voluntary renewable energy program. An electrical utility may not charge any nonparticipating customers for any costs incurred pursuant to the provisions of this section.

(E)(F) A renewable energy facility may be located anywhere in the electrical utility's service territory within the utility's balancing authority.

(F)(G) If the commission determines that an electrical utility has a voluntary renewable energy program on file with the commission as of the effective date of this chapter, that conforms with the requirements of this section, the utility is not required to make a new filing to meet the requirements of subsection (A)(B).

SECTION 18. Title 58 of the S.C. Code is amended by adding:

CHAPTER 43

Resilient Energy Resources and Renewable Energy Microgrids

Section 58‑43‑10. It is the intent of the General Assembly to promote and encourage customers of electrical utilities to invest in distributed energy resources to provide for energy resilience for their homes and businesses during prolonged electric grid outages, to encourage electrical utilities to make investments in the electric grid that mitigate disruptions from extreme weather, and to leverage customers’ private investments in distributed energy resources to make the grid more resilient, reliable, and efficient.

Section 58‑43‑20. For purposes of this chapter:

(1) “Critical facility” means any property within a class of buildings or facilities that are determined by the commission to be critical to public health and safety during a prolonged grid outage, including but not limited to, supercritical facilities such as police stations, fire stations, public emergency shelters, hospitals, and urgent care facilities, and subcritical facilities such as grocery stores and gas stations.

(2) “Energy storage device” means any commercially available technology, including batteries and batteries paired with onsite generation, that is capable of retaining and storing energy by chemical, thermal, mechanical, or other means for use at a later time.

(3) “Grid support services” means the dispatch and control of a resilient energy resource by an electrical utility or aggregator of distributed energy resources to provide services that contribute to the efficient or reliable operation of the grid including, but not limited to, frequency regulation, voltage support, spinning reserves, local or system peak demand reduction, demand response, and avoidance or deferral or a transmission or distribution upgrade or capacity expansion.

(4) “Renewable energy microgrid” means a group of interconnected loads and renewable or resilient energy resources, within clearly defined electrical boundaries, including at a single facility or customer premises, that acts as a single controllable entity with respect to its interaction with the electrical utility’s grid and is able to operate in parallel to the electrical utility in a grid connected mode and to operate in an island mode that electrically isolates the entity from the electrical utility’s grid. A customer with a contract demand of over 500kW may utilize combined‑heat and power or other efficient nonrenewable resource within a renewable energy microgrid provided that the nameplate capacity of the nonrenewable resource does not exceed twenty‑five percent of the total combined generating capacity, excluding capacity from any onsite battery storage, located within a renewable energy microgrid.

(5) “Resilient energy resource” means a renewable energy microgrid or renewable energy resource located on the premises of a customer of an electrical utility that is paired with an energy storage device and an advanced inverter capable of performing autonomous functions which allow such facility to operate in island mode during electrical outages to provide emergency power to onsite facilities or facilities on a microgrid, and to operate in parallel with the electrical utility’s grid under normal conditions to supply some combination of electric power and grid services to the electrical utility’s grid according to the dispatch orders or defined operational conditions of the electrical utility.

Section 58‑43‑30. (A) Electrical utilities may propose, for commission approval, programs to encourage retail customer adoption of resilient energy resource facilities across residential, commercial, municipal, industrial and other relevant customer classes of electrical utilities. Utilities must pursue federal funding and grants for these programs whenever possible. The program must provide up-front incentives for energy storage devices to retail electric customers who purchase, lease, or install a resilient energy resource on the customer’s premises or retrofit an existing distributed energy resource facility to meet the eligibility requirements of the resilient energy resource program. Residential customers must participate in the Solar Choice Program adopted pursuant to Section 58‑40‑20 to be eligible for an incentive pursuant to this section.

(B) Each electrical utility must offer an up-front incentive based on the maximum rated kilowatt output of an energy storage device to encourage customers to install and utilize a resilient energy resource for emergency back‑up power to the premises and to provide grid support services in accordance with the contract pursuant to Section 58‑43‑40. The incentive must be sufficient to support a reasonable payback period for the resilient energy resource, accounting for all value received by the retail customer through solar choice or net metering programs, revenue paid to the retail customer for providing grid support services, and the resilience value of avoided service outages or disruptions provided by the resilient energy resource.

(C) The commission must evaluate the cost‑effectiveness of the up-front incentive for energy storage devices using the Utility Cost Test. The commission must investigate adapting the Utility Cost Test for evaluating demand‑side measures to include the locational value of resilient energy resources. The commission must approve any program that is cost‑effective under that test. The commission may waive cost‑effectiveness reviews as it concerns any subprogram targeting critical facilities.

(D) An electrical utility may recover all reasonable and prudent program costs associated with administering customer incentives pursuant to this section and may include incentives offered under this section in base rates for the period of time that such facilities are enrolled in a grid-support services tariff pursuant to Section 58‑43‑40.

Section 58‑43‑40. (A) If an electrical utility proposes a resilient energy resource program, it must also propose for commission review and approval, a tariff for service and standard offer contracts that provide fair and adequate compensation to resilient energy resources for providing grid support services including, but not limited to, system peak demand reduction, local coincidental peak demand reduction, demand response, ancillary services, and other functions that are demonstrated to cost‑effectively integrate and accommodate interconnection distributed energy resources in a cost‑effective manner. The utility must propose for commission approval initial values for each type of grid support function and electrical utilities must update those values through the annual fuel adjustment proceeding and make a compliance filing to update the grid support tariff. The utility must also propose for commission approval terms and conditions for all standard offer grid support contracts that fix compensation rates for tenure options of two, five, and ten years.

