CHAPTER 41

Renewable Energy Programs

**SECTION 58‑41‑05.** Directions to commission.

 The commission is directed to address all renewable energy issues in a fair and balanced manner, considering the costs and benefits to all customers of all programs and tariffs that relate to renewable energy and energy storage, both as part of the utility's power system and as direct investments by customers for their own energy needs and renewable goals. The commission also is directed to ensure that the revenue recovery, cost allocation, and rate design of utilities that it regulates are just and reasonable and properly reflect changes in the industry as a whole, the benefits of customer renewable energy, energy efficiency, and demand response, as well as any utility or state‑specific impacts unique to South Carolina which are brought about by the consequences of this act.

HISTORY: 2019 Act No. 62 (H.3659), Section 1, eff May 16, 2019.

**SECTION 58‑41‑10.** Definitions.

 As used in this chapter:

 (1) "AC" means alternating current as measured at the point of interconnection of the small power producer's facility to the interconnecting electrical utility's transmission or distribution system.

 (2) "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

 (3) "Commission" means the South Carolina Public Service Commission.

 (4) "Electrical utility" is defined as set forth in Section 58‑27‑10(7), provided, however, that electrical utilities serving less than one hundred thousand customer accounts must be exempt from the provisions of this chapter. A renewable energy supplier participating in an electrical utility's voluntary renewable energy program pursuant to this chapter must not be considered an electrical utility for purposes of this chapter.

 (5) "Eligible customer" means a retail customer with a new or existing contract demand greater than or equal to one megawatt at a single‑metered location or aggregated across multiple‑metered locations.

 (6) "Generation credit" means a credit applied by an electrical utility to the bill of a participating customer that is equal to the value of the energy and capacity avoided by the electrical utility as a result of procuring energy and capacity from a renewable energy facility.

 (7) "Participating customer" means an eligible customer that elects to have a portion or all of its electricity needs supplied by a voluntary renewable energy program.

 (8) "Participating customer agreement" means an agreement between a participating customer, its electrical utility, and the renewable energy supplier establishing each party's rights and obligations under the electrical utility's voluntary renewable energy program.

 (9) "Power purchase agreement" means an agreement between an electrical utility and a small power producer for the purchase and sale of energy, capacity, and ancillary services from the small power producer's qualifying small power production facility.

 (10) "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended.

 (11) "Renewable energy contract" means a power purchase agreement between an electrical utility and a renewable energy supplier that commits the parties to participating in an electrical utility's voluntary renewable energy program for the purchase and sale of energy and capacity.

 (12) "Renewable energy facility" means a facility for the production of electrical energy that utilizes a renewable generation resource as defined in Section 58‑39‑120(F), that is placed in service after the effective date of this chapter, and for which costs are not included in an electrical utility's rates.

 (13) "Renewable energy supplier" means the owner or operator of a renewable energy facility, including the affiliate of an electrical utility that contracts with a participating customer.

 (14) "Small power producer" means a person or corporation owning or operating a "qualifying small power production facility" as defined in 16 U.S.C. Section 796, as amended.

 (15) "Standard offer" means the avoided cost rates, power purchase agreement, and terms and conditions approved by the commission and applicable to purchases of energy and capacity by electrical utilities as provided in this chapter from small power producers up to two megawatts AC in size.

 (16) "Voluntary renewable energy program" means a tariff filed with the commission by an electrical utility that enables a participating commercial or industrial customer to receive and pay for electric service, that reflects the program cost, and that includes the environmental attributes specified in the participating customer agreement and renewable energy contract, including a generation credit for such renewable energy, from the electrical utility pursuant to the terms of the tariff.

HISTORY: 2019 Act No. 62 (H.3659), Section 1, eff May 16, 2019.

**SECTION 58‑41‑20.** Review and approval proceedings for electrical utilities' avoided cost methodologies, standard offers, form contracts, and commitment to sell forms.

