CHAPTER 27

Electric Utilities and Electric Cooperatives

Editor's Note

2022 Act No. 220, Sections 3 and 4, provide as follows:

"SECTION 3. A. The General Assembly hereby finds and declares that:

"(1) the economic and financial well‑being of South Carolina and its citizens depends upon continued economic development and opportunities for employment;

"(2) the cost of electricity and the availability of renewable energy sources for electricity are important factors in the decision for a commercial and industrial entity to locate or expand their existing establishments in South Carolina;

"(3) competitive electric rates, terms, and conditions and the ability to utilize renewable energy sources for electric power generation are necessary to attract prospective commercial or industrial entities to invest in South Carolina and to encourage and incent robust economic growth in the State;

"(4) the Public Service Commission of South Carolina should weigh and consider any quantifiable net benefits that may result from economic development opportunities resulting from prospective commercial or industrial entities in determining whether rates, terms, and conditions proposed by an electrical utility as defined by Section 58‑27‑10(7) are reasonable, prudent, and in the best interest of the electrical utility's general body of retail customers; and

"(5) rates proposed by electrical utilities for prospective commercial or industrial entities that are at or greater than the electrical utility's marginal cost should be presumed reasonable.

"B. For the purposes of SECTION 3 unless otherwise specified:

"(1) 'Commission' means the Public Service Commission of South Carolina.

"(2) 'Electrical utility' has the same meaning as provided in Section 58‑27‑10(7).

"(3) 'Prospective manufacturing entity' means a commercial or industrial entity that proposes to:

"(a) request new, permanent electric service to a new establishment or location in an electrical utility's service territory;

"(b) expand an existing establishment in an electrical utility's service territory that has existing permanent electric service and which expansion will result in additional electrical load on the electrical utility's system; or

"(c) locate in an existing establishment and establish a new customer service account with the electrical utility for which expansion will result in additional electrical load on the electrical utility's system.

"(4) 'Marginal cost' means the electrical utility's marginal cost for producing energy.

"(5) 'Rate proposal' means a written document that identifies the rates, terms, and conditions for electric service offered by an electrical utility to a prospective manufacturing entity.

"(6) 'Contracts' shall have the same meaning as the term is used in Section 58‑27‑980.

"(7) 'Qualifying customer' means a commercial or industrial customer that agrees to locate its operations in South Carolina, or expand its existing establishment, and such location or expansion results in the addition of a minimum of:

"(a) 500 kilowatts at one point of delivery;

"(b) one hundred new employees; and

"(c) capital investment of four hundred thousand dollars following the electrical utility's approval for service.

"(8) 'Renewable energy facility' means a solar array or other facility constructed by or on behalf of a qualifying customer for the exclusive purpose of supplementing electric power generation from a renewable energy source for its economic development location or expansion.

"C. (A) Notwithstanding any other provision of law, an electrical utility may provide the South Carolina Department of Commerce or a prospective manufacturing entity with a rate proposal containing terms and conditions that would incentivize and encourage the prospective manufacturing entity to employ additional workforce and to make capital investments in the electrical utility's service territory. The rate proposal provided by an electrical utility may differ from the final contract, rate, terms, and conditions with the qualifying customer.

"(B) The electrical utility shall file the rate proposal with the commission for review and acceptance. The rate proposal is determined to be presumptively reasonable if the rates, terms, and conditions are equal to or greater than the electrical utility's marginal cost.

"D. (A) Nothing in this act shall restrict the commission's authority to regulate rates and charges or review contracts entered into by or supervise the operations of electrical utilities.

"(B) An electrical utility may offer economic development rates to a qualifying customer that may be lower than the rate or rates that the qualifying customer otherwise would be or is subject to under the electrical utility's commission approved tariffs in effect at the time; provided, however, that the economic development rate must not be lower than the electrical utility's marginal cost of providing service to the qualifying customer.

"(C) An electrical utility may negotiate and enter into agreements that contain economic development rates with a qualifying customer, which agreements and rates shall be subject to commission approval, and which shall be for a term not exceeding ten years. The electrical utility may offer the qualifying customer real time pricing options or riders for other clean energy attributes which may support the qualifying customer's sustainability goals.

"(D) In the commission's determination of the public interest for any economic development rate or contract, the electrical utility bears the burden of proof to establish that:

"(1) the rates or charges assessed to the electrical utility's other customers do not subsidize the cost of providing economic development rates to a qualifying customer;

"(2) the rates of other electrical utility operations do not increase; and

"(3) other customers of the electrical utility do not experience a rate increase due to a rate or rates offered to a qualifying customer.

"E. (1) The construction of a proposed renewable energy facility by or on behalf of a qualifying customer to support electric power generation at its economic development location or expansion must comply with federal, state, and local laws and ordinances.

"(2) In compliance with federal, state, and local laws and ordinances, the utility may expedite interconnection of a proposed renewable energy facility to be constructed by a qualifying customer to support electric power generation at its economic development location or expansion where high quality and reliable electric service are not adversely impacted.

"F. The provisions of SECTION 3 must be liberally construed to effectuate the purposes of this SECTION.

"SECTION 4. This act takes effect upon approval by the Governor. The provisions of SECTION 3 expire on July 1, 2026."

ARTICLE 1

General Provisions

**SECTION 58‑27‑10.** Definitions.

 When used in this chapter:

 (1) The term "commission" means the Public Service Commission of this State.

 (2) The term "commissioner" means one of the members of the Public Service Commission of this State.

 (3) The term "corporation" includes all bodies corporate, joint‑stock companies or associations, domestic or foreign, their lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships; but it shall not include municipalities as hereinafter defined.

 (4) The term "person" includes all individuals, partnerships, or associations other than corporations.

 (5) The term "municipality" includes a city, town, county, township, or any other corporation existing, created, or organized as a governmental unit under the Constitution or laws of this State except a consolidated political subdivision.

 (6) The term "public" means the public generally or any limited portion of the public, including a person, corporation, or municipality.

 (7) The term "electrical utility" includes municipalities to the extent of their business, property, rates, transactions, and operations without the corporate limits of the municipality, persons and corporations, their lessees, assignees, trustees, receivers, or other successors in interest owning or operating in this State equipment or facilities for generating, transmitting, delivering, or furnishing electricity for street, railway, or other public uses or for the production of light, heat, or power to or for the public for compensation; but it shall not include an electric cooperative or a consolidated political subdivision and shall not include a person, corporation, or municipality furnishing electricity only to himself or itself, their residents, employees, or tenants when such current is not resold or used by others.

 (8) The term "rate" means and includes every compensation, charge, toll, rental, and classification, or any of them, demanded, observed, charged, or collected by any electrical utility for any electric current or service offered by it to the public and any rules, regulations, practices, or contracts affecting any such compensation, charge, toll, rental, or classification.

 (9) The term "securities" means and includes stock, stock certificates, bonds, notes, debentures, or other evidences of indebtedness and any assumption or guaranty thereof.

 (10) The term "consolidated political subdivision" means a consolidated political subdivision existing pursuant to the Constitution of this State and shall not be deemed a city, town, county, or other governmental unit merged thereinto.

 (11) 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 24‑1; 1952 Code Section 24‑1; 1942 Code Section 8555‑1; 1932 (37) 1497; 1935 (39) 25; 1969 (56) 740; 1972 (57) 2757; 2006 Act No. 318, Section 157, eff May 24, 2006.

**SECTION 58‑27‑20.** Chapter inapplicable to certain areas.

 The provisions of this chapter shall not apply to the areas within former municipal corporate limits, where such municipality becomes a part of a consolidated political subdivision whenever such municipality owns and operates its own electric system and so long as such system continues to be owned and operated by the consolidated political subdivision.

HISTORY: 1962 Code Section 24‑1.1; 1972 (57) 2757.

**SECTION 58‑27‑30.** Corporations subject to chapter even before commencing operations.

 Corporations formed to acquire property or to transact business which would be subject to the provisions of this chapter and corporations possessing franchises, powers or privileges for any of the purposes contemplated by this chapter shall be deemed to be subject to the provisions of this chapter, although no property may have been acquired, business transacted or franchises, powers or privileges exercised.

HISTORY: 1962 Code Section 24‑2; 1952 Code Section 24‑2; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑40.** Compliance with orders, decisions, directions, rules and regulations.

 Each electrical utility and, to the extent covered by this title, each electric cooperative and consolidated political subdivision must obey and comply with all requirements of every order, decision, direction, rule, or regulation made or prescribed by the Public Service Commission or every direction, rule, or regulation made or prescribed by the Office of Regulatory Staff pursuant to this chapter or in relation to any other matter relating to or affecting the business of the electrical utility, electric cooperative, or consolidated political subdivision and must do everything necessary or proper to comply with and observe every order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

HISTORY: 1962 Code Section 24‑3; 1952 Code Section 24‑3; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1969 (56) 740; 1972 (57) 2757; 2006 Act No. 318, Section 158, eff May 24, 2006.

**SECTION 58‑27‑50.** Assessments on electric utilities to pay expenses of Commission.

 All expenses and charges incurred by the commission in the administration of this chapter and in the performance of its duties thereunder shall be defrayed by assessments made by the Comptroller General against the electrical utilities regulated thereunder and based upon the gross revenues collected by such electrical utilities from their business done wholly within this State in the manner set out in Section 58‑3‑100 for other corporations.

 The Public Service Commission must certify to the Comptroller General annually on or before May first the amounts to be assessed in the format approved by the Comptroller General.

HISTORY: 1962 Code Section 24‑4; 1952 Code Section 24‑4; 1942 Code Section 8555‑4; 1932 (37) 1497; 1982 Act No. 331, Section 3, eff April 9, 1982; 2006 Act No. 318, Section 159, eff May 24, 2006.

**SECTION 58‑27‑70.** Employment of staff; suits or actions arising under chapter.

 The commission may employ such technical administrative and clerical staff as it may deem necessary to carry out the provisions of this chapter and to perform the duties and exercise the powers conferred upon it by law in relation to electrical utilities. The Office of Regulatory Staff shall be the legal head of suits or actions arising under this chapter.

HISTORY: 1962 Code Section 24‑6; 1952 Code Section 24‑6; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 160, eff May 24, 2006.

**SECTION 58‑27‑80.** Annual report of Commission.

 As a separate section or division of the annual report which it is now required by law to make the Commission annually shall file a report containing a full and complete account of its transactions and proceedings under this chapter for the preceding calendar year, together with such other pertinent facts, suggestions and recommendations as it may deem of value to the people of the State.

HISTORY: 1962 Code Section 24‑7; 1952 Code Section 24‑7; 1942 Code Section 8555‑4; 1932 (37) 1497.

**SECTION 58‑27‑90.** Effect of chapter on constitutional rights and powers of municipalities.

 Nothing contained in this chapter or in Title 33, Chapter 49 shall be construed as to modify, abridge, or impair any of the rights or powers granted to cities and towns under the provisions of Article VIII, Sections 15 and 16, or any other provisions of the Constitution of this State, and every right, power, or privilege conferred upon any city or town by the Constitution of this State otherwise appearing to be modified, abridged, or impaired by any provision of this chapter is to be deemed excepted from the operation thereof, it being the intention of this chapter to control and regulate the acts of cities and towns only to an extent consistent with the Constitution of this State.

HISTORY: 1962 Code Section 24‑8; 1952 Code Section 24‑8; 1942 Code Section 8555‑8; 1932 (37) 1497; 1934 (38) 1452; 1937 (40) 147; 2004 Act No. 179, Section 6, eff upon approval (became law without the Governor's signature on February 19, 2004).

Editor's Note

2004 Act No. 179, Section 11 provides:

"SECTION 11. . . . Section 58‑27‑90, . . . as amended by this act, shall apply prospectively."

**SECTION 58‑27‑100.** Effect of chapter on municipal police regulations and ordinances.

 Nothing contained in this chapter or in Title 33, Chapter 49 shall be so construed as to limit or restrict the right of cities and towns to adopt and enforce reasonable police regulations and ordinances affecting electrical utilities and electric cooperatives, not inconsistent with the provisions of this chapter or the provisions of Title 33, Chapter 49, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears necessary and proper to the municipality for the security, general welfare, convenience, health, peace, order, and good government.

HISTORY: 1962 Code Section 24‑9; 1952 Code Section 24‑9; 1942 Code Section 8555‑8; 1932 (37) 1497; 1934 (38) 1452; 1937 (40) 147; 2004 Act No. 179, Section 7, eff upon approval (became law without the Governor's signature on February 19, 2004).

Editor's Note

2004 Act No. 179, Section 11 provides:

"SECTION 11. . . . Section 58‑27‑100, as amended by this act, shall apply prospectively."

**SECTION 58‑27‑110.** Effect of chapter on interstate commerce.

 Neither this chapter nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of the United States, except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

HISTORY: 1962 Code Section 24‑10; 1952 Code Section 24‑10; 1942 Code Section 8555‑8; 1932 (37) 1497; 1934 (38) 1452; 1937 (40) 147.

**SECTION 58‑27‑120.** Effect of chapter on duties declared in Broad River case.

 Nothing contained in this chapter, including any duty imposed, any right, power, or privilege granted, the exercise, receipt, or acceptance of any such right, privilege, or permit under the authority of this chapter nor any act done under the authority of this chapter shall be construed or given effect to abrogate, modify, or affect the duties and obligations of electrical or other public utilities as declared by the Supreme Court of South Carolina in the case of State ex rel. Daniel, Attorney General v Broad River Power Company, et al, 157 SC 1, 153 SE 537. However, if both a municipality and electrical or other public utility mutually agree, the electrical or other public utility may grant, transfer, abrogate, modify, sell, or impose upon the municipality the duty or obligation to provide a public transit system to the municipality. The terms of such a grant, transfer, abrogation, modification, sale, or imposition of the duty or obligation to provide a public transit system from an electrical or other public utility to a municipality shall take effect only upon the transfer of the public transit system from the public utility to the municipality or another governmental entity.

HISTORY: 1962 Code Section 24‑11; 1952 Code Section 24‑11; 1942 Code Section 8555‑8; 1932 (37) 1492; 1934 (38) 1452; 1937 (40) 147; 2002 Act No. 212, Section 1, eff April 22, 2002.

**SECTION 58‑27‑130.** Condemnation powers of electric companies, State authorities and electric cooperatives.

 Subject to the same duties and liabilities, all the rights, powers, and privileges conferred upon telegraph and telephone companies to acquire rights‑of‑way for the construction, maintenance, and operation of lines under Sections 58‑9‑2020 to 58‑9‑2030 are granted unto electric lighting and power companies incorporated under the laws of this State, or to those companies incorporated under the laws of any other state which have complied with the laws of this State regulating foreign corporations doing business in this State, and to state authorities and electric cooperatives, and the right is also granted to those companies and authorities and electric cooperatives to acquire fee simple title or an easement in land by a condemnation action, for the construction of electric generating plants, substations, switching stations, and impounding of waters to be used in conjunction with electric generating plants. No property or rights used for the generation or transmission of electricity, or devoted to public use for such purposes, shall be condemned hereunder.

HISTORY: 1962 Code Section 24‑12; 1952 Code Section 24‑12; 1942 Code Section 8540; 1932 Code Section 8540; Civ. C. '22 Section 5024; Civ. C. '12 Section 3326; 1904 (24) 489; 1958 (50) 1679; 1987 Act No. 173 Section 49, eff nine months from approval by Governor (approved by Governor on June 30, 1987).

**SECTION 58‑27‑140.** General powers of Commission.

 The commission may, upon petition:

 (1) ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities;

 (2) ascertain and fix by regulation adequate and reasonable standards for the measurement of quality, quantity, initial voltage, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any or all electrical utilities;

 (3) prescribe reasonable regulations for the examination and testing of such product, commodity, or service and for the measurement thereof; and

 (4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurement.

HISTORY: 1962 Code Section 24‑111; 1952 Code Section 24‑111; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 161, eff May 24, 2006.

**SECTION 58‑27‑150.** Promulgation of rules and regulations.

 The Commission may make such rules and regulations not inconsistent with law as may be proper in the exercise of its powers or for the performance of its duties under this chapter, all of which shall have the force of law.

HISTORY: 1962 Code Section 24‑112; 1952 Code Section 24‑112; 1942 Code Section 8555‑4; 1932 (37) 1497.

**SECTION 58‑27‑160.** Investigation and examination of condition and management of utility.

 The Office of Regulatory Staff may investigate and examine the condition and management of electrical utilities or any particular electrical utility.

HISTORY: 1962 Code Section 24‑113; 1952 Code Section 24‑113; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 162, eff May 24, 2006.

**SECTION 58‑27‑170.** Joint hearings and joint or concurrent orders; joint investigations.

 The commission may hold joint hearings and issue joint or concurrent orders in conjunction or concurrence with any official board or commission of any state or of the United States. The Office of Regulatory Staff may make joint investigations with any official board or commission of any state or of the United States.

HISTORY: 1962 Code Section 24‑114; 1952 Code Section 24‑114; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 163, eff May 24, 2006.

**SECTION 58‑27‑180.** Valuations and revaluations of property of utilities.

 The commission may, after hearing, ascertain and fix the value of the whole or any part of the property of any electrical utility insofar as the same is material to the exercise of the jurisdiction of the commission and may, after hearing, make revaluations from time to time and ascertain the value of all new construction, extensions, and additions to the property of every electrical utility.

HISTORY: 1962 Code Section 24‑115; 1952 Code Section 24‑115; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 164, eff May 24, 2006.

**SECTION 58‑27‑190.** Inspection of property; audit of books; examination of employees of utilities.

 The Office of Regulatory Staff has the right at any and all times to inspect the property, plant, and facilities of any electrical utility and the South Carolina Public Service Authority and to inspect or audit at reasonable times the accounts, books, papers, and documents of any electrical utility and the South Carolina Public Service Authority. For the purposes herein mentioned an employee or agent of the Office of Regulatory Staff may during all reasonable hours enter upon any premises occupied by or under the control of any electrical utility or the South Carolina Public Service Authority. An employee or agent of the Office of Regulatory Staff authorized to administer oaths has the power to examine under oath any officer, agent, or employee of the electrical utility and the South Carolina Public Service Authority, in relation to the business and affairs of the electrical utility or the South Carolina Public Service Authority, but written record of the testimony or statement so given under oath must be made.

HISTORY: 1962 Code Section 24‑116; 1952 Code Section 24‑116; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 165, eff May 24, 2006; 2021 Act No. 90 (H.3194), Section 15, eff January 1, 2022.

Effect of Amendment

2021 Act No. 90, Section 15, in the first sentence, inserted "and the South Carolina Public Service Authority" in two places, in the second sentence, inserted "or the South Carolina Public Service Authority", and in the third sentence, inserted "and the South Carolina Public Service Authority," following "employee of the electrical utility" and "or the South Carolina Public Service Authority" following "electrical utility".

**SECTION 58‑27‑200.** Inspection of tax returns and other information.

 In the performance of its duties under this chapter, an employee or agent of the Office of Regulatory Staff may inspect or make copies of all income, property, or other tax returns, reports, or other information filed by electrical utilities or the South Carolina Public Service Authority, with or otherwise obtained by any other department, commission, board, or agency of the state government. All departments, commissions, boards, or agencies of the state government must permit an employee or agent of the Office of Regulatory Staff to inspect or make copies of all information filed by electrical utilities or the South Carolina Public Service Authority, with or otherwise obtained by the department, commission, board, or agency of the state government.

HISTORY: 1962 Code Section 24‑117; 1952 Code Section 24‑117; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 166, eff May 24, 2006; 2021 Act No. 90 (H.3194), Section 16, eff January 1, 2022.

Effect of Amendment

2021 Act No. 90, Section 16, in the first and second sentences, inserted "or the South Carolina Public Service Authority," following "electrical utilities".

**SECTION 58‑27‑210.** Actions to prevent or discontinue violations of law or orders of Commission.

 Whenever it shall appear that any electrical utility, electric cooperative, the South Carolina Public Service Authority regarding its provision of electric services, or consolidated political subdivision is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the commission or is doing, or about to do anything or permitting or about to permit anything to be done contrary to or in violation of law or of any order of the commission, an action or proceeding shall be prosecuted in any court of competent jurisdiction in the name of the Office of Regulatory Staff for the purpose of having such violation or threatened violation discontinued or prevented, either by mandamus, injunction, or other appropriate relief, and in such action or proceeding, it shall be permissible to join such other persons, corporations, municipalities, or consolidated political subdivisions as parties thereto as may be reasonably necessary to make the order of the court in all respects effective. The commission must not be a party to any action.

