CHAPTER 27

Electric Utilities and Electric Cooperatives

ARTICLE 1

General Provisions

**SECTION 58‑27‑10.** Definitions.

 When used in this chapter:

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

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

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

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

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

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

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

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

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

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

 (11) The term “regulatory staff” means the executive director or the executive director and the employees of the Office of Regulatory Staff.

HISTORY: 1962 Code Section 24‑1; 1952 Code Section 24‑1; 1942 Code Section 8555‑1; 1932 (37) 1497; 1935 (39) 25; 1969 (56) 740; 1972 (57) 2757; 2006 Act No. 318, Section 157, eff May 24, 2006.

CROSS REFERENCES

Constitutional provision for regulation of common carriers, see SC Const. Art. IX, Section 1.

Furnishing of electric services within consolidated political subdivision governed, in part, by this chapter, see Section 4‑8‑150.

Joint Municipal Electric Power and Energy Act, see Section 6‑23‑10 et seq.

Lease of renewable electric generation facilities program, “retail electric provider” defined, see Section 58‑27‑2600.

Lease of renewable electric generation facility, see Section 58‑27‑2610.

Midlands Authority not to modify or abridge rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities supplying electricity under this chapter, see Section 13‑19‑230.

Net energy metering, “electrical utility” defined, see Section 58‑40‑10.

Trident Economic Development Finance Authority not to modify or abridge rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities supplying electricity under this chapter, see Section 13‑12‑230.

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 49, Public Utilities and Transportation.

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1. In general

Competition between utilities eliminated. In placing upon the Commission the power and duty to supervise and regulate privately owned electrical utilities, including the power to regulate the territory served by each, competition between such utilities was eliminated and regulation substituted. South Carolina Public Service Authority v. Carolina Power & Light Co. (S.C. 1964) 244 S.C. 466, 137 S.E.2d 507.

Electric cooperative had no standing to seek a cease and desist order under the Electrical Utilities Act. Code 1952, Sections 12‑1001 to 12‑1083, 24‑1 to 24‑176. Tri‑County Elec. Co‑op. v. Snow (S.C. 1961) 238 S.C. 298, 120 S.E.2d 14.

Purpose of chapter. This chapter was designed to require electric utilities to furnish the public, without discrimination, adequate and efficient service at reasonable rates, and to protect such utilities from ruinous competition which was deemed an economic waste. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6.

2. Electric utility

The South Carolina Public Service Authority is not an electric utility as defined by this section [Code 1962 Section 24‑1], and therefore not subject to the jurisdiction of the Public Service Commission. South Carolina Elec. & Gas Co. v. South Carolina Public Service Authority (S.C. 1949) 215 S.C. 193, 54 S.E.2d 777.

3. Rate

The term “rate” as defined in Section 58‑27‑10 is not the same as “rate of return,” which is the rate that a utility is entitled to earn on its investment. Parker v. South Carolina Public Service Com’n (S.C. 1985) 285 S.C. 231, 328 S.E.2d 909.

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

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

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

CROSS REFERENCES

Effect of this section on furnishing of electric services within consolidated political subdivision, see Section 4‑8‑150.

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

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

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

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

Library References

Electricity 1, 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 21 to 27, 43.

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

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

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under the Electric Cooperative Act from control by the Public Service Commission, see Section 33‑49‑50.

Financing applications, Public Service Commission, see S.C. Code of Regulations R. 103‑823.1.

Midlands Authority not to modify or abridge rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities supplying electricity under this chapter, see Section 13‑19‑230.

Trident Economic Development Finance Authority not to modify or abridge rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities supplying electricity under this chapter, see Section 13‑12‑230.

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

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

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

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

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

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

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

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

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

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 16, Civil, Administrative and Special Proceedings.

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

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

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

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

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

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

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

Editor’s Note

2004 Act No. 179, Section 11 provides:

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

CROSS REFERENCES

Midlands Authority not to modify or abridge rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities supplying electricity under this chapter, see Section 13‑19‑230.

Trident Economic Development Finance Authority not to modify or abridge rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities supplying electricity under this chapter, see Section 13‑12‑230.

Library References

Electricity 1, 1.5.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 11 to 20.

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

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

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

Editor’s Note

2004 Act No. 179, Section 11 provides:

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

Library References

Electricity 1.

Municipal Corporations 54.

Westlaw Topic Nos. 145, 268.

C.J.S. Electricity Sections 1 to 7.

