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**VERSIONS OF THIS BILL**

[05/07/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/5521_20240507.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 58-3-140, RELATING TO THE PUBLIC SERVICE COMMISSION’S POWERS TO REGULATE PUBLIC UTILITIES, SO AS TO ESTABLISH CONSIDERATIONS AND STATE POLICY FOR THE COMMISSION’S DECISION MAKING PROCESS, TO ESTABLISH A SCHEDULE FOR CERTAIN TESTIMONY AND DISCOVERY IN CONTESTED PROCEEDINGS, TO PERMIT ELECTRICAL UTILITY CUSTOMERS TO ADDRESS THE COMMISSION AS PUBLIC WITNESSES, AND TO ESTABLISH REQUIREMENTS FOR AN INDEPENDENT THIRD‑PARTY CONSULTANT HIRED BY THE COMMISSION; BY ADDING SECTION 58-4-150 SO AS TO REQUIRE THE OFFICE OF REGULATORY STAFF TO PREPARE A COMPREHENSIVE STATE ENERGY ASSESSMENT AND ACTION PLAN AND TO ESTABLISH REQUIREMENTS FOR THIS PLAN; BY ADDING SECTION 58-31-205 SO AS TO PERMIT THE PUBLIC SERVICE AUTHORITY TO JOINTLY OWN ELECTRICAL FACILITIES WITH CERTAIN CONDITIONS; BY ADDING SECTION 58-37-70 SO AS TO PERMIT A SMALL MODULAR NUCLEAR PILOT PROGRAM AND TO ESTABLISH REQUIREMENTS; BY ADDING ARTICLE 3 TO CHAPTER 37, TITLE 58 SO AS TO PROVIDE FOR STATE AGENCY REVIEW OF ENERGY INFRASTRUCTURE PROJECT APPLICATIONS AND TO PROVIDE A SUNSET; BY AMENDING SECTION 58-40-10, RELATING TO THE DEFINITION OF “CUSTOMER GENERATOR”, SO AS TO ESTABLISH CHARACTERISTICS FOR A “CUSTOMER GENERATOR”; BY AMENDING SECTION 58-41-30, RELATING TO VOLUNTARY RENEWABLE ENERGY PROGRAMS, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS AND CONSIDERATIONS FOR THESE PROGRAMS; BY AMENDING SECTION 58-41-10, RELATING TO DEFINITIONS, SO AS TO ADD THE DEFINITION OF “ENERGY STORAGE FACILITIES”; BY AMENDING SECTION 58-41-20, RELATING TO PROCEEDINGS FOR ELECTRICAL UTILITIES” AVOIDED COST METHODOLOGIES AND RELATED PROCESSES, SO AS TO AUTHORIZE COMPETITIVE PROCUREMENT PROGRAMS FOR RENEWABLE ENERGY, CAPACITY, AND STORAGE, TO PERMIT COMPETITIVE PROCUREMENT OF NEW RENEWABLE ENERGY CAPACITY AND ESTABLISH REQUIREMENTS FOR NON COMPETITIVE PROCUREMENT PROGRAMS, AND TO DELETE LANGUAGE REGARDING THE COMMISSION HIRING THIRD PARTY EXPERTS FOR THESE PROCEEDINGS; BY ADDING SECTION 58-41-25 SO AS TO PROVIDE FOR A PROCESS FOR COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY FACILITIES; BY AMENDING SECTION 58-33-20, RELATING TO DEFINITIONS, SO AS TO ADD THE DEFINITION “LIKE FACILITY” AND “MAJOR UTILITY FACILITY” TO REQUIRE AN ELECTRIC GENERATING PLANT AND ASSOCIATED FACILITIES MAY ALSO REQUIRE A FOOTPRINT OF MORE THAN ONE HUNDRED TWENTY FIVE ACRES; BY AMENDING ARTICLE 3 OF CHAPTER 33, TITLE 58, RELATING TO CERTIFICATION OF MAJOR UTILITY FACILITIES, SO AS TO PROVIDE FOR A LIKE FACILITY, TO ESTABLISH REQUIREMENTS AND CONSIDERATIONS FOR PROPOSED FACILITIES, TO PROVIDE WHAT ACTIONS MAY BE TAKEN WITHOUT PERMISSION FROM THE COMMISSION, AND TECHNICAL CHANGES; BY AMENDING SECTION 58-37-40, RELATING TO INTEGRATED RESOURCES PLANS, SO AS TO ADD CONSIDERATION OF A UTILITY’S TRANSMISSION AND DISTRIBUTION RESOURCE PLAN, TO ESTABLISH PROCEDURAL REQUIREMENTS AND EVALUATION BY THE COMMISSION, AND REQUIRE PARTIES TO BEAR THEIR OWN COSTS; BY AMENDING SECTION 58-33-310, RELATING TO AN APPEAL FROM A FINAL ORDER OR DECISION OF THE COMMISSION, SO AS TO REQUIRE A FINAL ORDER ISSUED PURSUANT TO CHAPTER 33, TITLE 58 BE IMMEDIATELY APPEALABLE TO THE SOUTH CAROLINA SUPREME COURT AND TO PROVIDE FOR AN EXPEDITED HEARING; BY AMENDING SECTION 58-33-320, RELATING TO JOINT HEARINGS AND JOINT INVESTIGATIONS, SO AS TO MAKE A CONFORMING CHANGE; BY ADDING SECTION 58-4-160 SO AS TO REQUIRE THE OFFICE OF REGULATORY STAFF TO CONDUCT A STUDY TO EVALUATE ESTABLISHING A THIRD PARTY ADMINISTRATOR FOR ENERGY EFFICIENCY AND DEMAND‑SIDE MANAGEMENT PROGRAMS; BY AMENDING SECTION 58-37-10, RELATING TO DEFINITIONS, SO AS TO ADD A REFERENCE TO “DEMAND SIDE MANAGEMENT PROGRAM” AND PROVIDE DEFINITIONS FOR “COST EFFECTIVE” AND “DEMAND SIDE MANAGEMENT PILOT PROGRAM”; BY AMENDING SECTION 58-37-20, RELATING TO COMMISSION PROCEDURES ENCOURAGING ENERGY EFFICIENCY PROGRAMS, SO AS TO EXPAND COMMISSION CONSIDERATIONS FOR COST EFFECTIVE, DEMAND SIDE MANAGEMENT PROGRAMS, AND REQUIRE EACH INVESTOR OWNED ELECTRICAL UTILITY TO SUBMIT AN ANNUAL REPORT TO THE COMMISSION REGARDING ITS DEMAND SIDE MANAGEMENT PROGRAMS; BY AMENDING SECTION 58-37-30, RELATING TO REPORTS ON DEMAND SIDE ACTIVITIES, SO AS TO MAKE A CONFORMING CHANGE; BY ADDING SECTION 58-37-35 SO AS TO PERMIT PROGRAMS AND CUSTOMER INCENTIVES TO ENCOURAGE OR PROMOTE DEMAND SIDE MANAGEMENT PROGRAMS FOR CUSTOMER‑SITED DISTRIBUTION RESOURCES, AND TO PROVIDE CONSIDERATIONS FOR THESE PROGRAMS; BY AMENDING SECTION 58-37-50, RELATING TO AGREEMENTS FOR ENERGY EFFICIENCY AND CONSERVATION MEASURES, SO AS TO ESTABLISH CERTAIN TERMS AND RATE RECOVERY FOR AGREEMENTS FOR FINANCING AND INSTALLING ENERGY EFFICIENCY AND CONSERVATION MEASURES, AND FOR APPLICATION TO A RESIDENCE OCCUPIED BEFORE THE MEASURES ARE TAKEN; TO ESTABLISH THE “ENERGY INVESTMENT AND ECONOMIC DEVELOPMENT FUND”, AND TO PROVIDE FOR RELATED REQUIREMENTS; BY ADDING SECTION 58‑41‑50, SO AS TO ENCOURAGE BULK POWER SOLUTIONS AND TO PROVIDE REQUIREMENTS; SO AS TO PROVIDE PROVISIONS RELATED TO ECONOMIC DEVELOPMENT AND REASONABLE AND PRUDENT COST DEFERRAL.

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

SECTION 1. Section 58‑3‑140 of the S.C. Code is amended to read:

Section 58‑3‑140. (A)(1) Except as otherwise provided in Chapter 9 of this title, the commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

(2) The commission must promulgate regulations to establish safety, maintenance, and inspection standards for the public utilities and may assess fines for public utilities that violate these standards.

(B)(1) The commission, in conducting its analysis and making a decision in matters involving electrical utilities, must consider the economic impact to the State when fixing just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every electrical utility in this State.

(2) The General Assembly declares the rates, services, and operations of electrical utilities are a matter of public interest and the availability of an adequate, reliable, and economical supply of electric power and natural gas to the people and economy of South Carolina is a matter of public policy. When exercising its powers under this section, the commission must balance the public interest in determining the rates, services, and operations of electrical utilities. It is the policy of this State for the commission, in matters involving electrical utilities, to:

(a) ensure South Carolina customers have access to an adequate, reliable, and economical supply of energy resources;

(b) sustain growth in industrial and economic development by ensuring an electric generation, transmission, and distribution system that can grow and modernize to meet the demands that a prosperous and developing economy places on it;

(c) provide fair regulation of electrical utilities in the interest of the public in a manner that maintains the financial integrity of the electrical utility by assuring a sufficient and fair rate of return, supports economic development and industry retention, and provides just and reasonable rates to be established for entities providing electrical utility services to customers in this State while promoting adequate, reliable, and economical utility service to all of the citizens and residents of this State;

(d) provide the State and the public with a well‑regulated electrical utility environment;

(e) assure that resources necessary to meet future growth through the provision of adequate, reliable electrical utility service include use of the entire spectrum of demand‑side options, including but not limited to, conservation, load management, and energy efficiency programs as additional sources of energy supply and energy demand reduction;

(f) provide just and reasonable rates and charges for electrical utility services without undue preferences or advantages, or unfair or destructive competitive practices and consistent with long‑term management and conservation of energy resources by avoiding wasteful, uneconomic generation and uses of energy;

(g) assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities, and to that end, to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities;

(h) recognize the important role of utilities in economic development and industry retention and the necessity for utilities to maintain the ability to finance continued investment in, and operation and maintenance of, the electric system, rapid restoration of power after major storms and outages, rate designs, and infrastructure necessary to attract and retain businesses and jobs to South Carolina, the ability to obtain financing at attractive rates, and to ensure a viable workforce for providing electricity and to attract such utility workers at market‑competitive wages;

(i) seek to encourage and promote harmony between public utilities, their users, and the environment;

(j) foster the continued service of electrical utilities on a well‑planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare, economic development, and industry retention;

(k) seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide economic development and industry retention;

(l) encourage the continued study and research on new and innovative rate designs which will protect the State, the public, the ratepayers and the utilities;

(m) facilitate the construction of facilities in and the extension of natural gas service to unserved and underserved areas in order to promote the public welfare throughout the State;

(n) further the development of cleaner energy technologies on a cost‑effective basis to protect the natural resources of this State, promote the health and well‑being of the people of this State, and attract investments, create employment opportunities, drive economic growth, and foster innovation in this State; and

(o) accomplish regulatory processes and issue orders in a timely manner.