HISTORY: 1962 Code Section 24‑118; 1952 Code Section 24‑118; 1942 Code Section 8555‑4; 1932 (37) 1497; 1969 (56) 740; 1972 (57) 2757; 2006 Act No. 318, Section 167, eff May 24, 2006; 2021 Act No. 90 (H.3194), Section 17, eff January 1, 2022.

Effect of Amendment

2021 Act No. 90, Section 17, in the first sentence, inserted "the South Carolina Public Service Authority regarding its provision of electric services," following "electric cooperative,".

**SECTION 58‑27‑220.** Enforcement and administration of chapter.

 In addition to the foregoing expressly enumerated powers, the Office of Regulatory Staff must enforce, execute, administer, and carry out the provisions of this chapter relating to the powers, duties, limitations, and restrictions imposed upon electrical utilities and the South Carolina Public Service Authority by this chapter or any other provisions of the law of this State regulating electrical utilities and the South Carolina Public Service Authority regarding its provision of electric services.

HISTORY: 1962 Code Section 24‑119; 1952 Code Section 24‑119; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 168, eff May 24, 2006; 2021 Act No. 90 (H.3194), Section 18, eff January 1, 2022.

Effect of Amendment

2021 Act No. 90, Section 18, inserted "and the South Carolina Public Service Authority" following "imposed upon electrical utilities" and "and the South Carolina Public Service Authority regarding its provision of electric services" following "regulating electrical utilities".

**SECTION 58‑27‑230.** Exercise of other powers of Commission not excluded.

 The enumeration of the powers of the Commission as herein set forth shall not be construed to exclude the exercise of any power which the Commission would otherwise have under the provisions of law.

HISTORY: 1962 Code Section 24‑120; 1952 Code Section 24‑120; 1942 Code Section 8555‑4; 1932 (37) 1497.

**SECTION 58‑27‑240.** Construction of South Carolina Rural Development Act of 1996.

 No provision of the South Carolina Rural Development Act of 1996 may be construed to alter, modify, amend, or repeal, directly or by implication, any provision of Chapter 27 of Title 58, Chapter 31 of Title 58, Chapter 33 of Title 58, Chapter 23 of Title 6, Chapter 7 of Title 5, and Chapter 31 of Title 5, governing, among other things, the retail and wholesale distribution and sale of electric energy in this State.

HISTORY: 1996 Act No. 462, Section 5, eff July 2, 1996.

Editor's Note

1996 Act No. 462, Section 1, eff July 2, 1996, provides as follows:

"SECTION 1. This act may be cited as the 'South Carolina Rural Development Act of 1996'."

**SECTION 58‑27‑250.** Restrictions on interruption of electric service to residential customer for nonpayment of bill; exceptions.

 (A) Except as provided in subsections (B) and (C) of this section, an electrical utility must not interrupt electric service to any residential customer for nonpayment of a bill until twenty‑five days have elapsed from the date of billing.

 (B) An electrical utility may interrupt electric service to any residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of electricity and his account balance on a daily basis and the balance of that customer's prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his electric service may be interrupted when the balance of his prepay account reaches zero; (2) electric service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the electrical utility to give the customer notice of the impending interruption by telephone or electronically; and (3) electric service must not be interrupted except during hours when the electrical utility, or an agent, is accepting cash payments.

 (C) A prepay program established by an electrical utility shall be subject to approval by the Public Service Commission of South Carolina prior to implementation. Any interruption of electric service under an approved prepay program shall be governed by the terms of this section and the provisions of the prepay account agreement. A prepay program approved by the Public Service Commission under this subsection must allow the utility to interrupt service when the balance of the customer's prepay account is zero and the conditions set out in subsection (B) are met. Upon a showing of good cause, the commission may allow alternative compliance with the requirement of subsection (B) regarding the ability of the customer to monitor his consumption and account balance on a daily basis, if such compliance provides consumer information and protections similar to that required in subsection (B).

 (D) Nothing contained herein shall be construed so as to relieve an electrical utility of the requirements of Act 313 of 2006.

 (E) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law.

HISTORY: 2010 Act No. 258, Section 2, eff June 11, 2010.

**SECTION 58‑27‑255.** Coal combustion residuals disposal.

 (A) Coal combustion residuals that result from an electrical utility, an electric cooperative, a governmental entity, a corporation, or an individual producing electricity for sale or distribution by burning coal must be placed in a commercial Class 3 solid waste management landfill, unless the coal combustion residuals are:

 (1) located contiguous with the electric generating unit;

 (2) intended to be beneficially reused;

 (3) placed into beneficial reuse; or

 (4) placed in an appropriate landfill which meets the standards of the Department of Health and Environmental Control Regulation 61‑107, and that is owned or operated by the entity that produced the electricity which resulted in the coal combustion residuals.

 (B) The "beneficial reuse" of coal combustion residuals, as used in this section, is subject to the applicable regulations as promulgated by the Department of Health and Environmental Control.

HISTORY: 2016 Act No. 138 (H.4857), Section 1, eff March 2, 2016.

Editor's Note

2016 Act No. 138, Sections 2 and 4, provide as follows:

"SECTION 2. Nothing in this act affects any other provisions or requirements of law or regulation applicable to coal combustion residuals."

"SECTION 4. This act takes effect upon approval by the Governor and applies to the disposal of coal combustion residuals placed in a landfill on or after that date."

**SECTION 58‑27‑260.** Joint Committee on the Electrification of Transportation.

 (A) There is established the Joint Committee on the Electrification of Transportation. The committee is comprised of four members of the Senate, two of whom are appointed by the Chairman of Senate Finance and two of whom are appointed by the Chairman of Senate Judiciary, and four members of the House of Representatives, two of whom are appointed by the Chairman of the Ways and Means Committee and two of whom are appointed by the Chairman of the Labor, Commerce and Industry Committee. The members of the committee shall elect one co‑chairman from the Senate appointees and one co‑chairman from the House appointees.

 (B)(1) The committee shall study the challenges and opportunities associated with the electrification of the transportation sector and make recommendations to the General Assembly to enable a fair, efficient, and cost‑effective transition to electric transportation.

 At a minimum, the committee shall study the following issues:

 (a) environmental, economic, and customer challenges and benefits associated with the advancement of electric vehicles;

 (b) the potential value of advancing the development and deployment of electric vehicles and associated infrastructure and address issues that impede development and deployment;

 (c) explore and evaluate the impacts of electric vehicles on roads, bridges, and other infrastructure, including the potential loss of revenue due to the current and projected future use of electric vehicles in this State;

 (d) explore and evaluate the impacts of electric vehicles on customers, utilities, and the grid; and

 (e) any other issues associated with the electrification of the transportation sector.

 (2) The committee shall receive reports from:

 (a) the Office of Regulatory Staff's stakeholder initiative to advance the electrification of transportation sector;

 (b) the South Carolina Public Service Commission pursuant Section 58‑27‑265; and

 (c) by September first of each year, the South Carolina Department of Revenue shall provide an annual report to the committee that details the prior fiscal year's revenue collections, from whatever source derived, designated for the repair, maintenance, or improvements to the South Carolina transportation system.

 (C) The committee shall receive clerical and related assistance from the staff of the Senate and the staff of the House of Representatives, as approved and designated by the President of the Senate and the Speaker of the House, respectively.

HISTORY: 2021 Act No. 46 (S.304), Section 2, eff May 17, 2021.

**SECTION 58‑27‑265.** Identification of regulatory challenges and opportunities associated with electrification of transportation sector.

 (A) No earlier than April 1, 2023, the Public Service Commission shall open a docket for the purpose of identifying the regulatory challenges and opportunities associated with the electrification of the transportation sector.

 At a minimum, the commission shall study the following issues:

 (1) grid integration and resource planning to facilitate electrified transportation;

 (2) the interaction between transportation electrification and the electric power grid;

 (3) regulatory policies to support efficient and cost‑effective transition to electric transportation;

 (4) the need for data management and coordination among a number of energy system participants;

 (5) grid investments that support electric vehicle deployments as a part of planned modernization efforts to enable an efficient and cost‑effective transition to electric transportation;

 (6) increased electric vehicle adoption and the development of their charging infrastructure and how those advancements align with grid modernization efforts;

 (7) whether rate designs and other load management strategies are appropriate to mitigate potential negative grid impacts and maximize potential grid benefits of transportation electrification;

 (8) other critical issues related to transportation electrification, such as service reliability, privacy, affordability, and security; and

 (9) and any other issues the commission determines relevant.

 (B) The commission shall issue a report to the Joint Committee on the Electrification of Transportation. Upon submitting the report, the commission shall open a docket at least every three years thereafter to study the regulatory issues related to the electrification of the transportation sector and report back to the Joint Committee on the Electrification of Transportation and the General Assembly.

 (C) To the extent necessary to carry out commission responsibilities, the commission is authorized to employ third‑party consultants and experts, by contract or otherwise, as the commission may consider necessary to assist the commission in the proper discharge of its duties and responsibilities as provided by this section. The expenses for the employment of any third‑party consultant or expert as authorized by this subsection must be paid from the assessments collected pursuant to Section 58‑3‑100. The commission shall provide an accounting of compensation and expenses incurred for third‑party consultants and experts in a report provided annually to the review committee. The commission is exempt from the State Procurement Code in the selection and hiring of third‑party consultants and experts as authorized by this subsection.

HISTORY: 2021 Act No. 46 (S.304), Section 2, eff May 17, 2021.

**SECTION 58‑27‑270.** Stakeholder process; exploration of opportunities and identification of challenges to advance electrification of transportation sector.

 (A) The South Carolina Office of Regulatory Staff through any existing electric vehicle stakeholder initiatives launched by the regulatory staff, shall complete a stakeholder process to facilitate a broad, collaborative statewide discussion among stakeholders to explore the opportunities to advance electrification of the transportation sector along with identifying challenges associated with the advancement of electrification of the transportation sector.

 (B) Components of this initiative shall include, but not be limited to:

 (1) working with stakeholders in the private and public sector, including the South Carolina Department of Transportation, the South Carolina Department of Commerce, the South Carolina Department of Revenue, and other relevant stakeholders;

 (2) examining the legislative and regulatory environmental, economic, and customer challenges and opportunities;

 (3) identifying challenges and opportunities in electrified vehicle technologies, such as power conversion and energy storage, the grid integration of electrified transportation and transportation policies, that pave the way for electrified transportation; and

 (4) identifying efforts to enable a more efficient and cost‑effective transition to electric transportation.

 (C) To the extent necessary to carry out its responsibilities, the Office of Regulatory Staff is authorized to employ third‑party consultants and experts, by contract or otherwise, as the Office of Regulatory Staff may consider necessary to assist regulatory staff in the proper discharge of its duties and responsibilities as provided by this section. The expenses for the employment of any third‑party consultant or expert authorized by this subsection must be paid from the assessments collected pursuant to Section 58‑4‑60. The Office of Regulatory Staff shall provide an accounting of compensation and expenses incurred for third‑party consultants and experts in a report provided annually to the review committee. The Office of Regulatory Staff is exempt from the State Procurement Code in the selection and hiring of third‑party consultants and experts as authorized by this subsection.

 (D) The Office of Regulatory Staff shall make initial recommendations to the Joint Committee on the Electrification of Transportation no earlier than July 1, 2022. Upon submitting the report, the Office of Regulatory staff shall convene additional stakeholder initiatives and report recommendations to the Joint Committee at least every two years thereafter.

HISTORY: 2021 Act No. 46 (S.304), Section 2, eff May 17, 2021.

ARTICLE 3

Franchises and Permits

**SECTION 58‑27‑410.** Procedure for granting of exclusive municipal franchises to furnish light.

 All cities and towns of the State may grant the exclusive franchise of furnishing light to such cities and towns and the inhabitants thereof. But no such franchise shall be valid unless it shall first receive the vote of two thirds of the board of aldermen or common council of the city or town granting it and be subsequently confirmed by a vote of the majority of the qualified electors of the city or town, voting at an election called specially for the purpose. The ordinance or resolution granting such a franchise shall fix a maximum rate for furnishing light, both for public and private consumption and the person obtaining such exclusive franchise shall have no power to charge or receive any greater price for light thus furnished than the maximum rate so fixed. No such franchise shall affect any existing contractual rights.

HISTORY: 1962 Code Section 24‑21; 1952 Code Section 24‑21; 1942 Code Section 7269; 1932 Code Section 7269; Civ. C. '22 Section 4424; Civ. C. '12 Section 3014; 1902 (23) 1039.

**SECTION 58‑27‑415.** Franchise fee not to be paid or collected under "Stateline Accounts"; calculation of franchise fee.

 (A) The State shall not pay, nor shall any person, including a municipality or utility, impose, pay, or collect a franchise fee with respect to electrical power provided to the State by a utility under the "Stateline Accounts". The "Stateline Accounts" referenced in this section are those state electrical power accounts that arose from the 1925 agreement validated, ratified, and approved in Act 440 of 1925 (34 Stats. 852).

 (B) The utility shall exclude all gross sales revenue accrued from the Stateline Accounts when calculating any franchise fee owed to a municipality and shall therefore not include those Stateline Account gross sales revenues in the payment of the franchise fee to the municipality. The "Stateline Accounts" referenced in this section are those state electrical power accounts that arose from the 1925 agreement validated, ratified, and approved in Act 440 of 1925 (34 Stats. 852).

HISTORY: 2008 Act No. 329, Section 1, eff June 16, 2008.

Editor's Note

2008 Act No. 329, Section 2 provides as follows:

"Section 58‑27‑415(A) takes effect upon approval by the Governor. Section 58‑27‑415(B) takes effect January 1, 2009."

**SECTION 58‑27‑420.** Franchises and permits shall be indeterminate.

 Every permit or franchise hereafter granted to any electrical utility, either by the State or any municipality thereof, shall have the effect of an indeterminate permit which shall continue in effect until terminated as provided by this chapter or by any lawful forfeiture of the right of such electrical utility to continue to conduct its business in this State.

HISTORY: 1962 Code Section 24‑22; 1952 Code Section 24‑22; 1942 Code Section 8555‑3; 1932 (37) 1497.

**SECTION 58‑27‑430.** Exchange of old limited permit or franchise for indeterminate permit.

 Any electrical utility operating under an existing permit or franchise heretofore granted by the State or any municipality thereof prescribing a definite period of years for the existence of such permit or franchise shall, upon (a) filing with the commission and providing to the Office of Regulatory Staff a written declaration that it surrenders such permit or franchise, (b) the consent of such municipality, and (c) proof of any consent that may be required by Article VIII, Section 15 of the Constitution of this State, receive an indeterminate permit which shall take the place of the surrendered permit or franchise, and such electrical utility or its successors or assigns shall hold such permit in accordance with the terms, conditions, and limitations of this chapter and any future regulatory acts. If, for any reason, any indeterminate permit held by a public utility is held to be invalid, the public utility shall, by operation of law and without further act, have reinstated in it any franchise or franchises surrendered by it in exchange for such indeterminate permit.

HISTORY: 1962 Code Section 24‑23; 1952 Code Section 24‑23; 1942 Code Section 8555‑3; 1932 (37) 1497; 2006 Act No. 318, Section 169, eff May 24, 2006.

**SECTION 58‑27‑440.** Revocation of indeterminate permit for inadequacy of service.

 Whenever the service rendered by any electrical utility operating under an indeterminate permit shall be found inadequate by order of the Commission after hearing and such electrical utility shall fail to remedy the same after having been given a reasonable opportunity to do so, the indeterminate permit enjoyed by such electrical utility in respect to the service so found to be inadequate may with the consent of such municipality be declared revoked by the Commission upon such terms as shall be reasonable and just. But no order of the Commission revoking any such permit shall have any force and effect until a final determination of any proceeding brought to review the same.

HISTORY: 1962 Code Section 24‑24; 1952 Code Section 24‑24; 1942 Code Section 8555‑3; 1932 (37) 1497.

**SECTION 58‑27‑450.** Continuance of service on expiration of franchise.

 Any electrical utility which has been furnishing electricity to a city or town or its inhabitants under a franchise that has expired shall, with such consent of the local authorities as may be required by article VIII, section 15, of the Constitution of this State, until a new permit for supplying electricity to such city or town or its inhabitants lawfully has been obtained, continue to furnish the same to such city or town or its inhabitants under such rates and upon such terms and conditions as may be approved by the Commission.

HISTORY: 1962 Code Section 24‑25; 1952 Code Section 24‑25; 1942 Code Section 8555‑3; 1932 (37) 1497.

**SECTION 58‑27‑460.** Promulgation of standards for interconnection of renewable energy facilities; certain generation activities prohibited.

 (A)(1) The commission shall promulgate and periodically review standards for interconnection and parallel operation of generating facilities to an electrical utility's distribution and transmission system, where such interconnection is under the jurisdiction of the commission pursuant to Title 16, Chapter 12, Subchapter II of the United States Code, as amended, regulations and orders of the Federal Energy Regulatory Commission, and the laws of South Carolina. Each electrical utility shall implement such standards in a fair, nondiscriminatory manner.

 (2) The commission shall, within six months of the effective date of the amendments to this section, establish proceedings for the purpose of considering revisions to the standards promulgated pursuant to this section. In developing such revisions, the commission may consider any issue, which, in the exercise of its discretion, the commission deems relevant to improving the fairness and effectiveness of the procedures.

 (3) In implementing item (1), the commission shall ensure such standards provide for efficient and timely processing of interconnection requests and take into account the impact of generator interconnection on electrical utility system assets, service reliability, and power quality. Such standards shall address the impact of the addition of energy storage and the interconnection processes for amending existing interconnection requests to include energy storage. The commission shall enact standards that are fair, reasonable, and nondiscriminatory with respect to interconnection applicants, other utility customers, and electrical utilities, and the standards shall serve the public interest in terms of overall cost and system reliability.

 (B) No generating facility shall connect or operate in parallel phase and synchronization with any electrical utility without written approval by the electrical utility that all of the commission's requirements have been met. For a generating facility that violates this provision, an electrical utility immediately may and without notice disconnect the generating facility's electric service.

 (C) In the event of a dispute between an interconnection customer and the electrical utility on an issue relating to interconnection service, the parties first shall attempt to resolve the claim or dispute using any dispute resolution procedures provided for pursuant to the applicable interconnection standards promulgated by the commission. If the parties are unable to resolve such claim or dispute using those procedures, then either party may petition the commission for resolution of the dispute including, but not limited to, a determination of the appropriate terms and conditions for interconnection. The commission shall resolve such disputes within six months from the filing of the petition in accordance with the terms of applicable state and federal law.

 (D) Each electrical utility shall comply with the South Carolina generator interconnection procedures and all commission‑approved agreements regarding interconnection practices and reporting requirements. The commission shall establish reasonable guidelines to ensure reasonable interconnection timelines, including time requirements to deliver a final system impact study to all interconnection customers that execute a system impact study agreement prior to three months after the effective date of this act. The commission shall consider implementation of additional performance incentives and enforcement mechanisms for electrical utilities to ensure compliance with this requirement.

 (E) The commission shall, as part of implementing subsection (A)(1), consider whether a comprehensive independent review of interconnection should be performed and consider whether to require each electrical utility to:

 (1) conduct a study to determine the scope and cost of necessary transmission upgrades to support development of renewable energy resources in a manner that does not impact reliability;

 (2) evaluate the cost of developing and maintaining hosting capacity maps to allow power producers to identify areas of the distribution grid that are more amenable to building and interconnecting their generation facilities and to avoid areas that are already saturated with distributed generation; and

 (3) file a list of interconnected facilities with the commission each quarter, to include interconnections that are under the jurisdiction of the Federal Energy Regulatory Commission.

HISTORY: 2014 Act No. 236 (S.1189), Section 6, eff June 2, 2014; 2019 Act No. 62 (H.3659), Section 10, eff May 16, 2019.

Editor's Note

2014 Act No. 236, Section 9, provides as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs."

Effect of Amendment

2019 Act No. 62, Section 10, rewrote the section, requiring the Public Service Commission to periodically review the standards for interconnection and parallel operation of generating facilities to an electrical utility's distribution and transmission system.

ARTICLE 5

Service Rights of Electric Suppliers

**SECTION 58‑27‑610.** Definitions.

 When used in this article:

 (1) The term "electric supplier" means any electrical utility other than a municipality, any electric cooperative other than an electric cooperative engaged primarily in the business of furnishing electricity to other electric cooperatives for resale to other electric consumers, and any consolidated political subdivision owning or operating an electric plant or system for furnishing of electricity to the public for compensation.

