ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 1 of 34

Hancock, Sonya

From: PSC_Contact
Subject: FW: DN 2022-93-E and DN 2022-97-E Application of SR Lambert I, LLC for CPN RE 100 MW Solar Facility and of SR Lambert II for CPN RE Solar Farm in Georgetown County, South Carolina
Attachments: 2022-03-16.Letter to Whittier.pdf; Title 58 Chapter 33 of the SC Code.pdf; SC Code Section 58-3-260 and -270.pdf

Sonya Hancock
Public Service Commission of South Carolina
101 Executive Center Dr., Ste. 100
Columbia, South Carolina 29210
Sonya.hancock@psc.sc.gov

From: Wessinger-Hill, JoAnne <JoAnne.Hill@psc.sc.gov>
Sent: Friday, March 25, 2022 8:51 PM
To: Weston Adams <weston.adams@nelsonmullins.com>; court.walsh@nelsonmullins.com; Bateman, Andrew <abateman@ors.sc.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Hall, Roger <RHall@scconsumer.gov>; SC - RIGGIN LORIANNE; Parrish, Duane <dparrish@scprt.com>; martinsv@dhec.sc.gov; dickmajs@dhec.sc.gov; steve.davidson@nelsonmullins.com; Mustian, Ben <BMustian@ors.sc.gov>; PSC_Contact <Contact@psc.sc.gov>; Weston Adams <weston.adams@nelsonmullins.com>; court.walsh@nelsonmullins.com; steve.davidson@nelsonmullins.com; Bateman, Andrew <abateman@ors.sc.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Hall, Roger <RHall@scconsumer.gov>; SC - RIGGIN LORIANNE; Parrish, Duane <dparrish@scprt.com>; martinsv@dhec.sc.gov; dickmajs@dhec.sc.gov; Mustian, Ben <BMustian@ors.sc.gov>; SC - RIGGIN LORIANNE; Parrish, Duane <dparrish@scprt.com>; swhittier@georgetownsc.gov; aking000@mailbox.sc.edu; bobertzs@dnr.sc.gov; cjayroe@georgetownsc.gov; mney@scfc.gov; EEmerson@scdah.sc.gov
Cc: Stark, David <david.stark@psc.sc.gov>; Besley, Sharon <sharon.besley@psc.sc.gov>; Moser, Sandra <Sandra.Moser@psc.sc.gov>; Wessinger-Hill, JoAnne <JoAnne.Hill@psc.sc.gov>; Boyd, Jocelyn <Jocelyn.Boyd@psc.sc.gov>; PSC_Contact <Contact@psc.sc.gov>
Subject: DN 2022-93-E and DN 2022-97-E Application of SR Lambert I, LLC for CPN RE 100 MW Solar Facility and of SR Lambert II for CPN RE Solar Farm in Georgetown County, South Carolina

Dear Mr. Whittier and Parties of Records:

In response to the attached email from Scott Whittier, Director of the City of Georgetown Utilities & Public Works, thank you for the introduction. I have attached a copy of S.C. Utility Facility Siting and Environmental Protection Act, South Carolina Code Sections 58-33-10 *et. seq.* Since there are deadlines related to when an interested or affected party shall respond, intervene, or make filings to protect their interests, you may want to consider consulting with counsel of the City of Georgetown. Counsel would be able to review materials served upon you

or such matters filed with the Commission on the public website (www.psc.sc.gov) and in its Docket Management System. (https://dms.psc.sc.gov/Web/Dockets). A copy of all public filings in each Application are available on the DMS. Anyone can access the filings posted to the DMS.

I hope that this information is helpful. Please know that the Commission and its staff attorney do not provide legal advice. The Commissioners are quasi-judicial as they will decide the matters before through hearings and the evidence of record related to the matters pending before them as part of their regulatory duties and

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 2 of 34

responsibilities. Nothing contained herein or attached to this email is deemed legal advice. Just because this email is sent by the counsel for the Commission does not make it legal advice. It is the same material, or copies of statutes, that a member of the Commission Clerk's Office would send to members of the public. This information is also available to all persons via links found on the Commission's public website.

Please know that a copy of this email will be filed in Dockets No. 2022-93-E and 2022-97-E. This is in accordance with South Carolina Code Section 58-3-260, Commission *Ex Parte* Communications Policy, and related laws governing the Commission and Commission staff, including not limited to the Code of Judicial Conduct. All correspondence related to a matter must be posted on the Docket Management System (DMS) and must include all parties of record. This is also for the sake of transparency. Commissioners and Commission Staff (except with regard to certain administrative matters delegated to the Clerk's Office) cannot communicate in any form – whether telephone, email or fax – by voice, or in writing, without all parties being present or included. Should you decide to respond to this email, it is requested that you "REPLY ALL" so that all parties are included in the communications. The "Reply All" will also ensure that a copy of the electronic correspondence will be filed and placed the Dockets for the SR Lambert I, LLC and SR Lambert II Applications for the Certification of Environmental Compatibility and Public Convenience related to the proposed 100 MW solar farm(s). Any correspondence not filed directly in the Docket should be sent to Contact@psc.sc.gov.

With kind regards, I am

Jo Anne Wessinger Hill

C. Jo Anne Wessinger Hill, Esq.
General Counsel to the Commission
Public Service Commission
State of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210
www.psc.sc.gov
Email: JoAnne.Hill@psc.sc.gov
803-896-5100 (main) | 803-896-5188 (f) | JoAnne.Hill@psc.sc.gov

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 3 of 34

The information contained in this e-mail message is public and will be filed in the Docketing Management System (DMS) for the corresponding docketed matter. Any responsive e-mail message by you should also be filed by you in the DMS for this matter. **If the reader of this message does not want certain information, which is meant to be discussed only between the parties and not Public Service Commission of South Carolina (Commission) staff, please do not use "reply all" to this message. Any e-mail message involving the Commission or Commission staff** is also subject to the provisions of Commission Order No. 2019-748 in Docket No. 2019-329-A; shall be published in the docket for this matter; and **should also be copied to all parties of record in the docket.** If you have received this communication in error, please immediately notify us by telephone at (803) 896-5100.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 4 of 34

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 5 of 34

From: Whittier, Scott
To: PSC Contact
Subject: [External] Certification of Environmental Compatibility and Public Convenience
Date: Tuesday, March 15, 2022 11:18:18 AM

Mrs. Jocelyn Boyd,

I would like to introduce myself. My name is Scott Whittier and I work for the City of Georgetown as their Director of Utilities and Public Works. Since I am new to the state of South Carolina, I am not familiar with some of its processes. The City has received notification of the application of SR Lambert I, LLCC and SR Lambert II for the Certification of Environmental Compatibility and Public Convenience for the proposed 100 MW solar farm. I would love to have a conversation with you or someone from your office to discuss the procedure and as a recipient of the notice, what we are required to do. My direct phone line is 843-545-4611.

Thank you,
Scott

Scott Whittier | Director

City of Georgetown Utilities & Public Works

800 Church Street (29440) : PO Box 1146, Georgetown, SC 29442
Contact | **P**: 843-545-4600 | **F**: 843-527-7591 | **E**: swhittier@georgetownsc.gov

www.georgetownsc.gov

DISCOVER Georgetown SOUTH CAROLINA

where southern time
MEETS MARITIME

DiscoverGeorgetownSC.com

All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

ACCEPTED FOR PROCESSING - 2022 March 16 8:53 AM - SCPSC - 2022-93-E - Page 2 of 2

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 7 of 34

CHAPTER 33
Utility Facility Siting and Environmental Protection

ARTICLE 1
Short Title; Definitions

SECTION 58-33-10. Short title.

This chapter shall be known, and may be cited, as the "Utility Facility Siting and Environmental Protection Act".

HISTORY: 1962 Code Section 58-1801; 1971 (57) 889; 2006 Act No. 318, Section 220, eff May 24, 2006.

SECTION 58-33-20. Definitions.

Section effective until January 1, 2022. See, also, Section 58-33-20 effective January 1, 2022.

The following words, when used in this chapter, has the following meanings, unless otherwise clearly apparent from the context:

(1) The term "commission" means Public Service Commission.

(2) The term "major utility facility" means:

(a) electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts.

(b) an electric transmission line and associated facilities of a designed operating voltage of one hundred twenty-five kilovolts or more; provided, however, that the words "major utility facility" shall not include electric distribution lines and associated facilities, nor shall the words "major utility facility" include electric transmission lines and associated facilities leased to and operated by (or which upon completion of construction are to be leased to and operated by) the South Carolina Public Service Authority.

(3) The term "commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying or changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(4) The term "municipality" means any county or municipality within this State.

(5) The term "person" includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, but shall not include the South Carolina Public Service Authority.

(6) The term "public utility" or " utility" means any person engaged in the generating, distributing, sale, delivery, or furnishing of electricity for public use.

(7) The term "land" means any real estate or any estate or interest therein, including water and riparian rights, regardless of the use to which it is devoted.

(8) The term "certificate" means a certificate of environmental compatibility and public convenience and necessity.

(9) The term "regulatory staff" means the executive director or the executive director and the employees of the Office of Regulatory Staff.

HISTORY: 1962 Code Section 58-1803; 1971 (57) 889; 2006 Act No. 318, Section 221, eff May 24, 2006.

SECTION 58-33-20. Definitions.

Section effective January 1, 2022. See, also, Section 58-33-20 effective until January 1, 2022.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 8 of 34

The following words, when used in this chapter, has the following meanings, unless otherwise clearly apparent from the context:

(1) The term "commission" means Public Service Commission.

(2) The term "major utility facility" means:

(a) electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts.

(b) an electric transmission line and associated facilities of a designed operating voltage of one hundred twenty-five kilovolts or more; provided, however, that the words "major utility facility" shall not include electric distribution lines and associated facilities.

(3) The term "commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying or changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(4) The term "municipality" means any county or municipality within this State.

(5) The term "person" includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, and shall include the South Carolina Public Service Authority.

(6) The term "public utility" or "utility" means any person engaged in the generating, distributing, sale, delivery, or furnishing of electricity for public use.

(7) The term "land" means any real estate or any estate or interest therein, including water and riparian rights, regardless of the use to which it is devoted.