C.J.S. Municipal Corporations Sections 9 to 11, 144 to 147, 194, 210.

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

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

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

Library References

Commerce 62.1.

Electricity 1.

Westlaw Topic Nos. 83, 145.

C.J.S. Commerce Sections 101 to 104, 108.

C.J.S. Electricity Sections 1 to 7.

United States Supreme Court Annotations

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution‑Supreme Court cases. 100 L Ed 2d 1049.

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

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

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

Library References

Electricity 1.

Public Utilities 114.

Westlaw Topic Nos. 145, 317A.

C.J.S. Electricity Sections 1 to 7.

C.J.S. Public Utilities Sections 5 to 9, 202 to 207.

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

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

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

CROSS REFERENCES

Construction of Pee Dee Regional Airport District, see Section 55‑11‑720.

Eminent domain, generally, see Section 28‑2‑10 et seq.

Power of public utilities to prohibit operation of certain motor vehicles on utility rights‑of‑way, see Section 16‑11‑755.

Procedures for condemnation of property, Eminent Domain Procedure Act, see Section 28‑2‑10 et seq.

Right of water power companies to flood burial grounds, see Section 49‑9‑10 et seq.

Utility facility siting and environmental protection, see Section 58‑33‑10 et seq .

Library References

Eminent Domain 35.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Section 45.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 18, Corporations.

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1. In general

Cited in Twin City Power Co. v Savannah R. Elec. Co., 163 SC 438, 161 SE 750 (1930). Woody v South Carolina Power Co., 202 SC 73, 24 SE2d 121 (1943). Williams v Transcontinental Gas Pipe Line Corp., 89 F Supp 485 (1950).

The primary right to acquire rests in eminent domain, and that power resides in the State of right and by necessity; the SC Constitution did not create it, but has only affirmed it (art 14), and limited its exercise (art 1, Section 13, art 9, Section 20). The exercise of the right resting in the legislature, that body may prescribe how it shall be exercised. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

Eminent domain is an attribute of sovereignty Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

The general rule now recognized is that the legislature has the plenary power not only to grant or withhold the right to exercise the power of eminent domain, but also to define the quantum of interest or estate which may be acquired, whether an easement or the fee or some estate intermediate these two. The interest taken depends always on the construction of the statute authorizing the taking. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

Private corporation may condemn land for public use. For more than half a century the right of a private corporation to condemn land for public use has been recognized and followed. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

Erection of plants for generation and distribution of electric energy is a public use. That the erection, maintenance, and operation of plants for generating electric energy and distributing it to the public is a public use for which private property may be appropriated under authority delegated by the legislature, has been so repeatedly held by the courts that it is now settled and is no longer open to question. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

Where a statute authorizes the taking of a fee, it cannot be held invalid, or that an easement only was acquired thereunder, on the ground that an easement only was required to accomplish the purpose which the legislature had in view. That is a legislative, and not a judicial, question. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

Shade trees around home should not be wantonly destroyed for power line, unless it clearly appears destruction is reasonably necessary. Civ.Code 1922, Sections 5015‑5024. (See Code 1942, Sections 8531‑8540). Seabrook v. Carolina Power & Light Co. (S.C. 1930) 159 S.C. 1, 156 S.E. 1.

“Necessity,” as well as public use, must exist to warrant condemnation by public service corporation. Seabrook v. Carolina Power & Light Co. (S.C. 1930) 159 S.C. 1, 156 S.E. 1.

Only method for landowner to protect himself against unnecessary condemnation by power company is to contest its right by independent action in equity. Civ.Code 1922, Sections 5015‑5024 (See Code 1942, Sections 8531‑8540). Seabrook v. Carolina Power & Light Co. (S.C. 1930) 159 S.C. 1, 156 S.E. 1.

Code 1962 section 12‑103 was repealed by necessary implication upon the passage of this section [Code 1962 Section 24‑12]. Southern Power Co. v. Walker (S.C. 1911) 89 S.C. 84, 71 S.E. 356.