 (2) The term "premises" means the building, structure or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for farming, business, commercial, industrial, institutional or governmental purposes, shall together constitute one "premises," except that any such building, structure or facility shall not, together with any other building, structure or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure or facility.

 (3) The term "line" means any electric conductor operating at a nominal voltage level of 25 KV or less, measured phase‑to‑phase, except (a) in the case of overhead construction, a conductor from the pole or tower nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and (b) in the case of underground construction, a conductor from the transformer (or junction point, if there be one) nearest, on or in the premises of the consumer to such premises; provided, the term "line" shall include any electric conductor operating at a nominal voltage level in excess of 25 KV and less than 48 KV where it is established to the satisfaction of the other electric suppliers in the county or counties where such conductor is located, or in the absence of such agreement, to the satisfaction of the Public Service Commission, that the primary purpose and use of such conductor is for the distribution of electric power and not for the transmission of bulk power from one area to another; and, provided, further, that the term "line" shall include any other electric conductor operating at a nominal voltage level in excess of 25 KV and less than 48 KV, except that, until it is determined that such conductor is a distribution line in accordance with the preceding proviso, the service rights with respect to premises located wholly within three hundred feet of such conductor shall not be exclusive.

 (4) The term "industrial premises" means the premises of a person, firm or corporation engaged in the business of manufacture, processing, assembling, fabrication or related work.

 (5) As used in this article the term "corridor rights" means those rights an electric supplier has to serve customers which rights arise from the provisions of Section 58‑27‑620(1)(b), (c), and (d).

HISTORY: 1962 Code Section 24‑13; 1969 (56) 740; 1972 (57) 2757; 2007 Act No. 16, Section 4, eff upon approval (became law without the Governor's signature on May 3, 2007).

**SECTION 58‑27‑620.** Service rights of and restrictions on electric suppliers.

 With respect to service in all areas outside the corporate limits of municipalities, electric suppliers shall have rights and be subject to restrictions as follows:

 (1) Every electric supplier shall have the right to serve:

 (a) all premises being served by it, or to which any of its facilities for service are attached on July 1, 1969;

 (b) subject to paragraph (d)(i) of this subsection, all premises initially requiring electric service after July 1, 1969, which are located wholly within three hundred feet of the electric supplier's lines as the lines exist on July 1, 1969;

 (c) subject to paragraph (d)(i) of this subsection, all premises initially requiring electric service after July 1, 1969, which are located wholly within three hundred feet of lines that the electric supplier constructs to serve consumers that it has the right to serve or acquires after July 1, 1969; provided, however, that an electric supplier shall not have the right to serve premises wholly within a service area assigned to another electric supplier pursuant to Section 58‑27‑640 from a line constructed after the date of the assignment;

 (d) if chosen by the consumer, any premises initially requiring electric service after July 1, 1969, which are:

 (i) located wholly or partially within three hundred feet of the lines of the electric supplier and also wholly or partially within three hundred feet of the lines of another electric supplier, as each of the supplier's lines exist on July 1, 1969, or as extended to serve consumers that the supplier has the right to serve or as acquired after July 1, 1969;

 (ii) not located wholly within three hundred feet of the lines of any electric supplier and are not located partially within three hundred feet of the lines of two or more electric suppliers, unless the premises are located wholly or partially within an area assigned to an electric supplier pursuant to Section 58‑27‑640;

 (iii) located partially within a service area assigned to the electric supplier and partially within a service area assigned to another electric supplier pursuant to Section 58‑27‑640 or are located partially within a service area assigned to the electric supplier pursuant to Section 58‑27‑640 and partially within three hundred feet of the lines of another electric supplier, or are located partially within three hundred feet of the lines of the electric supplier, as the lines exist on July 1, 1969, or as extended to serve consumers it has the right to serve or as acquired after that date, and partially within a service area assigned to another electric supplier pursuant to Section 58‑27‑640; and

 (iv) located only partially within a service area assigned to one electric supplier pursuant to Section 58‑27‑640 and are located wholly outside the service area assigned to other electric suppliers and are located wholly more than three hundred feet from other electric suppliers' lines, and any electric supplier not so chosen by the consumer in any of the situations described in this paragraph (d) shall not thereafter furnish service to the premises. The choice of the consumer in the situations described in this paragraph (d) must be controlling, and the Public Service Commission shall have no authority to order any other supplier to serve the consumer, except as provided in Section 58‑27‑660;

 (e) with respect to the above provisions of Section 58‑27‑620(1)(d), a premises consisting of multiple buildings, structures, or facilities, is deemed to be located partially within three hundred feet of a supplier's line having service rights if:

 (i) at least twenty percent of the total connected electric load of the premises, as determined by the final site plan submitted for construction permits, is due to a single building, structure, or facility located wholly or partially within three hundred feet of the line having service rights;

 (ii) a minimum of eighty percent of the total connected electric load of the premises, as determined by the final site plan submitted for construction permits, is to be served to buildings, structures, or facilities located wholly within two thousand feet of the line having service rights;

 (iii) service is rendered through only one meter to all buildings, structures, or facilities constituting the premises;

 (f) with respect to the above provisions of Section 58‑27‑620(1)(d)(iii), a premises consisting of multiple buildings, structures, or facilities is deemed to be located partially within a supplier's territory if:

 (i) at least twenty percent of the total connected electric load of the premises, as determined by the final site plan submitted for construction permits, is due to a single building, structure, or facility located wholly or partially within the supplier's territory;

 (ii) a minimum of eighty percent of the total connected electric load of the premises, as determined by the final site plan submitted for construction permits, is to be served to buildings, structures, or facilities located wholly within two thousand feet of the supplier's territory; and

 (iii) service is rendered through only one meter to all buildings, structures, or facilities constituting the premises;

 (g) all premises located wholly within the service area assigned to it pursuant to Section 58‑27‑640; and

 (h) all premises being served by it pursuant to the provisions of Section 58‑27‑620(2) as it existed before the effective date of Article 4, Chapter 33 of Title 58.

 (2) Any electric supplier or electric utility shall have the right to furnish electric service to any industrial premises initially requiring electric service after the effective date of Article 4, Chapter 33 of Title 58 provided that the total connected load of the premises, as determined by the final site plan submitted for construction permits, is 7.5 megawatts or larger, and the premises is located entirely within one of the following parcels:

 (a) the parcel shown on Map 101 filed in the Office of Regulatory Staff;

 (b) the parcel shown on Map 102 filed in the Office of Regulatory Staff;

 (c) the parcel shown on Map 103 filed in the Office of Regulatory Staff;

 (d) the parcel shown on Map 104 filed in the Office of Regulatory Staff;

 (e) the parcel shown on Map 105 filed in the Office of Regulatory Staff;

 The provisions of this item (2) may apply to additional parcels upon agreement of the affected electric suppliers and approval of the Public Service Commission after notice and an opportunity for hearing is given to all interested parties.

 The Office of Regulatory Staff shall maintain these maps as public records. If any additional parcels are added pursuant to this item (2), maps must be prepared by, or at the direction of, the Office of Regulatory Staff and maintained by the Office of Regulatory Staff as public records.

 (3) No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this section if such premises were already constructed. The construction of lines for, and the furnishing of, temporary service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were already constructed, shall not impair the right of such other electric supplier to furnish service to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier which furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve.

 (4) No electric supplier shall furnish electric service to any premises in this State outside the limits of any incorporated city or town except as permitted by this section; provided, that nothing in this section shall restrict the right of an electric supplier to furnish electric service to its own premises or to exchange or interchange electric energy with, purchase electric energy from or sell electric energy to any other electric supplier.

 (5) In extending electric service to a consumer an electric supplier will, insofar as possible, construct its facilities in accordance with good utility practices.

 (6) Any electric cooperative which is engaged primarily in the furnishing of electricity for resale to other electric cooperatives shall have the right to furnish such electricity for resale to all electric cooperatives but shall not furnish electric service to any other customers or premises.

 (7) Upon consolidation of the units of government within any county, pursuant to the Constitution of this State, existing municipal electric plants or systems within such county may continue in operation under the consolidated political subdivision and shall be subject to this chapter except within those areas as provided for in Section 58‑27‑20. For the purposes of this chapter a consolidated political subdivision shall not be deemed a municipality and the corporate limits of municipalities merged into the consolidated political subdivision shall be deemed to cease to exist upon consolidation except for the purposes of Sections 58‑27‑20 and 58‑27‑630.

 (8) In addition to the authority granted to the commission in the preceding provisions of this section, the commission shall have the authority to approve agreements between electric suppliers concerning corridor rights. This additional authority only shall apply in situations where all affected electric suppliers have reached an agreement concerning corridor rights. With respect to the agreements, the commission shall approve the agreements if, after giving notice and an opportunity for hearing to interested parties, it finds the agreements to be fair and reasonable, but the commission shall not have the authority to alter or amend any such agreement unless all affected electric suppliers agree to the alteration or amendment.

HISTORY: 1962 Code Section 24‑14; 1969 (56) 740; 1972 (57) 2757; 2007 Act No. 16, Sections 5 to 7, eff upon approval (became law without the Governor's signature on May 3, 2007).

**SECTION 58‑27‑630.** Service rights and restrictions in areas within consolidated political subdivisions.

 Whenever there is a consolidation of government as authorized under the Constitution of this State, the rights of and restrictions on electric suppliers as provided for in Section 58‑27‑620 shall apply to areas within the corporate limits of a municipality being merged into a consolidated political subdivision except a municipality owning and operating a municipal electric system and shall be established as of the date of consolidation rather than on July 1, 1969, as provided for in Section 58‑27‑620. On the date of such consolidations the same rights granted to and restrictions imposed upon other electric suppliers shall be granted to and imposed upon existing municipal systems as to areas within the consolidated political subdivision but outside the previously existing corporate limits of the municipality owning and operating such a system.

HISTORY: 1962 Code Section 24‑14.1; 1972 (57) 2757.

**SECTION 58‑27‑640.** Assignment of service areas.

 The Public Service Commission shall assign, beginning as soon as practicable after January 1, 1970, to electric suppliers, all areas, by adequately defined boundaries which may be by reference to boundaries drawn on maps or otherwise, that are outside the corporate limits of municipalities, and that are more than three hundred feet from the lines of all electric suppliers as such lines exist on the dates of the assignments; provided, that the Commission may leave unassigned any area in which the Commission, in its discretion, determines the absence of assignment is justified by public convenience and necessity. The Commission shall make assignments of areas in accordance with public convenience and necessity considering, among other things, the location of existing lines and facilities of electric suppliers and the adequacy and dependability of the service of electric suppliers, but not considering rate differentials among electric suppliers.

 Upon consolidation of the units of government within any county pursuant to the Constitution of this State, the Commission shall initially assign the areas that were within the corporate limits of the municipality merged into the consolidated political subdivision and that are more than three hundred feet from the lines of all electric suppliers as such lines exist on the date of the consolidation to the electric supplier including any existing municipal systems then serving within such areas, subject to the power of the Commission to leave any area unassigned or to reassign any area and subject to Sections 58‑27‑20, 58‑27‑630 and 58‑27‑650.

HISTORY: 1962 Code Section 24‑15; 1969 (56) 740; 1972 (57) 2757.

Editor's Note

Section 1 of 1984 Act No. 431, provides as follows:

"The General Assembly finds that assignment of electric service territories by the Public Service Commission has aided the State in overseeing the public interest of its citizens by uniformly regulating the responsibilities and rights of sellers of electricity.

"The General Assembly further finds that unnecessary duplication of electrical facilities increases rates and charges to South Carolina citizens and that the assignment of electric service territories has decreased duplication.

"The General Assembly further finds that incorporation of new municipalities and annexation by existing municipalities alter assignments of service areas originally made for public convenience and necessity without consideration for the impact of the change on persons living outside the municipality.

"Therefore, in accordance with the powers granted the General Assembly under Article IX, Section 1, and Article VIII, Section 14, of the Constitution of this State, it is declared the policy of South Carolina to maintain the assignment of electric service territories by the Public Service Commission over areas having been assigned electric suppliers under Section 58‑27‑640, even when the area becomes incorporated or annexed to an existing city or town"

Section 57 of 1987 Act No. 173 (codified as Section 58‑27‑690), provides that this section shall not be modified, abridged, or repealed by 1987 Act No. 173.

**SECTION 58‑27‑650.** Reassignment of service areas.

 (A) The Public Service Commission, upon agreement of the affected electric suppliers, is authorized to reassign to one electric supplier any area or portion of the area assigned to another and, notwithstanding the lack of an agreement, the commission upon petition by any electric supplier or county or consolidated political subdivision within this State, after notice to all affected electric suppliers and after hearing, if a hearing is requested by any affected electric supplier, the Office of Regulatory Staff, or any other interested party, is authorized to reassign to one electric supplier any area or portion of the area assigned to another, except premises being served by the other electric supplier or to which any of its facilities for service are attached and except the portions of the area as are within three hundred feet of the other electric supplier's lines, upon a finding that the reassignment is required by public convenience and necessity. In determining whether public convenience and necessity require the reassignment, the commission shall consider among other things the adequacy and dependability of the service of the affected electric suppliers, but may not consider rate differentials between the electric suppliers.

 (B) The Public Service Commission has the authority and jurisdiction, if a hearing is requested by any affected electric supplier, the Office of Regulatory Staff, or municipality, to order any electric supplier to cease and desist from furnishing electric service inside an assigned area which has been annexed into a municipality upon a finding that service to existing consumers by the electric supplier which is then furnishing service, or which has the right to furnish service to the premises, is or will be inadequate or undependable, and cannot or will not be made adequate or dependable within a reasonable time, or that the rates, conditions of service, or service regulations, applied to the consumers, are unreasonably discriminatory. In determining the adequacy and dependability of service or whether rates, conditions of service, or service regulations are unreasonably discriminatory, the commission may not consider rate differentials between the affected electric suppliers or municipality or differences in the provisions of utility service other than electrical services. Upon a finding of inadequate, undependable, or unreasonably discriminatory service, the commission shall order necessary improvements or corrections or the sale of the facilities in accordance with Section 58‑27‑1360.

HISTORY: 1962 Code Section 24‑16; 1969 (56) 740; 1972 (57) 2757; 1984 Act No. 431, Section 2, eff June 6, 1984; 2006 Act No. 318, Section 170, eff May 24, 2006.

Editor's Note

Section 1 of 1984 Act No. 431, provides as follows:

"The General Assembly finds that assignment of electric service territories by the Public Service Commission has aided the State in overseeing the public interest of its citizens by uniformly regulating the responsibilities and rights of sellers of electricity.

"The General Assembly further finds that unnecessary duplication of electrical facilities increases rates and charges to South Carolina citizens and that the assignment of electric service territories has decreased duplication.

"The General Assembly further finds that incorporation of new municipalities and annexation by existing municipalities alter assignments of service areas originally made for public convenience and necessity without consideration for the impact of the change on persons living outside the municipality.

"Therefore, in accordance with the powers granted the General Assembly under Article IX, Section 1, and Article VIII, Section 14, of the Constitution of this State, it is declared the policy of South Carolina to maintain the assignment of electric service territories by the Public Service Commission over areas having been assigned electric suppliers under Section 58‑27‑640, even when the area becomes incorporated or annexed to an existing city or town."

Section 57 of 1987 Act No. 173 (codified as Section 58‑27‑690), provides that this section shall not be modified, abridged, or repealed by 1987 Act No. 173.

**SECTION 58‑27‑660.** Supplier may furnish service in area served by another.

 Notwithstanding the provisions of Sections 58‑27‑620 and 58‑27‑640:

 (1) Any electric supplier may furnish electric service to any consumer who desires service from such electric supplier at any premises being served by another electric supplier, or at premises which another electric supplier has the right to serve pursuant to other provisions of this article, upon agreement of the affected electric suppliers.

 (2) The Public Service Commission shall have the authority and jurisdiction, after notice to all affected electric suppliers and the Office of Regulatory Staff and after hearing, if a hearing is requested by any affected electric supplier, the Office of Regulatory Staff, or any other interested party, to order any electric supplier which may reasonably do so to furnish electric service to any consumer who desires service from the electric supplier at any premises being served by another electric supplier, including service being provided under the provisions of Section 58‑27‑620(2) as it existed before the effective date of Article 4, Chapter 33 of Title 58 or at premises which another electric supplier has the right to serve pursuant to other provisions of this article, and to order the other electric supplier to cease and desist from furnishing electric service to the premises, upon a finding that service to the consumer by the electric supplier which is then furnishing service, or which has the right to furnish service, to the premises, is or will be inadequate or undependable, and cannot or will not be made adequate and dependable within a reasonable time, or that the rates, conditions of service, or service regulations, applied to the consumer, are unreasonably discriminatory.

HISTORY: 1962 Code Section 24‑17; 1969 (56) 740; 2006 Act No. 318, Section 171, eff May 24, 2006; 2007 Act No. 16, Section 8, eff upon approval (became law without the Governor's signature on May 3, 2007).

Editor's Note

ARTICLE 4, Chapter 33 of Title 58 (Sections 58‑33‑210, et seq.) took effect May 3, 2007.

**SECTION 58‑27‑670.** Service in area becoming part of municipality; premises located within boundaries of electric cooperative or corridor.

 (1) The furnishing of electric service in any area which becomes a part of any municipality after the effective date of this subsection, either by annexation or incorporation, whether or not the area, or any portion of the area has been assigned pursuant to Section 58‑27‑640, is subject to the provisions of Sections 58‑27‑1360 and 33‑49‑250, and any provisions of this article. No poles, wires, or other facilities of electric suppliers using the streets, alleys, or other public ways within the corporate limits of a municipality may be constructed by an electric supplier, unless the consent of the municipal governing body is first obtained. Annexation may not be construed to increase, decrease, or affect any other right or responsibility a municipality, electric cooperative, or electrical utility may have with regard to supplying electric service in areas assigned by the Public Service Commission in accordance with Chapter 27 of Title 58.

 (2) No electrical utility, except the annexing or incorporating municipality or its board or commission of public works, shall furnish electrical service to any premises first requiring service in an area annexed by a municipality or incorporated after the effective date of this subsection where such premises is located (a) in an area assigned by the commission prior to annexation or incorporation to an electric cooperative or (b) in an electric supplier's corridor, as described in this chapter, lying within the boundaries of such area assigned by the commission prior to annexation or incorporation to an electric cooperative; however, nothing in this subsection limits the power of an electric cooperative to serve in such areas, as provided in Section 33‑49‑250.

HISTORY: 1962 Code Section 24‑18; 1969 (56) 740; 1984 Act No. 431, Section 3, eff June 6, 1984; 2004 Act No. 179, Section 8, eff upon approval (became law without the Governor's signature on February 19, 2004).

Editor's Note

Section 57 of 1987 Act No. 173 (codified as Section 58‑27‑690), provides that this section shall not be modified, abridged, or repealed by 1987 Act No. 173.

2004 Act No. 179, Section 11 provides:

**SECTION 11.** . . . Section 58‑27‑670, as amended by this act, shall apply prospectively."

**SECTION 58‑27‑680.** Effect of continuation of service.

 The continuation of electric service under Section 58‑27‑670 must not be construed as affecting the authority of an electric supplier pursuant to Section 58‑27‑620 to serve premises which are already receiving electric service from a municipal electric system, whether inside or outside municipal boundaries.

HISTORY: 1984 Act No. 431, Section 6, eff June 6, 1984.

Editor's Note

Section 1 of 1984 Act No. 431, provides as follows:

"The General Assembly finds that assignment of electric service territories by the Public Service Commission has aided the State in overseeing the public interest of its citizens by uniformly regulating the responsibilities and rights of sellers of electricity.

"The General Assembly further finds that unnecessary duplication of electrical facilities increases rates and charges to South Carolina citizens and that the assignment of electric service territories has decreased duplication.

"The General Assembly further finds that incorporation of new municipalities and annexation by existing municipalities alter assignments of service areas originally made for public convenience and necessity without consideration for the impact of the change on persons living outside the municipality.

"Therefore, in accordance with the powers granted the General Assembly under Article IX, Section 1, and Article VIII, Section 14, of the Constitution of this State, it is declared the policy of South Carolina to maintain the assignment of electric service territories by the Public Service Commission over areas having been assigned electric suppliers under Section 58‑27‑640, even when the area becomes incorporated or annexed to an existing city or town."