(8) The term "certificate" means a certificate of environmental compatibility and public convenience and necessity.

(9) The term "regulatory staff" means the executive director or the executive director and the employees of the Office of Regulatory Staff.

HISTORY: 1962 Code Section 58-1803; 1971 (57) 889; 2006 Act No. 318, Section 221, eff May 24, 2006; 2021 Act No. 90 (H.3194), Section 19, eff January 1, 2022.

Code Commissioner's Note

At the direction of the Code Commissioner, the first undesignated paragraph, which was inadvertently deleted by 2021 Act No. 90, Section 19, was reinstated.

Effect of Amendment

2021 Act No. 90, Section 19, in (2), in (b), deleted ", nor shall the words 'major utility facility' include electric transmission lines and associated facilities leased to and operated by (or which upon completion of construction are to be leased to and operated by) the South Carolina Public Service Authority" at the end; and in (5), substituted "and shall include" for "but shall not include".

ARTICLE 3
Certification of Major Utility Facilities

SECTION 58-33-110. Certificate required before construction of major utility facility; transfer and amendment of certificate; exceptions; emergency certificates.

(1) No person shall commence to construct a major utility facility without first having obtained a certificate issued with respect to such facility by the Commission. The replacement of an existing facility with a like facility, as determined by the Commission, shall not constitute construction of a major utility facility. Any facility, with respect to which a certificate is required, shall be constructed, operated and maintained in conformity with the certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this chapter; provided, however, any authorization relating to a major utility facility granted under other laws administered by the Commission shall constitute a

certificate if the requirements of this chapter have been complied with in the proceeding leading to the granting of such authorization.

(2) A certificate may be transferred, subject to the approval of the Commission, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) A certificate may be amended.

(4) This chapter shall not apply to any major utility facility:

(a) the construction of which is commenced within one year after January 1, 1972; or

(b) for which, prior to January 1, 1972, an application for the approval has been made to any federal, state, regional, or local governmental agency which possesses the jurisdiction to consider the matters prescribed for finding and determination in subsection (1) of Section 58-33-160.

(c) for which, prior to January 1, 1972, a governmental agency has approved the construction of the facility and indebtedness has been incurred to finance all or part of the cost of such construction;

(d) which is a hydroelectric generating facility over which the Federal Power Commission has licensing jurisdiction; or

(e) which is a transmission line or associated electrical transmission facilities constructed by the South Carolina Public Service Authority, for which construction either is commenced within one year after January 1, 2022, or is necessary to maintain system reliability in connection with the closure of the Winyah Generating Station, provided that such transmission is not for generation subject to this chapter.

(5) Any person intending to construct a major utility facility excluded from this chapter pursuant to subsection (4) of this section may elect to waive the exclusion by delivering notice of the waiver to the Commission. This chapter shall thereafter apply to each major utility facility identified in the notice from the date of its receipt by the Commission.

(6) The Commission shall have authority to waive the normal notice and hearing requirements of this chapter and to issue a certificate on an emergency basis if it finds that immediate construction of a major utility facility is justified by public convenience and necessity; provided, that the Public Service Commission shall notify all parties concerned under Section 58-33-140 prior to the issuance of such certificate; provided, further, that the Commission may subsequently require a modification of the facility if, after giving due consideration to the major utility facility, available technology and the economics involved, it finds such modification necessary in order to minimize the environmental impact.

(7) The Commission shall have authority, where justified by public convenience and necessity, to grant permission to a person who has made application for a certificate under Section 58-33-120 to proceed with initial clearing, excavation, dredging and construction; provided, however, that in engaging in such clearing, excavation, dredging or construction, the person shall proceed at his own risk, and such permission shall not in any way indicate approval by the Commission of the proposed site or facility.

(8)(a) Notwithstanding the provisions of item (7), and not limiting the provisions above, a person may not commence construction of a major utility facility for generation in the State of South Carolina without first having made a demonstration that the facility to be built has been compared to other generation options in terms of cost, reliability, and any other regulatory implications deemed legally or reasonably necessary for consideration by the commission. The commission is authorized to adopt rules for such evaluation of other generation options.

(b) The commission may, upon a showing of a need, require a commission-approved process that includes:

(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 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;

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 9 of 34

(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 process.

HISTORY: 1962 Code Section 58-1810; 1971 (57) 889; 2019 Act No. 62 (H.3659), Section 9, eff May 16, 2019; 2021 Act No. 90 (H.3194), Section 9, eff June 15, 2021.

Effect of Amendment

2019 Act No. 62, Section 9, added (8), providing for a mandatory demonstration before commencing construction of major utility facility.

2021 Act No. 90, Section 9, in (4), made nonsubstantive changes throughout, and added (e).

SECTION 58-33-120. Application for certificate; service on and notice to municipalities, government agencies and other persons of application.

(1) An applicant for a certificate shall file an application with the commission, in such form as the commission may prescribe. The application must contain the following information:

(a) a description of the location and of the major utility facility to be built;

(b) a summary of any studies which have been made by or for applicant of the environmental impact of the facility;

(c) a statement explaining the need for the facility; and

(d) any other information as the applicant may consider relevant or as the commission may by regulation or order require. A copy of the study referred to in item (b) above shall be filed with the commission, if ordered, and shall be available for public information.

(2) Each application shall be accompanied by proof of service of a copy of the application on the Office of Regulatory Staff, the chief executive officer of each municipality, and the head of each state and local government agency, charged with the duty of protecting the environment or of planning land use, in the area in the county in which any portion of the facility is to be located. The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(3) Each application also must be accompanied by proof that public notice was given to persons residing in the municipalities entitled to receive notice under subsection (2) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in newspapers of general circulation as will serve substantially to inform such persons of the application.

(4) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies, or persons identified in subsections (2) and (3) of this section may be cured pursuant to orders of the commission designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the commission may, after filing, require the applicant to serve notice of the application or copies thereof, or both, upon such other persons, and file proof thereof, as the commission may deem appropriate.

(5) An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe. Notice of the application shall be given as set forth in subsections (2) and (3) of this section.

HISTORY: 1962 Code Section 58-1811; 1971 (57) 889; 2006 Act No. 318, Section 222, eff May 24, 2006.

SECTION 58-33-130. Hearings.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 10 of 34

(1) Upon the receipt of an application complying with Section 58-33-120, the Commission shall promptly fix a date for the commencement of a public hearing, not less than sixty nor more than ninety days after the receipt, and shall conclude the proceedings as expeditiously as practicable. The testimony presented at the hearing may be presented in writing or orally, provided that the Commission may make rules designed to exclude repetitive, redundant or irrelevant testimony.

(2) On an application for an amendment of a certificate, the Commission shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any significant increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility; provided, that the Public Service Commission shall forward a copy of the application to all parties upon the filing of an application.

HISTORY: 1962 Code Section 58-1812; 1971 (57) 889.

SECTION 58-33-140. Parties to certification proceedings; limited appearances; intervention.

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

(a) the applicant;

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

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

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

(2) Any person may make a limited appearance in the sixty days after the date given in the published notice as the date for filing the application. No person making a limited appearance shall be a party or shall have the right to present oral testimony or argument or cross-examine witnesses.

(3) The commission may, in extraordinary circumstances for good cause shown, and giving consideration to the need for timely start of construction of the facility, grant a petition for leave to intervene as a party to participate in subsequent phases of the proceeding, filed by a municipality, government agency, person, or organization which is identified in paragraphs (b) or (c) of subsection (1) of this section, but which failed to file a timely notice of intervention or petition for leave to intervene, as the case may be.

HISTORY: 1962 Code Section 58-1813; 1971 (57) 889; 1993 Act No. 181, Section 1568, eff July 1, 1994; 2006 Act No. 318, Section 223, eff May 24, 2006.

SECTION 58-33-150. Record of proceedings; consolidation of representation of parties.

A record shall be made of the hearing and of all testimony taken and the cross-examination thereon. Upon request of a party, either before or after the decision, a State agency which proposes to or does require a condition to be included in the certificate as provided for in Section 58-33-160 shall furnish for the record all factual findings, documents, studies, rules, regulations, standards, or other documentation, supporting the condition. The Commission may provide for the consolidation of the representation of parties having similar interests.

HISTORY: 1962 Code Section 58-1814; 1971 (57) 889.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 11 of 34

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 12 of 34

SECTION 58-33-160. Decision of Commission.

(1) The Commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the major utility facility as the Commission may deem appropriate; such conditions shall be as determined by the applicable State agency having jurisdiction or authority under statutes, rules, regulations or standards promulgated thereunder, and the conditions shall become a part of the certificate. The Commission may not grant a certificate for the construction, operation and maintenance of a major utility facility, either as proposed or as modified by the Commission, unless it shall find and determine:

(a) The basis of the need for the facility.

(b) The nature of the probable environmental impact.

(c) That the impact of the facility upon the environment is justified, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.

(d) That the facilities will serve the interests of system economy and reliability.

(e) That there is reasonable assurance that the proposed facility will conform to applicable State and local laws and regulations issued thereunder, including any allowable variance provisions therein, except that the Commission may refuse to apply any local law or local regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics or of the needs of consumers whether located inside or outside of the directly affected government subdivisions.

(f) That public convenience and necessity require the construction of the facility.

(2) If the Commission determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities and persons residing therein affected by the modification shall have been given reasonable notice.

(3) A copy of the decision and any opinion shall be served by the Commission upon each party.

HISTORY: 1962 Code Section 58-1815; 1971 (57) 889.

SECTION 58-33-170. Opinion of Commission.

In rendering a decision on an application for a certificate, the Commission shall issue an opinion stating its reasons for the action taken. If the Commission has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (e) of subsection (1) of Section 58-33-160, it shall state in its opinion the reasons therefor.

HISTORY: 1962 Code Section 58-1816; 1971 (57) 889.

SECTION 58-33-180. Additional requirements regarding construction of a major utility facility.

Section effective January 1, 2022.

