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Document No.____

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

CHAPTER 103

Statutory Authority: 1976 Code Section 58-3-140, 58-37-60 (2019 Supplement), and 58-41-20 (2019 Supplement)

103-811. Procedure to Employ, through Contract or Otherwise, Qualified, Independent Third-Party Consultants or Experts.

Preamble:

The Public Service Commission of South Carolina proposes to add a regulation which provides a process for the Commission to engage qualified independent third-party consultants or experts. The proposed regulation is necessary to provide a documented and transparent public process for employing, through contract or otherwise, qualified independent third-party consultants or experts for the Commission. The Notice of Drafting regarding this regulation was published on September 27, 2019, in the *State Register, Volume 43, Issue 9.*

Section-by-Section Discussion

103-811. This section, when it becomes effective, covers the Commission's procedures for hiring qualified, independent third-party consultants or experts by utilizing a Request for Proposals process.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to the Public Service Commission, Clerk's Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210. Please reference Docket Number 2019-289-A. To be considered, comments must be received no later than 4:45 p.m. on Friday, December 27, 2019. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Public Service Commission on **Wednesday, January 29, 2020, at 2:30 p.m.** in the Commission's Hearing Room, 101 Executive Center Drive, Columbia, South Carolina 29210.

Preliminary Fiscal Impact Statement:

The Commission anticipates utilizing its current resources to handle the Request for Proposals process outlined in the proposed regulation. However, the Commission anticipates incurring additional costs related to the compensation and related costs for the employment, through contract or otherwise, of the qualified, independent third-party consultants or experts. At the time of the filing of the proposed regulation, the Commission's initial contract to hire a qualified, independent third-party consultant or expert pursuant to S.C. Code Ann. Section 58-41-20 (I) included estimated compensation of $175,000.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined pursuant to S.C. Code Ann. Section 1-23-115(C)(1) through (3) and (9) through (11).

DESCRIPTION OF REGULATION:

103-811. Procedure to Employ, through Contract or Otherwise, Qualified, Independent Third-Party Consultants or Experts

Purpose: Act 62 of 2019, or the South Carolina Energy Freedom Act, was signed by Governor

Henry McMaster on May 16, 2019. At least two sections of Act 62 reference the Commission's ability to hire external consultants or experts to assist in fulfilling the requirements of the law. S.C. Code Ann. Section 58-41-20 (I) states, in part, "The commission is authorized to employ, through contract or otherwise, third-party consultants or experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third-party consultant or expert authorized by this subsection. The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section. The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties."
Also, S.C. Code Ann. Section 58-37-60 states:

(A) The commission and the Office of Regulatory Staff are authorized to initiate an independent study to evaluate the integration of renewable energy and emerging energy technologies into the electric grid for the public interest. An integration study conducted pursuant to this section shall evaluate what is required for electrical utilities to integrate increased levels of renewable energy and emerging energy technologies while maintaining economic, reliable, and safe operation of the electricity grid in a manner consistent with the public interest. Studies shall be based on the balancing areas of each electrical utility. The commission shall provide an opportunity for interested parties to provide input on the appropriate scope of the study and also to provide comments on a draft report before it is finalized. All data and information relied on by the independent consultant in preparation of the draft study shall be made available to interested parties, subject to appropriate confidentiality protections, during the public comment period. The results of the independent study shall be reported to the General Assembly.
(B) The commission may require regular updates from utilities regarding the implementation of the state's renewable energy policies.
(C) The commission may hire or retain a consultant to assist with the independent study authorized by this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of the consultant authorized by this subsection."
The proposed regulation provides a documented procedure including, but not limited to, accepting applications from prospective consultants or experts, public interviews, and final decisions made by Commissioners related to the pool of applicants.