Section 57 of 1987 Act No. 173 (codified as Section 58‑27‑690), provides that this section shall not be modified, abridged, or repealed by 1987 Act No. 173.

**SECTION 58‑27‑690.** Act 431 of 1984 not affected by Act 173 of 1987.

 Nothing in Title 28, Chapter 2 (Sections 28‑2‑10 et seq.), and Sections 1‑11‑110, 3‑5‑50, 3‑5‑100, 3‑5‑330, 4‑17‑20, 5‑27‑150, 5‑31‑420, 5‑31‑430, 5‑31‑440, 5‑31‑610, 5‑35‑10, 6‑11‑130, 6‑23‑290, 13‑1‑350, 13‑11‑80, 24‑1‑230, 28‑3‑20, 28‑3‑30, 28‑3‑140, 28‑3‑460, 46‑19‑130, 48‑11‑110, 48‑15‑30, 48‑15‑50, 48‑17‑30, 48‑17‑50, 49‑17‑1050, 49‑19‑1060, 49‑19‑1440, 50‑13‑1920, 51‑1‑560, 54‑3‑150, 55‑9‑80, 55‑11‑10, 57‑3‑700, 57‑5‑370, 57‑5‑380, 57‑21‑200, 57‑25‑190, 57‑25‑470, 57‑25‑680, 57‑27‑70, 58‑9‑2030, 58‑15‑410, 58‑17‑1200, 13‑1‑1330, 58‑27‑130, 58‑31‑50, 59‑19‑200, 59‑105‑40, 59‑117‑70, 59‑123‑90 shall modify, abridge, or repeal Sections 58‑27‑650, 58‑27‑670, 58‑27‑680, 58‑27‑1280, or 58‑27‑1360.

HISTORY: 1987 Act No. 173, Section 57, eff nine months from approval by Governor (approved by Governor on June 30, 1987); 1993 Act No. 181, Section 1567, eff July 1, 1993.

Editor's Note

Act No. 431 of 1984 amended Sections 58‑27‑650, 58‑27‑670, 58‑27‑1280, and 58‑27‑1360, and added Section 58‑27‑680.

For the code sections added, amended, or repealed by the 1987 Act No. 173, see Table B, Allocation of Acts, in the supplement to Volume 22.

This section contains a reference to Section 51‑1‑560. There is no Section 51‑1‑560.

ARTICLE 7

Rates and Charges

**SECTION 58‑27‑810.** Rates shall be just and reasonable.

 Every rate made, demanded or received by any electrical utility or by any two or more electrical utilities jointly shall be just and reasonable.

HISTORY: 1962 Code Section 24‑31; 1952 Code Section 24‑31; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑820.** Schedule of rates, service rules and regulations and service contracts shall be filed with Commission.

 Under rules and regulations prescribed by the commission, every electrical utility must file with the commission and provide to the Office of Regulatory Staff, within such time and in such form as the commission may designate, schedules showing all rates, service rules and regulations, and forms of service contracts established by the electrical utility and collected or enforced or to be collected or enforced within the jurisdiction of the commission. Under rules and regulations prescribed by the commission, every distribution electric cooperative and consolidated political subdivision must file with the commission and provide to the Office of Regulatory Staff, for information purposes, within such time and in such form as the commission may designate, schedules showing all rates, service rules and regulations, and forms of service contracts established by the distribution electric cooperative or consolidated political subdivision. Each electrical utility, distribution electric cooperative, and consolidated political subdivision must keep copies of the schedules open to public inspection under rules and regulations prescribed by the commission.

HISTORY: 1962 Code Section 24‑32; 1952 Code Section 24‑32; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1969 (56) 740; 1972 (57) 2757; 2006 Act No. 318, Section 172, eff May 24, 2006.

Editor's Note

2019 Act No. 62, Section 16, provides as follows:

"SECTION 16. Notwithstanding another provision of this act, or another provision of law, no costs or expenses incurred nor any payments made by the electrical utility in compliance or in accordance with this act must be included in the electrical utility's rates or otherwise be borne by the general body of South Carolina retail customers of the electrical utility without an affirmative finding supported by the preponderance of evidence of record and conclusion in a written order by the Public Service Commission that such expense, cost, or payment was reasonable and prudent and made in the best interest of the electrical utility's general body of customers."

**SECTION 58‑27‑830.** Utility shall not charge rates different from those in schedule.

 No electrical utility shall directly or indirectly, by any device whatsoever or in any way, charge, demand, collect or receive from any person, corporation or municipality a greater or less compensation for any electric current or service rendered or supplied or to be rendered or supplied by such electrical utility than that prescribed in the schedules of such electrical utility applicable thereto then on file in the manner provided in this chapter, nor shall any person, corporation or municipality receive or accept any service, electric current, product or commodity from an electric utility for a compensation greater or less than that prescribed in such schedules.

HISTORY: 1962 Code Section 24‑33; 1952 Code Section 24‑33; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

Editor's Note

2019 Act No. 62, Section 16, provides as follows:

"SECTION 16. Notwithstanding another provision of this act, or another provision of law, no costs or expenses incurred nor any payments made by the electrical utility in compliance or in accordance with this act must be included in the electrical utility's rates or otherwise be borne by the general body of South Carolina retail customers of the electrical utility without an affirmative finding supported by the preponderance of evidence of record and conclusion in a written order by the Public Service Commission that such expense, cost, or payment was reasonable and prudent and made in the best interest of the electrical utility's general body of customers."

**SECTION 58‑27‑840.** Preferences and unreasonable differences in rates shall not be made; classifications may be established.

 (A) No electrical utility, or consolidated political subdivision shall, as to rates or services, make or grant any unreasonable preference or advantage to any person, corporation, municipality or consolidated political subdivision to its unreasonable prejudice or disadvantage. No electrical utility, or consolidated political subdivision shall establish or maintain any unreasonable difference as to rates or service as between localities or as between classes of service. Subject to the approval of the Commission, however, electrical utilities, and consolidated political subdivisions may establish classifications of rates and services and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered and any other reasonable consideration. The Commission may determine any question of fact arising under this section. The Commission shall not fix any rates charged by electric cooperatives or consolidated political subdivisions.

 (B) No distribution electric cooperative shall, as to rates or services, make or grant any unreasonable preference or advantage to any person, corporation, municipality or consolidated political subdivision to its unreasonable prejudice or disadvantage. No distribution electric cooperative shall establish or maintain any unreasonable difference as to rates or service as between localities or as between classes of service. The Office of Regulatory Staff is granted the authority to audit, on its own initiative or in response to complaints, issues arising under this subsection, including the authority to review and examine whether the distribution electric cooperatives are maintaining any unreasonable differences as to rates or service as between localities or as between classes of service. Rate classifications established by distribution electric cooperatives may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered, and any other reasonable consideration. Upon completion of an audit, review, or examination as provided in this section, the Office of Regulatory Staff must report its findings to the board of the distribution electric cooperative and attempt to resolve any compliance issues identified in the audit.

 (C) The Commission is granted authority to resolve any disputed issues arising from the audit, review, or examination by the Office of Regulatory Staff of matters arising under subsection (B) of this section. The Commission shall not fix any rates charged by electric cooperatives.

HISTORY: 1962 Code Section 24‑34; 1952 Code Section 24‑34; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1969 (56) 740; 1972 (57) 2757; 2019 Act No. 56 (H.3145), Section 15, eff January 1, 2020.

Editor's Note

2019 Act No. 56, Section 16, provides as follows:

"SECTION 16. Where the provisions of new or revised 1976 Code sections or subsections contained in this act conflict with provisions of the bylaws of an electric cooperative, the provisions of this act control and the cooperative, as permitted by Section 33‑49‑280, shall amend and conform its bylaw provisions accordingly."

Effect of Amendment

2019 Act No. 56, Section 15, inserted the (A) identifier; in (A), in the first and second sentences, deleted "distribution electric cooperative" following "No electrical utility,", and in the third sentence, deleted "distribution electric cooperatives" following "electrical utilities,"; added (B), providing for the manner in which the prohibition against preferences and unreasonable differences in rates applies to distribution electric cooperatives; and added (C), granting the Commission authority to resolve disputed issues from the audit, review, or examination by the Office of Regulatory Staff.

**SECTION 58‑27‑845.** Findings and enumeration of electrical utility customer rights.

 (A) The General Assembly finds that there is a critical need to:

 (1) protect customers from rising utility costs;

 (2) provide opportunities for customer measures to reduce or manage electrical consumption from electrical utilities in a manner that contributes to reductions in utility peak electrical demand and other drivers of electrical utility costs; and

 (3) equip customers with the information and ability to manage their electric bills.

 (B) Every customer of an electrical utility has the right to a rate schedule that offers the customer a reasonable opportunity to employ such energy and cost‑saving measures as energy efficiency, demand response, or onsite distributed energy resources in order to reduce consumption of electricity from the electrical utility's grid and to reduce electrical utility costs.

 (C) In fixing just and reasonable utility rates pursuant to Section 58‑3‑140 and Section 58‑27‑810, the commission shall consider whether rates are designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationships between costs incurred and benefits received, and that no one class of customers are unduly burdening another, and that each customer class pays, as close as practicable, the cost of providing service to them.

 (D) For each class of service, the commission must ensure that each electrical utility offers to each class of service a minimum of one reasonable rate option that aligns the customer's ability to achieve bill savings with long‑term reductions in the overall cost the electrical utility will incur in providing electric service, including, but not limited to, time‑variant pricing structures.

 (E) Every customer of an electrical utility has a right to obtain their own electric usage data in a machine‑readable, accessible format to the extent such is readily available. Electrical utilities shall allow customers an electronic means to assent to share the customer's energy usage data with a third‑party vendor designated by the customer.

HISTORY: 2019 Act No. 62 (H.3659), Section 2, eff May 16, 2019.

**SECTION 58‑27‑850.** Investigation and change of rates by commission.

 Whenever the commission after a hearing finds that the existing rates in effect and collected by any electrical utility for any service, product, or commodity are unjust, unreasonable, insufficient, unreasonably discriminatory, or in any way in violation of any provision of law, the commission shall determine the just, reasonable, and sufficient rates to be thereafter observed and in force and shall fix the rates by its order.

HISTORY: 1962 Code Section 24‑35; 1952 Code Section 24‑35; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 173, eff May 24, 2006.

**SECTION 58‑27‑860.** Proposed rate changes; prior approval.

 Whenever an electrical utility desires to put into operation a new rate, it must give not less than thirty days' notice of its intention to file with the commission and the Office of Regulatory Staff and must, after the expiration of the notice period, file with the commission and provide to the Office of Regulatory Staff a schedule setting forth the proposed changes. Copies of the schedule also must be given to other parties as the commission directs. Subject to the provisions of subsections (C) and (D) of Section 58‑27‑870, the proposed changes may not be put into effect in full or in part until approved by the commission. Nothing contained in this section affects the existing provisions of Act 1293 of 1966.

HISTORY: 1962 Code Section 24‑36; 1952 Code Section 24‑36; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1983 Act No. 138 Section 4, eff June 15, 1983; 2006 Act No. 318, Section 174, eff May 24, 2006.

**SECTION 58‑27‑865.** "Fuel cost" defined; estimated fuel costs; rebuttable presumption; duties of commission.

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

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

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

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

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

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

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

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

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

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

 (G) The commission is authorized to promulgate, in accordance with the provisions of this section, all regulations necessary to allow the recovery by electrical utilities of all their prudently incurred fuel costs as precisely and promptly as possible, in a manner that tends to assure public confidence and minimize abrupt changes in charges to consumers.

HISTORY: 1983 Act No. 138, Section 9, eff June 15, 1983; 1996 Act No. 348, Section 1, eff May 29, 1996; 2004 Act No. 175, Section 7, eff February 18, 2004; 2006 Act No. 318, Section 175, eff May 24, 2006; 2007 Act No. 16, Section 9, eff upon approval (became law without the Governor's signature on May 3, 2007); 2014 Act No. 236 (S.1189), Section 1, eff June 2, 2014.

Editor's Note

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

"With respect to Section 9 [amending this section] of this act, the General Assembly makes the following findings:

"(1) by Act 138 of 1983, codified at Section 58‑27‑865 of the 1976 Code, the General Assembly provided a means for electric utilities to make routine, annual adjustments in the amount of fuel cost recovered from customers;

"(2) Section 58‑27‑865 has furthered the public interest by allowing the recovery of variable and incremental power supply costs on an accurate, timely, and efficient basis;

"(3) by Act 348 of 1996, the General Assembly amended Section 58‑27‑865 to include in annual adjustments the costs of SO2 emissions allowances that utilities are required to consume in generating electricity; and

"(4) certain electric utilities are now being required to further limit the SO2 emissions from their generating plants and also limit their emissions of NOx or acquire and consume emissions allowances, and proposals are being made to require electric utilities to limit certain other emissions."

2014 Act No. 236, Section 9, provides as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs."

**SECTION 58‑27‑870.** Commission action on proposed rate changes; refund of excessive charges.

 (A) After a schedule setting forth the proposed changes in its rates or tariffs has been filed with the commission and provided to the Office of Regulatory Staff, the commission must hold a public hearing concerning the lawfulness or reasonableness of the proposed changes.

 (B) When the proposed changes relate to rates or tariffs, the commission must rule and issue its order approving or disapproving the changes within six months after the date the schedule is filed.

 (C) Should the commission fail to issue an order within the period prescribed in this section, then upon written notice by any party to the commission of that fact, the commission shall have an additional ten days from the receipt of the notice to issue the required order. If the commission rules and issues its order within the time aforesaid, and the utility shall appeal from the order, by filing with the commission a petition for rehearing, the utility may put the rates requested in its schedule into effect under bond only during the appeal and until final disposition of the case. Such bond must be in a reasonable amount approved by the commission, with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission, to the persons, corporations, or municipalities respectively entitled to the amount of the excess, if the rate or rates put into effect are finally determined to be excessive; or there may be substituted for the bond other arrangements satisfactory to the commission for the protection of parties interested. During any period in which a utility charges increased rates under bond, it must provide records or other evidence of payments made by its subscribers or patrons under the rate or rates which the utility has put into operation in excess of the rate or rates in effect immediately prior to the filing of the schedule. All increases in rates put into effect under the provisions of this section which are not approved and for which a refund is required shall bear interest at a rate of twelve percent per annum. The interest shall commence on the date the disallowed increase is paid and continue until the date the refund is made. In all cases in which a refund is due, the commission must order a total refund of the difference between the amount collected under bond and the amount finally approved.

 (D) If the commission fails to rule or issue its order within the time prescribed in subsections (B) or (C) of this section, the utility may put into effect the change in rates it requested in its schedule. The change is to be treated as an approval of the new rate schedule by the commission.

 (E) After the date the schedule is filed with the commission, no further rate change request under this section may be filed until twelve months have elapsed from the date of the filing of the schedule; provided, however, this section shall not apply to a request for rate reduction.

 (F) Notwithstanding the provisions of Sections 58‑27‑860 and 58‑27‑870, the commission may allow rates or tariffs to be put into effect without notice and hearing upon order of the commission when such rates or tariffs do not require a determination of the entire rate structure and overall rate of return, or when the rates or tariffs do not result in any rate increase to the electrical utility, or when the rates or tariffs are for experimental purposes, or when the rates or tariffs so filed are otherwise necessary to obtain an orderly rate administration.

 (G) The commission's determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record.

HISTORY: 1962 Code Section 24‑37; 1952 Code Section 24‑37; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1983 Act No. 138 Section 5, eff June 15, 1983; 1989 Act No. 184, Section 8, eff June 8, 1989; 2006 Act No. 318, Section 176, eff May 24, 2006; 2007 Act No. 16, Section 3, eff upon approval (became law without the Governor's signature on May 3, 2007).

Editor's Note

2019 Act No. 62, Section 15, provides as follows:

"SECTION 15. All costs incurred by the utility necessary to effectuate this act, that are not precluded from recovery by other provisions of this act and that do not have a recovery mechanism otherwise specified in other provisions of the act or established by state law, shall be deferred for commission consideration of recovery in any proceeding initiated under Section 58‑27‑870, if deemed reasonable and prudent."

**SECTION 58‑27‑920.** Schedule of rates put into effect after preliminary investigation.

 The commission may, after a preliminary investigation by the Office of Regulatory Staff and upon such evidence as to the commission seems sufficient, order any electrical utility to put into effect a schedule of rates as shall be deemed fair and reasonable, within such time as may be prescribed by order of the commission, which shall be not less than fifteen days, and an attested copy of the order must be served upon the utility and the Office of Regulatory Staff by registered mail or otherwise as provided by law.

HISTORY: 1962 Code Section 24‑42; 1952 Code Section 24‑42; 1942 Code Section 8239; 1934 (38) 1549; 1935 (39) 25; 2006 Act No. 318, Section 177, eff May 24, 2006.

**SECTION 58‑27‑930.** Petition for hearing on change in rates; suspension of new rates pending hearing.

 If any utility affected thereby objects to an order issued pursuant to Section 58‑27‑920, it may, within ten days after service upon it of the copy of the order, file a petition with the commission stating the grounds of any such objection and demand a hearing thereon and it may require, if it so requests in the petition, that such schedule of rates be suspended pending the hearing. The utility also must provide a copy of the petition to the Office of Regulatory Staff. Any member of the public adversely affected by any such order of the commission shall also have all the rights herein conferred on the utility affected.

HISTORY: 1962 Code Section 24‑43; 1952 Code Section 24‑43; 1942 Code Section 8239; 1934 (38) 1549; 1935 (39) 25; 2006 Act No. 318, Section 178, eff May 24, 2006.

**SECTION 58‑27‑940.** Order confirming, modifying or vacating former order; service; effective date of rate changes.

 After a hearing provided by Section 58‑27‑930, the commission by its order must either confirm, modify, or vacate its former order, in conformity with what is found to be just and reasonable, and an attested copy of the order of the commission must be immediately served on the utility affected and the Office of Regulatory Staff by registered mail or otherwise, as provided by law. In case the original order of the commission is confirmed or modified by making the order more favorable to the utility affected, the rates prescribed by the original order of the commission or the modification of the order, as the case may be, are operative as of the time fixed by the original order. The utility affected shall put the rates into effect as of the date fixed by the original order.

HISTORY: 1962 Code Section 24‑44; 1952 Code Section 24‑44; 1942 Code Section 8239; 1934 (38) 1549; 1935 (39) 25; 1983 Act No. 138 Section 6, eff June 15, 1983; 2006 Act No. 318, Section 179, eff May 24, 2006.

**SECTION 58‑27‑950.** Petition for hearing as prerequisite to bringing cause of action challenging order.

 A utility must not bring a cause of action challenging the commission's order issued pursuant to Section 58‑27‑920 unless the utility shall first make application to the commission for a hearing as provided for in Section 58‑27‑930. The commission must not be a party to any cause of action.

HISTORY: 1962 Code Section 24‑45; 1952 Code Section 24‑45; 1942 Code Section 8239; 1934 (38) 1549; 1935 (39) 25; 2006 Act No. 318, Section 180, eff May 24, 2006.

**SECTION 58‑27‑960.** Reparation orders; suits to enforce.

 When a petition has been filed with the commission concerning any rate or charge for any electric current furnished or service performed by any electrical utility and the commission has found after hearing that the electrical utility has charged an unreasonable, excessive, or discriminatory amount for electric current or service, the commission may order the electrical utility to make due reparation to the petitioner, with interest from the date of collection; however, no unreasonable discrimination must result from the reparation. But no order for the payment of reparation upon the ground of unreasonableness must be made by the commission in any instance wherein the rate or charge in question has been authorized by law. No assignment of a reparation claim must be recognized by the commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership, or order of court. If the electrical utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same, and upon trial of such suit, a duly certified copy of the order of the commission shall be prima facie evidence of the facts therein set forth. All petitions concerning unreasonable, excessive, or discriminatory charges on which reparation orders may be made must be filed with the commission and provided to the Office of Regulatory Staff within two years from the time the cause of action accrues, and the suit for enforcement of the order must be commenced in the court within one year from the date of the order of the commission. The commission must not be a party to any cause of action. The remedy in this section provided is cumulative and in addition to any other remedy or remedies in this chapter provided in case of failure of an electrical utility to obey an order or decision of the commission.

HISTORY: 1962 Code Section 24‑46; 1952 Code Section 24‑46; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 181, eff May 24, 2006.