(B) The owner or operator of a resilient energy resource may elect to receive direct payment for providing applicable services under a grid support tariff or designate a retail electric account on the same premises of the resilient energy resource to receive a monetary bill credit to be applied against the customer’s monthly electric bill throughout the contract term.

(C) A retail customer utilizing a resilient energy resource must not be assessed a standby charge or other additional fee or charge for operating a resilient energy resource during the contract period of a grid support service provided for in this section. Nothing in this section precludes a utility from charging a resilient energy resource for the reasonable costs of interconnection and metering required to facilitate grid support services.

(D) All compensation paid or credited to the owner or operator of a resilient energy resource facility for grid support services under an approved tariff must be recoverable through the electric utility’s fuel adjustment clause.

SECTION 19. As soon as practicable after the effective date of this act, the commission must open a proceeding to reevaluate the filing schedules for electrical utility integrated resource plans subject to commission jurisdiction pursuant to Section 58‑37‑40. The commission must establish a revised schedule for each electrical utility in order to minimize overlap between the triennial cycle of electrical utility integrated resource plan proceedings occurring after January 1, 2025. To promote administrative efficiency and the public interest, following the 2023 integrated resource plan cycle, the commission may grant a one‑time exception to Section 58‑37‑40(A) and permit or require an electrical utility to file its subsequent integrated resource plan one year earlier or one year later that would otherwise be required pursuant to Section 58‑37‑40(A).

SECTION 20. The Public Utilities Review Committee shall retain a third‑party, independent expert consultant to conduct a comprehensive study of other states’ commissions’ process of election or appointment, structures, responsibilities, qualifications, technical subject matter experts on staff, compensation, and ex parte rules and procedures. The third‑party, independent expert consultant must be selected by the Chair and Vice Chair of the Review Committee. The third‑party, independent expert consultant shall prepare and deliver this report, along with its recommendations to the General Assembly by January 1, 2025.

SECTION 21. (A) The regulatory staff must conduct a study to evaluate the potential costs and benefits of establishing a nonprofit entity to serve as a third‑party administrator for energy efficiency programs and other demand‑side management programs funded by, or potentially funded by, one or more public utility companies in this State.

(B) This study must consider the experience of third‑party energy efficiency and demand‑side management administrators in other states.

(C) The study must evaluate whether third‑party administration offers opportunities to increase cost and energy savings, improve the quality of services rendered, reduce ratepayer costs, or more effectively serve low‑income customers, within a program portfolio that is cost‑effective overall, as compared to similar program administration by individual utilities, or to increase the cost‑effectiveness of energy efficiency program portfolios. This study must consider, but is not limited to, the following:

(1) whether third‑party administration could reduce administrative costs, as compared to separate administration of energy efficiency programs on the part of one or more investor‑owned electric and gas utilities, electric cooperatives, municipally owned electric utilities, and the South Carolina Public Service Commission;

(2) whether a system benefit charge or other funding or financing mechanism would more efficiently, effectively, and fairly fund energy efficiency and other demand‑side management programs through a third‑party administrator;

(3) whether third‑party administration is an appropriate mechanism to increase ratepayer energy savings in the case of utilities that have experienced lower historical performance in terms of annual and cumulative energy savings as a percentage of retail sales;

(4) whether third‑party administration offers opportunities to more efficiently administer programs that save electricity, gas, and water, and to obtain more comprehensive energy savings for a broader range of customers, and to facilitate improved and more independent evaluation, measurement, and verification of program performance, as compared to programs separately administered by individual utilities;

(5) whether a third‑party administrator could promote more uniform program rules and offerings across utility programs and territories in a manner that facilitates enhanced participation by vendors and contractors who deliver energy efficiency services and whether such administration could facilitate workforce development to support energy efficiency and demand‑side management in South Carolina;

(6) whether a third‑party administrator could enhance delivery of nonenergy benefits such as resilience, reliability, health, economic development, energy security, and pollution reduction; and

(7) whether a third‑party administrator could effectively pursue nonratepayer funding, such as federal, state, or local governmental support, as a means of either reducing reliance of ratepayer funds or increasing the scope, reach, or effectiveness of energy efficiency and demand‑side management programs.

(D) The regulatory staff must conduct this study with assistance from the South Carolina Energy Office. This study must also be conducted with public input from stakeholders through written comments and at least one public forum.

(E) The regulatory staff is authorized to retain the services of an expert or consultant with expertise and experience in the successful implementation of independently administrated, ratepayer-funded energy efficiency programs. The regulatory staff is exempt from the procurement code for the purposes of retaining assistance services for this study for costs that do not exceed one hundred fifty thousand dollars.

(F) The regulatory staff must initiate the study either: (a) within six months after the effective date of this act if the regulatory staff does not need additional funding for this study; or (b) if additional funding is needed for this study, as soon as practicable after receiving those funds. Once the regulatory staff initiates the study, it must complete its report within twelve months and a copy must be provided to the General Assembly. This report may include recommendations and matters to consider regarding the possible creation of a statewide third‑party energy efficiency coordinator.

(G) The provisions of this section are subject to available funding.

SECTION 22. This act takes effect upon approval by the Governor.

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