2. Constitutional issues

Electric company’s condemnation under statute of fee in connection with construction and maintenance of electric generating plant did not violate constitutional provision authorizing corporations to condemn private property only for right of way privileges and did not deprive owner of land without due process. Code 1952, Section 24‑12; Const. art. 1, Sections 5, 17; U.S.C.A.Const. Amend. 14. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743. Constitutional Law 4076; Eminent Domain 3

3. Exercise of power

Section delegates power of eminent domain. By this section [Code 1962 $ 24‑12] the legislature has expressly delegated to electric companies, and all others similarly engaged, the power of eminent domain. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

Exercise of such power by grantees thereof. In the exercise of the power of eminent domain, those to whom it has been delegated represent the sovereignty of the state and are empowered to decide, subject only to supervision of the courts to avoid fraudulent or capricious abuse, what and how much land of the citizens they will condemn for their purposes. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743. Eminent Domain 58

Is restricted by courts to reasonable necessities of the case. Every company seeking to condemn land for public improvement must in a modified degree, be permitted to judge for itself as to what amount is necessary for such purpose. This right, however is subordinate to the right of the courts to prevent an abuse of the power by restricting its exercise to the reasonable necessities of the case, since to take more than reasonable necessity requires is to appropriate private property to private use. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

Grantee must not abuse discretion. The safer rule is that the grantee of the power to condemn must not abuse the discretion confided by the legislature, and spoliate private property by taking, for pretended public use, more than a reasonable necessity requires. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

Decision of question of necessity lies with grantee. The decision of the question of necessity lies with the one to whom the State has delegated the authority to take property for a public use. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

And it is not subject to review by the court in the absence of fraud, bad faith, or abuse of discretion. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

4. Entry of judgment and payment of interest not required

No entry of judgment or payment of interest in condemnation proceedings by power companies. While some condemnation statutes specifically provide for the entry of a judgment and for payment of interest, the statutes under which power companies condemn property do not. Carolina Power & Light Co. v. Copeland (S.C. 1972) 258 S.C. 206, 188 S.E.2d 188.

The legislature has not seen fit to amend the statutes so as to provide for entry of a judgment and payment of interest where power companies condemn property. Carolina Power & Light Co. v. Copeland (S.C. 1972) 258 S.C. 206, 188 S.E.2d 188.

5. Measure of compensation

The measure of just compensation is the value of the land required plus the amount of any “special damage.” Carolina Power & Light Co. v. Copeland (S.C. 1972) 258 S.C. 206, 188 S.E.2d 188.

6. Injunctions

In action solely for permanent injunction, refusing injunction pendente lite, shown to be essential to assertion and preservation of legal right, if established as alleged in complaint, is error. Seabrook v. Carolina Power & Light Co. (S.C. 1930) 159 S.C. 1, 156 S.E. 1.

7. Pleadings

Complaint, supported by affidavits, seeking permanent injunction, alleging condemnation for power line was wanton and unnecessary and would cause irreparable injury and destruction of shade trees held to justify temporary injunction. Seabrook v. Carolina Power & Light Co. (S.C. 1930) 159 S.C. 1, 156 S.E. 1.

8. Presumptions and burden of proof

Burden of establishing abuse of discreton. The burden is on the landowner to allege and establish bad faith and abuse of discretion. Atkinson v. Carolina Power & Light Co. (S.C. 1961) 239 S.C. 150, 121 S.E.2d 743.

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

 The commission may, upon petition:

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

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

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

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

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

CROSS REFERENCES

Financing applications, Public Service Commission, see S.C. Code of Regulations R. 103‑823.1.

Library References

Electricity 1, 11(4), 11.3(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 61 to 63.

United States Supreme Court Annotations

Public utilities, electricity, freely negotiated contract rates, just and reasonable presumption, challenges by noncontracting parties, see NRG Power Marketing, LLC v. Maine Public Utilities Com’n, U.S.Dist.Col.2010, 130 S.Ct. 693, 558 U.S. 165, 175 L.Ed.2d 642, on remand 625 F.3d 754, 393 U.S.App.D.C. 182.

NOTES OF DECISIONS

In general 1

1. In general

The Public Service Commission exceeded its statutory authority by requiring the South Carolina Electric and Gas Company to refund more than seven million dollars to its retail electric customers as a result of the sale and purchase of energy between the company and other energy producers since the commission may prescribe refunds in only two specific instances: pursuant to Section 58‑28‑880 for the difference between new rates under bond and those ultimately found to be just and reasonable by the commission, and under Section 58‑27‑960 for a past charge in excess of the applicable rate. Since the rates in question had previously been approved by the commission, the refund was barred by the Section 58‑27‑960 prohibition against reparations based on unreasonableness where the rate had been approved by law. South Carolina Elec. and Gas Co. v. Public Service Commission (S.C. 1980) 275 S.C. 487, 272 S.E.2d 793.