(B)(C) The commission must develop and publish a policy manual which must set forth guidelines for the administration of the commission. All procedures must incorporate state requirements and good management practices to ensure the efficient and economical utilization of resources.

(C)(D) The commission must facilitate access to its general rate request orders in contested matters involving more than one hundred thousand dollars by publishing an order guide which indexes and cross‑references orders by subject matter and case name. The order guide must be made available for public inspection.

(D)(E) The commission must promulgate regulations to require the direct testimony of witnesses appearing on behalf of utilities and of witnesses appearing on behalf of persons having formal intervenor status, such testimony to be reduced to writing and prefiled with the commission in advance of any hearing. In contested case proceedings, the applicant seeking relief from the commission shall have the right to prefile rebuttal testimony responsive to the direct prefiled testimony of other parties. The commission may allow supplemental testimony in cases where new matters arise after the filing of direct testimony, provided that parties shall have the right to respond to such supplemental testimony. The procedural schedule for each contested case proceeding shall include dates for completion of each phase of discovery, including discovery related to the application or other initial pleading as filed, direct testimony of the applicant, direct testimony of the Office of Regulatory Staff and other parties and intervenors, rebuttal testimony of the applicant, and surrebuttal testimony but only if allowed by the commission upon motion that there is material new information for which surrebuttal testimony is required. The commission must act on a motion to allow surrebuttal testimony within three business days. Except upon showing of exceptional circumstances or surprise, all discovery must be completed not less than ten days prior to the hearing.

(F) The commission may convene public hearings to allow electrical utility customers to address the commission as public witnesses without intervening in the proceedings and without subjecting themselves to discovery or prefiling testimony. Public witnesses may address the commission on issues related to customer service, utility operations, reliability, economic hardship, affordability, environmental concerns, or other matters that affect them. The electrical utility and the Office of Regulatory Staff shall work to investigate and resolve individual service issues raised by public witnesses.

(G) Any other provision of law notwithstanding, to the extent the commission is authorized by the General Assembly to employ an independent third‑party consultant to assist the commission in its duties with respect to a matter before the commission, such consultant may only rely upon evidence introduced by a party to that proceeding into the record subject to the requirements of the South Carolina Administrative Procedures Act. Further, the commission may not give any consultant employed by the commission party status in a proceeding before the commission.

(E)(H) Nothing in this section may be interpreted to repeal or modify specific exclusions from the commission's jurisdiction pursuant to Title 58 or any other title.

(F)(I) When required to be filed, tariffs must be filed with the office of the chief clerk of the commission and, on that same day, provided to the Executive Director of the Office of Regulatory Staff.

SECTION 2. Chapter 4, Title 58 of the S.C. Code is amended by adding:

Section 58‑4‑150. (A) To further advance and expand upon Executive Order 2023‑18 which established the PowerSC Energy Resources and Economic Development Interagency Working Group, the Office of Regulatory Staff, in consultation with a stakeholder group that includes representatives of consumer, environmental, manufacturing, forestry, and agricultural organizations, natural gas and electrical utilities, the South Carolina Public Service Authority, and other affected state agencies, shall prepare a comprehensive South Carolina energy assessment and action plan, hereinafter referred to as “the plan”. This plan must identify recommended actions over a ten‑year period to ensure the availability of adequate, reliable, and economical supply of electric power and natural gas to the people and economy of South Carolina. For purposes of this section, natural gas and electrical utilities also includes any investor‑owned electrical utility, a public utility as defined in Section 58‑5‑10, the Public Service Authority, electric cooperatives, and any consolidated political subdivision that owns or operates in this State equipment or facilities for generating, transmitting, delivering, or furnishing electricity, but does not include an entity that furnishes electricity only to itself, its residents, or tenants when such current is not resold or used by others.

(B) The Office of Regulatory Staff, in collaboration with the electrical utilities and the South Carolina Public Service Authority, shall aggregate data and analyses from their most recent integrated resource plans approved by the commission, and include any updates or associated filings and other available data in order to create a statewide comprehensive view of the availability of an adequate, reliable, and economical supply of energy resources to the people and economy of South Carolina.

(C) The plan must detail factors, and make recommendations, essential to adequate, reliable, and economical supply of energy resources for the people and economy of South Carolina, including but not limited to:

(1) projections of energy consumption in South Carolina, including the use of fuel resources and costs of electricity and generation resources across the electrical utilities’ and the South Carolina Public Service Authority’s balancing authority areas used to serve the State;

(2) the adequacy of electricity generation, transmission, and distribution resources in this State to meet projections of energy consumption;

(3) the adequacy of infrastructure utilized by natural gas industries in providing fuel supply to electric generation plants or otherwise for end‑use customers;

(4) the overall needs of the South Carolina electric grid and transmission system and details from the plans of each electrical utility and the South Carolina Public Service Authority to meet current and future energy needs in a cost‑effective, reliable, economic, and environmental manner;

(5) an assessment of state and local impediments to expanded use of generation or distributed resources and recommendations to reduce or eliminate such impediments;

(6) how energy efficiency, demand‑side management programs, and conservation initiatives across the electrical utilities’ and the South Carolina Public Service Authority’s balancing authority areas may be expanded to lower bills and reduce electric consumption;

(7) details regarding potential siting of energy resource and transmission facilities in order to identify any disproportionate adverse impact of such activities on the environment, agricultural community, land use, and economically disadvantaged or minority communities;

(8) details regarding commercial and industrial consumer clean energy goals and options available to such customers to achieve these goals, including:

(a) an analysis of the barriers commercial and industrial consumers face in making such investments in this State;

(b) an analysis of any electric and natural gas regulatory barriers to the recruitment and retention of commercial and industrial customers in this State; and

(c) recommendations to address any barriers identified in items (a) and (b) in a manner that is consistent with the public interest and which is not duly impactful to nonparticipating customers as it pertains to rate and system impacts, and which is not unduly impactful to entities providing public utility services.

(C) In preparing the plan the Office of Regulatory Staff may retain an outside expert to assist with compiling this report.

(D) In addition to the information required by this section, the plan must include recommendations for legislative, regulatory, or other public and private actions to best ensure a reliable and reasonably priced energy supply in South Carolina that supports the continued growth and success of this State. In forming these recommendations, the Office of Regulatory Staff must confer with the stakeholder group to ensure the recommendations would likely achieve the intended result for the electric grid, electric generation, and natural gas resources serving South Carolina customers.

(E) The plan must be submitted to the Public Utilities Review Committee for approval.

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

SECTION 3. .Article 1, Chapter 31, Title 58 of the S.C. Code is amended by adding:

Section 58‑31‑205. (A) The Public Service Authority shall have the power to jointly own, as tenants‑in‑common or through a limited liability company, with investor‑owned electric utilities of electrical generation and transmission facilities, the power to plan, finance, acquire, own, operate, and maintain an interest in such plants and facilities necessary or incidental to the generation and transmission of electric power and the power to make plans and enter into such contracts as are necessary or convenient for the planning, financing, acquisition, construction, ownership, operation, and maintenance of such plants and facilities. However, the Public Service Authority shall own a percentage of such plants and facilities equal to the percentage of the money furnished or the value of property supplied by the Public Service Authority for the acquisition and construction of the plants and facilities. The Public Service Authority shall also own and control a like percentage of the electrical output thereof.

(B) The Public Service Authority shall be severally liable in proportion to its ownership share of such plants and facilities acquired pursuant to this section for the acts, omissions, or obligations performed, omitted, or incurred by the operator or other owners of the plants and facilities while acting as the designated agent of the Public Service Authority for the purposes of constructing, operating, or maintaining the plants and facilities, or any of them.However, the Public Service Authority shall not be otherwise liable, jointly or severally, for the acts, omissions, or obligations of other owners of the plants and facilities, nor shall any money or property of the Public Service Authority be credited or otherwise applied to the account of the operator or other owners of the plants and facilities, or be charged with any debt, lien, or mortgage as a result of any debt or obligation of the operator or other owners of the plants and facilities.

SECTION 4. .Article 3, Chapter 33, Title 58 of the S.C. Code is amended by adding:

Section 58‑33‑196. Electrical utilities and the Public Service Authority are encouraged to explore the potential for deploying advanced nuclear facilities including, but not limited to, small modular nuclear facilities at suitable sites. Suitable sites may include sites of current nuclear facilities, sites where nuclear facilities have been proposed but not constructed, and other brownfield sites, such as coal‑generation sites. Any utility pursuing deployment of such nuclear facilities must provide annual progress reports to the commission and the Public Utilities Review Committee; this report may be in writing or in the form of testimony in an appropriate proceeding. The utility must provide estimates of the cost of the studies including, but not limited to, planning, licensing, and project development to the commission. If the commission finds such estimated costs are reasonable, prudent, and in the public interest, such costs may be recoverable through rates as they are incurred. Nothing in this section relieves an electrical utility of the burden of filing for a certificate under this article and obtaining appropriate approvals from the commission before commencing construction.

SECTION 5. .Chapter 37, Title 58 of the S.C. Code is amended by adding:

Section 58‑37‑70. (A) It is the policy of this State to promote the development and operation of advanced nuclear facilities, including small modular nuclear reactors, in the most economical manner and at the earliest reasonable time possible. These facilities are intended to provide electricity that is reliable, resilient, secure, and free of carbon dioxide emissions, as well as promote this state’s economic development and industry retention.

(B) As used in this section:

(1) “Electrical utility” has the same meaning as provided in Section 58‑27‑10(7) and includes the South Carolina Public Service Authority.

(2) “Site” means the geographic location of one or more small modular nuclear reactors.