(A)(1) In addition to the requirements of Articles 1, 3, 5, and 7 of Chapter 33, Title 58, a certificate for the construction of a major utility facility shall be granted only if the Public Service Authority demonstrates and proves by a preponderance of the evidence and the commission finds:

(a) the construction of a major utility facility constitutes a more cost-effective means for serving direct serve and wholesale customers than other feasibly available long-term power supply alternatives and provides less ratepayer risk while maintaining safe and reliable electric service than other feasibly available long-term power supply alternatives; and

(b) energy efficiency measures; demand-side management; renewable energy resource generation; available long-term power supply alternatives, or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system and that the construction and operation of the facility is in the public interest.

(2) Available long-term power supply alternatives may include, but are not limited to, power purchase agreements, competitive procurement of renewable energy, joint dispatch agreements, market purchases from an existing regional transmission organization, joining or creating a new regional transmission organization, using best available technology for energy generation, transmission, storage and distribution, or any combination thereof.

(3) The commission shall consider any previous analysis performed pursuant to Section 58-37-40 in acting upon any petition by the Public Service Authority pursuant to this section. The commission shall also take into account the Public Service Authority's resource and fuel diversity, reasonably anticipated future operating costs, arrangements with other electric utilities for interchange of power, pooling of plants, purchase of power and other alternative methods for providing reliable, efficient, and economical electric service.

(B) The Public Service Authority shall file an estimate of construction costs in such detail as the commission may require. No certificate shall be granted unless the commission has approved the estimated construction costs and made a finding that construction will be consistent with the Authority's commission-approved plan for expansion of electric generating capacity.

HISTORY: 2021 Act No. 90 (H.3194), Section 20, eff January 1, 2022.

SECTION 58-33-185. Additional requirements regarding acquisition of a major utility facility.

Section effective January 1, 2022.

(A) The Public Service Authority may not enter into a contract for the acquisition of a major utility facility without approval of the Public Service Commission of South Carolina, provided that the approval is required only to the extent the transaction is not subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission or any other federal agency.

(B)(1) In acting upon any petition by the Public Service Authority pursuant to this section, the Public Service Authority must prove by a preponderance of the evidence that the proposed transaction constitutes a more cost-effective means for serving direct serve and wholesale customers than other feasibly available long-term power supply alternatives and provides less ratepayer risk while maintaining safe and reliable electric service than other feasibly available long-term power supply alternatives. The commission shall consider any previous analysis performed pursuant to Section 58-37-40 in acting upon any petition by the Public Service Authority pursuant to this section. The commission shall also take into account the Public Service Authority's arrangements with other electric utilities for interchange of power, pooling of plants, purchase of power and other alternative methods for providing reliable, efficient, and economical electric service.

(2) Available long-term power supply alternatives may include, but not be limited to, power purchase agreements of a different duration than proposed, competitive procurement of renewable energy, joint dispatch agreements, market purchases from an existing regional transmission organization, joining or creating a new regional transmission organization, using best available technology for energy generation, transmission, storage and distribution, or any combination thereof.

(C) Application for the approval of the commission shall be made by the Public Service Authority and shall contain a concise statement of the proposed action, the reasons therefor, and such other information as may be required by the commission.

(D) Upon the receipt of an application, the commission shall promptly fix a date for the commencement of a public hearing, not less than sixty nor more than ninety days after the receipt, and shall conclude the proceedings as expeditiously as practicable. The commission shall establish notice requirements and proceedings shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing.

(E) The commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications as the commission may deem appropriate.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 13 of 34

(F)(1) The commission may not grant approval unless it shall find and determine that the Public Service Authority satisfied all requirements of this section and the proposed transaction is in the best interests of the retail and wholesale customers of the Public Service Authority.

(2) The commission also may require compliance with any provision of Article 3, Chapter 33, Title 58 that the commission determines necessary to grant approval.

HISTORY: 2021 Act No. 90 (H.3194), Section 20, eff January 1, 2022.

SECTION 58-33-190. Additional requirements regarding purchase of a major utility facility.

Section effective January 1, 2022.

(1) The Public Service Authority may not enter into a contract for the purchase of power with a duration longer than ten years without approval of the Public Service Commission of South Carolina, provided that the approval is required only to the extent the transaction is not subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission or any other federal agency. This section does not apply to purchases of renewable power through a commission approved competitive procurement process.

(2) The commission shall consider any previous analysis performed pursuant to Section 58-37-40 in acting upon any petition by the Public Service Authority pursuant to this section. The commission shall also take into account the Public Service Authority's resource and fuel diversity, reasonably anticipated future operating costs, arrangements with other electric utilities for interchange of power, pooling of plants, purchase of power, and other alternative methods for providing reliable, efficient, and economical electric service.

(3) The commission may not grant approval unless it shall find and determine that the proposed transaction is in the best interests of the retail and wholesale customers of the Public Service Authority.

HISTORY: 2021 Act No. 90 (H.3194), Section 20, eff January 1, 2022.

ARTICLE 4
Base Load Review Act

Editor's Note
2018 Act No. 258, Sections 2.A and 2.B, provide as follows:
"SECTION 2. A. As of the effective date of this act, the Public Service Commission must not accept a base load review application, nor may it consider any requests made pursuant to Article 4, Chapter 33, Title 58 other than in a docket currently pending before the commission.
"B. The provisions of Article 4, Chapter 33, Title 58 are repealed upon the conclusion of litigation concerning the abandonment of V.C. Summer Units 2 and 3."
2018 Joint Resolution 285 (S.954), Sections 1 to 3, provide as follows:
"SECTION 1. The Public Service Commission shall not hold a hearing on the merits before November 1, 2018, for a docket in which requests were made pursuant to the Base Load Review Act; however, the Public Service Commission may hold an administrative or procedural hearing for such a docket prior to a hearing on the merits. The Public Service Commission must issue a final order on the merits for a docket in which requests were made pursuant to the Base Load Review Act no later than December 21, 2018.
"SECTION 2. No final determination of matters described in this joint resolution, whether by a final order issued by the Public Service Commission or by operation of law, shall occur earlier than the time period prescribed in SECTION 1. The Public Service Commission's failure to issue a final order prior to the time period established in this joint resolution shall not constitute approval by the Public Service Commission and a utility must not put into effect the change in rates it requested in its schedule.
"SECTION 3. Any statute in Title 58 in conflict with the provisions of this joint resolution are suspended for purposes of the utility rates for matters related to V.C. Summer Nuclear Reactor Units 2 and 3 at

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 14 of 34

Jenkinsville, South Carolina. This suspension remains in effect until the Public Service Commission issues its final order in this matter."

SECTION 58-33-210. Citation and applicability of article.

This article is known, and may be cited, as the "Base Load Review Act" and is applicable to utilities as defined in Section 58-33-220 of this article.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

Editor's Note

2007 Act No. 16, Section 1.(A), provides as follows:

"The purpose of Article 4 of Chapter 33 of Title 58, added by Section 2 of this act, is to provide for the recovery of the prudently incurred costs associated with new base load plants, as defined in Section 58-33-220 of Article 4, when constructed by investor-owned electrical utilities, while at the same time protecting customers of investor-owned electrical utilities from responsibility for imprudent financial obligations or costs."

SECTION 58-33-220. Definitions.

The following terms, when used in this article, shall have the following meanings, unless another meaning is clearly apparent from the context:

(1) "AFUDC" means the allowance for funds used during construction of a plant calculated according to regulatory accounting principles.

(2) "Base load plant" or "plant" means a new coal or nuclear fueled electrical generating unit or units or facility that is designed to be operated at a capacity factor exceeding seventy percent annually, has a gross initial generation capacity of three hundred fifty megawatts or more, and is intended in whole or in part to serve retail customers of a utility in South Carolina, and for a coal plant, includes Best Available Control Technology, as defined by the United States Environmental Protection Agency, for the control of air emissions.

(3) "Base load review application" or "application" means an application for a base load review order under the terms of this article.

(4) "Base load review order" means an order issued by the commission pursuant to Section 58-33-270 establishing that if a plant is constructed in accordance with an approved construction schedule, approved capital costs estimates, and approved projections of in-service expenses, as defined herein, the plant is considered to be used and useful for utility purposes such that its capital costs are prudent utility costs and are properly included in rates.

(5) "Capital costs" or "plant capital costs" means costs associated with the design, siting, selection, acquisition, licensing, construction, testing, and placing into service of a base load plant, and capital costs incurred to expand or upgrade the transmission grid in order to connect the plant to the transmission grid and includes costs that may be properly considered capital costs associated with a plant under generally accepted principles of regulatory or financial accounting, and specifically includes AFUDC associated with a plant and capital costs associated with facilities or investments for the transportation, delivery, storage, and handling of fuel.

(6) "Combined application" means a base load review application which is combined with an application for a certificate under the Utility Facility Siting and Environmental Protection Act, or which involves a plant located outside of the State of South Carolina, and at the utility's option may be combined with an application for new electric rates under Section 58-27-860.

(7) "Combined proceeding" means a proceeding to consider all aspects of a combined application.

(8) "Construction work in progress" means capital costs as defined above associated with a base load plant which have been incurred but have not been included in the utility's plant-in-service.

(9) "General rate proceeding" means a proceeding under Section 58-27-810 and other applicable provisions for the establishment of new electric rates and charges, and where orders in general rate

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 15 of 34

proceedings are referenced in this article, these orders include rate orders issued in proceedings or combined proceedings under this article.

(10) "In-service expenses" means reasonably projected expenses recognized under generally accepted principles of regulatory and financial accounting as a result of a plant commencing commercial operation, including:

(a) expenses associated with operating and maintaining a plant, as well as taxes and governmental charges applicable to the plant including taxes other than income taxes;

(b) depreciation and amortization expenses related to the plant;

(c) revenue requirements related to the utility's cost of capital applied to the investment in supplies, inventories, and working capital associated with the plant; and

(d) other costs determined by the commission to be appropriate for ratemaking purposes. In-service expenses include, but are not limited to, labor, supplies, insurance, general and administrative expenses, and the cost of outside services, but do not include costs recovered as fuel costs pursuant to Section 58-27-865.

(11) "Person" means any individual, group, firm, partnership, or corporation.