 (A) As soon as is practicable after the effective date of this chapter, the commission shall open a docket for the purpose of establishing each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary to implement this section. Within six months after the effective date of this chapter, and at least once every twenty‑four months thereafter, the commission shall approve each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary to implement this section. Within such proceeding the commission shall approve one or more standard form power purchase agreements for use for qualifying small power production facilities not eligible for the standard offer. Such power purchase agreements shall contain provisions, including, but not limited to, provisions for force majeure, indemnification, choice of venue, and confidentiality provisions and other such terms, but shall not be determinative of price or length of the power purchase agreement. The commission may approve multiple form power purchase agreements to accommodate various generation technologies and other project‑specific characteristics. This provision shall not restrict the right of parties to enter into power purchase agreements with terms that differ from the commission‑approved form(s). Any decisions by the commission shall be just and reasonable to the ratepayers of the electrical utility, in the public interest, consistent with PURPA and the Federal Energy Regulatory Commission's implementing regulations and orders, and nondiscriminatory to small power producers; and shall strive to reduce the risk placed on the using and consuming public.

 (1) Proceedings conducted pursuant to this section shall be separate from the electrical utilities' annual fuel cost proceedings conducted pursuant to Section 58‑27‑865.

 (2) Proceedings shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing.

 (B) In implementing this chapter, the commission shall treat small power producers on a fair and equal footing with electrical utility‑owned resources by ensuring that:

 (1) rates for the purchase of energy and capacity fully and accurately reflect the electrical utility's avoided costs;

 (2) power purchase agreements, including terms and conditions, are commercially reasonable and consistent with regulations and orders promulgated by the Federal Energy Regulatory Commission implementing PURPA; and

 (3) each electrical utility's avoided cost methodology fairly accounts for costs avoided by the electrical utility or incurred by the electrical utility, including, but not limited to, energy, capacity, and ancillary services provided by or consumed by small power producers including those utilizing energy storage equipment. Avoided cost methodologies approved by the commission may account for differences in costs avoided based on the geographic location and resource type of a small power producer's qualifying small power production facility.

 (C) The avoided cost rates offered by an electrical utility to a small power producer not eligible for the standard offer must be calculated based on the avoided cost methodology most recently approved by the commission. In the event that a small power producer and an electrical utility are unable to mutually agree on an avoided cost rate, the small power producer shall have the right to have any disputed issues resolved by the commission in a formal complaint proceeding. The commission may require mediation prior to a formal complaint proceeding.

 (D) A small power producer shall have the right to sell the output of its facility to the electrical utility at the avoided cost rates and pursuant to the power purchase agreement then in effect by delivering an executed notice of commitment to sell form to the electrical utility. The commission shall approve a standard notice of commitment to sell form to be used for this purpose that provides the small power producer a reasonable period of time from its submittal of the form to execute a power purchase agreement. In no event, however, shall the small power producer, as a condition of preserving the pricing and terms and conditions established by its submittal of an executed commitment to sell form to the electrical utility, be required to execute a power purchase agreement prior to receipt of a final interconnection agreement from the electrical utility.

 (E)(1) Electrical utilities shall file with the commission power purchase agreements entered into pursuant to PURPA, resulting from voluntary negotiation of contracts between an electrical utility and a small power producer not eligible for the standard offer.

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

 (3) In establishing standard offer and form contract power purchase agreements, the commission shall consider whether such power purchase agreements should prohibit any of the following:

 (a) termination of the power purchase agreement, collection of damages from small power producers, or commencement of the term of a power purchase agreement prior to commercial operation, if delays in achieving commercial operation of the small power producer's facility are due to the electrical utility's interconnection delays; or

 (b) the electrical utility reducing the price paid to the small power producer based on costs incurred by the electrical utility to respond to the intermittent nature of electrical generation by the small power producer.

 (F)(1) Electrical utilities, subject to approval of the commission, shall offer to enter into fixed price power purchase agreements with small power producers for the purchase of energy and capacity at avoided cost, with commercially reasonable terms and a duration of ten years. The commission may also approve commercially reasonable fixed price power purchase agreements with a duration longer than ten years, which must contain additional terms, conditions, and/or rate structures as proposed by intervening parties and approved by the commission, including, but not limited to, a reduction in the contract price relative to the ten year avoided cost. Notwithstanding any other language to the contrary, the commission will make such a determination in proceedings conducted pursuant to subsection (A). The avoided cost rates applicable to fixed price power purchase agreements entered into pursuant to this item shall be based on the avoided cost rates and methodologies as determined by the commission pursuant to this section. The terms of this subsection apply only to those small power producers whose qualifying small power production facilities have active interconnection requests on file with the electrical utility prior to the effective date of this act. The commission may determine any other necessary terms and conditions deemed to be in the best interest of the ratepayers. This item is not intended, and shall not be construed, to abrogate small power producers' rights under PURPA that existed prior to the effective date of the act.