(3) “Small modular nuclear reactor” means an advanced nuclear reactor that produces nuclear power and has a power capacity of up to 500 megawatts per reactor.

(C) The commission may establish a small modular nuclear reactor pilot program, if such a program is endorsed by the Nuclear Advisory Council. A pilot program must include the following requirements:

(1) any entity that holds a current license from the U.S. Nuclear Regulatory Commission to construct or operate at least one existing nuclear electrical generating facility at the time of the application may apply to the commission for a certificate of public convenience and necessity pursuant to the Utility Facility Siting and Environmental Protection Act;

(2) a certificate may be granted if obtaining a certification of public convenience and necessity would permit the applicant to apply for, use, or leverage at least thirty percent of the construction costs of the small modular nuclear reactor by utilizing any benefits or incentives available to lower the capital or operating costs including, but not limited to, governmental funds, tax credits, grants, and loan guarantees;

(3) the costs and benefits of a small modular nuclear reactor are reasonable and prudent compared to the levelized costs of electricity generation from other resources, applying any governmental tax credits and incentives. Factors that must be considered in levelized costs include fuel factors, economic and environmental benefits, and costs associated with any relative externalities;

(4) no more than three small modular nuclear reactors may receive a permit pursuant to this pilot program.

(D) An application for this pilot program must include:

(1) if the project’s location:

(a) is on or adjacent to an existing or former coal electrical generation site;

(b) is on or adjacent to an existing nuclear facility;

(c) enables coal plant retirement or emissions reduction in the electrical utility’s or the South Carolina Public Service Authority’s balancing area; or

(d) supports diversity in energy production, reliability, and energy security;

(2) if the project is subject to competitive procurement or solicitation for services and equipment;

(3) a demonstration that the program’s costs and benefits are reasonable and prudent and in the interest of South Carolina customers; and

(4) any other information the commission may wish to include in the application.

Nothing in this subsection limits any factors that the commission may consider in its determination of an application.

(E)(1) Reasonable and prudent costs incurred for a small modular nuclear reactor approved pursuant to this section shall be recoverable. In the event an electrical utility abandons a small modular nuclear reactor approved by the commission before its commercial operation, the electrical utility must provide a fulsome accounting to the commission of the circumstances of abandonment. Capital costs may only be recovered if the commission determines that the decision to abandon was reasonable, prudent, and in the public interest; however, these costs shall not include a rate of return. The commission may impose conditions it determines to be necessary to protect customers against unreasonable construction, development, or operational risk including, but not limited to, reporting, inspection, and the potential of requiring the utility to hire an independent third‑party construction monitor to evaluate the prudency of the utility’s actions and associated expense during the development of the project and construction of the reactor.

(2) The commission must not allow any cost recovery related to a small modular nuclear reactor outside of a rate case.

(F)(1) In addition to the small modular nuclear facility pilot program, electrical utilities and the South Carolina Public Service Authority are encouraged to evaluate the potential for deploying nuclear facilities at suitable sites within this State. A “suitable site” may include sites of current nuclear facilities, sites where nuclear facilities have been proposed but not constructed, and brownfield sites, such as coal generation sites.

(2) When evaluating the potential of a nuclear facility, the applicant must provide notice and annual progress reports to the Public Utilities Review Committee, the Nuclear Advisory Council, and the commission. When available, the applicant must also provide cost estimates of the studies related to a potential nuclear facility to serve customers in South Carolina. This includes, but is not limited to, planning, licensing, and project development, the anticipated timeline of an early site permit, and current possibilities or barriers to co‑ownership of such facilities, and available federal benefits which may defray costs of these facilities.

(3) In the event the commission finds cost estimates pursuant to item (2) are reasonable and prudent, the costs may be recoverable through rates, even if an application for a certificate of environmental compatibility and public convenience and necessity have not been filed. However, these costs shall not include a rate of return.

(G) Nothing in this section relieves an electrical utility or the South Carolina Public Service Authority of the burden of filing for a certificate pursuant to this article and obtaining appropriate approvals from the commission before commencing construction.

SECTION 6. Chapter 37, Title 58 of the S.C. Code is amended by adding:

Article 3

Energy Infrastructure Projects

Section 58‑37‑100. As used in this article:

(1) “Agency” means any agency, department, board, commission, or political subdivision of this State. However, it does not include the Public Service Commission, except for Sections 58‑37‑110 and 58‑37‑120.

(2) “Application” means a written request made to an agency for grant of a permit or approval of an action of matter within the agency’s jurisdiction pertaining to an energy infrastructure project.

(3) “Brownfield energy site” means an existing or former electrical generating site or other existing or former industrial site.

(4) “Energy corridor” means a corridor in which a utility or the South Carolina Public Service Authority has:

(a) transmission lines with a rated voltage of at least 110 kilovolts, including the substations, switchyards, and other appurtenant facilities associated with such lines; or

(b) high pressure natural gas transmission pipelines and the metering, compression stations, valve station, and other appurtenant facilities associated with such lines.

(5) “Energy corridor project” means an energy infrastructure project that involves the expansion of electric or natural gas delivery capacity in whole or in principal part within an existing energy corridor.

(6) “Energy infrastructure project” means the construction, placement, authorization, or removal of energy infrastructure including, but not limited to, electric transmission and generation assets, natural gas transmission assets, and all associated or appurtenant infrastructure and activities, including communications and distribution infrastructure.

(7) “Permit” means a permit, certificate, approval, registration, encroachment permit, right of way, or other form of authorization.

(8) “Person” means an individual, corporation, association, partnership, trust, agency, or the State of South Carolina.

Section 58‑37‑110. (A) Given the importance of sufficient, reliable, safe, and economical energy to the health, safety, and well‑being of the citizens of South Carolina and to the state’s economic development and prosperity, the General Assembly finds that the prompt siting, permitting, and completion of energy infrastructure projects, energy corridor projects, and brownfield electrical generation projects are crucial to the welfare of the State.

(B) All state agencies are instructed to give expedited review of applications for energy infrastructure projects, to provide reasonable and constructive assistance to applicants to allow the applicants to comply with state law and regulatory requirements as expeditiously as possible, and to be guided by the policy goals established in subsection (A).

(C) All state agencies are instructed to give due weight to the reduction in the environmental, aesthetic, and socioeconomic impacts that are incurred to support the safe, reliable, and economic provision of energy to the people of South Carolina when energy infrastructure projects can be located in existing energy corridors or on brownfield energy sites, and shall consider the relative reductions in such impacts compared to greenfield projects in evaluating projects in existing energy corridors or on brownfield energy sites.

Section 58‑37‑120. (A) Any agency presented with an application for a permit for an energy infrastructure project shall issue a decision on the application no later than six months after the date the application is received by the agency. If the agency fails to take final action within six months of receipt of the application, the application shall be deemed approved, and the agency shall promptly issue documentation that the applicant may reasonably request establishing that the agency has granted the relief requested.

(B) Upon receipt of an application, the agency shall promptly review it for sufficiency and shall provide the applicant with a list of all deficiencies within thirty days of receipt. The identification of by the agency of deficiencies in the application shall not toll the six‑month period for agency determination.

Section 58‑37‑130. The applicant or any person whose private rights are affected by an agency decision or action on an application for a permit for any energy infrastructure project may appeal that decision or action to the South Carolina Supreme Court. The Supreme Court shall hear these appeals as a direct appeal in accordance with the South Carolina Appellate Court Rules. The Court shall provide for an expedited briefing and hearing of the appeal, in preference to all other nonemergency matters on its docket, and decide such appeals on an expedited basis.

Section 58‑37‑140. The provisions of this article shall expire ten years after its effective date.

SECTION 7. Section 58‑40‑10(C) of the S.C. Code is amended to read:

(C) “Customer‑generator” means the owner, operator, lessee, or customer‑generator lessee of an electric energy generation unit which:

(1) generates or discharges electricity from a renewable energy resource, including an energy storage device configured to receive electrical charge solely from an onsite renewable energy resource;

(2) has an electrical generating system with a capacity of:

(a)(i) 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

(ii) after June 1, 2024, not more than the lesser of five thousand kilowatts (5,000kW AC) or one hundred percent of contract demand for a nonresidential customer, provided the customer‑generator is on a time‑of‑use rate schedule and any excess energy produced by the customer‑generator is credited and reset at the end of each monthly period; or

(iii) more than five thousand kilowatts (5,000kW AC) if agreed to by the customer‑generator and the electrical utility, provided that the electrical utility submits the agreement to the commission for consideration and approval if the commission finds the agreement to contain appropriate ratemaking provisions and is in the public interest; or

(b) not more than twenty kilowatts (20 kW AC) if a residential customer;

(3) is located on a single premises owned, operated, leased, or otherwise controlled by the customer;

(4) is interconnected and operates in parallel phase and synchronization with an electrical utility and complies with the applicable interconnection standards;

(5) is intended primarily to offset part or all of the customer‑generator's own electrical energy requirements; and

(6) meets all applicable safety, performance, interconnection, and reliability standards established by the commission, 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.

SECTION 8. Section 58‑41‑30 of the S.C. Code is amended to read:

Section 58‑41‑30. (A) The ability to utilize clean energy resources for electric power generation is important to attract prospective commercial or industrial entities to invest in South Carolina and to encourage and incent robust economic growth in the State.

(B) The commission shall be responsive to the clean energy needs of customers and the economic development and industry retention implications for the State when reviewing and approving voluntary clean energy programs. The commission shall consider updates to these voluntary renewable energy programs on an ongoing basis.

(C) Within one hundred and twenty days of the effective date of this chapter, subject to subsection (F), each electrical utility shall file a proposed voluntary renewable energy program for review and approval by the commission, unless as of July 1, 2024, the electrical utility already has a voluntary renewable energy program that conforms with the requirements of this section on file with the commission. The commission shall conduct a proceeding to review the program and establish reasonable terms and conditions for the program. Interested parties shall have the right to participate in the proceeding. The commission maymust periodically hold additional proceedings to update the program evaluate whether updates to the programs are necessary. At a minimum, each electrical utility must submit to the commission a program for which the program shall provide that:

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

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

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

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

(D) The commission must approve voluntary renewable energy programs, in addition to those provided for in subsection (C), where the participating customer purchases clean energy environmental attributes of new or existing renewable energy facilities owned and operated and recovered on a cost‑of‑service basis by the electrical utility or otherwise supplies through the execution of agreements with third parties within the utility’s balancing authority area. Voluntary renewable energy programs shall also facilitate behind‑the‑meter options for customers and access to renewable energy resource generation.