Legal Authority: S.C. Code Ann. Section 58-3-140, 58-37-60 (2019 Supplement), and 58-41-20 (2019 Supplement)

Plan for Implementation: The proposed regulation will take effect upon approval by the General Assembly and publication in the *State Register*. Additionally, the approval of the proposed regulation will provide a public and transparent process of the Commission's hiring of qualified, independent third-party consultants or experts.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:
The proposed Regulation 103-811 is needed and is reasonable as it provides a documented, transparent procedure for interested persons' awareness of how the Commission will hire qualified, independent third-party consultants or experts and how interested persons can participate in the Request for Proposals process.

DETERMINATION OF COSTS AND BENEFITS:
The Commission opines that it can absorb the administrative process expenditures related to the hiring of qualified, independent third-party consultants or experts. The initial estimate of $175,000 is related to one contract executed by the Commission and a qualified, independent third-party consultant or expert hired pursuant to S.C. Code Ann. Section 58-41-20 (I).

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UNCERTAINTIES OF ESTIMATES:
None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:
None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The regulation will have no detrimental effect on the environment or public health if the regulation is not implemented.

STATEMENT OF RATIONALE:

The purpose for Regulation 103-811 is to add a process for the Commission to issue Request for Proposals for qualified, independent third-party consultants or experts. Adoption of this Regulation will result in a documented, public, and transparent process of the Commission's hiring of qualified, independent third-party consultants or experts. There was no scientific or technical basis relied upon in the development of this regulation.

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Text:

103-811. Procedure to Employ, through Contract or Otherwise, Qualified, Independent Third-Party Consultants or Experts.

The Public Service Commission shall use a formal Request for Proposals process to hire, through contract or otherwise, external qualified, independent third-party consultants or experts.

Request for Proposals
External qualified, independent third-party consultants or experts shall be procured via Request for Proposals (RFP). Any proposed RFP shall be addressed by the Commission at a publicly noticed meeting where the Commission will determine whether an RFP must be released and shall state the reason(s) for the RFP. Thereafter, the Commission Staff shall prepare and publish the RFP in accordance with the Commission Directive.

Process for Opening Sealed Responses to Request for Proposals
All Request for Proposals submissions or filings to the Commission must be filed in a sealed envelope. Such submissions by prospective external qualified, independent third-party consultants or experts will remain sealed until a publicly noticed meeting. At this meeting, at the direction of the Chairman, the sealed submissions will be opened and the name(s) of the filer(s) and other relevant information as requested by the Commissioners will be revealed. The relevant information regarding the filer(s) and other general information about the filing(s) will become a part of the record for the meeting. During this meeting, the Commissioners shall approve a schedule to review the submission(s), including, but not limited to, instructing the Commission Staff to file the response(s) to the RFP in the appropriate docket on the Docket Management System; scheduling public interviews which are livestreamed or publicly video broadcasted;

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scheduling deadlines for the parties in the affected dockets to submit questions for the prospective external qualified, independent third-party consultants or experts; scheduling deadlines for the parties in the relevant dockets to file feedback, comments, etc. regarding post-interview issues; scheduling deadlines for the prospective external qualified, independent third-party consultants or experts to submit a written conflicts check letter; scheduling deadlines for the Commission to provide the prospective external qualified, independent third-party consultants or experts with proposed questions from the Commissioners.

Process for Publication of Request for Proposals

The process for RFPs shall include issuance of written Request for Proposals indicating, at a minimum, in general terms that which is sought to be procured and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications, or qualifications that will be required.

Proposals may be solicited using the following tools: social media, the Commission's website, local media, NARUC, and national job websites.

Additional Information Regarding the RFP Process

During the public interview, the external qualified, independent third-party consultants or experts shall be encouraged to elaborate on their qualifications and performance data or employee/staff expertise pertinent to the proposed project, as well as alternative concepts. Proprietary information from competing prospective external qualified, independent third-party consultants or experts shall not be disclosed to the public or to competitors.

The Commissioners shall decide to hire external qualified, independent third-party consultants or experts at a publicly noticed meeting.

If the terms and conditions for multiple awards are included in the RFP, the Commission may award contracts to more than one qualified, independent third-party consultant or expert.

Bonds on Professional Services

The Public Service Commission may require performance bonds for contracts for external qualified, independent third-party consultants or experts if provided in the RFP.

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