(12) "Preconstruction costs" means all costs associated with a potential nuclear plant incurred before issuance of a final certificate under the Utility Facility Siting and Environmental Protection Act, including, without limitation, the costs of evaluation, design, engineering, environmental and geotechnical analysis and permitting, contracting, other required permitting including early site permitting and combined operating license permitting, and initial site preparation costs and related consulting and professional costs, and shall include AFUDC associated with those costs. For potential nuclear plants located in other states, the costs must be those incurred before issuance of a certificate by the host state under statutes comparable to the Utility Facility Siting and Environmental Protection Act.

(13) "Proceeding" means the proceeding to consider an application filed under this chapter.

(14) "Project development application" means an application for a project development order.

(15) "Project development order" means an order establishing the prudence of a utility's decision to incur preconstruction costs associated with a nuclear plant or potential nuclear plant.

(16) "Return on equity" means the return on common equity established in the base load review order for a plant. But, if the order in the utility's most recent general rate proceeding was issued no more than five years before the date of filing of the application or combined application, or if such an order is issued after the application, combined application or base load review order related to the plant is filed, then at the utility's option, the rate of return on common equity established in that order shall be the rate of return used for computing future rate revisions under this article. A project-specific return on equity set hereunder shall apply exclusively to the establishment of the weighted average cost of capital under this article and shall not be used for reporting or any other purpose.

(17) "Revised rates" means a revised schedule of electric rates and charges reflecting a change to the utility's then current nonfuel rates and charges to add incremental revenue requirements related to a base load plant as authorized in this article. For a nuclear plant under construction, until it enters commercial operation the rate adjustments related to the plant shall include recovery of the weighted average cost of capital applied to the outstanding balance of capital costs of that plant only and shall not include depreciation or other items constituting a return of capital to the utility. For a coal plant, no revised rates shall be allowed except that an adjustment under Section 58-33-280(J)(1) shall be permitted to take effect on or after the date commercial operations of the plant commence.

(18) "Revised rates order" means an order issued by the commission approving, modifying, or denying the utility's request to charge revised rates under this article, which revised rates order an aggrieved party may contest in an adversarial hearing before the commission.

(19) "Revised rates proceedings" means all proceedings to consider an application for revised rates or review of a revised rates order.

(20) "Utility" means a person owning or operating equipment or facilities for generating, transmitting, or delivering electricity to South Carolina retail customers for compensation but it shall not include electric cooperatives, municipalities, the South Carolina Public Service Authority, or a person furnishing electricity

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 16 of 34

only to himself, itself, its residents, employees, or tenants when the electricity is not resold or used by others.

(21) "Utility Facility Siting and Environmental Protection Act" means Section 58-33-10 and other applicable provisions of this chapter.

(22) "Weighted average cost of capital" or "cost of capital" means the utility's average cost of debt and equity capital:

(a) incorporating the return on equity;

(b) incorporating the utility's current weighted average cost of debt;

(c) weighting (a) and (b) according to the utility's capital structure for ratemaking purposes, as established in the order in the utility's last general rate proceeding, updated to reflect the utility's current levels of debt and equity capital; and

(d) adjusting the result for the effect of income taxes.

(23) "Imprudent" or "imprudence" includes, but is not limited to, lack of caution, care, or diligence as determined by the commission in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project, or any other person acting on behalf of or for the utility affecting the project. Imprudent or imprudence includes, but does not require, a finding of negligence, carelessness, or recklessness.

Imprudence on behalf of any contractor, subcontractor, agent, or person hired to construct a plant or perform any action or service on behalf of the utility shall be attributed to the utility.

(24) "Prudent", "prudence", or "prudency" means a high standard of caution, care, and diligence in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project, or any other person acting on behalf of or for the utility affecting the project.

To the extent a utility enters a contract with a third party that delegates some or all decision-making authority related to the project, the utility retains the burden of establishing the prudency of specific items of cost or specific third-party decisions.

"Prudent", "prudence", or "prudency" also requires that any action or decision be made in a timely manner. In determining whether any action or decision was prudent, the commission shall consider, including, but not limited to:

(a) whether the utility acts in a timely manner, with any passage of time which results in increased costs or expense prior to the utility acting or making the decision weighing against a finding of prudency;

(b) whether prior actions or decisions by the utility were imprudent and such imprudent actions led to a decision by the utility that could otherwise be prudent. Such circumstances weigh against a finding of prudency; and

(c) any other relevant factors, including commission of a fraudulent act, which are deemed not to be prudent.

As used in item (c), "fraud" includes, in addition to its normal legal connotation, concealment, omission, misrepresentation, or nondisclosure of a material fact in any proceeding or filing before the commission or Office of Regulatory Staff. Proceedings and filings to which the provisions of this paragraph apply include, but are not limited to, rate or revised rate filings, responsive filings, motions, pleadings, briefs, memoranda, document requests, and other communications before the commission or Office of Regulatory Staff.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007); 2018 Act No. 258 (H.4375), Section 1, eff June 28, 2018.

Editor's Note

2018 Act No. 258, Section 12, provides as follows:

"SECTION 12. This act takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before the Public Service Commission or in any other court or venue on or after the effective date of this act."

Effect of Amendment

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 17 of 34

2018 Act No. 258, Section 1, added (23), relating to the definition of "imprudent", and added (24), relating to the definition of "prudent".

SECTION 58-33-225. Project development applications; prudency determinations; disallowance of imprudent costs; deferral of costs of abandoned project.

(A) The provisions of this section apply to the preconstruction costs of a nuclear-powered facility.

(B) At any time before the filing of an application or a combined application under this act related to a specific plant, a utility may file a project development application with the commission and the office of regulatory staff.

(C) In a project development application, the utility shall:

(1) describe the plant being considered and shall designate:

(a) the anticipated generation capacity (or range of capacity) of the plant; and

(b) the projected annual capacity factors or range of factors of the plant;

(2) provide information establishing the need for the generation capacity represented by the potential plant and the need for generation assets with the indicative annual capacity factors of the potential plant;

(3) provide information establishing the reasonableness and prudence of the potential fuel sources and potential generation types that the utility is considering for the plant; and

(4) provide such other information as may be required to establish that the decision to incur preconstruction costs related to the potential nuclear plant is prudent considering the information known to the utility at the time and considering the other alternatives available to the utility for supplying its generation needs.

(D) The commission shall issue a project development order affirming the prudency of the utility's decision to incur preconstruction costs for the nuclear plant specified in the application if the utility demonstrates by a preponderance of evidence that the decision to incur preconstruction costs for the plant is prudent. In issuing its project development order, the commission may not rule on the prudency or recoverability of specific items of cost, but shall rule instead on the prudency of the decision to incur preconstruction costs for the nuclear plant described in Section 58-33-225(C)(1).

(E) Unless the record in a subsequent proceeding shows that individual items of cost were imprudently incurred, or that other decisions subsequent to the issuance of a project development order were imprudently made considering the information available to the utility at the time they were made, then all the preconstruction costs incurred for the potential nuclear plant must be properly included in the utility's plant-in-service and must be recoverable fully through rates in future proceedings under this chapter.

(F) To the extent that a party in a general rate proceeding or revised rates proceeding establishes the imprudence of specific items of cost or of specific decisions made subsequent to the issuance of a project development order as set forth in Section 58-33-225(E), then the commission may disallow the resulting costs but only to the extent that a prudent utility would have avoided those costs considering the information available to the utility at the time when they were incurred or the decisions at issue were made.

(G) If the utility decides to abandon the project after issuance of a prudency determination under this section, then the preconstruction costs related to that project may be deferred, with AFUDC being calculated on the balance, and may be included in rates in the utility's next general rate proceeding or revised rates proceeding, provided that as to the decision to abandon the plant, the utility shall bear the burden of proving by a preponderance of the evidence that the decision was prudent. Without in any way limiting the effect of Section 58-33-225(D), recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs. Pending an order in the general rate proceeding or revised rates proceeding, the utility, at its discretion, may commence to amortize to cost of service the balance of the preconstruction costs related to the abandoned project over a period equal to the period during which the costs were incurred, or five years, whichever is greater.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 18 of 34

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 19 of 34

(H) Prudency determinations under Section 58-33-225(D) may not be challenged or reopened in any subsequent proceeding including proceedings under Section 58-27-810 and other applicable provisions and Section 58-33-220 and other applicable provisions of this article.

(I) At any time after an initial project development order has been issued, a utility may file an amended project development application seeking a determination of the prudency of the utility's decision to continue to incur preconstruction costs considering changed circumstances or changes in the type or location of nuclear plant that the utility is pursuing or considering other characteristics or decisions related to the plant. The amended project development application must be considered in a separate docket; however, the testimony and other evidence of the prior docket must be considered to be part of the new docket.

(J) Pursuant to Section 58-33-240, the commission shall enter an order granting or denying a project development order or amended project development order within six months of the filing of the application. If the commission fails to issue an order within the period prescribed in this section, a party may move that the commission issue an order granting or denying the application. If the commission fails to issue an order within ten days after the motion is served, the application will be considered granted.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-230. Filing applications for proposed construction with commission; copy to and role of Office of Regulatory Staff; application for certificate under Utility Facility Siting and Environmental Protection Act for plants inside South Carolina and plants outside South Carolina serving residents.

(A) Any utility proposing to construct a plant, individually or jointly with other parties, may elect to come under the terms of this article by filing an application or combined application with the commission, and by serving a copy of that application or combined application on the Office of Regulatory Staff.

(B) If the plant is to be located in South Carolina and no application for a certificate under the Utility Facility Siting and Environmental Protection Act has previously been granted or is then pending, the utility shall file a combined application under this article.

(C) If the plant is to be located outside South Carolina but will serve retail customers in this State, the utility shall file a combined application, but as to the Utility Facility Siting and Environmental Protection Act, the combined application shall address only the requirements of Section 58-33-160(1)(a), (d), and (f), and information pertaining to the environmental impacts of the plant may not be included in the combined application. In issuing the resulting order as to the Utility Facility Siting and Environmental Protection Act, the commission shall make the determinations required under Section 58-33-160(1)(a), (d) and (f) only.

(D) For plants located outside South Carolina that will serve retail customers in this State, the issuance of a certificate for the plant by the host state after a review of issues comparable to those considered under Section 58-33-160(1)(a), (d) and (f) of the Utility Facility Siting and Environmental Protection Act shall create a rebuttable presumption that the requirements of those sections are satisfied.