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

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

(D)(G) A participating customer shall bear the burden of any reasonable costs associated with participating in a voluntary renewable energy program. An electrical utility may not charge any nonparticipating customers for any costs incurred pursuant to the provisions of this section. Purchased power costs incurred by an electrical utility as a result of subsection (C) shall be recovered in the electrical utility’s fuel clause pursuant to Section 58‑27‑865.

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

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

SECTION 9. .Section 58‑41‑10 of the S.C. Code is amended by adding:

(17) “Energy storage facilities” means any commercially available technology that is capable of absorbing energy and storing it for a period of time for use at a later time including, but not limited to, electrochemical, thermal, and electromechanical technologies.

SECTION 10. Section 58‑41‑20 of the S.C. Code is amended to read:

Section 58‑41‑20. (A) As soon as is practicable after the effective date of this chapter, the commission shall open a docket for the purpose of establishing each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary to implement this section. Within six months after the effective date of this chapter, and at least once every twenty‑four months thereafter, the commission shall approve each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary to implement this section. Within such proceeding the commission shall approve one or more standard form power purchase agreements for use for qualifying small power production facilities not eligible for the standard offer. Such power purchase agreements shall contain provisions, including, but not limited to, provisions for force majeure, indemnification, choice of venue, and confidentiality provisions and other such terms, but shall not be determinative of price or length of the power purchase agreement. The commission may approve multiple form power purchase agreements to accommodate various generation technologies and other project‑specific characteristics. This provision shall not restrict the right of parties to enter into power purchase agreements with terms that differ from the commission‑approved form(s). Any decisions by the commission shall be just and reasonable to the ratepayers of the electrical utility, in the public interest, consistent with PURPA and the Federal Energy Regulatory Commission's implementing regulations and orders, and nondiscriminatory to small power producers; and shall strive to reduce the risk placed on the using and consuming public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any electrical utility administering a program for the competitive procurement of renewable energy resources and associated co‑located energy storage facilities that have been approved by the commission pursuant to Section 58‑41‑25 that is open to qualifying small power production facilities within the electrical utility’s balancing authority area in South Carolina may competitively procure new renewable energy capacity pursuant to that competitive solicitation process as a means of complying with the Public Utility Regulatory Policies Act. Further, the commission must establish a five‑year term for energy purchased at administratively established avoided cost rates outside of competitive procurement of renewable energy resources, with the exception of voluntarily negotiated agreements to serve the public interest, for any electrical utility administering a program for the competitive procurement of renewable energy resources and associated co‑located energy storage facilities that has been approved by the commission if the commission determines that doing so will incentivize participation in the competitive procurement process.

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

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

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

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

SECTION 11. Chapter 41, Title 58 of the S.C. Code is amended by adding:

Section 58‑41‑25. (A) Unless an electrical utility makes an application pursuant to subsection (F) or (G), electrical utilities may file for commission approval of a program for the competitive procurement of renewable energy facilities which may also include, at the utility’s option, associated co‑located energy storage facilities, also referred to as “eligible facilities”, or purchase one‑hundred percent of the output from such eligible facilities, including all energy, capacity, ancillary services, and environmental and renewable attributes. Eligible facilities may be located anywhere in the electrical utility’s balancing authority area to meet needs for new generation and energy storage resources identified by the electrical utility’s integrated resource plan and associated filings. The commission may not grant approval unless the commission finds and determines that the electrical utility satisfied the requirements of this section and the proposed program is just and reasonable and in the best interests of the electrical utility’s customers.

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

(1) renewable energy facilities, and if applicable, energy storage resources, or their output, must be procured via a competitive solicitation process open to all market participants that meet minimum stated eligibility requirements;

(2) the electrical utility shall issue public notification of its intention to issue a competitive solicitation to procure renewable energy facilities and associated co‑located energy storage facilities, if applicable, at least ninety days prior to the release of the solicitation, including identifying the proposed target procurement volume, procurement process, and timeline for administering the solicitation;

(3) renewable energy facilities eligible to participate in competitive procurement are those that use renewable generation resources identified in Section 58‑39‑120(F), which must also satisfy that electrical utility’s capacity, energy, or operational needs, as identified by the electrical utility, and take into account the required operating characteristics of the needed capacity;

(4) energy storage facilities, if included by the electrical utility in the solicitation, must be associated equipment located at the same site as the renewable energy facility;

(5) electrical utilities may seek to ensure that their procurement of eligible facilities results in a reasonable balance of ownership of eligible facilities between such utility, including its affiliates and unrelated market participants, and may offer self‑developed proposals. However, if an electrical utility or its affiliate seek to participate in the procurement, the electrical utility’s program must include an independent evaluator to evaluate all bids offered and to ensure they are fairly and competitively evaluated. For purposes of this section, “independent evaluator” means an independent third party retained by the electrical utility that has no ownership in the electrical utility or a market participant and has the skills and experience necessary to oversee the solicitation process and provide the utility with an independent evaluation of all proposals for ultimate selection. At the conclusion of the solicitation, the independent evaluator shall report to the commission on the openness and fairness of the bid evaluation process and certify that the selection of proposals adhered to the evaluation methodology and requirement of the program.

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

(1) pro‑forma contract to inform prospective market participants of the procurement terms and conditions for the output purchased by the electrical utility from eligible resources. The pro‑forma contract must:

(a) provide for the purchase of renewable energy, capacity, and environmental and renewable attributes from renewable energy facilities owned and operated by third parties that commit to allow the procuring electrical utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the electrical utility’s own generating resources;

(b) include standardized and commercially reasonable requirements for contract performance security; and

(c) define limits and compensation for resource dispatch and curtailments.

In the event an electrical utility chooses to procure output from co‑located storage, the pro‑forma contract must also cover similar terms and conditions as specified herein for those eligible facilities.

(2) pro‑forma agreements to govern the procurement of eligible facilities by the electrical utility from market participants;

(3) bid evaluation methodology that ensures all bids are treated equitably, including price and non‑price evaluation criteria; and

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

(D) After bids are submitted and evaluated, the electrical utility will elect the winning bids based upon the public evaluation methodology.

(E) An electrical utility shall file with the commission a public report summarizing the results of each competitive solicitation within thirty days of finalizing the contract with the winning bidder. The report must include, at a minimum, a summary of the bids received and an anonymized list of the project awards, including size, location, and average award price and tenor.

(F) Nothwithstanding the requirements in subsections (B) and (C), the results of all other competitive procurement programs undertaken by an electrical utility within its balancing authority area outside of South Carolina that will serve customers in the electrical utility’s balancing authority area within South Carolina and are open to equal participation by eligible facilities located within South Carolina may be approved by the commission if the commission determines such programs enable economic*,* reliable, and safe operation of the electricity grid in a manner consistent with the public interest. For purposes of this section, “public interest” shall also include the ability of customers to subscribe to customer programs which leverage the competitively procured solar and potential storage contemplated within this section. Any electrical utility that requests acceptance of a system‑wide procurement pursuant to this section must demonstrate to the commission that the utility has adhered to subsection (D) as defined in that specific competitive procurement program and submit the post solicitation report to the commission, as required by subsection (E).

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

(H) Electrical utilities are permitted to recover costs incurred pursuant to this section, including reasonable and prudent administrative costs to develop and propose procurements under this section, and if approvedby the commission, the costs resulting from such procurements through rates established pursuant to Section 58‑27‑865 or otherwise through rates established pursuant to Section 58‑27‑870. If the commission denies an application made pursuant to subsection (F) or (G) of this section, and the utility continues with the procurement, then the utility must allocate all costs and benefits associated with the resources being procured away from South Carolina customers.

(I) An electrical utility administering a program for the competitive procurement of renewable energy resources and storage facilities that has been approved by the commission pursuant to Section 58‑41‑25 that is open to qualifying small power production facilities located in South Carolina may utilize such programs as means to satisfy its purchase obligations for avoidable capacity from qualifying small power production facilities under the Public Utility Regulatory Policies Act, consistent with Section 58‑41‑20(F)(3).

SECTION 12.A.Section 58‑33‑20 of the S.C. Code is amended by adding:

(10) The term “like facility” with reference to generation facilities and without limitation, includes a facility or facilities that are proposed to provide capacity on a site currently or previously used for siting electric generation that replaces the capacity of a facility or facilities that are being retired, downrated, mothballed, or dedicated to standby or emergency service at the same site, limited to facilities no more than 300 megawatts, so long as those new facilities will provide an amount of effective load‑carrying capacity that in whole or in part will serve to replace the capacity to be lost as a result of retirement, and includes associated transmission facilities needed to deliver power from that facility to customers. A “like facility” with reference to transmission facilities, and without limitation, includes any facility that represents the rebuilding, reconductoring, paralleling, increasing voltage, adding circuits or otherwise reconfiguring of an existing transmission line or other transmission facilities including, without limitation, projects to increase the capacity of such facilities, provided such facilities are: (a) located materially within a utility right of way or corridor; (b) located materially within a new right of way or corridor; or (c) substantially located on the property of a customer, prospective customer, or the State.

B. Section 58‑33‑20(2)(a) of the S.C. Code is amended to read:

(2) The term “major utility facility” means:

(a) electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy‑five megawatts or that requires a footprint of more than one hundred twenty‑five acres of land.

SECTION 13. Article 3, Chapter 33, Title 58 of the S.C. Code is amended to read:

Article 3

Certification of Major Utility Facilities

Section 58‑33‑110. (1) No person shall commence to construct a major utility facility without first having obtained a certificate issued with respect to such facility by the Commission. The replacement of an existing facility with a like facility, as determined by the Commission, shall not constitute construction of a major utility facility. Upon application for a determination by the Commission that a proposed utility facility constitutes a like facility replacement, the Commission must issue a written order approving or denying the application within sixty days of filing. If the Commission fails to issue a written order within sixty days of the application’s filing, the application shall be deemed as approved. Any facility, with respect to which a certificate is required, shall be constructed, operated and maintained in conformity with the certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this chapter; provided, however, any authorization relating to a major utility facility granted under other laws administered by the Commission shall constitute a certificate if the requirements of this chapter have been complied with in the proceeding leading to the granting of such authorization.

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

(3) A certificate may be amended.