 (2) Once an electrical utility has executed interconnection agreements and power purchase agreements with qualifying small power production facilities located in South Carolina with an aggregate nameplate capacity equal to twenty percent of the previous five‑year average of the electrical utility's South Carolina retail peak load, that electrical utility shall offer to enter into fixed price power purchase agreements with small power producers for the purchase of energy and capacity at avoided cost, with the terms, conditions, rates, and terms of length for contracts as determined by the commission in a separate docket or in a proceeding conducted pursuant to subsection (A). The commission is expressly directed to consider the potential benefits of terms with a longer duration to promote the state's policy of encouraging renewable energy.

 (G) Nothing in this section prohibits the commission from adopting various avoided cost methodologies or amending those methodologies in the public interest.

 (H) Unless otherwise agreed to between the electrical utility and the small power producer, a power purchase agreement entered into pursuant to PURPA may not allow curtailment of qualifying facilities in any manner that is inconsistent with PURPA or implementing regulations and orders promulgated by the Federal Energy Regulatory Commission.

 (I) The commission is authorized to employ, through contract or otherwise, third‑party consultants and experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third‑party consultant or expert authorized by this subsection. The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section. The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties. The qualified independent third party shall submit all requests for documents and information necessary to their analysis under the authority of the commission and the commission shall have full authority to compel response to the requests. The qualified independent third party's duty will be to the commission. Any conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility. The utilities may require confidentiality agreements with the independent third party that do not impede the third‑party analysis. The utilities shall be responsive in providing all documents, information, and items necessary for the completion of the report. The independent third party shall also include in the report a statement assessing the level of cooperation received from the utility during the development of the report and whether there were any material information requests that were not adequately fulfilled by the electrical utility. Any party to this proceeding shall be able to review the report including the confidential portions of the report upon entering into an appropriate confidentiality agreement. The commission and the Office of Regulatory Staff may not hire the same third‑party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings.

 (J) Each electrical utility's avoided cost filing must be reasonably transparent so that underlying assumptions, data, and results can be independently reviewed and verified by the parties and the commission. The commission may approve any confidentiality protections necessary to allow for independent review and verification of the avoided cost filing.

HISTORY: 2019 Act No. 62 (H.3659), Section 1, eff May 16, 2019.

Editor's Note

2019 Act No. 62, Section 14, provides as follows:

"SECTION 14. The provisions of Section 58‑41‑20 shall not be interpreted to supersede the conditions of any settlement entered into by an electrical utility and filed with the commission prior to the adoption of this act."

**SECTION 58‑41‑30.** Voluntary renewable energy programs.

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

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

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

 (3) in addition to paying a retail bill calculated pursuant to the rates and tariffs that otherwise would apply to the participating customer, reduced by the amount of the generation credit, a participating customer shall reimburse the electrical utility on a monthly basis for the amount paid by the electrical utility to the renewable energy supplier pursuant to the participating customer agreement and renewable energy contract, plus an administrative fee approved by the commission; and

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

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

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

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

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

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

HISTORY: 2019 Act No. 62 (H.3659), Section 1, eff May 16, 2019.

**SECTION 58‑41‑40.** Neighborhood community solar programs; review of programs; recovery of costs.

 (A) It is the intent of the General Assembly to expand the opportunity to support solar energy and support access to solar energy options for all South Carolinians, including those who lack the income to afford the upfront investment in solar panels or those who do not own their homes or have suitable rooftops. The General Assembly encourages all electric service providers in this State to consider offering neighborhood community solar programs.

 (B)(1) Within sixty days after the effective date of this chapter, the commission shall open a docket for each electrical utility to review the community solar programs established pursuant to Act 236 of 2014 and to solicit status information on existing programs from the electrical utilities.

 (2) Within one hundred and eighty days after the commission opens the docket pursuant to item (1), the electrical utilities shall update their report on their existing programs and may propose new programs.

 (C) Subject to review by the commission, a public utility must be entitled to full and timely cost recovery for all reasonable and prudent costs incurred in implementing and complying with this section. Participating customers shall bear the burden of any reasonable and prudent costs associated with participating in a neighborhood community solar program; however, the commission shall nonetheless promote access to solar energy projects for low and moderate income customers. An electrical utility may not charge any nonparticipating customers for any costs incurred pursuant to the provisions of this section.

HISTORY: 2019 Act No. 62 (H.3659), Section 1, eff May 16, 2019.