(E) An application or combined application may be combined with a general rate proceeding application at the utility's option.

(F) The Office of Regulatory Staff shall safeguard the public interest in all matters arising under this article. It shall have full audit rights related to all matters arising under this article and shall review the reasonableness and necessity of all costs to be recovered under this article.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-240. Applicability of procedural requirements for general rate proceedings; notice; burden of proof as to prudence of decision to build plant; deadlines.

(A) Except as otherwise specified in this article, all procedural requirements that apply to general rate proceedings by law or regulation shall apply to proceedings and combined proceedings, to revised rates proceedings, and to the judicial review of orders issued under this article. The requirements related to the

form and content of applications in general rate proceedings, however, only shall apply to proceedings or combined proceedings which include an application for new electric rates under Section 58-27-860 and only shall apply to that part of the application or combined application which is filed under Section 58-27-860.

(B) As to combined proceedings, the procedural requirements related to general rate proceedings shall control over any inconsistent provisions in other statutes; provided, however, that provisions of Section 58-33-140 of the Utility Facility Siting and Environmental Protection Act related to parties and appearances shall apply to proceedings involving facilities located in this State to the extent parties seek to appear to raise issues arising under that act.

(C) In proceedings to review revised rates orders, no further notice to the public, customers, and others is required additional to that provided upon filing of the proceeding or combined proceeding. In proceedings to review revised rates orders, the utility's revised rates filing shall serve as the application and the utility must be considered to be the applicant.

(D) In proceedings and combined proceedings, the utility shall have the burden of proving that the decision to build the plant was prudent, and shall have the burden of proof as to all matters on which the commission is required to enter findings under Section 58-33-270(A), (B), (C), (D), and (E). Without in any way limiting the conclusive effect of determinations under Section 58-33-225 and Section 58-33-275, in cases where this statute allows a party to challenge the prudency of any transaction, cost, or decision of the utility, that party shall be required to make a prima facie case establishing imprudence, and thereafter the burden of proof shall shift to the utility to demonstrate the prudence of the transaction cost, or decision by a preponderance of the evidence.

(E) In proceedings and combined proceedings, the deadlines contained in Section 58-27-870(B) and (C) shall be nine months.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-250. Application for baseline review; contents.

The application for a base load review order under this article shall include:

(1) information showing the anticipated construction schedule for the plant;

(2) information showing the anticipated components of capital costs and the anticipated schedule for incurring them;

(3) information showing the projected effect of investment in the plant on the utility's overall revenue requirement for each year during the construction period;

(4) information identifying:

(a) the specific type of units selected for the plant;

(b) the suppliers of the major components of the plant; and

(c) the basis for selecting the type of units, major components, and suppliers;

(5) information detailing the qualification and selection of principal contractors and suppliers, other than those listed in item (4)(c) above, for construction of the plant;

(6) information showing the anticipated in-service expenses associated with the plant for the twelve months following commencement of commercial operation adjusted to normalize any atypical or abnormal expense levels anticipated during that period;

(7) information required by Section 58-33-270(B)(6);

(8) information identifying risk factors related to the construction and operation of the plant;

(9) information identifying the proposed rate design and class allocation factors to be used in formulating revised rates;

(10) information identifying the return on equity proposed by the utility pursuant to Section 58-33-220(16); and

(11) the revised rates, if any are requested, that the utility intends to put in place after issuance of the resulting base load review order.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 20 of 34

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 21 of 34

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-260. Combined application; contents.

(A) A combined application must contain:

(1) an introduction;

(2) material required by law or regulation to be contained in an application filed under the Utility Facility Siting and Environmental Protection Act, except that combined applications associated with plants located outside South Carolina shall address only Section 58-33-160(1)(a), 58-33-160(1)(d), and 58-33-160(1)(f) and information pertaining to the environmental impacts of the plant may not be included in the combined application;

(3) the material required by law or regulation to be contained in an application under this article, including the material required under Section 58-33-250;

(4) if combined with a general rate proceeding, the material required to be filed by law or regulation in applications for the establishment of new rates under Section 58-27-860; and

(5) if the plant is located outside South Carolina, a copy of the order from the host state granting a certificate or other authorization similar to that granted under the Utility Facility Siting and Environmental Protection Act.

(B) Where the same information is required in different sections of the combined application, it may be set forth once and cross-referenced as appropriate.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-270. Base load review orders; contents; petition for modification; settlement agreements between Office of Regulatory Staff and applicant.

(A) After the hearing, the commission shall issue a base load review order approving rate recovery for plant capital costs if it determines:

(1) that the utility's decision to proceed with construction of the plant is prudent and reasonable considering the information available to the utility at the time;

(2) for plants located in this State, that the utility has satisfied the requirements of Section 58-33-160 of the Utility Facility Siting and Environmental Protection Act, either in a past proceeding or in the current proceeding if the current proceeding is a combined proceeding; and

(3) for plants located outside South Carolina, that the utility has satisfied the requirements of Section 58-33-160(1)(a), 58-33-160(1)(d), and 58-33-160(1)(f) of the Utility Facility Siting and Environmental Protection Act.

(B) The base load review order shall establish:

(1) the anticipated construction schedule for the plant including contingencies;

(2) the anticipated components of capital costs and the anticipated schedule for incurring them, including specified contingencies;

(3) the return on equity established in conformity with Section 58-33-220(16);

(4) the choice of the specific type of unit or units and major components of the plant;

(5) the qualification and selection of principal contractors and suppliers for construction of the plant; and

(6) the inflation indices used by the utility for costs of plant construction, covering major cost components or groups of related cost components. Each utility shall provide its own indices, including: the source of the data for each index, if the source is external to the company, or the methodology for each index which is compiled from internal utility data, the method of computation of inflation from each index, a calculated overall weighted index for capital costs, and a five-year history of each index on an annual basis.

(C) If revised rates are requested, the base load review order shall specify initial revised rates reflecting the utility's current investment in the plant which must be determined using the standards set forth in Section 58-33-280(B) and implemented according to Section 58-33-280(D).

(D) The base load review order shall establish the rate design and class allocation factors to be used in calculating revised rates related to the plant. In establishing revised rates, all factors, allocations, and rate designs shall be as determined in the utility's last rate order or as otherwise previously established by the commission, except that the additional revenue requirement to be collected through revised rates shall be allocated among customer classes based on the utility's South Carolina firm peak demand data from the prior year.

(E) As circumstances warrant, the utility may petition the commission, with notice to the Office of Regulatory Staff, for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form part of any base load review order issued under this section. The commission shall grant the relief requested if, after a hearing, the commission finds:

(1) as to the changes in the schedules, estimates, findings, or conditions, that the evidence of record justifies a finding that the changes are not the result of imprudence on the part of the utility; and

(2) as to the changes in the class allocation factors or rate designs, that the evidence of record indicates the proposed class allocation factors or rate designs are just and reasonable.

(F) The commission shall consider a request under Section 58-33-270(E) in a new docket which pursuant to Section 58-33-240 must be subject to the requirement that the relief requested in this article is considered granted if not denied by order within six months of the date of filing. If the commission fails to issue an order within the period prescribed in this section, a party may move that the commission issue an order granting or denying the application. If the commission fails to issue an order within ten days after the motion is served, the application will be considered granted.

(G) The commission promptly shall schedule a hearing to consider any settlement agreement entered into between the Office of Regulatory Staff, as the party representing the public interest in the proceedings, and the utility applicant, provided that all parties shall have been given a reasonable opportunity to conduct discovery in the docket by the time the hearing is held. The commission may accept the settlement agreement as disposing of the matter, and issue an order adopting its terms, if it determines that the terms of the settlement agreement comport with the terms of this act.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-275. Base load review orders; parameters; challenges; recovery of capital costs.

(A) A base load review order shall constitute a final and binding determination that a plant is used and useful for utility purposes, and that its capital costs are prudent utility costs and expenses and are properly included in rates so long as the plant is constructed or is being constructed within the parameters of:

(1) the approved construction schedule including contingencies; and

(2) the approved capital costs estimates including specified contingencies.

(B) Determinations under Section 58-33-275(A) may not be challenged or reopened in any subsequent proceeding, including proceedings under Section 58-27-810 and other applicable provisions and Section 58-33-280 and other applicable provisions of this article.

(C) So long as the plant is constructed or being constructed in accordance with the approved schedules, estimates, and projections set forth in Section 58-33-270(B)(1) and 58-33-270(B)(2), as adjusted by the inflation indices set forth in Section 58-33-270(B)(5), the utility must be allowed to recover its capital costs related to the plant through revised rate filings or general rate proceedings.

(D) Changes in fuel costs will not be considered in conducting any evaluation under this section.

(E) In cases where a party proves by a preponderance of the evidence that there has been a material and adverse deviation from the approved schedules, estimates, and projections set forth in Section 58-33-270(B)(1) and 58-33-270(B)(2), as adjusted by the inflation indices set forth in Section 58-33-270(B)(5), the commission may disallow the additional capital costs that result from the deviation,

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 22 of 34

but only to the extent that the failure by the utility to anticipate or avoid the deviation, or to minimize the resulting expense, was imprudent considering the information available at the time that the utility could have acted to avoid the deviation or minimize its effect.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-277. Reports; contents; on-going monitoring by Office of Regulatory Staff.

(A) After issuance of a base load review order approving rate recovery for capital costs related to the plant, the utility will file reports with the Office of Regulatory Staff quarterly until the plant begins commercial operation. These reports must be filed no later than forty-five days after the close of a quarter, shall not be combined with any other filing, and shall contain the following information:

(1) the progress of construction of the plant;

(2) updated construction schedules;

(3) schedules of the capital costs incurred including updates to the information required by Section 58-33-270(B)(5);

(4) updated schedules of the anticipated capital costs; and

(5) other information as the Office of Regulatory Staff may require.

(B) The Office of Regulatory Staff shall conduct on-going monitoring of the construction of the plant and expenditure of capital through review and audit of the quarterly reports under this article, and shall have the right to inspect the books and records regarding the plant and the physical progress of construction upon reasonable notice to the utility.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-280. Requests for approval of revised rates.

(A) No earlier than one year after filing the application or combined application, and no more frequently than annually thereafter, the utility may file with the commission and serve on the Office of Regulatory Staff requests for the approval of revised rates subsequent to those approved in the base load review order.