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

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

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

CROSS REFERENCES

Public Service Commission regulations pertaining to electric systems, see S.C. Code of Regulations R. 103‑300 et seq.

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

NOTES OF DECISIONS

In general 1

1. In general

Complying with rules evidences exercise of due care. Compliance by an electric company with pertinent rules and regulations is at least some evidence of the exercise of due care. Berry v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1960) 273 F.2d 572, certiorari denied 80 S.Ct. 1060, 362 U.S. 976, 4 L.Ed.2d 1011.

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

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

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

Library References

Electricity 1, 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 21 to 27, 43.

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

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

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

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

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

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

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

Library References

Electricity 11.3(3).

Westlaw Topic No. 145.

C.J.S. Electricity Section 68.

NOTES OF DECISIONS

Sufficiency of evidence 1

1. Sufficiency of evidence

Deferral of carrying cost associated with 400 megawatts of excess plant capacity, which was to be phased into electric company’s system as necessity arose, and deferred and recovered over some future period, was finding supported by evidence. Recovery could only take place if commission allowed it in some future order, and issue was not ripe for review. Hamm v. South Carolina Public Service Com’n (S.C. 1988) 294 S.C. 320, 364 S.E.2d 455. Electricity 11.3(7)

Evidence supported Commission’s system‑wide valuation of excess capacity where Consumer Advocate’s witness testified company had surplus in its total, but not in any one plant, there was simply more capacity than company needed to use, and that it would be wrong to ascribe surplus to any one particular plant; additionally, there was extensive testimony on what difference in costs were between system‑wide valuation and valuation of particular plant alone. Hamm v. South Carolina Public Service Com’n (S.C. 1988) 294 S.C. 320, 364 S.E.2d 455.

There was ample evidence in record to support decision of Commission to allow electric company to recover depreciation expenses on all of its plant investments, despite argument of Consumer Advocate that such should not be allowed because this figure included investment that produced 400 megawatts excess capacity which was deducted from rate base, where every plant in system was in service and depreciating. Hamm v. South Carolina Public Service Com’n (S.C. 1988) 294 S.C. 320, 364 S.E.2d 455.

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

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

HISTORY: 1962 Code Section 24‑116; 1952 Code Section 24‑116; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 165, eff May 24, 2006.

Library References

Electricity 1, 11.3(1).

Searches and Seizures 79.

Westlaw Topic Nos. 145, 349.

C.J.S. Aliens Section 325.

C.J.S. Electricity Sections 1 to 7, 61 to 63.

C.J.S. Searches and Seizures Sections 128 to 130, 132 to 134.

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

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

HISTORY: 1962 Code Section 24‑117; 1952 Code Section 24‑117; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 166, eff May 24, 2006.

CROSS REFERENCES

Electric power tax, see Section 12‑23‑10 et seq.

Reports of power companies to the Department of Revenue, see Section 58‑1‑40.

Library References

Electricity 1, 11.3(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 61 to 63.

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

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

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Preclusion of Public Service Commission jurisdiction over municipal utilities by virtue of restriction on termination of services for nonpayment of accounts, see Section 58‑5‑380.

Restrictions on interruption of electric or gas services to residential customer for nonpayment of bill, see Sections 5‑31‑690, 33‑49‑255.

Library References

Electricity 1, 11.3(7).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 75 to 78.

NOTES OF DECISIONS

In general 1

1. In general

Public Service Commission action seeking injunctive relief against city for violation of its order, under Code 1962 Section 24‑118 [Code 1976 Section 58‑27‑210] was not barred by previous action by city against Commission for judicial review of that order under Code 1962 Section 24‑161 [Code 1976 Section 58‑27‑2310] on the ground that the first action was between the same parties for the same cause, as the two actions are based on separate statutes. South Carolina Public Service Commission v. City of Rock Hill (S.C. 1977) 268 S.C. 405, 234 S.E.2d 228.

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

 In addition to the foregoing expressly enumerated powers, the Office of Regulatory Staff must enforce, execute, administer, and carry out the provisions of this chapter relating to the powers, duties, limitations, and restrictions imposed upon electrical utilities by this chapter or any other provisions of the law of this State regulating electrical utilities.

HISTORY: 1962 Code Section 24‑119; 1952 Code Section 24‑119; 1942 Code Section 8555‑4; 1932 (37) 1497; 2006 Act No. 318, Section 168, eff May 24, 2006.