**SECTION 58‑27‑970.** Participation in profits arising from efficiency.

 For the purpose of encouraging economy, efficiency and improvements in methods or service any electrical utility may, subject to the approval of the Commission, participate to such extent as may be permitted by the Commission in additional profits arising from any economy, efficiency or improvement in methods or service instituted by such electrical utility.

HISTORY: 1962 Code Section 24‑47; 1952 Code Section 24‑47; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑980.** Contracts subject to control and approval of Commission.

 No contract charge to be made to any person, corporation or municipality by any electrical utility for electricity to be furnished for light, heat or power established subsequent to March 24, 1922, shall be exempt from alteration, control, regulation and establishment by the Commission, when in its judgment the public interest so requires, to the full extent of the powers in relation to charges conferred upon the Commission by this chapter. Nor shall any contract establishing a rate or rates or any other contract affecting the use or disposition of its product or the charges to be paid therefor be entered into by any electrical utility without prior approval by the Commission, nor unless it be subject to amendment, modification, change or annulment by the Commission, if the public interest so requires. But nothing herein contained shall be construed to require the Commission's approval of a contract fixing a rate already approved by the Commission and then effective, if such contract rate is fixed subject to subsequent amendment, modification, change or annulment by the Commission. Full power and authority is hereby conferred on the Commission to accomplish the purposes expressed in this section.

HISTORY: 1962 Code Section 24‑48; 1952 Code Section 24‑48; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑990.** Contracts with other utilities.

 Subject to the approval of the Commission, electrical utilities may contract with each other for the sale and purchase or exchange of electricity if such contract contain a provision that from its date it shall be subject to amendment, modification, change or annulment by the Commission, after due hearing, if the public interest so requires.

HISTORY: 1962 Code Section 24‑49; 1952 Code Section 24‑49; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1000.** Charges for electricity established by municipal contract or franchise.

 All charges for electricity for light, heat or power established by any franchise granted to or contract made prior to March 24, 1922 with any person or corporation by any municipality pursuant to and under the authority of the laws of this State are to be deemed excepted from the regulatory powers of the Commission and to be unaffected by the provisions of this chapter. All charges established by any franchise or municipal contract subsequent to March 24, 1922 shall be subject to the regulatory powers of the Commission and may be changed by it for proper cause under the provisions of this chapter. It is the purpose of this chapter to regulate such charges only to the extent that it may be done consistently with the Constitutions of this State and of the United States.

HISTORY: 1962 Code Section 24‑50; 1952 Code Section 24‑50; 1942 Code Section 8555‑8; 1932 (37) 1497; 1934 (38) 1452; 1937 (40) 147.

**SECTION 58‑27‑1010.** Commission shall not regulate contracts made by municipalities.

 The Commission shall not regulate any contracts made by any municipality with its customers, and nothing in this chapter shall be construed as permitting the regulation by the Commission of the rates to be charged by any municipal plant to any of its customers, whether these customers be other municipalities, persons, firms or corporations.

HISTORY: 1962 Code Section 24‑51; 1952 Code Section 24‑51; 1942 Code Section 8555‑8; 1932 (37) 1497; 1934 (38) 1452; 1937 (40) 147.

**SECTION 58‑27‑1020.** Capitalization for rate‑making purposes.

 No electrical utility shall, for rate‑making purposes, capitalize its franchises, rights, powers, privileges or right to own and operate or enjoy any such franchises, rights, powers or privileges in excess of the amount paid to the State or to any political subdivision of the State as the consideration for the grant thereof or so capitalize any lease, contract of sale or contract for consolidation or merger of two or more electrical utilities or issue by way of substitution any capital stock, trust certificates, bonds, notes or other evidences of indebtedness or other securities for any consolidated or merged company exceeding the aggregate values of the properties so consolidated or merged plus any additional sum of money actually contributed in cash and any additional property or labor actually contributed; and the determination of such consideration or value as aforesaid shall be subject to the approval of the Commission. The Commission shall not permit any electrical utility to do any of the things that an electrical utility is forbidden by this section to do.

HISTORY: 1962 Code Section 24‑52; 1952 Code Section 24‑52; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1030.** Sales of appliances shall not be considered in rate making.

 Every electrical utility shall keep separate accounts to show all profits or losses resulting from the sale of appliances or other merchandise, and no such profit or loss shall be taken into consideration by the Commission in arriving at any rate to be charged for service by any such electrical utility.

HISTORY: 1962 Code Section 24‑53; 1952 Code Section 24‑53; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1040.** Certain sections cumulative.

 Nothing contained in Sections 58‑27‑920 to 58‑27‑950 shall be construed to divest the Commission of any power otherwise possessed by it to regulate electrical utilities and the duties and powers thereby devolved upon the Commission are in addition to those otherwise imposed by law.

HISTORY: 1962 Code Section 24‑54; 1952 Code Section 24‑54; 1942 Code Section 8239; 1934 (38) 1549; 1935 (39) 25.

**SECTION 58‑27‑1050.** Distributed energy resources; report required.

 The Office of Regulatory Staff, with guidance and feedback from the electrical utilities and other interested parties, shall investigate and report to the Public Service Commission on fixed costs, fixed charges, and the extent of cost shifting that is attributable to distributed energy resources within current utility cost of service ratemaking methodologies, cost allocations, and rate designs, with a focus on the implications distributed energy resources could have for that business model in the future. The report shall review how to ensure a fair allocation of costs and benefits between consumers who utilize distributed energy resources and consumers who do not utilize distributed energy resources, as well as suggesting any necessary or prudent changes to existing or future rate structures. The report shall include a general overview of cost shifting that is attributable to or arising from historical cost of service ratemaking related to the current utility business model, specifically the cost of service ratemaking methodology, the cost allocations and rate designs. The findings shall include public comment and be reported to the Public Service Commission by December 31, 2015.

HISTORY: 2014 Act No. 236 (S.1189), Section 5, eff June 2, 2014.

Editor's Note

2014 Act No. 236, Section 9, provides as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs."

**SECTION 58‑27‑1060.** Electric vehicle charging stations.

 (A) A person or corporation who uses an electric vehicle charging station to resell electricity to the public for compensation is not an electric utility if:

 (1) the person or corporation has procured the electricity from an electrical utility, municipality, consolidated political subdivision, the Public Service Authority, or an electric cooperative that is authorized to engage in the retail sale of electricity within the territory in which the electric vehicle charging service is provided;

 (2) the person or corporation furnishes electricity exclusively for the charging of plug‑in electric vehicles; and

 (3) the charging station is immobile.

 (B) Nothing in this section shall be construed to limit the ability of an electrical utility, municipality, consolidated political subdivision, the Public Service Authority, or an electric cooperative to use electric vehicle charging stations to furnish electricity for charging electric vehicles. Any increases in customer demand or energy consumption associated with transportation electrification shall not constitute found revenues for an electrical utility.

HISTORY: 2021 Act No. 46 (S.304), Section 1, eff May 17, 2021.

ARTICLE 8

Storm Damage Recovery

**SECTION 58‑27‑1100.** Issuance of bonds to offset and reduce costs due to storm recovery activity.

 Upon application by an electrical utility, the commission may by order authorize the issuance of bonds for the purposes of offsetting and reducing prudently incurred costs due to storm recovery activity. It is in the interest of the State and its citizens to encourage and facilitate the use of securitized bonds as a method for enabling electrical utilities to lower the cost of financing the costs of these activities under certain conditions, and to empower the commission to review a securitization mechanism to determine whether it is consistent with the public interest and worthy of approval. In order for the commission to authorize the issuance of these bonds, it must find that an electrical utility's use of this financing mechanism will provide quantifiable net benefits to customers on a present value basis as compared to the costs that would have been incurred absent the issuance of storm recovery bonds, and will result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in a financing order issued by the commission.

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1105.** Definitions.

 When used in this article:

 (1) The term "ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, liquidity or credit support arrangement, or other financial arrangement entered into in connection with recovery bonds.

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

 (3) The term "bondholder" means a person who holds a storm recovery bond.

 (4) The term "code" means The Uniform Commercial Code, Title 36 of the South Carolina Code of Laws.

 (5) The term "commission" means the Public Service Commission of South Carolina.

 (6) The term "electrical utility" is as defined in Section 58‑27‑10(7).

 (7) The term "financing costs" includes all of the following:

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

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

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

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

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

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

 (8) The term "financing order" means an order that authorizes the issuance of storm recovery bonds; the imposition, collection, and periodic adjustments of a storm recovery charge; the creation of storm recovery property; and the sale, assignment, or transfer of storm recovery property to an assignee.

 (9) The term "financing party" means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.

 (10) The term "financing statement" is as defined in Section 36‑9‑102.

 (11) The term "pledgee" means a financing party to which an electrical utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to storm recovery property.

 (12) The term "storm" means, individually or collectively, a named tropical storm or hurricane, a tornado, ice storm or snowstorm, flood, an earthquake, or other significant weather or natural disaster.

 (13)(a) The term "storm recovery activity" means an activity or activities by an electrical utility, its affiliates, or its contractors directly and specifically in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of an electrical utility as the result of a storm or storms, including activities related to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities.

 (b) No electrical utility is required to securitize nor is it prohibited from securitizing those capital improvements or infrastructure upgrades that have a quantifiable net benefit to consumers and that improve the resiliency of the transmission and distribution system.

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

 (15) The term "storm recovery charge" means the amounts authorized by the commission to repay, finance, or refinance storm recovery costs and financing costs and that are nonbypassable charges (i) imposed on and part of all retail customer bills, (ii) collected by an electrical utility or its successors or assignees, or a collection agent, in full, separate and apart from the electrical utility's base rates, and (iii) paid by all existing or future retail customers receiving transmission or distribution service, or both, from the electrical utility or its successors or assignees under commission‑approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of electrical utilities in this State.

 (16) The term "storm recovery costs" means:

 (a) all incremental costs, including capital costs, appropriate for recovery from existing and future retail customers receiving transmission or distribution service from an electrical utility that an electrical utility has incurred or expects to incur as a result of the applicable storm that are caused by, associated with, or remain as a result of undertaking storm recovery activity;

 (b) storm recovery costs shall be net of applicable insurance proceeds, tax benefits, income tax savings, and any other amounts intended to reimburse the electrical utility for storm recovery activities such as government grants, or aid of any kind and where determined appropriate by the commission, and may include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the electrical utility's most recent general rate proceeding. Storm recovery costs may include, to the extent determined appropriate by the commission, the cost to replenish and fund any storm reserves, the costs of retiring any existing indebtedness relating to storm recovery activities, and carrying costs;

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

 (17) The term "storm recovery property" means:

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

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1110.** Petition for financing order; requirements.

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

 (1) a description of the storm recovery activities that the electrical utility has undertaken or proposes to undertake and the reasons for undertaking the activities, or if the electrical utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in storm recovery costs, a description of the settlement agreement;

 (2) the storm recovery costs and an estimate of the costs of any storm recovery activities that are being undertaken but are not completed;

 (3) the level of the storm recovery reserve, if any, that the electrical utility proposes to establish or replenish and has determined would be appropriate to recover through storm recovery bonds and is seeking to so recover, and such level that the electrical utility is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining the amounts and methods of recovery;

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

 (5) an estimate of the financing costs related to the storm recovery bonds;

 (6) an estimate of the storm recovery charges necessary to recover the storm recovery costs, including the storm recovery reserve amount, if any, determined appropriate by the commission, and financing costs and the period for recovery of such costs;

 (7) a comparison between the net present value of the costs to customers that are estimated to result from the issuance of storm recovery bonds based on current market conditions and the costs that would result from the application of the traditional method of financing and recovering storm recovery costs from customers. The comparison should demonstrate that the issuance of storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable net benefits to customers on a present value basis as compared to the costs that would have been incurred absent the issuance of storm recovery bonds; and

 (8) direct testimony, exhibits, and supporting workpapers supporting the petition, testimony, and exhibits. Such workpapers may be filed under seal to the extent necessary to protect confidential, proprietary, or sensitive information. The electrical utility shall provide functional exhibits and workpapers to the Office of Regulatory Staff and to the commission, subject to any appropriate confidentiality designations.

 (B) If the principal costs the electrical utility proposes to finance using storm recovery bonds were not already subject to review by the commission in a general rate proceeding, then the electrical utility must file a petition with the commission for review and approval of those costs no later than one hundred eighty days before filing a petition for a financing order pursuant to this section.

 (1) Any petition for review and approval of the principal costs shall be accompanied by direct testimony, exhibits, and supporting workpapers supporting the petition, testimony, and exhibits. Such workpapers may be filed under seal to the extent necessary to protect confidential, proprietary, or sensitive information. The electrical utility shall provide functional exhibits and workpapers to the Office of Regulatory Staff and to the commission, subject to any appropriate confidentiality designations.

 (2) If the electrical utility must file a petition for review and approval of the principal costs, the electrical utility shall not be required to provide additional notice prior to filing a petition for a financing order pursuant to this section; otherwise, the utility shall file a notice of its intent to file a petition for a financing order not less than thirty days prior to filing any such petition.

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

 (a) within fourteen days after the date the petition is filed, the commission shall establish a procedural schedule that permits a commission decision no later than one hundred thirty‑five days after the date the petition is filed; and

 (b) no later than one hundred thirty‑five days after the date the petition is filed, the commission shall issue a financing order or an order rejecting the petition. A party to the commission proceeding may petition the commission for reconsideration of the financing order within the time prescribed in Section 58‑27‑2150.

 (2) A financing order issued by the commission to an electrical utility shall include all of the following elements and shall not issue unless each of the following elements is met:

 (a) except for changes made pursuant to the formula‑based mechanism authorized under this section, the amount of storm recovery costs, including the level of storm recovery reserves, if any, to be financed using storm recovery bonds. The commission shall describe and estimate the amount of financing costs that may be recovered through storm recovery charges and specify the period over which storm recovery costs and financing costs may be recovered;

 (b) a finding that the proposed issuance of recovery bonds and the imposition and collection of a storm recovery charge will provide quantifiable net benefits to customers on a present value basis as compared to the costs that would have been incurred absent the issuance of storm recovery bonds;

 (c) a finding that the structuring, marketing, and pricing of the storm recovery bonds will result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in such financing order. The financing order must provide detailed findings of fact addressing cost effectiveness and associated rate impacts upon retail customers and retail customer classes;

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

 (e) a determination of what portion, if any, of the storm recovery reserves, if any, must be held in a funded reserve and any limitations on how the reserve may be held, accessed, or used;

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

 (g) the storm recovery property that is or shall be created in favor of an electrical utility or its successors or assignees, and that shall be used to pay or secure storm recovery bonds and all financing costs;

 (h) the degree of flexibility to be afforded to the electrical utility in establishing the terms and conditions of the storm recovery bonds including, but not limited to, repayment schedules, expected interest rates, and other financing costs, and subject to any conditions in the financing order, including the pre‑bond issuance review process which the commission shall establish;

 (i) how storm recovery charges will be allocated among customer classes;

 (j) a requirement that, after the final terms of an issuance of storm recovery bonds have been established and before the issuance of storm recovery bonds, the electrical utility determines the resulting initial storm recovery charge in accordance with the financing order and that such initial storm recovery charge be final and effective upon the issuance of such storm recovery bonds without further commission action so long as the recovery charge is consistent with the financing order and the pre‑bond issuance review process established by the commission in the financing order is complete;

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

 (l) any other conditions not otherwise inconsistent with this section that the commission determines are appropriate.

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

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

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

 (6) If required by the commission in a financing order, within one business day after the final terms of the storm recovery bonds are determined, the electrical utility shall provide an issuance advice letter to the commission.

 (a) Such issuance advice letter shall be in the form approved in a financing order and include the final terms of the storm recovery bond issuance, up‑front financing costs and on‑going financing costs. Such issuance advice letter shall include a certification from the electrical utility, the primary underwriter(s), and a qualified independent third‑party designated by the commission, as a condition to closing, certifying whether the sale of storm recovery bonds complies with the requirements of this article and the financing order. The certifications of the electrical utility and independent third‑party shall certify whether the issuance of recovery bonds and the imposition and collection of a storm recovery charge will in fact provide quantifiable net benefits to customers on a present‑value basis as compared to the costs that would have been incurred absent the issuance of storm recovery bonds. The certifications of the electrical utility, primary underwriter(s), and independent third‑party shall certify whether the structuring, marketing, and pricing of the storm recovery bonds will in fact result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds were priced and the terms set forth in the financing order. The independent third‑party designated by the commission shall review the issuance advice letter and deliver its independent certification to the commission along with any other information it believes the commission should consider as to the commission's decision in subitem (b) no later than one business day after the filing of the issuance advice letter by the electric utility which will contain the aforementioned certifications.

 (b) Unless otherwise provided in the financing order, by no later than noon on the fourth business day after the final terms of the storm recovery bonds are determined, the commission shall either accept the issuance advice letter or deliver an order to the electrical utility to prevent the issuance of the storm recovery bonds.

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

 (E) Within thirty days after the commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within thirty days after the commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of South Carolina. Review on appeal shall be based solely on the record before the commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and to state and federal law, and is within the authority of the commission under this article. The Supreme Court of South Carolina shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

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

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1115.** Treatment of storm recovery bonds and storm recovery charges.

 (A) The commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this chapter, consider the storm recovery bonds issued pursuant to a financing order to be the debt of the electrical utility other than for federal income tax purposes, consider the storm recovery charges paid under the financing order to be the revenue of the electrical utility for any purpose, or consider the storm recovery costs or financing costs specified in the financing order to be the costs of the electrical utility, nor may the commission determine any action taken by an electrical utility which is consistent with the financing order to be unjust or unreasonable unless the electrical utility abandons the issuance of storm recovery bonds or the electrical utility's petition for a financing order is ultimately denied.

 (B) The commission may not order or otherwise directly or indirectly require an electrical utility to use storm recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure except as permitted under this article. After the issuance of a financing order, the electrical utility retains sole discretion regarding whether to cause the storm recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance, unless otherwise provided in the financing order. Nothing shall prevent the electrical utility from abandoning the issuance of storm recovery bonds under the financing order by filing with the commission a statement of abandonment and the reasons therefor. The commission may not refuse to allow an electrical utility to recover storm recovery costs in an otherwise permissible fashion, or refuse or condition authorization or approval of the issuance and sale by an electrical utility of securities or the assumption by the electrical utility of liabilities or obligations, solely because of the potential availability of storm recovery bond financing.

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1120.** Requirements for electric bills of electrical utility that has obtained a financing order and caused recovery bonds to be issued.

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

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

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1125.** Storm recovery property; security interests; sale, assignment, or transfer of storm recovery property.

 (A) Provisions applicable to storm recovery property:

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

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

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

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

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

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

 (7) Recovery bonds shall be nonrecourse to the credit or any assets of the electrical utility other than the storm recovery property as specified in the financing order and any rights under any ancillary agreement.

 (B) Provisions applicable to security interests:

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

 (2) A security interest in storm recovery property is created, valid, and binding and perfected at the later of the times that: (i) the financing order is issued, (ii) a security agreement is executed and delivered by the debtor granting such security interest, (iii) the debtor has rights in such storm recovery property or the power to transfer rights in such storm recovery property, or (iv) value is received for the storm recovery property. The description of storm recovery property in a security agreement is sufficient if the description refers to this article and the financing order creating the storm recovery property.

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

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

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

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

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

 (C) Provisions applicable to the sale, assignment, or transfer of storm recovery property:

 (1) Any sale, assignment, or other transfer of storm recovery property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to, and under the storm recovery property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and state income tax purposes. For all purposes other than federal and state income tax purposes, the parties' characterization of a transaction as a sale of an interest in storm recovery property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in storm recovery property may be created only when all of the following have occurred: (i) the financing order creating the storm recovery property has become effective; (ii) the documents evidencing the transfer of storm recovery property have been executed by the assignor and delivered to the assignee; and (iii) value is received for the storm recovery property. After such a transaction, the storm recovery property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the storm recovery property perfected in accordance with subsection (B) of this section.

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

 (a) commingling of storm recovery charges with other amounts;

 (b) the retention by the seller of (i) a partial or residual interest, including an equity interest, in the storm recovery property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of storm recovery charges;

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

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

 (e) the obligation of the seller to collect storm recovery charges on behalf of an assignee;

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

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

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

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

 (3) Any right that an electrical utility has in the storm recovery property before its pledge, sale, or transfer or any other right created under this article or created in the financing order and assignable under this article or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in storm recovery property to an assignee is enforceable only upon all of the following items having been attained: (i) the issuance of a financing order, (ii) the assignor having rights in such storm recovery property or the power to transfer rights in such storm recovery property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of storm recovery bonds, and (iv) the receipt of value for the storm recovery property. An enforceable transfer of an interest in storm recovery property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with subsection (B)(3). The transfer is perfected against third parties as of the date of filing.