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

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

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

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

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

(e) which is a transmission line or associated electrical transmission facilities constructed by the South Carolina Public Service Authority,: (i) for which construction either is commenced within one year after January 1, 2022,; or (ii) which is necessary to maintain system reliability in connection with the closure of the Winyah Generating Station, provided that such transmission is not for generation subject to this chapter; or (iii) which is necessary to serve an identified commercial or industrial customer to promote economic development or industry retention as determined by the South Carolina Public Service Authority and agreed to by the Office of Regulatory Staff where such agreement is documented in a letter by the Office of Regulatory Staff to the Public Utilities Review Committee and the commission.

(5) Any person intending to construct a major utility facility excluded from this chapter pursuant to subsection (4) of this section or Section 58‑33‑20(10) may elect to waive the exclusion by delivering notice of the waiver to the Commission. This chapter shall thereafter apply to each major utility facility identified in the notice from the date of its receipt by the Commission.

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

(7) The Commission shall have authority, where justified by public convenience and necessity, to grant permission to a person who has made application for a certificate under Section 58‑33‑120 to proceed with initial clearing, excavation, dredging and construction.; provided, , No permission from the Commission shall be required to proceed with initial clearing, excavation, dredging, and initial construction of any facility which constitutes a component of the preferred generation plan in an integrated resource plan or update approved by the Commission pursuant to Chapter 37 of this title, or any like facility; provided that in engaging in such clearing, excavation, dredging or construction, the person shall proceed at his own risk, and such permission shall not in any way indicate approval by the Commission of the proposed site or facility.

(8)(a) Notwithstanding the provisions of item (7), and not limiting the provisions above, a person may not commence construction of a major utility facility for generation in the State of South Carolina without first having made a demonstration In seeking a certificate, the applicant must provide credible information demonstrating that the facility to be built has been compared to other generation options in terms of cost, reliability, schedule constraints, fuel cost and availability, transmission constraints and costs, ancillary services capabilities, current and reasonably expected future environmental costs and restrictions, that the facility supports system efficiency and reliability in light of those considerations, and any other regulatory implications deemed legally or reasonably necessary for consideration by the commission. The commission is authorized to adopt rules for such evaluation of other generation options.

(b) The commission may, upon a showing of a need, require a commission‑approved process that includes Office of Regulatory Staff may provide to the commission a report that includes any or all of the following:

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

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

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

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

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

(vi) (iv) a demonstration that an assessment of whether the facility is consistent with an integrated resource plan or update approved by previously filed with the commission or is otherwise justified by generation planning modeling comparable to that filed as part of the utility’s integrated resource plan but updated with current data concerning system loads, fuel prices, environmental regulations, location‑specific transmission costs, updated construction costs and updated construction timelines, updated costs of gas supply facilities, if any, and other relevant costs, schedules or inputs establishing that the facility in question supports system economy and reliability; and

(vii) (v) an assessment detailing the treatment of utility affiliates in the same manner as compared to nonaffiliates participating in the request for proposal process, if any.

(9) The applicant may, but must not be required to, issue requests for proposals or otherwise conduct market procurement activities in support of the showings required pursuant to this chapter.

(10) Not withstanding any other provision in this section, an electrical utility serving customers in this state may seek a certificate of public convenience and necessity when building a major utility facility, as defined in Section 58‑33‑20(2), in another state but within the electrical utility’s balancing area serving customers in South Carolina. In such a case, the provisions of Sections 58‑33‑120, 58‑33‑140, and 58‑33‑160(1)(b), (c), and (e) shall not apply, but all other requirements of this section affecting customers in this state shall apply. In addition:

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

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

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

(iii) a statement explaining the need for the major utility facility;

(iv) any other information the applicant may consider relevant or as the commission may by regulation require. A copy of the report referred to in item (8)(b) must be filed with the commission, if ordered by the commission, and shall be available for public information.

(b) The parties to a proceeding for a certificate pursuant to this section shall include:

(i) the applicant;

(ii) the Office of Regulatory Staff; and

(iii) intervenors with standing as approved by the commission.

(c) If the commission denies an application made pursuant to this section and the utility continues to build such major utility facility, the utility must allocate all costs and benefits associated with the major utility facility away from the utility’s South Carolina customers.

Section 58‑33‑120. (1) An applicant for a certificate shall file an application with the commission, in such form as the commission may prescribe. The application must contain the following information:

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

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

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

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

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

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

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

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

Section 58‑33‑130. (1) Upon the receipt of an application complying with Section 58‑33‑120, the Commission shall promptly fix a date for the commencement of a public hearing, not less than sixty nor more than ninety days after the receipt, and shall conclude the proceedings as expeditiously as practicable complete the hearing and issue an order on the merits within one hundred eighty days of receipt of the application.

(2) The testimony presented at the hearing may be presented in writing or orally, provided that the Commission may make rules designed to exclude repetitive, redundant or irrelevant testimony; however, all expert testimony must be prefiled with the Commission, with responsive expert testimony of non‑applicants being received with enough time for the applicant to meaningfully respond, and in no case would expert testimony be filed less than twenty days before the hearing.

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

Section 58‑33‑140. (1) The parties to a certification proceeding shall include:

(a) the applicant;

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

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

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

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

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

Section 58‑33‑150. A record shall be made of theany hearing and of all testimony taken and the cross‑examination thereon. Upon request of a party, either before or after the decision, a State agency which proposes to or does require a condition to be included in the certificate as provided for in Section 58‑33‑160 shall furnish for the record all factual findings, documents, studies, rules, regulations, standards, or other documentation, supporting the condition. The Commission may provide for the consolidation of the representation of parties having similar interests.

Section 58‑33‑160. (1) The Commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the major utility facility as the Commission may deem appropriate; such conditions shall be as determined by the applicable State agency having jurisdiction or authority under statutes, rules, regulations or standards promulgated thereunder, and the conditions shall become a part of the certificate. The Commission may notmust grant a certificate for the construction, operation and maintenance of a major utility facility, either as proposed or as modified by the Commission, unless it shall find and determineif it finds and determines that the applicant has shown:

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

(b) The nature of the probable environmental impact.

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

(d) That the facilities will serve the interests of system economy and reliability, and in the case of generating facilities, will do so considering reasonably available alternatives and their associated costs, risks, and operating attributes.

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

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

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

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

Section 58‑33‑170. In rendering a decision on an application for a certificate, the Commission shall issue an opinionorder stating its reasons for the action taken. If the Commission has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (e) of subsection (1) of Section 58‑33‑160, it shall state in its opinion order the reasons therefor.

Section 58‑33‑180. (A)(1) In addition to the requirements of Articles 1, 3, 5, and 7 of Chapter 33, Title 58, a certificate for the construction of a major utility facility shall be granted only if the Public Service Authority demonstrates and proves by a preponderance of the evidence and the commission finds:

(a)(1) the construction of a major utility facility constitutes a more cost‑effective means for serving direct serve and wholesale customers than other feasibly available long‑term power supply alternatives and provides less ratepayer risk while maintaining safe and reliable electric service than other feasibly available long‑term power supply alternatives; and

(b)(2) energy efficiency measures; demand‑side management; renewable energy resource generation; available long‑term power supply alternatives, or any combination thereof, would not establish or maintain a more cost‑effective and reliable generation system and that the construction and operation of the facility is in the public interest.

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

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

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

Section 58‑33‑185. (A) The Public Service Authority may not enter into a contract for the acquisition of acquire a major utility facility without approval of the Public Service Commission of South Carolina, provided that the approval is required only to the extent the transaction is not subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission or any other federal agency.

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

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

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

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

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

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

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

Section 58‑33‑190. (1) The Public Service Authority may not enter into a contract for the purchase of power with a duration longer than ten years without approval of the Public Service Commission of South Carolina, provided that the approval is required only to the extent the transaction is not subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission or any other federal agency. This section does not apply to purchases of renewable power through a commission approved competitive procurement process.

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

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

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

Section 58‑37‑40. (A) Electrical utilities, electric cooperatives, municipally owned electric utilities, and the South Carolina Public Service Authority must each prepare an integrated resource plan. An integrated resource plan must be prepared and submitted at least every three years. Nothing in this section may be construed as requiring interstate natural gas companies whose rates and services are regulated only by the federal government or gas utilities subject to the jurisdiction of the commission to prepare and submit an integrated resource plan.

(1) Each electrical utility with one hundred thousand or more customer accounts and the Public Service Authority must submit its integrated resource plan to the commission. The integrated resource plan must be posted on the electrical utility's website and on the commission's website.

(2) Electric cooperatives, electric utilities with less than one hundred thousand customer accounts, and municipally owned electric utilities shall each submit an integrated resource plan to the State Energy Office. Each integrated resource plan must be posted on the State Energy Office's website. If an electric cooperative, electric utility with less than one hundred thousand customer accounts, or municipally owned utility has a website, its integrated resource plan must also be posted on its website. For distribution, electric cooperatives that are members of a cooperative that provides wholesale service, the integrated resource plan may be coordinated and consolidated into a single plan provided that nonshared resources or programs of individual distribution cooperatives are highlighted. Where plan components listed in subsection (B)(1) and (2) of this section do not apply to a distribution or wholesale cooperative or a municipally owned electric utility as a result of the cooperative or the municipally owned electric utility not owning or operating generation resources, the plan may state that fact or refer to the plan of the wholesale power generator. Where plan components listed in subsection (B)(1) and (2) of this section do not apply to an electrical utility with less than one hundred thousand customer accounts as a result of its own generation resources being comprised of more than seventy‑five percent renewable energy or because it purchases wholesale load balancing generation services, then the plan may state that fact or refer to the plan of the wholesale power generator. For purposes of this section, a wholesale power generator does not include a municipally created joint agency if that joint agency receives at least seventy‑five percent of its electricity from a generating facility owned in partnership with an electrical utility and that electrical utility:

(a) generally serves the area in which the joint agency's members are located; and

(b) is responsible for dispatching the capacity and output of the generated electricity.

(3) The South Carolina Public Service Authority shall submit its integrated resource plan to the commission. The Public Service Authority shall develop a public process allowing for input from all stakeholders prior to submitting the integrated resource plan. The integrated resource plan must be developed in consultation with the electric cooperatives and municipally owned electric utilities purchasing power and energy from the Public Service Authority and consider any feedback provided by retail customers and shall include the effect of demand‑side management activities of the electric cooperatives and municipally owned electric utilities that directly purchase power and energy from the Public Service Authority or sell power and energy generated by the Public Service Authority. The integrated resource plan must be posted on the commission's website and on the Public Service Authority's website.