CROSS REFERENCES

Financing applications, Public Service Commission, see S.C. Code of Regulations R. 103‑823.1.

Library References

Electricity 1, 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 21 to 27, 43.

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

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

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

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

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

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

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

Editor’s Note

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

“SECTION 1. This act may be cited as the ‘South Carolina Rural Development Act of 1996’.”

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

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

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

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

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

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

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

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

Library References

Electricity 11.1(1), 11.4.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 52 to 53.

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

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

 (1) located contiguous with the electric generating unit;

 (2) intended to be beneficially reused;

 (3) placed into beneficial reuse; or

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

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

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

Editor’s Note

2016 Act No. 138, Sections 2, 3, 4, provide as follows:

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

“SECTION 3. The provisions of this act are repealed five years from the act’s effective date, unless reenacted or otherwise extended by the General Assembly.

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

CROSS REFERENCES

Solid Waste Management, see S.C. Code of Regulations R. 61‑107, et seq.

ARTICLE 3

Franchises and Permits

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

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

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

Library References

Electricity 4, 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

NOTES OF DECISIONS

In general 1

1. In general

Effect when franchise not exclusive. Ordinance granting power company right to use streets and supply electric current was not invalid because not enacted in compliance with this section [Code 1962 Section 24‑21] governing granting of exclusive franchises, where franchise granted was not exclusive. Town of Brookland v. Broad River Power Co. (S.C. 1934) 172 S.C. 115, 173 S.E. 71. Municipal Corporations 686

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

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

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

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

Editor’s Note

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

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

Library References

Electricity 4, 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

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

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

Library References

Electricity 4, 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

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

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

Library References

Electricity 4, 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

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

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

Library References

Electricity 11(4).

Westlaw Topic No. 145.

NOTES OF DECISIONS

In general 1

1. In general

A Pageland Municipal Ordinance 130, enacted pursuant to Section 5‑7‑30, was invalid where it conflicted with Section 58‑27‑440 in that the effect of the ordinance was to allow termination of an electricity suppliers’s service to its industrial customers without a finding of inadequate service by the Public Service Commission; a local ordinance enacted pursuant to the power granted in Section 5‑7‑30 is not valid if it conflicts with the Constitution or general law of the state of South Carolina. Carolina Power & Light Co. v. Town of Pageland (S.C. 1996) 321 S.C. 538, 471 S.E.2d 137, rehearing denied.

The application of Section 58‑27‑440 in determining the validity of Pageland Municipal ordinance 130 did not conflict with Pageland’s right of consent under S.C. Const. Art. VIII, Section 15. Carolina Power & Light Co. v. Town of Pageland (S.C. 1996) 321 S.C. 538, 471 S.E.2d 137, rehearing denied.

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

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

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

Library References

Electricity 11(4), 11.1(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 52 to 53.

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

 (A) The commission shall promulgate standards for interconnection of renewable energy facilities and other nonutility‑owned generation with a generation capacity of two thousand kilowatts (2,000 kW AC) or less to an electrical utility’s distribution system.

 (B) No customer‑generator or customer‑generator lessee shall connect or operate an electric generation unit in parallel phase and synchronization with any electrical utility without written approval by the electrical utility that all of the commission’s requirements have been met. For a customer‑generator or customer‑generator lessee who violates this provision, an electrical utility immediately may and without notice disconnect the electric facilities of the customer‑generator or customer‑generator lessee and terminate the customer‑generator’s or customer‑generator lessee’s electric service.

HISTORY: 2014 Act No. 236 (S.1189), Section 6, eff June 2, 2014.

Editor’s Note

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

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

Library References

Electricity 8.4, 8.6.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 40, 42.

ARTICLE 5

Service Rights of Electric Suppliers

**SECTION 58‑27‑610.** Definitions.

 When used in this article:

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

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

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

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

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

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

CROSS REFERENCES

Electric supplier as defined in this section as meeting definition of “responsible bidder” for electrical output from solid waste resource recovery facilities, see Section 44‑96‑120.

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Powers of electric cooperatives, see Section 33‑49‑250.

Library References

Electricity 11.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 51 to 56.