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

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

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

 (a) conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with item 3 of subsection (B) of this section;

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

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1130.** Description of storm recovery property; application of section.

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1135.** Financing statements.

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1140.** Governing law.

 The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any storm recovery property shall be the laws of this State.

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1145.** State not liable on any storm recovery bonds; bonds are not a debt or general obligation of the State.

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1150.** Entities which may invest in storm recovery bonds.

 All of the following entities may legally invest any sinking funds, monies, or other funds in storm recovery bonds:

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

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

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

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1155.** Prohibited actions by the State.

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

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

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

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

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

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1160.** Assignee or financing party.

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1165.** Conflicts between this article and other laws.

 If there is a conflict between this article and any other law regarding the attachment, assignment, perfection, effect of perfection, priority of, assignment or transfer of, or security interest in storm recovery property, this article shall govern.

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1170.** Commission may retain independent outside consultants; compensation.

 In connection with its responsibilities under this article, the commission may retain independent outside consultants to serve as advisors and counsel to the commission. Such consultants shall not have authority to direct how the electrical utility places the storm recovery bonds to market. Any such consultants will be subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as are applicable to the employees of the commission. The commission shall endeavor to retain such consultants in order to best control costs ultimately paid by customers. The compensation paid to such consultants may not exceed compensation generally paid by the regulated industry for such specialists. The consultants' duty will be to the commission, and the consultants shall not have any financial interest in the storm recovery bonds or participate in the underwriting or secondary market trading of the storm recovery bonds. The commission is exempt from complying with the State Procurement Code in the selection and hiring of independent outside consultants authorized by this section.

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1175.** Validity of actions taken by an electrical utility.

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

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

**SECTION 58‑27‑1180.** Violation of article; penalties.

 A violation of this article or of a financing order issued under this article subjects the utility that obtained the order to penalties under Article 19 of this chapter and to any other penalties or remedies that the commission determines are necessary to achieve the intent of this article and the intent and terms of the financing order and to prevent any increase in financial impact to the utility's ratepayers above that set forth in the financing order. If the commission orders a penalty or a remedy for a violation, the monetary penalty or remedy and the costs of defending against the proposed penalty or remedy may not be recovered from the ratepayers. The commission may not make adjustments to recovery charges for any such penalties or remedies.

HISTORY: 2022 Act No. 227 (S.1077), Section 1, eff June 17, 2022.

ARTICLE 9

Extension and Abandonment of Service; Transfer of Property

**SECTION 58‑27‑1210.** Extension of facilities; commission approval.

 (A) When ordered by the commission after a hearing, any electrical utility, distribution electric cooperative, or consolidated political subdivision, may be required to establish, construct, maintain, and operate any reasonable extension of its existing facilities. If any such extension, however, will interfere with the service or system of any other electrical utility, distribution electric cooperative, or consolidated political subdivision, the commission, on petition and after hearing, either may order the discontinuance of the extension or prescribe terms and conditions with respect thereto as may be just and reasonable. Each electrical utility, distribution electric cooperative, and consolidated political subdivision, within areas assigned to it by the commission and within three hundred feet of its lines, as defined in Section 58‑27‑610, is obligated to comply with all requests for service in accordance with its schedules of rates and service rules and regulations on file with the commission.

 (B) Electric utilities, distribution cooperatives, or consolidated political subdivisions shall obtain commission approval of proposed construction of electric facilities only in the following situations where:

 (1) one electric supplier proposes to construct a line that would cross the line of another electric supplier;

 (2) one electric supplier proposes to construct a line that is within seventy feet of another electric supplier's line at any point unless the lines are separated by a publicly maintained roadway; or

 (3) an electric supplier proposes to construct or extend a line through the territory of another electric supplier to or into a municipality.

 No commission approval is required under this subsection where all affected electric suppliers reach an agreement on approval of the proposed construction or where either line is six hundred volts or less.

HISTORY: 1962 Code Section 24‑61; 1952 Code Section 24‑61; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1969 (56) 740; 1972 (57) 2757; 2006 Act No. 318, Section 182, eff May 24, 2006; 2007 Act No. 16, Section 10, eff upon approval (became law without the Governor's signature on May 3, 2007).

Editor's Note

2007 Act No. 16, Section 1.(B), provides in part as follows:

". . . Section 10 [amending this section] of this act is intended to specify those situations in which electric suppliers must obtain commission approval for construction of facilities and is intended to supersede Regulation 103‑304, South Carolina Code of Regulations, to the extent it would require approval in any other situation."

**SECTION 58‑27‑1220.** Extensions by municipalities.

 Any municipality operating its own plant or transmission system, if granted by the Commission a certificate of convenience and necessity as provided by Section 58‑27‑1230, may extend its lines and electrical service into any territory adjacent to such municipality, as well as into any nearby city or town if there is no electrical utility then operating in such city or town.

HISTORY: 1962 Code Section 24‑62; 1952 Code Section 24‑62; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1230.** Certificate of public convenience and necessity shall be obtained prior to construction, operation or extension of system; exceptions.

 No electrical utility, except a municipality within its corporate limits, shall hereafter begin the construction or operation of any electrical utility plant or system or of any extension thereof, except those ordered by the Commission under the provisions of Section 58‑27‑1210, without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction or operation. But unless such construction or operation has been commenced under a limited or conditional certificate of authority as provided by Section 58‑27‑1260, this section shall not be construed to require any such electrical utility to secure a certificate (a) for any extension within any municipality or district within which it had lawfully commenced operations prior to April 8, 1932, (b) for an extension within or to territory already served by it, necessary in the ordinary course of its business or (c) for an extension into territory contiguous to that already occupied by it and not receiving similar service from another electrical utility. No electrical utility, except a municipality within its corporate limits, shall exercise any right or privilege under any franchise or permit, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege.

HISTORY: 1962 Code Section 24‑63; 1952 Code Section 24‑63; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1240.** Prerequisites to issuance of certificate.

 Before any certificate may issue hereunder, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, must be on file in the office of the commission and in the Office of Regulatory Staff. Every applicant for a certificate shall give such notice of its application as the commission may require and must file in the office of the commission and the Office of Regulatory Staff evidence required by the commission to show that the applicant has received any consent of local authorities that might be required under Article VIII, Section 15 of the Constitution of this State.

HISTORY: 1962 Code Section 24‑64; 1952 Code Section 24‑64; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 183, eff May 24, 2006.

**SECTION 58‑27‑1250.** Issuance or refusal of certificate or modified certificate.

 The Commission may after hearing issue a certificate as prayed for or refuse to issue the same or may issue it for the construction or operation of a portion only of the contemplated facility, line, plant or system, or extension thereof or for the partial exercise only of the rights or privileges sought and may attach to the exercise of the rights granted by the certificate such terms and conditions in harmony with this chapter as in its judgment the public convenience and necessity may require.

HISTORY: 1962 Code Section 24‑65; 1952 Code Section 24‑65; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1260.** Order preliminary to issuance of certificate.

 If an electrical utility, except a municipality within its corporate limits, desires to exercise a right or privilege under a permit, consent, or other authority which it contemplates securing but which has not as yet been granted to it, the electrical utility may apply to the commission for an order preliminary to the issuance of the certificate. The electrical utility also must serve a copy of its application upon the Office of Regulatory Staff. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate upon terms and conditions as it may designate after the electrical utility has obtained the contemplated permit, consent, or other authority. Upon the presentation to the commission of evidence satisfactory to it that such permit, consent, or other authority has been secured by such electrical utility, the commission must thereupon issue the certificate.

HISTORY: 1962 Code Section 24‑66; 1952 Code Section 24‑66; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 184, eff May 24, 2006.

**SECTION 58‑27‑1270.** Cease and desist order when construction or operation proceeds in absence of certificate.

 Whenever an electrical utility, electric cooperative, consolidated political subdivision, public utility district, governmental body or agency, or another person or corporation is engaged or is about to engage in construction or operation without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or otherwise in violation thereof, any interested electrical utility, electric cooperative, consolidated political subdivision, corporation, municipality, or the Office of Regulatory Staff may file a petition with the commission. The commission may, with or without notice, make its order requiring the party complained of to cease and desist from construction or operation until the commission may, after hearing, issue an order and prescribe terms and conditions in harmony with this chapter as are just and reasonable.

HISTORY: 1962 Code Section 24‑67; 1952 Code Section 24‑67; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1969 (56) 740; 1972 (57) 2757; 2006 Act No. 318, Section 185, eff May 24, 2006.

**SECTION 58‑27‑1280.** Order where construction or extension causes unreasonable interference.

 If any electrical utility, electric cooperative, or any governmental body or agency which owns or operates equipment or facilities for generating, transmitting, delivering, or furnishing electricity in this State, in constructing or extending its lines, plant, or system, unreasonably interferes or is about to interfere unreasonably with the service or system of any other electrical utility, electric cooperative, or governmental body or agency, the commission on petition of the electrical utility, electric cooperative, the Office of Regulatory Staff, or governmental body or agency complaining to be injuriously affected may, after hearing, make orders and prescribe terms and conditions in harmony with this chapter as are just and reasonable, including the removal of lines and the issuance of a cease and desist order to the electrical utility, electric cooperative, or governmental body or agency causing the interference.

HISTORY: 1962 Code Section 24‑68; 1952 Code Section 24‑68; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1969 (56) 740; 1972 (57) 2757; 1984 Act No. 431, Section 4, eff June 6, 1984; 2006 Act No. 318, Section 186, eff May 24, 2006.

Editor's Note

Section 57 of 1987 Act No. 173 (codified as Section 58‑27‑690) provides that this section shall not be modified, abridged or repealed by 1987 Act No. 173.

**SECTION 58‑27‑1290.** Abandonment of service.

 No electrical utility shall abandon all or any portion of its service to the public, except for ordinary discontinuance of service for nonpayment of undisputed charges in the usual course of business, unless written application is first made to the commission for the issuance of a certificate authorizing the abandonment, and until the commission in its discretion issues a certificate after a public hearing of all parties appearing to the commission to be interested. The electrical utility also must serve a copy of its application upon the Office of Regulatory Staff.

 In any such case, any interested party shall have the right within fifteen days after the final order of the commission to apply to the Supreme Court for a review thereof, and in such case, no such abandonment shall be permitted until the appeal is heard and the Supreme Court by order permits the abandonment.

HISTORY: 1962 Code Section 24‑69; 1952 Code Section 24‑69; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 187, eff May 24, 2006.

**SECTION 58‑27‑1300.** Disposition of properties, powers, franchises or privileges; certain out‑of‑state property may be sold.

 No electrical utility, without the approval of the commission and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, assign, transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them, except that any electrical utility which has utility property, the fair market value of which is one million dollars or less, may sell, assign, transfer, lease, consolidate, or merge this property without prior approval of the commission. The commission may, at its discretion, hold a hearing on the request of an electrical utility to sell, assign, transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them. An electric utility seeking approval of a transfer under this provision shall serve a copy of the application on the Office of Regulatory Staff. For purposes of this section, "utility property" shall include property used and useful to provide customers with electric service and which has been properly included in the electric utility's rate base, including construction work in progress or property held to serve future customers. Utility property that has been transferred to nonutility accounts must continue to be treated as utility property under this provision for five years following the transfer.

HISTORY: 1962 Code Section 24‑70; 1952 Code Section 24‑70; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1988 Act No. 449, eff April 18, 1988; 1996 Act No. 349, Section 1, eff May 29, 1996; 2006 Act No. 318, Section 188, eff May 24, 2006.

**SECTION 58‑27‑1310.** Lease of property and franchises.

 Any electric light company organized under the laws of this State may lease its property and franchises to any other electric light company, upon such terms as may be agreed upon by a majority of the stockholders at a special meeting called after thirty days' advertisement.

HISTORY: 1962 Code Section 24‑71; 1952 Code Section 24‑71; 1942 Code Section 8187; 1932 Code Section 8187; Civ. C. '22 Section 4367; Civ. C. '12 Section 2881; 1908 (24) 1090.

**SECTION 58‑27‑1320.** Municipality may purchase property operated under indeterminate permit.

 Any electrical utility operating in a city or town under an indeterminate permit shall be deemed to have consented to the purchase by such city or town for just compensation, including severance damages, if any, of the property of such electrical utility operated in such city or town under such permit.

HISTORY: 1962 Code Section 24‑72; 1952 Code Section 24‑72; 1942 Code Section 8555‑3; 1932 (37) 1497.

**SECTION 58‑27‑1330.** Notice of municipality's intent to acquire property of utility.

 When the municipal council or other governing body of any city or town, after a public hearing of which at least thirty days' notice has been given, by ordinance or resolution duly adopted by a majority vote, expresses a desire and declares its purpose to acquire for the city or town the property of an electrical utility so operated therein as authorized under the provisions of this chapter, immediate notice by registered mail of the action of such municipal council or governing body shall be given by it to the commission and the Office of Regulatory Staff, to the electrical utility, and to all of its mortgagees or other lienors appearing of record in the county in which such city or town is situated.

HISTORY: 1962 Code Section 24‑73; 1952 Code Section 24‑73; 1942 Code Section 8555‑3; 1932 (37) 1497; 2006 Act No. 318, Section 189, eff May 24, 2006.

**SECTION 58‑27‑1340.** Determination of just compensation for purchase of electrical utility.

 When the commission has been notified that a city or town has expressed its desire and purpose to purchase the property of the electrical utility operated under the indeterminate permit in the city or town and has also been notified that the parties to the purchase and sale are unable to agree upon the amount to be paid and received therefor, the commission must, after not less than thirty days' notice to the Office of Regulatory Staff, the city or town, and to the electrical utility, as well as to all of its mortgagees and lienors appearing of record in the county in which the city or town is situated, hold a public hearing upon the matter of just compensation, including severance damages if any, to be paid for the taking of the property by the city or town. Within a reasonable time after the public hearing, the commission must by order fix and determine and certify to the clerk of the city or town, to the electrical utility, and to any bondholder, mortgagee, lienor, or other interested party who has entered an appearance in the proceeding the just compensation, including the damages, if any. The order of the commission may be reviewed as provided in this chapter for the review of other orders of the commission. The commission must not be a party to an action for review.

HISTORY: 1962 Code Section 24‑74; 1952 Code Section 24‑74; 1942 Code Section 8555‑3; 1932 (37) 1497; 2006 Act No. 318, Section 190, eff May 24, 2006.

**SECTION 58‑27‑1350.** Payment of compensation and transfer of property after approval in municipal election.

 After the amount of compensation and damages has been finally fixed the same shall be paid by the city or town and the property shall be transferred by the electrical utility within not more than ninety days, and upon such transfer the indeterminate permit of such electrical utility, to the extent that it applies to such city or town, shall be deemed cancelled. But such purchase by the city or town shall not be consummated unless approved by a majority vote of the electors in such city or town who are qualified to vote on its bonded indebtedness at an election held after the amount of the compensation and damages has been finally fixed. If such purchase is not approved by the electors or if so approved and the city or town shall not comply or legally tender compliance with its proposed purchase within ninety days after the amount of compensation and damages has been finally fixed, the electrical utility shall be released from its obligation to convey under the proceedings had.

HISTORY: 1962 Code Section 24‑75; 1952 Code Section 24‑75; 1942 Code Section 8555‑3; 1932 (37) 1497.

**SECTION 58‑27‑1360.** Acquisition of property of supplier of electricity when area annexed to or incorporated as municipality.

 When an area in which electric service is being furnished at wholesale or retail by a supplier of electricity, including municipal corporations, public or governmental agencies, and electric cooperatives, is incorporated as a city or town or is annexed to an existing incorporated city or town, the city or town or, with the consent of the governing body of such city or town, an electrical utility furnishing electricity in that city or town by franchise, contract, permit, or other consent, has the right to acquire the property of a supplier of electricity brought within corporate limits upon a finding by the commission pursuant to subsection (B) of Section 58‑27‑650 that inadequate, undependable, or unreasonably discriminatory service is being provided and upon payment of just compensation. The supplier of electricity having property or facilities in areas incorporated as a city or town or annexed into an existing city or town has the right to compel the city or town or an electrical utility operating in that city or town pursuant to a franchise, contract, permit, or other consent to purchase the facilities and properties and to compel the payment of just compensation. The city or town may not elect to purchase or give its consent to a purchase by another supplier of electricity until the commission has ruled upon adequacy of service, and it has first given ten days' written notice to the Office of Regulatory Staff and the suppliers concerned of its intention to purchase or consent to the purchase of property situate within the limits of the municipality used for providing electric service in the municipality.

 Within ten days after notice is given that the right to acquire or sell the facilities and properties is exercised, the parties shall each select a representative in order to reach an agreement on just compensation. The selling supplier shall make its pertinent books and records available to the representative of the purchasing supplier. If the representatives are unable to agree on just compensation within a period of sixty days, they shall jointly request the resident judge of the judicial circuit in which the facilities and properties to be purchased are situate to submit a list of five disinterested persons from which the selection of an arbiter must be made. The resident judge shall submit the list within five days after receipt of a request. Within five days after receipt of the list from the resident judge, the representatives of the parties shall meet, and each party has alternate strikes, the first strike to be chosen by lot, until one person remains on the list, and this person is the arbiter, whose expenses and fee for service rendered, as assessed by him against either or both parties, are subject to review by the resident judge. The arbiter shall give each representative an opportunity to be heard, and his decision on just compensation, including reasonable expenses, engineers' and attorneys' fees justifiably incurred by the selling supplier as allowed by the arbiter, is final and binding on the parties.

 If either party fails to act during the time limitation set forth above for the accomplishment of a particular step within this procedure without the consent of the other party, then the party failing to act forfeits his rights in the selection of an arbiter and his rights to be heard by the arbiter.

 For the purposes of this section, "just compensation" consists of the total of the following:

 (a) Reproduction cost, new, of the facilities being acquired, less depreciation on a straight‑line basis;

 (b) Cost of reintegrating the system of the selling supplier after detaching the portion to be sold (including allowance for idle substation, transmission, and generation capacity caused in the remaining portion of the system or of any supplying systems, the cost of which is borne in whole or in part by the selling system);

 (c) An additional amount, in recognition of the loss of revenue of greater than average value, equivalent to two and one‑half times the gross revenue derived by the selling supplier from the consumers on the lines being acquired during the twelve months next preceding the first of the month in which notice of purchase was given the selling supplier.

 The total sum paid by an electrical utility or municipality under the provisions of this section for acquisition of facilities is the original cost of the facilities to be entered on its books and records for all accounting purposes, including rate making.

HISTORY: 1962 Code Section 24‑76; 1963 (53) 495; 1984 Act No. 431, Section 5, eff June 6, 1984; 2006 Act No. 318, Section 191, eff May 24, 2006.

Editor's Note

Section 57 of 1987 Act No. 173 (codified as Section 58‑27‑690) provides that this section shall not be modified, abridged, or repealed by 1987 Act No. 173.

ARTICLE 11

Adequacy of Service, Reports, Accounts, and the Like

**SECTION 58‑27‑1510.** Service shall be adequate, efficient and reasonable.

 Every electrical utility shall furnish adequate, efficient and reasonable service.

HISTORY: 1962 Code Section 24‑91; 1952 Code Section 24‑91; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1520.** Ordering improvement of service.

 Whenever the commission, after a hearing, finds that the service of any electrical utility is unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, the commission must determine the reasonable, safe, adequate, and sufficient service to be observed, furnished, enforced, or employed and must fix the service by its order, rule, or regulation.

HISTORY: 1962 Code Section 24‑92; 1952 Code Section 24‑92; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 192, eff May 24, 2006.

**SECTION 58‑27‑1530.** Certain wires shall not be erected near public road.

 No electric light or power wire shall be erected or maintained within fifty yards of any public road or highway in this State, unless it be so constructed, erected and maintained and provided with sufficient lightning guards or arresters, automatic cut‑offs and other devices as may be necessary for the protection of persons and property. Any person erecting or maintaining any such wire in violation of the provisions hereof shall forfeit and pay as a penalty therefor five dollars a day for each day such violation continues after the expiration of thirty days from the date on which he may have been given a written notice specifying the fault or defect in the manner of erection, construction or maintenance thereof. Such penalty may be recovered at the suit of any citizen in any county in which such violation shall occur and the sum so recovered, after paying therefrom all the expenses incurred in the prosecution of such suit, shall be paid into the county treasury for such county for ordinary county purposes.