(4)(a) In addition to the requirements of Section 58‑37‑40(B), the Public Service Authority's integrated resource plan shall include an analysis of long‑term power supply alternatives and enumerate the cost of various resource portfolios over various study periods including a twenty‑year study period and, by comparison on a net present value basis, identify the most cost‑effective and least ratepayer‑risk resource portfolio to meet the Public Service Authority's total capacity and energy requirements while maintaining safe and reliable electric service.

(b) In addition to the requirements of Section 58‑37‑40(B), the commission shall review and evaluate the Public Service Authority's analysis of long‑term power supply alternatives and various resource portfolios over various study periods including a twenty‑year study period and, by comparison on a net present value basis, identify the most cost‑effective and lowest ratepayer‑risk resource portfolio to meet the Public Service Authority's total capacity and energy requirements while maintaining safe and reliable electric service. The commission's evaluation shall include, but not be limited to:

(i) evaluating the cost‑effectiveness and ratepayer‑risk of self‑build generation and transmission options compared with various long‑term power supply alternatives, including power purchase agreements, competitive procurement of renewable energy, joint dispatch agreements, market purchases from an existing regional transmission organization, joining or creating a new regional transmission organization, using best available technology for energy generation, transmission, storage and distribution, or any combination thereof. In evaluating and identifying the most cost‑effective and least ratepayer‑risk resource portfolio, the commission shall strive to reduce the risk to ratepayers associated with any generation and transmission options while maintaining safe and reliable electric service; and

(ii) an analysis of any potential cost savings that might accrue to ratepayers from the retirement of remaining coal generation assets.

(c) The Authority's integrated resource plan must provide the information required in Section 58‑37‑40(B) and must be developed in consultation with the electric cooperatives, including Central Electric Power Cooperative, and municipally owned electric utilities purchasing power and energy from the Public Service Authority, and consider any feedback provided by retail customers and shall include the effect of demand‑side management activities of the electric cooperatives, including Central Electric Power Cooperative, and municipally owned electric utilities that directly purchase power and energy from the Public Service Authority or sell power and energy generated by the Public Service Authority. The Integrated Resource Plan of the South Carolina Public Service Authority shall include and evaluate at least one resource portfolio, which will reflect the closure of the Winyah Generating Station by 2028, designed to provide safe and reliable electric service while meeting a net zero carbon emission goal by the year 2050.

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

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

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

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

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

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

(i) customer energy efficiency and demand response programs;

(ii) facility retirement assumptions; and

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

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

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

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

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

(j) a report addressing updates to the utility’s transmission plan under the utility’s open‑access transmission tariff pursuant to the federal jurisdiction planning process. In this report, the utility shall describe if applicable planned transmission improvements may enable specific siting of new resources or provide expected and planned impacts to other resource interconnection constraints or operations of the systems. The utility shall also describe how it evaluated alternate transmission technologies when developing solutions for identified transmission needs for interconnecting resources.

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

(C)(1) The commission shall have a proceeding to review each electrical utility subject to subsection (A)(1) and the Public Service Authority's integrated resource plan. As part of the integrated resource plan filing, the commission shall allow intervention by interested parties. The procedural schedule shall include dates for completion of each phase of discovery, including discovery related to the integrated resource plan as filed, direct testimony of the applicant, direct testimony of the Office of Regulatory Staff and other parties and intervenors, and rebuttal testimony of the applicant. Except upon showing exceptional circumstances, all discovery shall be served in time to allow its completion, but not less than ten days prior to the hearing. The commission shall establish a procedural schedule to permit reasonable discovery after an integrated resource plan is filed in order to assist parties in obtaining evidence concerning the integrated resource plan, including the reasonableness and prudence of the plan and alternatives to the plan raised by intervening parties. No later than three hundred days after an electrical utility files an integrated resource plan, the commission shall issue a final order approving, modifying, or denying the plan filed by the electrical utility or the Public Service Authority.

(2) The commission shall approve an electrical utility's or the Public Service Authority's integrated resource plan if the commission determines that the proposed integrated resource plan represents the most reasonable and prudent means of meeting the electrical utility's or the Public Service Authority's energy and capacity needs as of the time the plan is reviewed. To determine whether the integrated resource plan is the most reasonable and prudent means of meeting energy and capacity needs, the commission, in its discretion, shall consider whether the plan appropriately balances the following factors. In reviewing an integrated resource plan, the commission shall give due consideration as to the resources and actions necessary for the utility to fulfill compliance and reliability obligations pursuant to the Federal Energy Regulatory Commission, the North American Electric Reliability Corporation, the Southeastern Electric Reliability Council, and the Nuclear Regulatory Commission requirements, as well as environmental requirements applicable to resources serving customers in this state. Matters related to the scope and sufficiency of an electrical utility’s demand‑side plans and activities shall be considered exclusively in proceedings conducted pursuant to Section 58‑37‑20. In reviewing an integrated resource plan, the commission shall focus its review on the decisions which the applicant must make in the near term based on the triennial integrated resource plan under consideration at the time and shall approve a plan if it finds that the plan appropriately balances the following factors:

(a) resource adequacy and capacity to serve anticipated peak electrical load, including the need for electric capacity and energy required to support economic development and industry retention in the electrical utility’s or the Public Service Authority’s service territory and to meet applicable planning reserve margins;

(b) consumer affordability and least reasonable cost, considering the resources needed to support economic development and industry retention, and other risks and benefits;

(c) compliance with applicable state and federal environmental regulations;

(d) power supply reliability;

(e) commodity price risks;

(f) diversity of generation supply; and

(g) the efficiencies and optimum plans for any electrical utility system spanning state lines located within the electrical utility’s or the Public Service Authority’s balancing authority area; and

(h) other foreseeable conditions that the commission determines to be for the public’s interest.

(3) In modifying or rejecting an electrical utility’s or the Public Service Authority’s integrated resource plan, the commission shall only require revisions that are reasonably anticipated to materially change resource procurement decisions to be made on the basis of the integrated resource plan under review. If the commission modifies or rejects an electrical utility's or the Public Service Authority's integrated resource plan, the electrical utility or the Public Service Authority, within sixty days after the date of the final order, shall submit a revised plan addressing concerns identified by the commission and incorporating commission‑mandated revisions to the integrated resource plan to the commission for approval. Within sixty days of the electrical utility's or the Public Service Authority's revised filing, the Office of Regulatory Staff shall review the electrical utility's or the Public Service Authority's revised plan and submit a report to the commission assessing the sufficiency of the revised filing. Other parties to the integrated resource plan proceeding also may submit comments. No later than sixty days after the Office of Regulatory Staff report is filed with the commission, the commission at its discretion may determine whether to accept the revised integrated resource plan or to mandate further remedies that the commission deems appropriate.

(4) The submission, review, and acceptance of an integrated resource plan by the commission, or the inclusion of any specific resource or experience in an accepted integrated resource plan, shall not be determinative of the reasonableness or prudence of the acquisition or construction of any resource or the making of any expenditure. An electrical utility shall retain the burden of proof to show that all of its investments and expenditures are reasonable and prudent when seeking cost recovery in rates.

(D)(1) An electrical utility and the Public Service Authority shall each submit annual updates to its integrated resource plan to the commission. An annual update must include an update to the electric utility's or the Public Service Authority's base planning assumptions relative to its most recently accepted integrated resource plan, including, but not limited to: energy and demand forecast, commodity fuel price inputs, renewable energy forecast, energy efficiency and demand‑side management forecasts, changes to projected retirement dates of existing units, along with other inputs the commission deems to be for the public interest. The electrical utility's or Public Service Authority's annual update must describe the impact of the updated base planning assumptions on the selected resource plan.

(2) The Office of Regulatory Staff shall review each electrical utility's or the Public Service Authority's annual update and submit a report within ninety days to the commission providing a recommendation concerning the reasonableness of the annual update. After reviewing the annual update and the Office of Regulatory Staff report, the commission may accept the annual update or direct the electrical utility or the Public Service Authority to make changes to the annual update that the commission determines to be in the public interest within sixty days from the submittal of the Office of Regulatory Staff’s report.

(E) Intervenors shall bear their own costs of participating in proceedings before the commission.

(E)(F) The commission is authorized to promulgate regulations to carry out the provisions of this section.

SECTION 15. Sections 58‑33‑310 and 58‑33‑320 of the S.C. Code are amended to read:

Section 58‑33‑310. Any party may appeal, in accordance with Section 1‑23‑380, from all or any portion of any final order or decision of the commission, including conditions of the certificate required by a state agency under Section 58‑33‑160 as provided by Section 58‑27‑2310. Any appeals may be called up for trial out of their order by either party. Any final order on the merits issued pursuant to this chapter shall be immediately appealable to the Supreme Court of South Carolina, without petition for rehearing or reconsideration. The Supreme Court shall provide for expedited briefing and hearing of the appeal in preference to all other nonemergency matters. The commission must not be a party to an appeal.

Section 58‑33‑320. Except as expressly set forth in Section 58‑33‑310, no court of this State shall have jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the commission under this chapter or to stop or delay the construction, operation, or maintenance of a major utility facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder, and any such action shall be brought only by the Office of Regulatory Staff. Provided, however, that subject to Section 58‑33‑175, nothing herein contained shall be construed to abrogate or suspend the right of any individual or corporation not a party to maintain any action which he might otherwise have been entitled.

SECTION 16. Chapter 4, Title 58 of the S.C. Code is amended by adding:

Section 58‑4‑160. (A)(1) The Office of Regulatory Staff must conduct a study to evaluate the potential costs and benefits of the various administrator models for energy efficiency programs and other demand‑side management programs funded by, or potentially funded by, electrical utilities in this State. This study must be conducted on each electrical utility in this State. For purposes of this section, administrator models for energy efficiency programs shall include the following models: utility administrator, state or government agency administrator, an independent third‑party administrator, and a hybrid administrator.

(2) For purposes of this section only, “electrical utility” means an investor‑owned electrical utility that serves more than 100,000 customers in this State.

(B) This study must consider which administrator model would most meaningfully improve programs offered by the electrical utility.