(B) A utility must be allowed to recover through revised rates its weighted average cost of capital applied to all or, at the utility's option, part of the outstanding balance of construction work in progress, calculated as of a date specified in the filing. Any construction work in progress not included in any specific filing for revised rates shall continue to earn AFUDC and may be included in rates through future filings. The revised rates filing shall include the most recent monitoring report filed under Section 58-33-277(A) updated to reflect information current as of the date specified in the filing.

(C) Written comments to the commission and the Office of Regulatory Staff concerning the revised rates and the information supporting them shall be allowed within one month of the revised rates filing.

(D) The Office of Regulatory Staff shall review and audit the revised rates and the information supporting them to determine their compliance with the terms of this article. No later than two months after the date of the revised rates filing, the Office of Regulatory Staff shall serve on the commission and all intervenors and parties of record a report indicating the results of its review and audit and proposing any changes to the revised rates or the information supporting them that the Office of Regulatory Staff determines to be necessary to comply with the terms of this article.

(E) Written comments related to the report may be filed with the commission within one month from the date of the filing of the report. Comments must be served on the Office of Regulatory Staff and simultaneously mailed or electronically transmitted to the utility and to all intervenors and parties of record who previously appeared and filed comments. The Office of Regulatory Staff may revise its report considering comments filed.

(F) No later than four months after the date of the revised rates filing, the commission shall issue a revised rates order granting, modifying, or denying revised rates as filed by the utility. In the absence of such a

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 23 of 34

revised rates order, the revised rates shall be considered to be approved as filed. If the commission fails to issue an order within the period prescribed in this section, a party may move that the commission issue an order granting or denying the application. If the commission fails to issue an order within ten days after the motion is served, the application will be considered granted.

(G) Where both Office of Regulatory Staff and the utility agree in writing on the revised rates to be implemented, the commission may give weight to the agreement in issuing its revised rates order but may consider additional factors at its discretion.

(H) If the utility is granted a rate increase in the revised rates order, the utility shall provide notice to its customers with the next billing. The utility may implement revised rates for bills rendered on or after a date selected by the utility, which may not be sooner than thirty days after revised rates are approved.

(I) Upon implementation of revised rates under this article, the utility will cease to accrue AFUDC on that component of its construction work in progress on which it is recovering its weighted average cost of capital through revised rates.

(J) Other provisions of this article notwithstanding:

(1) The utility may file a final set of revised rates for a plant to go into effect upon commercial operation of the plant, the filing to be made no sooner than seven months before the projected date that the plant is to commence commercial operations. In the final revised rates the utility may include recovery of the weighted average cost of capital applied to all or part of the capital costs associated with the plant. In all cases, the decision to seek recovery in revised rates of less than the full amount of its cost must be at the utility's sole discretion. Rate adjustments to reflect the revenue requirements related to in-service expenses must be included in the final revised rates and shall be based on the utility's most current budget estimates of those expenses for the succeeding twelve-month period at the time the final revised rates are filed or actual expenses, if available.

(2) If the commission rejects a revised rate filing on grounds that may be corrected in a subsequent filing, or if the utility withdraws a revised rate filing before a revised rates order is issued, the utility may file a subsequent request for revised rates at any time thereafter.

(3) The utility may seek to recover any capital costs, in-service expenses, or other costs not included in revised rates through future general rate proceedings.

(4) Revised rates shall not be allowed, under Section 58-33-270(C) or under Section 58-33-280, for coal plants located in South Carolina that were certificated for construction under the Utility Facility Siting and Environmental Protection Act before December 31, 2007, or for coal plants located outside of South Carolina if certificated under a state statute analogous to the Utility Facility Siting and Environmental Protection Act before December 31, 2007.

(K) Where a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance of the evidence that the decision to abandon construction of the plant was prudent. Without limiting the effect of Section 58-33-275(A), recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs. The commission shall order the amortization and recovery through rates of the investment in the abandoned plant as part of an order adjusting rates under this article.

(L) After completion of a plant that is subject to a base load review order, the Office of Regulatory Staff shall conduct an audit of the utility revenues, expenses, and rates consistent with the audits conducted of filings for new electric rates under Section 58-27-860. The audit must be based on a twelve-month test period ending no later than December thirty-first of the calendar year following the year in which the plant entered commercial operation and must be filed with all parties to the base load review proceeding within four months of the conclusion of the test period.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007); 2018 Act No. 258 (H.4375), Section 4, eff June 28, 2018.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 24 of 34

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 25 of 34

Editor's Note
2018 Act No. 258, Section 12, provides as follows:
"SECTION 12. This act takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before the Public Service Commission or in any other court or venue on or after the effective date of this act."
Effect of Amendment
2018 Act No. 258, Section 4, in (G), substituted "may give weight to the agreement in issuing its revised rates order but may consider additional factors at its discretion" for "shall give substantial weight to the agreement in issuing its revised rates order" at the end.

SECTION 58-33-285. Review of revised rates order or failure to issue such order; Office of Regulatory Staff as party; intervention.

(A) Within thirty days of the issuance of a revised rates order pursuant to Section 58-33-280(E) of this article, or within thirty days of the failure by the commission to issue a revised rates order as required pursuant to Section 58-33-280(E), any aggrieved party may petition the commission for review of the revised rates order or of the failure to issue a revised rates order.

(B) The Office of Regulatory Staff and the utility must be automatic parties to any proceedings under this section.

(C) In filing for intervention under this section, intervenors shall identify with particularity the specific issues they intend to raise with regard to the revised rates order.

(D) The party seeking review of the revised rates order shall serve a copy of such petition on the Office of Regulatory Staff and the utility on the same day and by the same means as it is provided to the commission.

(E) Any filing under this section must be considered a new proceeding subject to the provisions of Section 58-33-240. The commission shall open a single new docket for all filings related to any one set of revised rates filed under this article.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-287. Review proceedings; consideration of settlement; discovery; contents and time for issuance of final order.

(A) The commission shall issue its order ruling upon a petition for review of a revised rates order within six months. If the petition for review has been resolved among the parties by settlement agreement, the commission shall consider and accept or reject any settlement agreement entered into by the parties within forty-five days. If a settlement agreement is reached between some but not all parties, then the settlement agreement, if approved by the commission, must be deemed to dispose of any issues resolved in it that have not been raised by other parties to the proceeding pursuant to Section 58-33-285(C).

(B) Proceedings pursuant to Section 58-33-285 are limited to issues related to whether the revised rates filed by the utility comply with the terms of the commission order issued pursuant to Section 58-33-270 and with the specific requirements of Section 58-33-280. Matters determined in orders issued pursuant to the Utility Facility Siting and Environmental Protection Act, Section 58-27-810, and other applicable provisions or Section 58-33-270 are not subject to review in proceedings under this section.

(C) In proceedings pursuant to Section 58-33-285, the commission shall allow limited discovery, and restrict the issues for discovery and hearing to whether the revised rates comply with the terms of the commission order issued pursuant to Section 58-33-270 and compliance with the specific requirements of Section 58-33-280.

(D) The commission shall issue such motions to strike, protective orders, motions to quash, motions for costs and sanctions, and other rulings as are necessary to enforce the terms of this limitation.

(E) The commission shall dismiss as a party any intervenor who, after notice, fails to abide by the limitations contained in this section.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 26 of 34

(F) The failure of the commission to enforce the terms of this section may be remedied by petition for writ of mandamus or supersedeas in the circuit court, which petition the court shall advance over all other matters on its docket and hear on an emergency basis, without the requirement of a formal answer or other return, such hearing to be held as soon as practicable upon twenty-four hours notice to the party against whom relief is sought. Proceedings related to the petitions may not serve to stay or delay proceedings before the commission.

(G) The commission shall issue a final order that:

(1) sets forth any changes that are required to the rates approved in the revised rates order;

(2) determines the amount of any overcollection or undercollection of the revenues by the utility that resulted from application of the rates authorized in the revised rates order as compared to the rates authorized in the final order issued under this section; and

(3) establishes a credit to refund the amount of an overcollection or a surcharge to collect the amount of an undercollection of revenues that arose during the time that the rates approved in the revised rates order, or imposed due to a failure of the commission to issue a revised rates order, were applicable and requires the utility to apply the credit or surcharge until such time as the overcollection or undercollection is exhausted.

(H) If the final order increases the amount of capital costs for which the utility may recover its weighted average cost of capital through revised rates, the AFUDC booked on those capital costs between the issuance of the revised rates order and the final order shall remain on the books of the utility and shall not be reversed or adjusted. Surcharges related to undercollection of costs must be calculated without consideration of AFUDC amounts recognized on the capital costs during this period.

(I) If the final order reduces the amount of capital cost for which the utility may recover its weighted average cost of capital through revised rates for reasons other than the conclusive finding that the capital costs were imprudently incurred, then the utility may resume accrual of AFUDC on any capital costs that were not included in rate recovery and may book an amount of AFUDC equal to the AFUDC not recognized during the time the rates approved in the revised rates order were in effect.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-290. Effect of denial of or failure to seek project development application; filing new or amended applications.

The denial of a project development application, application, or combined application under this article shall not preclude the utility from filing a new or amended project development application, application, or combined application at any time. A utility may proceed to construct a plant even if assurance of prudency or cost recovery under this article is not sought or is denied, and the failure to seek or obtain such an assurance may not be used as evidence or precedent in any future proceeding.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-295. Office of Regulatory staffing; expert witnesses.

(A) The Office of Regulatory Staff is authorized to create additional positions for purposes of performing its duties under this article as follows:

(1) two additional positions when there is one nuclear unit that is subject to an application for a project development order, an application or a combined application under this article, or that is under construction or abandonment and eligible for entry of future revised rates orders; and

(2) one additional position for each additional nuclear unit thereafter.