NOTES OF DECISIONS

In general 1

Electrical supplier 2

Premises 3

1. In general

Relief from alleged inadequate electric service by city was limited by statute to ordering city to improve its electric service; statute permitting reassignment to another provider did not apply to municipalities. City of Camden v. Public Service Com’n of South Carolina (S.C. 1999) 335 S.C. 580, 518 S.E.2d 262. Electricity 11(5)

A municipality had the right under Article 8, Section 15 of the state constitution to permit both a previously assigned electric supplier and the municipally franchised supplier to serve a newly annexed area where the electric supplier had sought a nonexclusive franchise allowing it to serve alongside the municipal franchise, was granted the franchise by the city, and then sought an order from the Public Service Commission declaring that its franchise was exclusive. South Carolina Elec. & Gas Co. v. Berkeley Elec. Co‑op., Inc. (S.C. 1991) 306 S.C. 228, 411 S.E.2d 218.

2. Electrical supplier

Corridor rights may be asserted only against “electrical suppliers” which, by definition, excludes municipalities. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1989) 299 S.C. 95, 382 S.E.2d 888.

3. Premises

Unimproved annexed parcel was not a “premises then being served” under the Electric Cooperative Act, and thus rural electric cooperative did not have a right to continue supplying electricity to the parcel after annexation; although store owners had reached agreement to purchase parcel and construct store on parcel, parcel’s only improvement at the time of the annexation was a security light installed by cooperative. City of Camden v. Fairfield Elec. Co‑op., Inc. (S.C. 2007) 372 S.C. 543, 643 S.E.2d 687. Electricity 8.1(3)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CROSS REFERENCES

Construction of Pee Dee Regional Airport District, see Section 55‑11‑720.

Effect of continuation of electric services, see Section 58‑27‑680.

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Limitations on Commission’s authority to assign areas within service area of Public Service Authority, see Section 58‑31‑430.

Requirement that lighting structures in unassigned area be considered single premises and may be served by electric supplier pursuant to customer choice provisions of this section or by electric utility that has certificate to serve such structures, see Section 4‑9‑30.

Territory and certificates, electric systems, see S.C. Code of Regulations R. 103‑304.

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

NOTES OF DECISIONS

In general 1

Justiciability 2

1. In general

Customer located within service area assigned to one electric supplier was not within 300 feet of another supplier’s “distribution line,” and thus customer did not have right to choose its supplier; Public Service Commission had determined that line was a transmission line rather than a distribution line, new distribution line would have to be built to serve customer, and line had only served one customer in its history pursuant to specific statutory exception. Duke Power Co. v. Public Service Com’n of South Carolina (S.C. 2001) 343 S.C. 554, 541 S.E.2d 250, rehearing denied. Electricity 8.1(2.1)

A city’s provision of electrical service to an industrial user located in an area assigned to another provider was illegal and ultra vires, even though the city relied on the industrial consumer choice exception (Section 58‑27‑620[2]) to the Territorial Assignment Act when it extended service at the user’s request, since this exception was repealed by implication to municipalities providing electrical service outside their corporate limits by the enactment of Section 5‑7‑60. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1992) 308 S.C. 175, 417 S.E.2d 562.

A city was not entitled to provide electrical services to an area assigned to another electrical supplier merely by annexing the portion of the city‑owned property completely surrounding the subject area, despite the city’s right to consent to utilities within its corporate limits, where the area itself was not annexed. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1992) 308 S.C. 175, 417 S.E.2d 562.

A city could not compel the Public Service Commission to “unassign” an area previously assigned to another electrical supplier, even though the city owned the area and annexed all of the property surrounding it since the city had the power to annex the area itself, but did not. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1992) 308 S.C. 175, 417 S.E.2d 562.

An electric utility was entitled to continue providing electric service to a restaurant pursuant to an exclusive franchise agreement with the town which had recently annexed the parcel of property on which the restaurant was located, even though the annexed parcel of land was situated within 300 feet of another utility’s existing electric lines. Berkeley Elec. Co‑op, Inc. v. South Carolina Public Service Com’n (S.C. 1991) 304 S.C. 15, 402 S.E.2d 674.

An electric cooperative’s corridor rights did not prohibit a city from extending electric service to a customer by virtue of Section 5‑7‑60 where the customer was located within territory unassigned by the Public Service Commission. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1989) 299 S.C. 95, 382 S.E.2d 888.

Corridor rights may be asserted only against “electrical suppliers” which, by definition, excludes municipalities. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1989) 299 S.C. 95, 382 S.E.2d 888.