HISTORY: 1962 Code Section 24‑93; 1952 Code Section 24‑93; 1942 Code Section 8531; 1932 Code 8531; Civ. C. '22 Section 5015; Civ. C. '12 Section 3317; Civ. C. '02 Section 2211; 1899 (23) 61; 1904 (24) 490.

**SECTION 58‑27‑1540.** System of accounts.

 The Office of Regulatory Staff may, subject to the approval of the commission, establish a system of accounts to be kept by electrical utilities subject to its jurisdiction and may prescribe the manner in which the accounts must be kept. Every electrical utility must keep its books, papers, and records accurately and faithfully according to the system of accounts and all regulations and directions in relation thereto prescribed by the Office of Regulatory Staff.

HISTORY: 1962 Code Section 24‑94; 1952 Code Section 24‑94; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 193, eff May 24, 2006.

**SECTION 58‑27‑1550.** Annual depreciation; depreciation reserve.

 Every electrical utility may, and may be required to, charge annually as an operating expense a reasonable sum for depreciation and credit the sum to a reserve account for such purpose. The reserve account must be charged only with plant retirements and expenditures made to restore depreciated property. But if the reserve thus created shall at any time in the judgment of the Office of Regulatory Staff be excessive, the commission, after due hearing, shall issue an order as will result in the credits to the reserve thereafter conforming to actual facts and conditions as ascertained by the commission. The commission may control or limit the depreciation reserve.

HISTORY: 1962 Code Section 24‑95; 1952 Code Section 24‑95; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 194, eff May 24, 2006.

**SECTION 58‑27‑1560.** Office of utility; removal of books and papers from State.

 Each electrical utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all books, accounts, papers, and records as shall be required by the Office of Regulatory Staff to be kept within the State. No books, accounts, papers, or records required by the Office of Regulatory Staff to be kept within the State shall be removed at any time from the State, except upon such conditions as may be prescribed by the Office of Regulatory Staff.

HISTORY: 1962 Code Section 24‑96; 1952 Code Section 24‑96; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 195, eff May 24, 2006.

**SECTION 58‑27‑1570.** Production of books and records.

 The Office of Regulatory Staff may require the production within this State at a time and place as it may designate, of any books, accounts, papers, or records of the electrical utility relating to its business or affairs within the State, pertinent to any lawful inquiry and kept by such electrical utility in any office or place within or without this State or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the Office of Regulatory Staff or under its direction.

HISTORY: 1962 Code Section 24‑97; 1952 Code Section 24‑97; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 196, eff May 24, 2006.

**SECTION 58‑27‑1580.** Furnishing information and reports; forms.

 Every electrical utility must furnish the Office of Regulatory Staff in such form and in such detail as the Office of Regulatory Staff requires, subject to the approval of the commission, all tabulations, computations, and other information required by the Office of Regulatory Staff to carry into effect any of the provisions of this chapter and must make special answer to all questions submitted by the Office of Regulatory Staff. Each electrical utility receiving from the Office of Regulatory Staff any blanks with directions to fill out must cause the blanks to be properly filled out so as to answer fully and correctly each question propounded therein and it shall return the tabulations, computations, and other information to the Office of Regulatory Staff within the time required. But in case any electrical utility is unable to answer any question, it must so state with good and sufficient reasons therefor. When required by the Office of Regulatory Staff, each electrical utility must deliver to the Office of Regulatory Staff copies of any or all maps, profiles, contracts, franchises, reports, books, accounts, papers, and records in its possession or in any way relating to its property or affecting its business and also a complete inventory of its property in the form as the Office of Regulatory Staff directs. Each electrical utility must, when required by the Office of Regulatory Staff, furnish in such form as the Office of Regulatory Staff requires all such reports as it may be directed by the Office of Regulatory Staff to furnish in relation to its operations, property, or business, and the Office of Regulatory Staff may require either periodical or special reports concerning any matter as to which it desires to inquire in order to keep itself informed in the performance of its duties under this chapter. All reports must be under oath by the officer or officers of the electrical utility as may be required by the Office of Regulatory Staff.

HISTORY: 1962 Code Section 24‑98; 1952 Code Section 24‑98; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 197, eff May 24, 2006.

**SECTION 58‑27‑1590.** Meters to measure electricity going into or out of State; records and reports.

 When an electrical utility is engaged in both interstate business and intrastate business in this State and at any time transmits electricity either into or from this State (a) by the use, either wholly or in part, of any transmission line or other facilities also used in intrastate service in this State, (b) if the electricity is generated by the use, either wholly or in part, of any facilities also used in intrastate service in this State, or (c) if the electricity is a part of any supply of electricity acquired by purchase, exchange, or any means other than actual generation and any part of the supply of electricity is also at any time used in intrastate service in this State, the commission may require the electrical utility to maintain at or near the state line, within this State, a meter or meters of a type or types to be approved by the commission before installation which must accurately and separately measure and register the electricity coming into and going out of this State. Any such electrical utility shall make records and reports of the meter readings as the Office of Regulatory Staff requires, all to the end that the Office of Regulatory Staff, in the performance of its duties in relation to intrastate operations and rates in this State, may at all times be able to determine with reasonable accuracy the results of the intrastate operations in this State of the electrical utility apart from its interstate operation or its operations in any other state or states and to segregate with reasonable precision the property devoted to interstate service or to the services of any other state or states.

HISTORY: 1962 Code Section 24‑99; 1952 Code Section 24‑99; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 198, eff May 24, 2006.

ARTICLE 13

Issuance and Sales of Securities

**SECTION 58‑27‑1710.** Securities shall not be issued without approval of Commission; exceptions.

 No electrical utility, except a municipality, shall issue any securities without the approval of the Commission. Nothing herein contained shall apply to any issue of securities payable within one year from the date thereof, except in case of issues made to refund such short‑time obligations; but such short‑time obligations may be renewed by similar obligations without the approval of the Commission for an aggregate period of not exceeding two years.

HISTORY: 1962 Code Section 24‑81; 1952 Code Section 24‑81; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1720.** Application for approval.

 Any electrical utility, except a municipality, desiring to issue any securities may apply to the commission for approval of the proposed issue by filing with the commission and providing a copy of an application to the Office of Regulatory Staff, together with a statement verified by (a) its president and secretary or other proper officers, (b) two of its incorporators, or (c) by its owner or owners, if it has no such officers, setting forth:

 (1) the amount and character of securities proposed to be issued;

 (2) the purpose for which they are to be issued;

 (3) the consideration for which they are to be issued;

 (4) the description and estimated value of the property, if any, to be acquired through the proposed issue;

 (5) the terms and conditions of their issuance; and

 (6) the financial condition of the electrical utility and its previous operations so far as relevant.

HISTORY: 1962 Code Section 24‑82; 1952 Code Section 24‑82; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 199, eff May 24, 2006.

**SECTION 58‑27‑1730.** Investigation and hearing as to value of issue of securities; certificate of authority.

 The Office of Regulatory Staff must thereupon make an investigation as may be necessary, at which investigation the electrical utility is entitled to be heard before the commission. The commission must determine whether the purpose of the issue is proper, value the property or services, if any, to be acquired by the issue, and find and determine the amount of such securities reasonably necessary for the purpose for which they are to be issued. To the extent that the commission approves the proposed issue, it must grant to the electrical utility a certificate of authority stating:

 (1) the amount of the securities reasonably necessary for the purpose for which they are to be issued and the character of the securities; and

 (2) the value of any property or services, if any, to be acquired thereby. Nothing herein contained shall be construed to impose or imply any guaranty or obligation as to the securities on the part of the State or any agency thereof, nor shall the commission, by virtue of the approval of the issuance of such securities, be deemed to be required to prescribe or approve any rate for the reason that such rate may be necessary to provide funds reasonably sufficient to retire such securities or the interest thereon.

HISTORY: 1962 Code Section 24‑83; 1952 Code Section 24‑83; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 2006 Act No. 318, Section 200, eff May 24, 2006.

**SECTION 58‑27‑1740.** Limitation of amount and use of proceeds of issue.

 Such electrical utility shall not issue any securities in greater amounts than specified in such certificate and shall apply the proceeds of such issue to the purposes specified in its petition.

HISTORY: 1962 Code Section 24‑84; 1952 Code Section 24‑84; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1750.** Certain sales of securities by or to employees prohibited.

 No electrical utility shall:

 (1) Permit any employee to sell, offer for sale or solicit the purchase of any security of such utility or of any other person or corporation during such hours as such employee is engaged to perform any duty of such electrical utility;

 (2) By any means or device whatsoever require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; nor

 (3) Require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment on any purchase or contract to purchase any security of such electrical utility or of any other person or corporation.

HISTORY: 1962 Code Section 24‑85; 1952 Code Section 24‑85; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493.

**SECTION 58‑27‑1760.** Permissible sales of securities to employees.

 Operating electrical utility companies may offer to their employees opportunities to purchase their securities, and may permit deductions from their wages or salaries to be applied on the payment of such purchases; provided that such offers shall permit only bona fide voluntary action on the part of the employees, and shall in no way require or coerce any employee into entering into or subscribing to any such plan.

HISTORY: 1962 Code Section 24‑86; 1953 (48) 312.

ARTICLE 15

Commission Hearings, Investigations and Proceedings

**SECTION 58‑27‑1910.** Promulgation of rules governing pleadings, practice and procedure.

 The Commission may prescribe rules governing pleadings, practice and procedure before it not inconsistent with the provisions of this chapter or any other provisions of law.

HISTORY: 1962 Code Section 24‑131; 1952 Code Section 24‑131; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑1920.** Rules governing hearings and proceedings.

 All hearings and proceedings must be governed by law and by rules of practice and procedure adopted by the commission.

HISTORY: 1962 Code Section 24‑132; 1952 Code Section 24‑132; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 201, eff May 24, 2006.

**SECTION 58‑27‑1930.** Additional hearings; notice.

 The Commission may, in addition to the hearings specifically provided for by this chapter, conduct such other hearings as may be required in the administration of the powers and duties conferred upon it by this chapter and by other acts relating to electrical utilities. Notice of all such hearings shall be given those interested therein.

HISTORY: 1962 Code Section 24‑133; 1952 Code Section 24‑133; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑1940.** Petition alleging improper act by electrical utility.

 Any person, corporation, or municipality having an interest in the subject matter, including any electrical utility concerned, may petition in writing setting forth any act or thing done or omitted to be done by any electrical utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer or of any order or rule of the commission.

HISTORY: 1962 Code Section 24‑134; 1952 Code Section 24‑134; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 202, eff May 24, 2006.

**SECTION 58‑27‑1950.** Service of copy of complaint.

 Upon the filing of a petition, the commission must cause a copy thereof to be served upon the person, corporation, or electrical utility which is the subject of the petition, and the Office of Regulatory Staff.

HISTORY: 1962 Code Section 24‑135; 1952 Code Section 24‑135; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 203, eff May 24, 2006.

**SECTION 58‑27‑1960.** Issuance and service of subpoenas and other process.

 The Commission and each commissioner may issue subpoenas, subpoenas duces tecum and all other necessary processes in proceedings pending before it, and such process shall extend to all parts of the State and may be served by any person authorized by law to serve processes.

HISTORY: 1962 Code Section 24‑136; 1952 Code Section 24‑136; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑1970.** Service of pleadings and notices.

 Service of all pleadings or notices in all hearings and proceedings pending before the commission, except service of the processes provided for by Section 58‑27‑1960, may be made personally or by mail as the commission may direct.

HISTORY: 1962 Code Section 24‑137; 1952 Code Section 24‑137; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 204, eff May 24, 2006.

**SECTION 58‑27‑1980.** Time, place and notice of hearing.

 The Commission shall fix the time and place of all hearings and shall serve notice thereof not less than twenty days before the time set for such hearing, unless the Commission shall find that public necessity requires that such hearing be held at an earlier date, in which event the notice shall be reasonable in view of all the circumstances.

HISTORY: 1962 Code Section 24‑138; 1952 Code Section 24‑138; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑1990.** Dismissal of petition without hearing.

 The commission may dismiss any petition without a hearing if in its opinion a hearing is not necessary in the public interest or for the protection of substantial rights.

HISTORY: 1962 Code Section 24‑139; 1952 Code Section 24‑139; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 205, eff May 24, 2006.

**SECTION 58‑27‑2000.** Administration of oaths; examination of witnesses; certification of official acts.

 For the purposes mentioned in this chapter, commissioners may administer oaths, examine witnesses, consistent with the Code of Judicial Conduct, and certify official acts.

HISTORY: 1962 Code Section 24‑140; 1952 Code Section 24‑140; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 206, eff May 24, 2006.

**SECTION 58‑27‑2010.** Contempt proceedings.

 In case of failure on the part of any person to comply with any lawful order of the commission or of any commissioner or with any subpoena or subpoena duces tecum or in the case of the refusal of any witness to testify concerning any matter on which he may be interrogated lawfully, any court of record of general jurisdiction, or a judge thereof, may, on application of a party requesting a subpoena, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. The commission must not be a party to any proceeding.

HISTORY: 1962 Code Section 24‑141; 1952 Code Section 24‑141; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 207, eff May 24, 2006.

**SECTION 58‑27‑2020.** Hearing before one or more commissioners.

 Any hearing which the commission has power to hold may be held before any one or more of the commissioners; however, the commissioner or commissioners must have been authorized by the commission to hold the hearing. Each hearing before a commissioner or commissioners must be considered the hearing of the commission. Any determination, ruling, or order of a commissioner or commissioners, upon a hearing held by him or them, must not become effective until due notice has been given to the commission and the determination, ruling, or order has been approved and confirmed by at least a quorum of the commission and ordered to be filed in its office. Upon such confirmation and order, the determination, ruling, or order shall be the determination, ruling, or order of the commission.

HISTORY: 1962 Code Section 24‑142; 1952 Code Section 24‑142; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 208, eff May 24, 2006.

**SECTION 58‑27‑2030.** Employment and duties of special agent or examiner.

 In any hearing, the commission may employ a special agent or examiner who shall have power to administer oaths, examine witnesses, consistent with the Code of Judicial Conduct, and receive evidence in any locality which the commission, having regard to the public convenience and the proper discharge of its functions and duties, may designate. The testimony and evidence so taken or received shall have the same force and effect as if taken or received by the commission or any one or more of the commissioners as above provided.

HISTORY: 1962 Code Section 24‑143; 1952 Code Section 24‑143; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 209, eff May 24, 2006.

**SECTION 58‑27‑2040.** Persons entitled to be heard at hearing and to introduce evidence.

 At the time fixed for any hearing before the commission or the time to which the same may have been continued, the petitioner and the person, corporation, or the affected electrical utility is entitled to be heard and to introduce evidence, in person or by attorney.

HISTORY: 1962 Code Section 24‑144; 1952 Code Section 24‑144; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 210, eff May 24, 2006.

**SECTION 58‑27‑2050.** Depositions.

 The Office of Regulatory Staff or any party to the proceedings may, in any hearing before the commission, cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for taking depositions in civil actions in the courts of this State.

HISTORY: 1962 Code Section 24‑145; 1952 Code Section 24‑145; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 211, eff May 24, 2006.

**SECTION 58‑27‑2060.** Self‑incrimination; immunity from prosecution.

 No person is excused from testifying or from producing any book, document, paper, or account in any hearing before the commission, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which he shall have been compelled under oath to testify or produce documentary evidence. But no person so testifying is exempt from prosecution or punishment for any perjury committed by him in his testimony.

HISTORY: 1962 Code Section 24‑146; 1952 Code Section 24‑146; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 212, eff May 24, 2006.

**SECTION 58‑27‑2070.** Copies of official documents and orders as evidence.

 Copies of official documents and orders filed or deposited according to law in the office of the commission or the Office of Regulatory Staff, certified by a commissioner or by the clerk of the commission under its official seal or the executive director of the Office of Regulatory Staff to be true copies of the original, shall be evidence in like manner as the originals in all matters before the commission and in the courts of this State. The commission and the Office of Regulatory Staff may prescribe reasonable charges to be paid for furnishing authenticated copies of such documents and orders.

HISTORY: 1962 Code Section 24‑147; 1952 Code Section 24‑147; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 213, eff May 24, 2006.

**SECTION 58‑27‑2080.** Compensation of witnesses.

 Witnesses who are summoned before the Commission shall be paid by the party or parties at whose instance they are summoned the same fees and mileage as are paid to witnesses in the courts of common pleas of this State, and witnesses whose depositions are taken pursuant to the provisions of this chapter and the officer taking the same shall be entitled to be paid by the party or parties at whose instance the deposition is taken the same fees as are paid for like services in the courts of common pleas of this State.

HISTORY: 1962 Code Section 24‑148; 1952 Code Section 24‑148; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑2090.** Charges by affiliated interests.

 When, in the judgment of the commission, there is a reasonably substantial affiliation of any electrical utility engaged in business in this State with any other corporation or person or when, in the judgment of the commission, any other corporation or person either exercises or is in position to exercise, by reason of ownership or control of securities or for any other cause, any reasonably substantial control over the business or policies of any electrical utility engaged in business in this State, the burden of proof shall be upon the electrical utility to establish as determined by the commission the reasonableness, fairness, and absence of injurious effect upon the public interest of any fees or charges growing out of any transactions between any electrical utility and such other corporation or person (a) in relation to supervision, management, construction, or engineering, services or contract, (b) for the sale of material, supplies, equipment, or other commodities, or (c) for any other purpose. Every electrical utility shall be required to produce, if so ordered by the commission in a pending proceeding, for the information of the commission and the other parties all such contracts, papers, and documents relating thereto and explanatory thereof as may be required by the commission, and unless the reasonableness, fairness, and absence of injurious effect upon the public interest of such fees and charges are established as determined by the commission, the same shall not be allowed by the commission for rate‑making purposes.

 The commission shall not allow for rate‑making purposes any fees or expenses included in any contract or agreement with an affiliate representing charges that the commission has directly disallowed in its rate‑making orders.

HISTORY: 1962 Code Section 24‑149; 1952 Code Section 24‑149; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1983 Act No. 138 Section 16, eff June 15, 1983; 2006 Act No. 318, Section 214, eff May 24, 2006.

**SECTION 58‑27‑2100.** Findings and orders of Commission.

 After the conclusion of a hearing the Commission shall make and file its findings and order with its opinion, if any. Its findings shall be in sufficient detail to enable the court on review to determine the controverted questions presented by the proceeding and whether proper weight was given to the evidence.

HISTORY: 1962 Code Section 24‑150; 1952 Code Section 24‑150; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑2110.** Service of orders on parties.

 A copy of such order, certified under the seal of the Commission, shall be served either personally or by registered mail upon the person, corporation or electrical utility against whom it runs, or his or its attorney, and notice thereof shall be given either personally or by registered mail to the other parties to the proceedings or their attorneys.

HISTORY: 1962 Code Section 24‑151; 1952 Code Section 24‑151; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑2120.** Effective date of orders.

 The order shall take effect and become operative twenty days after the service thereof, unless otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or revoked by the Commission. If an order cannot, in the judgment of the Commission, be complied with within twenty days, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order and may, on application and for good cause shown, extend the time for compliance fixed in its order.

HISTORY: 1962 Code Section 24‑152; 1952 Code Section 24‑152; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑2130.** Rescission or amendment of orders or decisions.

 The commission may at any time, except in those cases provided for in Section 58‑27‑2150, after notice and after opportunity to be heard as provided in the case of petitions, rescind or amend any order or decision made by it. Any order rescinding or amending a prior order or decision, after notice thereof, either personal or by registered mail, has been given to the electrical utility affected and to the other parties to the proceedings, shall have the same effect as is herein provided for original orders or decisions, but no such order shall affect the legality or validity of any acts done pursuant to the original order before service of notice of such change.

HISTORY: 1962 Code Section 24‑153; 1952 Code Section 24‑153; 1942 Code Section 8555‑5; 1932 (37) 1497; 2006 Act No. 318, Section 215, eff May 24, 2006.

**SECTION 58‑27‑2140.** Records of proceedings shall be kept.

 A full and complete record shall be kept of all proceedings had before the Commission or any commissioner on any formal hearing, and all testimony shall be taken down by a reporter appointed by the Commission.