The utility or utilities electing to file an application, project development order, or combined application under this article shall bear the costs associated with these positions, including all salaries, benefits, expenses, and charges, in proportion to the number of these units that they own in whole or in part as a

percentage of the total number of these units in the regulatory process under this article at the time. The Office of Regulatory Staff annually must certify to the Department of Revenue by May first the amounts to be assessed. By July first of each year, the Department of Revenue shall assess each utility for its assessment, which assessment must be due and payable by July fifteenth. The assessments must be charged against a utility by the Department of Revenue and collected in the manner provided by law for the collection of taxes from utilities, including the enforcement and collection provisions of Article 1, Chapter 54 of Title 12, and paid into the State Treasury as are other taxes collected by the Department of Revenue for the State less the Department of Revenue's actual incremental increase in the cost of administration. These assessments are in addition to any amounts assessed pursuant to Sections 58-4-60 and 58-5-480 and must be deposited in a special fund in the State Treasury from which the salaries, benefits, expenses, and charges must be paid.

(B) The Executive Director of the Office of Regulatory Staff is authorized to employ expert witnesses and other professional engineering, construction, or other experts or consultants as the executive director considers necessary to assist the regulatory staff in its review and audit of project development order applications, applications, combined applications, and applications for revised rates orders; participation in proceedings under this article; and in auditing and monitoring on-going construction of plants eligible for revised rates orders. The compensation paid to these persons may not exceed the compensation ordinarily paid by the regulated industry for these specialists. Upon agreement between the utility and the Office of Regulatory Staff or upon approval of the review committee established under Section 58-3-20, the compensation and expenses must be paid by the utility or utilities filing an application under this article.

(C) Compensation and expenses paid by the utility under this article must be treated as capital costs of the plant for ratemaking purposes.

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

SECTION 58-33-298. Application of limitations on rate filings in Section 58-27-870(E).

Filings under this article may not be considered in applying the limitations on rate filings contained in Section 58-27-870(E).

HISTORY: 2007 Act No. 16, Section 2, eff upon approval (became law without the Governor's signature on May 3, 2007).

ARTICLE 5
Judicial Review

SECTION 58-33-310. Appeal from final order or decision.

Any party may appeal, in accordance with Section 1-23-380, from all or any portion of any final order or decision of the commission, including conditions of the certificate required by a state agency under Section 58-33-160 as provided by Section 58-27-2310. Any appeals may be called up for trial out of their order by either party. The commission must not be a party to an appeal.

HISTORY: 1962 Code Section 58-1820; 1971 (57) 889; 2006 Act No. 318, Section 224, eff May 24, 2006.

SECTION 58-33-320. Jurisdiction of courts.

Except as expressly set forth in Section 58-33-310, no court of this State shall have jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the commission under this chapter or to stop or delay the construction, operation, or maintenance of a major utility facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder, and any such action shall be brought only by the Office of Regulatory Staff. Provided, however, nothing herein contained shall be construed to abrogate or suspend

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 27 of 34

the right of any individual or corporation not a party to maintain any action which he might otherwise have been entitled.

HISTORY: 1962 Code Section 58-1821; 1971 (57) 889; 2006 Act No. 318, Section 225, eff May 24, 2006.

ARTICLE 7
Miscellaneous Provisions

SECTION 58-33-410. Authority of other agencies or local governments; application of other laws.

Notwithstanding any other provision of law, no State or regional agency, or municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a major utility facility authorized by a certificate issued pursuant to the provisions of this chapter; provided, that nothing herein shall prevent the application of State laws for the protection of employees engaged in the construction, operation or maintenance of such facility; provided, however, that State agencies shall continue to have authority to enforce compliance with applicable State statutes, rules, regulations or standards promulgated within their authority.

HISTORY: 1962 Code Section 58-1830; 1971 (57) 889.

SECTION 58-33-420. Joint hearings with agencies from other states; agreements and compacts; joint investigations.

The commission, in the discharge of its duties under this chapter or any other statute, is authorized to hold joint hearings within or without the State and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any other state of the United States, whether in the holding of any hearings, or in the making of such orders, the commission shall function under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce or as an agency of the United States, or otherwise. The commission, in the discharge of its duties under this chapter, is authorized to enter into agreements or compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certificating the construction, operation, and maintenance of major utility facilities in accord with the purposes of this chapter and for the enforcement of the respective state laws regarding same. The commission may request the Office of Regulatory Staff to make joint investigations with any official board or commission of any state or of the United States.

HISTORY: 1962 Code Section 58-1831; 1971 (57) 889; 2006 Act No. 318, Section 226, eff May 24, 2006.

SECTION 58-33-430. Annual reports shall be furnished by public utilities.

Each public utility shall annually furnish a report to the commission and provide to the Office of Regulatory Staff for its review containing a ten-year forecast of loads and resources; provided, however, this section shall not apply to any electric cooperative. The report shall list the major utility facilities which, in the judgment of such utility, will be required to supply system demands during the forecast period. The forecast shall cover the ten-year period next succeeding the date of the report, shall be made available to the public, and furnished upon request to municipalities and government agencies charged with the duty of protecting the environment or of planning land use.

HISTORY: 1962 Code Section 58-1832; 1971 (57) 889; 2006 Act No. 318, Section 227, eff May 24, 2006.

Source: S.C. Legislative Website, https://www.scstatehouse.gov/code/title58.php

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 28 of 34

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 29 of 34

SECTION 58-3-30. Oaths; Code of Judicial Conduct applicable; ethics and the Administrative Procedure Act workshop.

(A) The commissioners shall take the oath of office provided by the Constitution and the oaths prescribed by law for state officers.

(B) The commissioners and commission employees are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, except as provided in Section 58-3-260, and the State Ethics Commission must enforce and administer those rules pursuant to Section 8-13-320. In addition, commissioners and commission employees must comply with the applicable requirements of Chapter 13 of Title 8.

(C) Each year, the commissioners and their employees must attend a workshop of at least six contact hours concerning ethics and the Administrative Procedures Act. This workshop must be developed with input from the review committee.

HISTORY: 1962 Code Section 58-53; 1952 Code Section 58-53; 1942 Code Section 8200; 1932 Code Section 8244; 1922 (32) 956; 1932 (37) 1380; 1935 (39) 25; 2004 Act No. 175, Section 4, eff February 18, 2004.

SECTION 58-3-260. Communications between commission and parties prohibited; exempt communications; disclosure of improper communications; penalties.

(A) For purposes of this section:

(1) "Proceeding" means a contested case, generic proceeding, or other matter to be adjudicated, decided, or arbitrated by the commission.

(2) "Person" means a party to a proceeding pending before the commission, a member of the Office of Regulatory Staff, a representative of a party to a proceeding pending before the commission, individuals, corporations, partnerships, limited liability companies, elected officials of state government, and other public and elected officials.

(3) "Communication" means the transmitting of information by any mode including, but not limited to, oral, written, or electronic.

(4) "Allowable ex parte communication briefing" means any communication that is conducted pursuant to the procedure outlined in subsection (C)(6) of this section.

(5) "Communication of supplemental legal citation" means the submission, subsequent to the submission of post-hearing briefs or proposed orders in a proceeding, of statutes, regulations, judicial or administrative decisions that are enacted, promulgated, or determined after the submission of post-hearing briefs or proposed orders.

(B) Except as otherwise provided herein or unless required for the disposition of ex parte matters specifically authorized by law, a commissioner, hearing officer, or commission employee shall not communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication, nor shall any person communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any commissioner, hearing officer, or commission employee without notice and opportunity for all parties to participate in the communication.

(C) The following communications are exempt from the prohibitions of subsection (B) of this section:

(1) a communication concerning compliance with procedural requirements if the procedural matter is not an area of controversy in a proceeding;

(2) statements made by a commission employee who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding, where the statements are limited to providing publicly available information about pending proceedings;

(3) inquiries relating solely to the status of a proceeding, unless the inquiry: (a) states or implies a view as to the merits or outcome of the proceeding; (b) states or implies a preference for a particular party or which states why timing is important to a particular party; (c) indicates a view as to the date by which a

proceeding should be resolved; or (d) is otherwise intended to address the merits or outcome or to influence the timing of a proceeding;

(4) a communication made by or to commission employees that concerns judicial review of a matter that has been decided by the commission and is no longer within the commission's jurisdiction; however, if the matter is remanded to the commission for further action, the provisions of this section shall apply during the period of the remand;

(5) where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized provided:

(a) the commissioner, hearing officer, or commission employee reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and

(b) the commissioner, hearing officer, or commission employee makes provision promptly to notify all other parties of the substance of the ex parte communication and, where possible, allows an opportunity to respond;

(6)(a) subject to the provisions of Chapter 4 of Title 30, communications, directly or indirectly, regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding for the purposes of an allowable ex parte communication briefing if:

(i) the Executive Director of the Office of Regulatory Staff or his designee attends the briefing and files a written certification, within seventy-two hours of the briefing, attaching copies of all statements and all other matters filed by all persons pursuant to subsubitems (ii), (iii), and (iv) of this subsection, with the chief clerk of the commission that such briefing was conducted in compliance with the provisions of this section and that each party, person, commissioner, or commission employee present has complied with the reporting and certification requirements of subsubitems (ii), (iii), and (iv); and within twenty-four hours of the submission by the executive director, the commission posts on its web site the written certification, statements, and other matters filed by the executive director;

(ii) each party, person, commissioner, and commission employee present files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty-eight hours of the briefing accurately summarizing the discussions in full and attaching copies of any written materials utilized, referenced, or distributed;

(iii) each party, person, commissioner, and commission employee present, within forty-eight hours of the briefing, files a certification with the Executive Director of the Office of Regulatory Staff that no commitment, predetermination, or prediction of any commissioner's action as to any ultimate or penultimate issue or any commission employee's opinion or recommendation as to any ultimate or penultimate issue in any proceeding was requested by any person or party nor any commitment, predetermination, or prediction was given by any commissioner or commission employee as to any commission action or commission employee opinion or recommendation on any ultimate or penultimate issue;

(iv) each commissioner or commission employee present at the allowable ex parte communication briefing grants to every other party or person requesting an allowable ex parte communication briefing on the same or similar matter that is or can reasonably be expected to become an issue in a proceeding, similar access and a reasonable opportunity to communicate, directly or indirectly, regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding under the provisions of subsection (C)(6) of this section and files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty-eight hours of the briefing stating that the commissioner or commission employee will comply with this provision;