Section 5‑7‑60 repeals by implication the provisions of Section 58‑27‑620(2) dealing with municipal electric service in territory assigned to an electric cooperative, and thus precludes municipalities from serving electricity to a requesting consumer at an industrial facility expecting to operate with a load of 750 KW or greater located within territory previously assigned to an electric cooperative, in the absence of an agreement with the cooperative. City of Newberry v. Public Service Com’n of South Carolina (S.C. 1986) 287 S.C. 404, 339 S.E.2d 124. Electricity 8.1(3)

2. Justiciability

Declaratory judgment action brought by electric cooperative corporation challenging constitutionality of Code Section 58‑27‑620(2)(4), which provides that industrial customer which has connected load of at least 750 kilowatts and which is located within 300 feet of lines of, or wholly within area assigned to electric co‑operative, may choose to be served by electric utility, is not justiciable controversy and is subject to dismissal because adjudication of constitutionality of Section 58‑27‑620(2)(4) will settle no legal rights of parties since Section 58‑27‑620(2)(4) does not govern controversy between electric cooperative corporation and electric utility corporation in that industrial plant which electric cooperative corporation seeks to serve is within electric utility’s territory, and Section 58‑27‑620(2)(4) would apply only if plant had been in electric cooperative’s assigned territory. Pee Dee Elec. Co‑op., Inc. v. Carolina Power and Light Co. (S.C. 1983) 279 S.C. 64, 301 S.E.2d 761. Declaratory Judgment 125

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

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

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Library References

Electricity 8.1(2).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 30, 34 to 36, 40 to 41.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

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

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

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

Editor’s Note

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

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

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

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

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

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Furnishing of electric service in any area which becomes part of any municipality, see Section 58‑27‑670.

Requirement that lighting structures located in area assigned by state Public Service Commission to electric supplier pursuant to this section be served by designated electric supplier unless it consents otherwise, see Section 4‑9‑30.

Library References

Electricity 8.1(2).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 30, 34 to 36, 40 to 41.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

Attorney General’s Opinions

The phrase “dependability of service”. SC Op.Atty.Gen. (Sept. 29, 2006) 2006 WL 2849793.

NOTES OF DECISIONS

In general 1

1. In general

Public Service Commission order, which stated that areas in county situated more than 300 feet from the lines of any electric supplier and outside corporate limits of any municipality were assigned to respective electric suppliers or designated unassigned, did not create 600‑foot swath of unassigned territory along one supplier’s line within territory assigned to another supplier; line was not a distribution line, and order merely clarified that territorial assignment did not abrogate existing corridor rights. Duke Power Co. v. Public Service Com’n of South Carolina (S.C. 2001) 343 S.C. 554, 541 S.E.2d 250, rehearing denied. Electricity 8.1(2.1)

Public Services Commission (PSC) did not have authority to address the lawfulness of city’s provision of electrical service, in action brought by county residents challenging the adequacy of electric service provided by city, where lawfulness of city’s provision of service was not raised by the pleadings. Relief from alleged inadequate electric service by city was limited by statute to ordering city to improve its electric service. City of Camden v. Public Service Com’n of South Carolina (S.C. 1999) 335 S.C. 580, 518 S.E.2d 262. Electricity 11(5)

In an appeal from an order of the Public Service Commission requiring a city to sell its electric plant and facilities to an electric cooperative and assigning the area served by the city to the electric cooperative, there was no statutory authority for the Commission to assign the cooperative to the area when the city had serviced the area for 44 years and desired to continue doing so. City of Camden v. Public Service Com’n of South Carolina (S.C. 1984) 283 S.C. 380, 323 S.E.2d 519.

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

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

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

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

Editor’s Note

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

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

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

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

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

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

CROSS REFERENCES

Acquisition of property of supplier of electricity when area is annexed to or incorporated as municipality, see Section 58‑27‑1360.

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Territory and certificates, electric systems, see S.C. Code of Regulations R. 103‑304.

Library References

Electricity 8.1(2).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 30, 34 to 36, 40 to 41.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

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

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

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

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

Editor’s Note

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Territory and certificates, electric systems, see S.C. Code of Regulations R. 103‑304.

Library References

Electricity 8.1(2).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 30, 34 to 36, 40 to 41.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

NOTES OF DECISIONS

In general 1

1. In general

Relief from alleged inadequate electric service by city was limited by statute to ordering city to improve its electric service; statute permitting reassignment to another provider did not apply to municipalities. City of Camden v. Public Service Com’n of South Carolina (S.C. 1999) 335 S.C. 580, 518 S.E.2d 262. Electricity 11(5)

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

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

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

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

Editor’s Note

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

2004 Act No. 179, Section 11 provides:

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

CROSS REFERENCES

Effect of continuation of electric services, see Section 58‑27‑680.