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

(1) whether third‑party administration subject to a pay for performance contract and independent third‑party evaluation, measurement, and verification could reduce administrative costs, as compared to separate administration of energy efficiency programs by individual electrical utilities;

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

(3) which administrator model provides the best mechanism to increase ratepayer energy savings in the case of electrical utilities that have experienced lower historical performance in terms of annual and cumulative energy savings as a percentage of retail sales;

(4) which administrator model provides the best mechanism to increase ratepayer energy savings in the case of electrical utilities that have experienced high historical performance in terms of annual and cumulative energy savings as a percentage of retail sales;

(5) the legal and practical implications of implementing the various administrator models for an electrical utility with a multistate balancing authority area;

(6) which administrator model could most enhance an electrical utility’s delivery of nonenergy benefits, such as resiliency, reliability, health, economic development, industry retention, energy security, and pollution reduction; and

(7) which administrator model could most effectively pursue nonratepayer funding including, but not limited to, federal, state, or local governmental support, as a means of either reducing reliance of ratepayer funds or increasing the scope, reach, or effectiveness of energy efficiency and demand side management programs.

(D) This study must be conducted with public input from stakeholders through written comments and at least one public forum.

(E) The Office of Regulatory Staff is authorized to retain the services of an expert or consultant with expertise and experience in the successful implementation of energy efficiency administrator programs. The Office of Regulatory Staff is exempt from the procurement code for the purposes of retaining services for this study.

(F) The provisions of this section are subject to funding. However, the Office of Regulatory Staff must initiate the study within one year from receipt of necessary funding and complete its report within six months. Upon completion of this study, the Office of Regulatory Staff must provide its report to the General Assembly and the commission. This report may include a recommendation as to which administrator model should be established for each electrical utility, draft legislation, and requirements that should be established.

SECTION 17. Section 58‑37‑10 of the S.C. Code is amended to read:

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

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

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

(3) “Cost‑effective” means that the net present value of benefits of a program or portfolio exceeds the net present value of the costs of the program or portfolio. A cost‑effective program or portfolio must pass any two of the following tests:

(a) utility cost test;

(b) total resource cost test;

(c) participant cost test; or

(d) ratepayer impact measure test.

In evaluating the cost‑effectiveness of a program or portfolio, a utility or program administrator must present the results of all four tests. In calculating cost‑effectiveness, a utility must use a standard utility practice for determining the percentage of energy savings that would or would not have been achieved through customer adoption of an efficiency behavior or technology without any incentive allowed pursuant to this chapter to install and utilize the technology as part of the associated demand‑side management program. The utility must designate the expected useful life of the measure and evaluate the costs and benefits of the measures over their useful lives in the program application based on industry‑accepted standards. Further, in calculating the cost‑effectiveness, the commission must consider the efficiencies and scale of programs that are or may be available across a utility’s balancing area, even if that balancing area extends outside of the state.

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

SECTION 18. Section 58‑37‑20 of the S.C. Code is amended to read:

Section 58‑37‑20. (A) The General Assembly declares that expanding utility investment in and customer access to cost‑effective demand‑side management programs will result in more efficient use of existing resources, promote lower energy costs, mitigate the increasing need for new generation and associated resources, and assist customers in managing their electricity usage to better control their electric bill, and is therefore in the public interest.

(B) The commission may approve any program filed by a public utility if the program is found to be cost‑effective. Furthermore, the commission may, in its discretion, approve any program filed by a public utility that is not cost‑effective, so long as the proposed demand‑side management program is targeted to low‑income customers, provided that the public utility’s portfolio of demand‑side management programs is cost‑effective as a whole.

(C) The South Carolina Public Service Commission may must adopt procedures that encourage require electrical utilities and public utilities providing gas services subject to the jurisdiction of the commission to plan for and invest in all reasonable, prudent, and available energy efficiency and demand‑side resources that are cost‑effective energy efficient technologies and energy conservation programs in an amount to be determined by the commission. If an electrical utility fails to meet the requirements of this section as determined by the commission, the commission is authorized to appoint a third‑party administrator to carry out the residential low‑income energy efficiency duties pursuant to this section on behalf of the electrical utility if the commission determines that having such a third‑party administrator is in the public interest and consistent with law. Upon notice and hearings that the commission may require, the commission may issue rules, regulations, or orders pursuant to this chapter to implement applicable programs and measures under this section. If adopted, these procedures must: provide incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end‑use technologies that are cost‑effective, environmentally acceptable, and reduce energy consumption or system or local coincident peak demand; allow energy suppliers and distributors to recover costs and obtain a reasonable rate of return on their investment in qualified demand‑side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities; require the Public Service Commission to establish rates and charges that ensure that the net income of an electrical or gas utility regulated by the commission after implementation of specific cost‑effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented. For purposes of this section only, the term “demand‑side activity” means a program conducted by an electrical utility or public utility providing gas services for the reduction or more efficient use of energy requirements of the utility or its customers including, but not limited to, utility transmission and distribution system efficiency, customer conservation and efficiency, load management, cogeneration, and renewable energy technologies.

(D) Each investor‑owned electrical utility must submit an annual report to the commission describing the demand‑side management programs implemented by the electrical utility in the previous year, provided the program has been operational for a reasonable period of time, as well as the results of such programs. The commission may require certain information including, but not limited to:

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

(2) program expenditures, including incentive payments;

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

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

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

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

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

(8) any other information required by the commission.

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

(F) The provisions of subsections (C), (D), and (E) do not apply to an electrical utility that serves less than 100,000 customers in this State.

SECTION 19. Section 58‑37‑30 of the S.C. Code is amended to read:

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

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

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

SECTION 20.Chapter 37, Title 58 of the S.C. Code is amended by adding:

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

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

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

(D) The commission may approve any program filed pursuant to this section if the commission finds the program to be cost effective pursuant to Section 58‑37‑10(3). For any demand‑side programs or customer incentives submitted under this section with projected annual customer incentive amounts less than five million dollars per year for each of the first two program years, the commission must issue an order as expeditiously as practicable on the written submissions of the electrical utility but may require an evidentiary hearing where novel or complex issues of fact require special review by the commission. Nothing in this section prevents the commission from ordering an electrical utility to modify or terminate a program approved pursuant to this section based on the results of standard evaluation, measurement, and verification protocols.

(E) The Energy Office must develop and publish materials intended to inform and educate the public regarding programs available to a customer pursuant to this section. The Energy Office must maintain a list of approved vendors who are qualified and in good standing to provide services associated with these programs.

SECTION 21. Section 58‑37‑50 of the S.C. Code is amended to read:

Section 58‑37‑50. (A) As used in this section:

(1) “Electricity provider” means an electric cooperative, an investor‑owned electric utility, the South Carolina Public Service Authority, or a municipality or municipal board or commission of public works that owns and operates an electric utility system.

(2) “Natural gas provider” means an investor‑owned natural gas utility or publicly owned natural gas provider.

(3) “Meter conservation charge” means the charge placed on a customer's account by which electricity providers and natural gas providers recover the costs, including financing costs, of energy efficiency and conservation measures.

(4) “Notice of meter conservation charge” means the written notice by which subsequent purchasers or tenants will be given notice that they will be required to pay a meter conservation charge.

(5) “Customer” means a homeowner or tenant receiving electricity or natural gas as a retail customer.

(6) “Community action agency” means a nonprofit eleemosynary corporation created pursuant to Chapter 45, Title 43 providing, among other things, weatherization services to a homeowner or tenant.

(B) Electricity providers and natural gas providers may enter into written agreements with customers and landlords of customers for the financing of the purchase price and installation costs of energy efficiency and conservation measures. These agreements may provide that the costs must be recovered by a meter conservation charge on the customer's electricity or natural gas account, provided that the electricity providers and natural gas providers comply with the provisions of this section. A failure to pay the meter conservation charge may be treated by the electricity provider or natural gas provider as a failure to pay the electricity or natural gas account, and the electricity provider or natural gas provider may disconnect electricity or natural gas service for nonpayment of the meter conservation charge, provided the electricity provider or natural gas provider complies with the provisions of Article 25, Chapter 31, Title 5; Article 17, Chapter 11, Title 6; Article 17, Chapter 49, Title 33; Article 11, Chapter 5, Title 58; Article 21, Chapter 27, Title 58; Article 5, Chapter 31, Title 58; and any applicable rules, regulations, or ordinances relating to disconnections.

(C) Any agreement permitted by subsection (B) must state plainly the interest rate to be charged to finance the costs of the energy efficiency and conservation measures. The interest rate must be a fixed rate over the term of the agreement and must not exceed four percent above the stated yield for one‑year treasury bills as published by the Federal Reserve at the time the agreement is enteredon the first business day of the calendar year in which the agreement is entered. An electrical utility entering into such an agreement whose rates are regulated by the commission must fix the interest rate over the term of the agreement to not exceed such utility’s weighted average cost of equity and long‑term debt as most recently approved by the commission at the time the agreement is entered. Any indebtedness created under the provisions of this section may be paid in full at any time before it is due without penalty.

(D) An electricity provider or natural gas provider may recover the costs, including financing costs, of these measures from its members or customers directly benefiting from the installation of the energy efficiency and conservation measures. Recovery may be through a meter conservation charge to the account of the member or customer and any such charge must be shown by a separate line item on the account. A utility entering into such agreement whose rates are regulated by the commission shall recover all reasonable and prudent incremental costs incurred to implement agreements for financing and installing energy‑efficiency and conservation measures in base rates. Incremental costs may include, but are not limited to, billing system upgrades, overhead, incremental labor, and all other expenses properly considered to be associated with ensuring the ongoing premise bill savings are realized from offering during the terms of such agreements.

(E) An electricity provider or natural gas provider shall assume no liability for the installation, operation, or maintenance of energy efficiency and conservation measures when the measures are performed by a third party, and shall not provide any warranty as to the merchantability of the measures or the fitness for a particular purpose of the measures, and no action may be maintained against the electricity provider or natural gas provider relating to the failure of the measures. An electricity provider or natural gas provider shall assume no liability for energy audits performed by third parties and shall provide no warranty relating to any energy audit done by any third party. Nothing in this section may be construed to limit any rights or remedies of utility customers and landlords of utility customers against other parties to a transaction involving the purchase and installation of energy efficiency and conservation measures.

(F) Before entering into an agreement contemplated by this section, the electricity provider or natural gas provider shall cause to be performed an energy audit on the residence considered for the energy efficiency measures. The energy audit must be conducted by an energy auditor certified by the Building Performance Institute or similar organization. The audit must provide an estimate of the costs of the proposed energy efficiency and conservation measures and the expected savings associated with the measures, and it must recommend measures appropriately sized for the specific use contemplated. An agreement entered following completion of an energy audit shall specify the measures to be completed and the contractor responsible for completion of the measures. The choice of a contractor to perform the work must be made by the owner of the residence. Upon request, the electricity provider or natural gas provider must provide the owner of the residence with a list of contractors qualified to do the work. Upon completion of the work, it must be inspected by an energy auditor certified by the Building Performance Institute or similar organization. Any work that is determined to have been done improperly or to be inappropriately sized for the intended use must be remedied by the responsible contractor. Until the work has been remedied, funds due to the contractor must be held in escrow by the electricity provider or natural gas provider.