(v) the commission posts on its web site, at least five business days prior to the proposed briefing, a notice of each request for an allowable ex parte communication briefing that includes the date and time of the proposed briefing, the name of the person or party who requested the briefing, the name of each commissioner and commission employee whom the person or party has requested to brief, and the subject matter to be discussed at the briefing;

(vi) the person or party initially seeking the briefing requests the briefing with sufficient notice, as required in subsubitem (v), to allow the initial briefing to be held at least twenty business days prior to

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 30 of 34

the hearing in the proceeding at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue, and the initial briefing must be held at least twenty business days prior to the hearing in the proceeding; and

(vii) any person or party desiring to have a briefing on the same or similar matter as provided for in subsubitem (vi) requests a briefing with sufficient notice, as required in subsubitem (v), to allow the briefing to be held at least ten business days prior to the hearing in the proceeding at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue, and any such briefing must be held at least ten business days prior to the hearing in the proceeding;

(b) any person or party may object to the attendance of the Executive Director of the Office of Regulatory Staff at an allowable ex parte communication briefing on the grounds of bias or a conflict of interest on the part of the executive director. Any such objection must be made in writing and must be filed with the executive director no later than twenty-four hours prior to the scheduled briefing. If the objecting person or party and the executive director agree upon a neutral person, that person shall serve in the executive director's stead and shall comply with the reporting and certification requirements of the executive director contained in subsubitem (i) and the executive director shall comply with the requirements contained in subsubitems (ii) and (iii). The costs of such person's services shall be charged to the party requesting the briefing and may be an allowable cost of the proceedings. If the objecting person or party and the executive director cannot agree upon a neutral person, the objecting person or party shall petition the Administrative Law Court for the appointment of a neutral person to serve in the executive director's stead, and the petition shall be given priority over all other matters within the jurisdiction of the Administrative Law Court. In the petition, the objecting party shall set forth the specific grounds supporting the objecting person's or party's allegation of bias or conflict on the part of the executive director and shall generally describe the matters to be discussed at the briefing. It shall not be sufficient grounds that the executive director is or is likely to be a party to a proceeding. The executive director shall be given an opportunity to respond. Part of the executive director's response shall include recommendations as to the experience required of the person to act in his stead. Upon a showing of actual bias or conflict of interest, the administrative law judge shall designate a person to act in the executive director's stead and that person shall comply with the reporting and certification requirements of the executive director contained in subsubitem (i) and the executive director shall comply with the requirements contained in subsubitems (ii) and (iii). Such person must have the expertise to act in the executive director's stead. The decision of the administrative law judge shall be considered interlocutory and not immediately appealable and may be appealed with the final order of the commission. The costs of such person's services shall be charged to the party requesting the briefing and may be an allowable cost of the proceedings;

(c) should the Executive Director of the Office of Regulatory Staff desire to conduct an allowable ex parte communication briefing, the chief clerk of the commission shall appoint a neutral person who shall serve in the executive director's stead and that person shall comply with the reporting and certification requirements of the Executive Director of the Office of Regulatory Staff contained in subsubitem (i). The Executive Director of the Office of Regulatory Staff shall comply with the requirements contained in subsubitems (ii) and (iii);

(d) nothing in subsection (C)(6) of this section requires any commissioner or commission employee to grant a request for an allowable ex parte communication briefing, except as provided in subsection (C)(6)(a)(iv) of this section;

(7) a communication of supplemental legal citation if the party files copies of such documents, without comment or argument, with the chief clerk of the commission and simultaneously provides copies to all parties of record;

(8) subject to the provisions of Chapter 4 of Title 30, communications between and among commissioners regarding matters pending before the commission; provided, further, that any commissioner, hearing officer, or commission employee may receive aid from commission employees if the commission employees providing aid do not:

(a) receive ex parte communications of a type that the commissioner, hearing officer, or commission employee would be prohibited from receiving; or

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 31 of 34

(b) furnish, augment, diminish, or modify the evidence in the record.

(D) If before serving in a proceeding, a commissioner, hearing officer, or commission employee receives an ex parte communication of a type that may not properly be received while serving, the commissioner, hearing officer, or commission employee must disclose the communication in the following manner: a commissioner, hearing officer, or a commission employee who receives an ex parte communication in violation of this section must promptly after receipt of the communication or, in the case of a communication prior to a filing, as soon as it is known to relate to a filing, place on the record of the matter all written and electronic communications received, all written and electronic responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the commissioner, hearing officer, or commission employee, as appropriate, received an ex parte communication and must advise all parties that these matters have been placed on the record. Within ten days after receipt of notice of the ex parte communication, any party who desires to rebut the contents of the communication must request and shall be granted the opportunity to rebut the contents. Parties affected by a violation may agree to a resolution of any claim regarding such violation, including the waiver of a hearing and the waiver of the obligation to report violations under subsection (I) of this section.

(E) Any person who makes an inadvertent ex parte communication must, as soon as it is known to relate to an issue in a proceeding, disclose the communication by placing on the record of the matter the communication made, if written or electronic, or a memorandum stating the substance of an inadvertent oral communication, and the identity of each person to whom the inadvertent ex parte communication was made or given. Within ten days after receipt of notice of the ex parte communication, any party who desires to rebut the contents of the communication must request and shall be granted the opportunity to rebut the contents. If no party rebuts the inadvertence of the ex parte communication within ten days after notice of the ex parte communication, the ex parte communication shall be presumed inadvertent. Parties affected by a violation may agree to a resolution of any claim regarding such violation, and the provisions of subsection (J) of this section shall not apply.

(F) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a commissioner, hearing officer, or commission employee who receives the communication may be disqualified by the commission, and the portions of the record pertaining to the communication may be sealed by protective order.

(G) Nothing in this section alters or amends Section 1-23-320(i).

(H) Nothing in this section prevents a commissioner, hearing officer, or commission employee from attending educational seminars sponsored by state, regional, or national organizations and seminars not affiliated with any utility regulated by the commission; however, the provisions of this section shall apply to any communications that take place outside any formal sessions.

(I) Subject to any privilege under Rule 501 of the South Carolina Rules of Evidence, any commissioner, hearing officer, commission employee, party, or any other person must report any wilful violation of this section on the part of a commissioner, hearing officer, or commission employee to the review committee.

(J) Any commissioner, hearing officer, commission employee, or person who wilfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty dollars or imprisoned for not more than six months. If a commissioner wilfully communicates with any party or person or if any person or party wilfully communicates with a commissioner regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten business days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the commissioner shall be removed from office. If a hearing officer or commission employee wilfully communicates with any party or person or any party or person wilfully communicates with a hearing officer or commission employee regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 32 of 34

other matter is or can reasonably be expected to become an issue, the hearing officer or commission employee shall be terminated from employment by the commission. For purposes of this section: (1) "wilful" means an act done voluntarily and intentionally with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or disregard the law, and (2) a violation of the provisions of this section must be proved by clear and convincing evidence before a commissioner, hearing officer, or commission employee can be removed from office or terminated from employment.

HISTORY: 2004 Act No. 175, Section 4, eff January 1, 2005.

SECTION 58-3-270. Obtaining remedial relief from violation of prohibited communications; hearing before administrative law judge.

(A) Any party seeking remedial relief from alleged violations of Section 58-3-260 may file a complaint with the Administrative Law Court.

(B) A complaint seeking sanctions must include the following:

(1) the name and address of the complainant;

(2) the name and address of complainant's counsel, if any;

(3) the name and address of each person alleged to have violated the ex parte prohibition, hereinafter referred to as respondent;

(4) the name and address of each respondent's counsel, if known;

(5) the facts constituting the alleged violation; and

(6) the sanctions sought by the complainant.

(C) A complaint filed under this section must be served on the commission, each respondent, respondent's counsel, if known, and all persons on the commission's service list for the proceeding that is the subject of the ex parte complaint.

(D) Within seven days of service of the complaint, a respondent must file an answer with the Administrative Law Court and serve it on the complainant, the commission, and all persons on the commission's service list for the proceeding that is the subject of the ex parte complaint.

(E) The administrative law judge assigned to the ex parte communication complaint proceeding by the Administrative Law Court may issue an order tolling any deadlines imposed by any state statute for a decision by the commission on the proceeding that is the subject of the ex parte communication complaint. The administrative law judge assigned to the ex parte communication complaint proceeding by the Administrative Law Court must conduct a hearing and must issue a decision within sixty days after the complaint is filed.

(F) The decision of the administrative law judge must describe the relevant facts of the case and must set forth the judge's findings as to whether the ex parte communication was in violation of Section 58-3-260. The judge also must impose sanctions in accordance with subsection (G) of this section. In imposing these sanctions, the judge, as a matter of equity, must protect: (1) the rights and interests of parties who are not alleged to have violated Section 58-3-260, and (2) the public interest in general.

(G) In his decision, the administrative law judge may impose the following sanctions:

(1) dismiss the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider the matter impartially;

(2) issue an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication if other parties are prejudiced by the prohibited ex parte communication;

(3) strike evidence or pleadings if the evidence or pleadings are tainted by the prohibited ex parte communication;

(4) issue a public statement of censure or explanation, if it is determined that the prohibited ex parte communication occurred but mitigating circumstances exist that:

(a) negate the need for a more severe sanction;

(b) indicate that the proceeding was not prejudiced to the extent that the commission is unable to consider the matter in the proceeding impartially;

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 33 of 34

(c) indicate that the ex parte communication did not prejudice other parties; or

(d) indicate that the ex parte communication did not taint the evidence or pleadings.

(H) If the administrative law judge finds the complainant's allegation of an ex parte violation was interposed for any improper purpose, such as to harass or cause unnecessary delay or increase the cost of the proceeding, the administrative law judge may issue an appropriate sanction against the complainant.

(I) Any decision of an administrative law judge pursuant to this section shall be considered interlocutory in nature and is not immediately appealable until a final order of the commission has been issued. Any appeal of a decision of an administrative law judge pursuant to this section must be included in and made in the same manner as an appeal of the final order of the commission in the subject proceeding.

HISTORY: 2004 Act No. 175, Section 4, eff January 1, 2005.

ACCEPTED FOR PROCESSING - 2022 March 29 11:45 AM - SCPSC - 2022-93-E - Page 34 of 34