HISTORY: 1962 Code Section 24‑154; 1952 Code Section 24‑154; 1942 Code Section 8555‑5; 1932 (37) 1497.

**SECTION 58‑27‑2150.** Rehearings.

 After an order or decision has been made by the Commission any party to the proceedings may within ten days after service of notice of the entry of the order or decision apply for a rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing, and the Commission may, in case it appears to be proper, grant and hold such rehearing. The Commission shall either grant or refuse an application for rehearing within twenty days, and a failure by the Commission to act upon such application within that period shall be deemed a refusal thereof. If the application be granted the Commission's order shall be deemed vacated, and the Commission shall enter a new order after the rehearing has been concluded.

HISTORY: 1962 Code Section 24‑155; 1952 Code Section 24‑155; 1942 Code Section 8555‑5; 1932 (37) 1497.

ARTICLE 17

Review of Commission Orders

**SECTION 58‑27‑2310.** Action to vacate order of commission; limitations.

 A party in interest dissatisfied with an order of the commission may appeal to the Supreme Court or court of appeals as provided by statute and the South Carolina Appellate Court Rules. No right of appeal accrues to vacate or set aside, either in whole or in part, an order of the commission, except an order on a rehearing, unless a petition to the commission for a rehearing is filed and refused or considered refused because of the commission's failure to act within twenty days. The commission must not be a party to any action.

HISTORY: 1962 Code Section 24‑161; 1952 Code Section 24‑161; 1942 Code Section 8555‑6; 1932 (37) 1497; 2006 Act No. 318, Section 216, eff May 24, 2006; 2006 Act No. 387, Section 42, eff July 1, 2006.

Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

**SECTION 58‑27‑2320.** Stay or suspension of Commission's order pending review.

 The pendency of proceedings to review shall not of itself stay or suspend the operation of the order of the Commission, but during the pendency of such proceedings the court, upon reasonable notice and after hearing, in its discretion may stay or suspend, either in whole or in part, the operation of the Commission's order on such terms as it deems just and in accordance with the practice of the court. Any party shall have the right to secure from the court in which a review of the order of the Commission is in good faith sought an order suspending or staying the operation of the order of the Commission, pending a review of such order, by adequately securing all persons, corporations and municipalities who will be affected by such suspension or stay against loss due to the delay in the enforcement of the order, in case the order under review is affirmed, the security to be approved and to be in such form and amount as shall be directed by the court granting the stay or suspension.

HISTORY: 1962 Code Section 24‑162; 1952 Code Section 24‑162; 1942 Code Section 8555‑6; 1932 (37) 1497.

**SECTION 58‑27‑2340.** Burden of proof shall be on complainant.

 In all actions and proceedings arising under this chapter or growing out of the exercise of the powers herein granted to the Commission the burden of proof shall be on the party attacking any order of the Commission to show that the same is unlawful or unreasonable.

HISTORY: 1962 Code Section 24‑164; 1952 Code Section 24‑164; 1942 Code Section 8555‑6; 1932 (37) 1497.

ARTICLE 19

Penalties

**SECTION 58‑27‑2410.** General penalty.

 Any person or corporation violating any provision of this chapter, other than Section 58‑27‑1530, or failing, omitting or neglecting to obey, observe or comply with any lawful order of the Commission, or any part or provision thereof, shall be subject to a penalty of not less than one hundred dollars nor more than five thousand dollars for each offense and reasonable expenses including attorney's fees.

HISTORY: 1962 Code Section 24‑171; 1952 Code Section 24‑171; 1942 Code Section 8555‑7; 1932 (37) 1497.

**SECTION 58‑27‑2420.** Every violation shall constitute a separate offense.

 Every violation of a provision of this chapter or of any lawful order of the Commission, or any part thereof, by any corporation or person is a separate and distinct offense and in case of a continuing violation each day's continuance thereof shall be deemed to be a separate and distinct offense.

HISTORY: 1962 Code Section 24‑172; 1952 Code Section 24‑172; 1942 Code Section 8555‑7; 1932 (37) 1497.

**SECTION 58‑27‑2430.** Penalties shall be cumulative; suit for one penalty shall not bar another suit.

 All penalties accruing under this chapter shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any electrical utility or any officer, director, agent or employee thereof or any other corporation or person.

HISTORY: 1962 Code Section 24‑173; 1952 Code Section 24‑173; 1942 Code Section 8555‑7; 1932 (37) 1497.

**SECTION 58‑27‑2440.** Actions to recover penalties.

 Actions to recover penalties under this chapter shall be brought in the name of the State by the Office of Regulatory Staff in any court of competent jurisdiction.

HISTORY: 1962 Code Section 24‑174; 1952 Code Section 24‑174; 1942 Code Section 8555‑7; 1932 (37) 1497; 2006 Act No. 318, Section 218, eff May 24, 2006.

**SECTION 58‑27‑2450.** Principals responsible for act of agents.

 In construing and enforcing the provisions of this chapter relating to penalties the act, omission or failure of any officer, agent or employee of any corporation or person acting within the scope of his official duties or employment shall in every case be deemed to be also the act, omission or failure of such corporation or person.

HISTORY: 1962 Code Section 24‑175; 1952 Code Section 24‑175; 1942 Code Section 8555‑7; 1932 (37) 1497.

**SECTION 58‑27‑2460.** Penalties not applicable to municipality but to officers, agents or employees personally.

 The penalties herein prescribed shall not be deemed to apply to municipalities, but the act, omission or failure of an officer, agent or employee of a municipality constituting a violation of this chapter or of any lawful order of the Commission, or any part thereof, although acting for the municipality, shall subject him personally to the penalties herein prescribed.

HISTORY: 1962 Code Section 24‑176; 1952 Code Section 24‑176; 1942 Code Section 8555‑7; 1937 (40) 1497.

ARTICLE 21

Termination of Electric Service Due to Nonpayment

**SECTION 58‑27‑2510.** Definitions.

 For purposes of this article:

 (1) "Licensed health care provider" means a licensed medical doctor, physician's assistant, nurse practitioner, or advanced‑practice registered nurse.

 (2) "Special needs account customer" means the account of a residential customer:

 (a) when the customer can furnish to the utility a certificate on a form provided by the utility and signed by a licensed health care provider that states that termination of electric service would be dangerous to the health of the customer or a member of his household at the premises to which electric service is rendered; or

 (b) who suffers from Alzheimer's disease or dementia as certified by a licensed health care provider.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006; 2012 Act No. 122, Section 5, eff February 22, 2012.

**SECTION 58‑27‑2520.** Termination procedures; contents.

 (A) Each electrical utility must establish written procedures for termination of service due to nonpayment for a special needs account customer at any time and for all residential customers during weather conditions marked by extremely cold or hot temperatures. Each electrical utility must submit its procedures to the Office of Regulatory Staff by November 1, 2006. Any subsequent revisions must be submitted semiannually by March first or September first.

 (B) The procedures for termination must include the following:

 (1) notification procedures so that the customer is made aware of an impending termination and the time within which he must make arrangements for payment prior to termination;

 (2) arrangements for a payment arrangement plan to enable a residential customer, who has a satisfactory payment history as determined by the public utility, to pay by installments where the customer is unable to pay the full amount due for electric service;

 (3) a procedure to advise customers who are unable to pay the full amount due or who are not approved for a payment arrangement plan that they may contact local social service agencies to determine the availability of public or private assistance with the payment of electric bills;

 (4) a schedule of termination that takes into account the availability of the acceptance of payment and the reconnection of service; and

 (5) the standards for determining weather conditions marked by extremely cold or hot temperatures.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

**SECTION 58‑27‑2530.** Third‑party notification program.

 An electrical utility must consider establishing and maintaining a third‑party notification program to allow a residential customer to designate a third party to be notified if the electric service is scheduled for termination.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

**SECTION 58‑27‑2540.** Disconnection when public safety emergency exists.

 Notwithstanding another provision of this article, an electrical utility may disconnect a customer when it is determined that a public safety emergency exists.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

**SECTION 58‑27‑2550.** Promulgation of regulations.

 Nothing in the article prohibits the commission from promulgating detailed regulations governing termination of service by an electrical utility so long as the regulations include the termination and third‑party notification protections provided by this article.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

**SECTION 58‑27‑2560.** Private right of action; duty of care.

 This article does not create a new private right of action or a new duty of care. This article does not diminish, increase, affect, or evidence any duty of care existing under the laws of this State prior to the effective date of this article.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

ARTICLE 23

Lease of Renewable Electric Generation Facilities Program

**SECTION 58‑27‑2600.** Definitions.

 As used in this article:

 (A) "Customer‑generator lessee" means the lessee of a renewable electric generation facility which:

 (1) generates electricity from a renewable energy resource;

 (2) has an electrical generating system with a capacity of:

 (a) not more than the lesser of one thousand kilowatts (1,000 kW AC) or one hundred percent of contract demand if a nonresidential customer; or

 (b) not more than twenty kilowatts (20 kW AC) if a residential customer;

 (3) is located on a premises or residence owned, operated, leased, or otherwise controlled by the customer‑generator lessee that is also the premises or residence served by the renewable electric generation facility;

 (4) is interconnected and operates in parallel phase and synchronization with the retail electric provider for the premises or residence and has been approved by that retail electric provider;

 (5) is intended only to offset part or all of the customer‑generator lessee's own retail electrical energy requirements for each respective premises or residence or to enable the customer‑generator lessee to obtain a credit for or engage in the sale of energy from the renewable electric generation facility to that customer‑generator lessee's retail electric provider or its designee; and

 (6) meets all applicable safety, performance, interconnection, and reliability standards established by the commission or the retail electric provider, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the federal Energy Regulatory Commission, and any local governing authorities.

 (B) "Retail electric provider" means an electrical utility as defined in Section 58‑27‑10 and also means other entities that provide retail electric service in South Carolina, but excluding electric cooperatives organized under the laws of a state other than South Carolina.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor's Note

2014 Act No. 236, Sections 9, 10, provide as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.

"SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties' right to appeal the matter."

**SECTION 58‑27‑2610.** Lease of renewable electric generation facility.

 (A) An entity that owns a renewable electric generation facility, located on a premises or residence owned or leased by an eligible customer‑generator lessee to serve the electric energy requirements of that particular premises or residence or to enable the customer‑generator lessee to obtain a credit for or engage in the sale of energy from the renewable electric generation facility to that customer‑generator lessee's retail electric provider or its designee, shall be permitted to lease such facility exclusively to a customer‑generator lessee under a lease, provided that the entity complies with the terms, conditions, and restrictions set forth within this article and holds a valid certificate issued by the Office of Regulatory Staff. An entity owning renewable electric generation facilities in compliance with the terms of this article shall not be considered an "electrical utility" under Section 58‑27‑10 if the renewable electric generation facilities are only made available to a customer‑generator lessee for the customer‑generator lessee's use on the customer‑generator lessee's premises or the residence where the renewable electric generation facilities are located, or for the sale of energy to that customer‑generator lessee's retail electric provider or its designee, and pursuant to a lease.

 (B) All customer‑generator lessees that interconnect renewable electric generation facilities to a retail electric provider's transmission or distribution system must enroll in the applicable rate schedules made available by that retail electric provider and the customer‑generator lessee shall otherwise comply with all requirements of Section 58‑40‑10, et seq., or the policy adopted by the retail electric provider not subject to Section 58‑40‑10, et seq.

 (C) To comply with the terms of this article, each customer‑generator lessee renewable electric generation facility shall serve only one premises or residence, and shall not serve multiple customer‑generator lessees or multiple premises or residences.

 (D) Any lease of a renewable electric generation facility not entered into pursuant to this article is prohibited. The owner of a renewable electric generation facility subject to any lease entered into outside of this program shall be considered an "electrical utility" under Section 58‑27‑10.

 (E) This section shall not be construed as allowing any sales of electricity from renewable electric generation facilities directly to any customer of any retail electric provider by the owner. This article shall not be construed as abridging or impairing any existing rights or obligations, established by contract or statute, of retail electric providers to serve South Carolina customers. The electrical output from any renewable electric generation unit leased pursuant to this program shall be the sole and exclusive property of the customer‑generator lessee.

 (F) An entity and its affiliates that lawfully provide retail electric service to the public may offer leases of renewable generation facilities in those areas or territories where it provides retail electric service. No such provider or affiliate shall offer or enter into leases of renewable generation facilities in areas served by another retail electric provider.

 (G) The costs an electrical utility incurs in marketing, installing, owning, or maintaining solar leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating electrical utility customers through rates, provided, however, that an electrical utility and the customer‑generator lessees which lease facilities from it may participate on an equal basis with other lessors and lessees in any applicable programs provided pursuant to Chapter 39 of this title and nothing in this section shall prevent the reasonable and prudent costs of a utility's distributed energy resource programs, including the provision of incentives to its own lessees and other allowable costs, from being reflected in a utility's rates as provided for in Chapter 39 or as otherwise permitted under generally applicable regulatory principles.

 (H)(1) The provisions of this Article 23 related to leased generation facilities shall not apply to:

 (a) facilities serving a single premises that are not interconnected with a retail electric provider;

 (b) facilities owned by customer‑generators but financed by a third party; or

 (c) facilities used exclusively for standby emergency service or participation in an approved standby generation program operated by a retail electric provider.

 (2) The commission may promulgate regulations consistent with this section interpreting the scope of these exemptions as to electrical utilities.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014; 2019 Act No. 62 (H.3659), Section 6, eff May 16, 2019.

Editor's Note

2014 Act No. 236, Sections 9, 10, provide as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.

"SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties' right to appeal the matter."

Effect of Amendment

2019 Act No. 62, Section 6, in (B), deleted ", subject to the participation limitations set forth therein or in the policy adopted by the retail electric provider not subject to Section 58‑40‑20(B)," following "made available by that retail electric provider"; in (G), deleted ", 1976 Code Sections 58‑39‑110, et seq" following "Chapter 39 of this title"; deleted (H) and (I), which related to the solar leasing cap, and redesignated (J) as (H); and in (H), in (1)(b), substituted "customer‑generators" for "customer generators".

**SECTION 58‑27‑2620.** Application; approval; updates; investigations; revocation; civil penalties; contested cases.

 (A) Before any entity other than an entity lawfully providing retail electric service to the public in this State commences to do business as a lessor of renewable electric generation facilities under the terms of this article, that entity shall submit an application to the Office of Regulatory Staff and provide such information as the Office of Regulatory Staff shall require. In performing its responsibilities under this article, the Office of Regulatory Staff must balance the state's interest in promoting a market for the provision of renewable electric generation facilities as permitted by this article with an appropriate level of protection for customer‑generator lessees to ensure fair and accurate marketing practices and ensure acceptable performance of renewable electric generation facilities and lessors.

 (B) The application shall be accompanied by such information as the Office of Regulatory Staff shall require and the Office of Regulatory Staff may condition its approval on such terms as the Office of Regulatory Staff shall determine to be just and reasonable to advance the goals of this article of balancing the state's interest in promoting a market for the provision of renewable electric generation facilities as permitted by this article, with an appropriate level of protection for customer‑generator lessees and to ensure fair and accurate marketing practices.

 (C) Upon review of the application and a finding that the applicant is fit, willing, and able to conduct business in accordance with the provisions of this article, the Office of Regulatory Staff shall approve the application and issue the lessor a certificate permitting the lessor to market and lease renewable electric generation facilities to customer‑generator lessees under the terms of this article.

 (D) The Office of Regulatory Staff is authorized to require the regular updating of information by certificate holders.

 (E) The Office of Regulatory Staff shall receive, compile and investigate customer complaints arising under this article and shall attempt to negotiate consent agreements or other settlements resolving alleged violations of this article.

 (F) As concerns potential violations of this article, lessors of distributed generation resources and their officers, agents, employees, or customers shall be subject to the investigatory powers provided in Sections 58‑4‑50 and 58‑4‑55 to the Office of Regulatory Staff regarding public utilities.

 (G) For the protection of the consuming public, the Office of Regulatory Staff may file a petition with the Administrative Law Court requesting revocation of a certificate for violations of this article. In appropriate circumstances, the Office of Regulatory Staff may request the immediate revocation of a certificate.

 (H) It shall be a violation of law punishable by civil penalty of not more than ten thousand dollars per occurrence for any person subject to subsection (A), either directly or indirectly:

 (1) to solicit business as a lessor of renewable electric generation facilities without a valid certificate issued under this section or otherwise in violation of the terms of this article; or

 (2) to engage in any unfair or deceptive practice in the leasing of renewable electric generation facilities.

 (I) An aggrieved person with standing may file a request for a contested case of a decision of the Office of Regulatory Staff with the Administrative Law Court within thirty days of such decision.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor's Note

2014 Act No. 236, Sections 9, 10, provide as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.

"SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties' right to appeal the matter."

**SECTION 58‑27‑2630.** Registration of facility; registry; public inspection of registry; report.

 (A) Not more than thirty days after installation of a renewable electric generation facility leased to a customer‑generator lessee, the lessor shall register the facility with the Office of Regulatory Staff on forms developed and provided by the Office of Regulatory Staff. This registration information must include:

 (1) the name, mailing, and electronic mail address and telephone number of the lessor‑owner;

 (2) the nameplate generating capacity of the facility and its expected annual energy output;

 (3) physical location of the facility;

 (4) the name, mailing, email address, and telephone number of the customer‑generator lessee;

 (5) a description of the intended use of the facility and its output;

 (6) a list of all federal, state, and local licenses and permits required for the construction and operation of the facility, along with a statement regarding whether each has been obtained or applied for;

 (7) the date the facility began or will begin operating;

 (8) the name of the retail electric provider to which the facility has been or will be interconnected;

 (9) an affidavit from the customer‑generator lessee that it will not sell, resell, or attempt to sell or resell the electrical output of the facility to any person, corporation, or entity, other than the customer‑generator lessee's retail electric provider or its designee, that the primary purpose for the operation of the renewable electric generation facility is to generate electricity for the benefit of the premises where it is located, and that the facility has been or will be operated in substantial compliance with all federal and state laws, rules, and regulations and all local codes and ordinances.

 (B) Office of Regulatory Staff shall maintain a registry of facilities registered pursuant to subsection (A). This information must be available for inspection by the public and is subject to the South Carolina Freedom of Information Act. The Office of Regulatory Staff may require the updating of information on the registry.

 (C) The Office of Regulatory Staff shall review the program established pursuant to this article and issue a report to the State Regulation of Public Utilities Review Committee no later than December 31, 2016, relating to its review, including recommendations regarding the expansion, reduction, or continuance of the program.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor's Note

2014 Act No. 236, Sections 9, 10, provide as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.

"SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties' right to appeal the matter."

**SECTION 58‑27‑2640.** Investigation of claims of violations.

 The Office of Regulatory Staff shall have the authority to investigate claims of violations of the provisions of Section 58‑27‑2610 committed by electrical utilities and lessors of renewable electric generation facilities.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor's Note

2014 Act No. 236, Sections 9, 10, provide as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.

"SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties' right to appeal the matter."

**SECTION 58‑27‑2650.** Section 58‑27‑2610 contingently effective.

 Section 58‑27‑2610 shall not become effective until the commission has approved net energy metering rates referenced in Chapter 40, Title 58 for all investor‑owned electrical utilities serving more than one hundred thousand retail customer accounts in South Carolina.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor's Note

2014 Act No. 236, Sections 9, 10, provide as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.

"SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties' right to appeal the matter."

**SECTION 58‑27‑2660.** Development of consumer protection regulations.

 (A)(1) The Office of Regulatory Staff and the Department of Consumer Affairs are directed to develop consumer protection regulations regarding the sale or lease of renewable energy generation facilities pursuant to the distributed energy resource program in Chapter 40 of this title. These regulations shall provide for the appropriate disclosure provided by sellers and lessors. Sellers must comply with Title 37. Nothing herein alters existing protections afforded by Title 37.

 (2) To fulfill the duties and responsibilities provided for in this section, the Office of Regulatory Staff shall develop a formal complaint process as part of the consumer protection regulations.

 (B) The Office of Regulatory Staff is authorized to enforce any applicable consumer protection provision set forth in this title by:

 (1) conducting an investigation into an alleged violation;

 (2) issuing a cease and desist order against a further violation;

 (3) imposing an administrative fine not to exceed two thousand five hundred dollars per violation on a solar company that materially fails to comply with the consumer protection requirements; and

 (4) voiding the agreement if necessary to remedy the violation or violations.

HISTORY: 2019 Act No. 62 (H.3659), Section 11, eff May 16, 2019.