(G) An electricity provider or natural gas provider that enters into an agreement as provided in this section may recover the costs, including financing costs, of energy efficiency and conservation measures from subsequent purchasers of the residence in which the measures are installed, provided the electricity provider or natural gas provider gives record notice that the residence is subject to the agreement. Notice must be given, at the expense of the filer, by filing a notice of meter conservation charge with the appropriate office for the county in which the residence is located, pursuant to Section 30‑5‑10. The notice of meter conservation charge does not constitute a lien on the property but is intended to give a purchaser of the residence notice that the residence is subject to a meter conservation charge. Notice is deemed to have been given if a search of the property records of the county discloses the existence of the charge and informs a prospective purchaser: (1) how to ascertain the amount of the charge and the length of time it is expected to remain in effect, and (2) of his obligation to notify a tenant if the purchaser leases the property as provided in subsection (H)(3).

(H) An electricity provider or natural gas provider may enter into agreements for the installation of energy efficiency and conservation measures and the recovery of the costs, including financing costs, of the measures with respect to rental properties by filing a notice of meter conservation charge as provided in subsection (G) and by complying with the provisions of this subsection:

(1) The energy audit required by subsection (F) must be conducted and the results provided to both the landlord and the tenant living in the rental property at the time the agreement is entered.

(2) If both the landlord and tenant agree, the electricity provider or natural gas provider may recover the costs of the energy efficiency and conservation measures, including financing costs, through a meter conservation charge on the account associated with the rental property occupied by the tenant. The agreement must provide notice to the landlord of the provisions contained in item (3).

(3) With respect to a subsequent tenant occupying a rental unit benefiting from the installation of energy efficiency and conservation measures, the electricity provider or natural gas provider may continue to recover the costs, including financing costs, of the measures through a meter conservation charge on the account associated with the rental property occupied by the tenant. With respect to a subsequent tenant, the landlord must give a written notice of meter conservation charge in the same manner as required by Section 27‑40‑240. If the landlord fails to give the subsequent tenant the required notice of meter conservation charge, the tenant may deduct from his rent, for no more than one‑half of the term of the rental agreement, the amount of the meter conservation charge paid to the electricity provider or natural gas provider.

(I) Agreements entered pursuant to the provisions of this section are exempt from the provisions of the South Carolina Consumer Protection Code, Title 37 of the South Carolina Code of Laws.

(J) An electricity provider or natural gas provider may contract with third parties to perform functions permitted under this section, including the financing of the costs of energy efficiency and conservation measures. A third party must comply with all applicable provisions of this section. When an electricity or natural gas provider contracts with a third party to perform administrative or financing functions under this subsection, the liability of the third party is limited in the same manner as an electricity provider or natural gas provider is under subsection (E).

(K) The provisions of this section apply only to energy efficiency and conservation measures for a residence already occupied atbefore the time the measures are taken. The procedures allowed by this section may not be used with respect to a new residence or a residence under construction. The provisions of this section may not be used to implement energy efficiency or conservation measures that result in the replacement of natural gas appliances or equipment with electric appliances or equipment, or that result in the replacement of electric appliances or equipment with natural gas appliances or equipment, unless (1) the customer who seeks to install the energy efficiency or conservation measure is being provided electric and natural gas service by the same provider, or (2) an electric appliance used for home heating is being replaced by an appliance that operates primarily on electricity but which has the capability of also operating on a secondary fuel source.

(L) Electricity providers or natural gas providers may offer their customers other types of financing agreements available by law, instead of the option established in this section, for the types of energy efficiency or conservation measures described in this section.

(M)(1) An electricity provider or natural gas provider must not obtain funding from the following federal programs to provide loans provided by this section:

(a) the Low Income Home Energy Assistance Program (LIHEAP), created by Title XXVI of the Omnibus Budget Reconciliation Act of 1981 and codified as Chapter 94, Title 42 of the United States Code, as amended by the Human Services Reauthorization Act of 1984, the Human Services Reauthorization Act of 1986, the Augustus F. Hawkins Human Services Reauthorization Act of 1990, the National Institutes of Health Revitalization Act of 1993, the Low Income Home Energy Amendments of 1994, the Coats Human Services Reauthorization Act of 1998, and the Energy Policy Act of 2005 which is administered and funded by the United States Department of Health and Human Services on the federal level and administered locally by community action agencies;

(b) the Weatherization Assistance Program, created by Title IV of the Energy Conservation and Production Act of 1976 and codified as Part A, Subchapter III, Chapter 81, Title 42 of the United States Code, amended by the National Energy Conservation Policy Act, the Energy Security Act, the Human Services Reauthorization Act of 1984, and the State Energy Efficiency Programs Improvement Act of 1990 and administered and funded by the United States Department of Energy on the federal level and administered locally by community action agencies.

(2) Nothing in this section changes the exclusive administration of these programs by local community action agencies through the South Carolina Governor's Office of Economic Opportunity pursuant to its authority pursuant to the provisions of Chapter 45, Title 43, the Community Economic Opportunity Act of 1983.

(3) Nothing in this subsection prevents a customer or member of an electricity provider or natural gas provider from obtaining services under the Low Income Home Energy Assistance Program or the Weatherization Assistance Program.

SECTION 22. Chapter 41, Title 58 of the S.C. Code is amended by adding:

Section 58‑41‑50. (A) The General Assembly encourages electrical utilities to explore cost effective, efficient bulk power solutions, particularly during periods of constrained capacity, for non‑residential customers with electric loads in excess of 25 megawatts.

(B)(1) An electrical utility may file a proposed agreement regarding co‑located resources between the utility and a customer with an electric load in excess of 25 megawatts for the commission’s consideration. The proposed agreement must contain at least one of the following requirements:

(a) co‑location of electric generation or storage on the customer’s property provides bulk system benefits for all customers and benefits for the host customer;

(b) co‑location of renewable electric generation resources on the customer’s property provides bulk system benefits for all customers and the renewable attributes associated with such generation can be allocated to the host customer;

(c) co‑location of electric generation on the customer’s property would result in permitting and siting efficiencies to enable electric generation to come online earlier than otherwise could occur; or

(d) co‑location of electric generation resources on the customer’s property could be utilized as resiliency resources to serve the electric grid in times of need.

(2) In the filing with the commission, the electrical utility must include a description of:

(a) how the resource helps to serve resource needs identified in the electrical utility’s most recent integrated resource plan filing;

(b) credit and ratepayer protections included in the agreement;

(c) the contractual terms that preserves the electrical utility’s operation of resources; and

(d) how costs and benefits associated with the agreement would be allocated among the customer who is a party to the agreement and other customers in the electrical utility’s balancing area.

(C) The commission must give a proposed agreement filed pursuant to this section expedited consideration. The commission may approve the proposed agreement if the commission finds:

(1) the proposed program was voluntarily agreed upon by the electrical utility and the customer,

(2) the filing meets the requirements of this section; and

(3) the proposed agreement is in the public interest.

(D) For purposes of this section, “co‑located” or “co‑location” includes electric generation and associated facilities on a customer’s site as well as any location where the connection to the electrical utility is in such proximity to the customer’s site that enables resilient power supply to support the development of power supply to meet the customer’s needs. An agreement regarding co‑location may also include potential co‑ownership of the electric generation and associate facilities by the electrical utility and the customer.

(E) Notwithstanding opportunities for co‑located resources, the General Assembly also encourages electrical utilities to continue to facilitate service to new electric loads in excess of 50 megawatts and to require operational and financial performance requirements for such customers to receive service pursuant to tariffed electrical utility rates or contracts approved by the commission, and to ensure appropriate protections and risk mitigation for the protection of the electrical utility’s existing customers. The electrical utility may meet these objectives by: (1) filing form contracts with the commission; (2) tariff offerings or services regulations filed with the commission; or (3) performance and credit policies reviewed by the Office of Regulatory Staff.

SECTION 23. (A) To foster economic development and future jobs in this State resulting from the supply‑chains associated with the same while supporting the significant and growing energy and capacity needs of the State, enhance grid resiliency, and maintain reliability, the General Assembly finds that the State of South Carolina should take steps necessary to encourage the development of a diverse mix of long‑lead, clean generation resources that may include advanced small modular reactors, biomass as defined in Section 12‑63‑20(B)(2) of the S.C. Code, hydrogen‑capable resources, and the Carolina Long Bay Project, and should preserve the option of efficiency development of such long‑lead resources with timely actions to establish or maintain eligibility for or capture available tax or other financial incentives or address operational needs.

(B) For an electrical utility to capture available tax or other financial or operational incentives for South Carolina ratepayers in a timely manner, the commission may find that actions by an electrical utility in pursuit of the directives in Section 58‑37‑35(A) are in the public interest, provided that the commission determines that such proposed actions are in the public interest and reasonably balance economic development and industry retention benefits, capacity expansion benefits, resource adequacy and diversification, emissions reduction levels, and potential risks, costs, and benefits to ratepayers and otherwise comply with all other legal requirements applicable to the electrical utility’s proposed action. For the South Carolina Public Service Authority, the Office of Regulatory Staff and the Public Service Authority’s board of directors shall apply the same principles described in this subsection in evaluating and approving actions proposed by the management of the Public Service Authority to achieve the objectives of this section.

SECTION 24. All reasonable and prudent costs incurred by an electrical 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 this act or established by state law, shall be deferred for commission consideration of recovery in any proceeding initiated pursuant to Section 58‑27‑870, and allowed for recovery if the commission determines the costs are reasonable and prudent.

SECTION 25. Section 58‑40‑10(F) of the S.C. Code is amended to read:

(F) “Renewable energy resource” means solar photovoltaic and solar thermal resources, wind resources, hydroelectric resources, geothermal resources, tidal and wave energy resources, recycling resources, hydrogen fuel derived from renewable resources, combined heat and power derived from renewable resources, and biomass resources as defined in Section 12‑63‑20(B)(2).

SECTION 26. The General Assembly finds that the sections presented in this act constitute one subject as required by Section 17, Article III of the South Carolina Constitution, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of the regulation of electrical utilities, the provision of electricity, and economic development as clearly enumerated in the title.  The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 27.If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 28. This act takes effect upon approval by the Governor.

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