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Joint Municipal Electric Power and Energy Act, see Section 6‑23‑10 et seq.

Library References

Electricity 8.1(2).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 30, 34 to 36, 40 to 41.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

When an area is incorporated into a new municipality or annexed into an existing one, the municipality may not oust or evict a utility provider which previously has lawfully served the area, in the absence of statutorily delegated powers of eminent domain authorizing such an ouster. South Carolina Elec. & Gas Co. v. Town of Awendaw (S.C. 2004) 359 S.C. 29, 596 S.E.2d 482. Public Utilities 113

An electric utility was entitled to continue providing electric service to a restaurant pursuant to an exclusive franchise agreement with the town which had recently annexed the parcel of property on which the restaurant was located, even though the annexed parcel of land was situated within 300 feet of another utility’s existing electric lines. Berkeley Elec. Co‑op, Inc. v. South Carolina Public Service Com’n (S.C. 1991) 304 S.C. 15, 402 S.E.2d 674.

A municipality may either consent to expanded electrical service by a supplier assigned by the Public Service Commission, or may itself serve new premises and customers within the assigned, annexed area. Blue Ridge Elec. Co‑op., Inc. v. City of Seneca (S.C. 1989) 297 S.C. 283, 376 S.E.2d 514. Electricity 8.1(2.1)

The amended provisions of Sections 58‑27‑670 and 58‑27‑1360, effective June 6, 1984, apply to areas annexed or incorporated after the effective date of the amendment. City of Westminster v. Blue Ridge Elec. Co‑op., Inc. (S.C.App. 1988) 295 S.C. 93, 366 S.E.2d 611, appeal dismissed 295 S.C. 106, 366 S.E.2d 611.

2. Constitutional issues

Sections 58‑27‑670 and 58‑27‑1360, as amended by Act 431 of the 1984 General Assembly, do not contravene South Carolina Constitution Article VIII, Section 15 or South Carolina Constitution Article VIII, Section 16. Thus, a franchisee possessing a valid PSC territorial assignment to serve an area subsequently annexed or duly incorporated is permitted to continue service in that area to those premises being served as of the date of annexation or incorporation. But such a franchisee is prohibited, without prior consent of the municipality, from extending or expanding service in that area by the use of any streets, alleys, public property or public ways after the date of annexation or incorporation. City of Abbeville v. Aiken Elec. Co‑op., Inc. (S.C. 1985) 287 S.C. 361, 338 S.E.2d 831.

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

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

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

Editor’s Note

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

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

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

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

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

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

Library References

Electricity 8.1(2).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 30, 34 to 36, 40 to 41.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

 Nothing in Title 28, Chapter 2 (Sections 28‑2‑10 et seq.), and Sections 1‑11‑110, 3‑5‑50, 3‑5‑100, 3‑5‑330, 4‑17‑20, 5‑27‑150, 5‑31‑420, 5‑31‑430, 5‑31‑440, 5‑31‑610, 5‑35‑10, 6‑11‑130, 6‑23‑290, 13‑1‑350, 13‑11‑80, 24‑1‑230, 28‑3‑20, 28‑3‑30, 28‑3‑140, 28‑3‑460, 46‑19‑130, 48‑11‑110, 48‑15‑30, 48‑15‑50, 48‑17‑30, 48‑17‑50, 49‑17‑1050, 49‑19‑1060, 49‑19‑1440, 50‑13‑1920, 50‑19‑1320, 51‑1‑560, 54‑3‑150, 55‑9‑80, 55‑11‑10, 57‑3‑700, 57‑5‑370, 57‑5‑380, 57‑21‑200, 57‑25‑190, 57‑25‑470, 57‑25‑680, 57‑27‑70, 58‑9‑2030, 58‑15‑410, 58‑17‑1200, 13‑1‑1330, 58‑27‑130, 58‑31‑50, 59‑19‑200, 59‑105‑40, 59‑117‑70, 59‑123‑90 shall modify, abridge, or repeal Sections 58‑27‑650, 58‑27‑670, 58‑27‑680, 58‑27‑1280, or 58‑27‑1360.

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

Editor’s Note

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

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

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

ARTICLE 7

Rates and Charges

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

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

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

Library References

Electricity 11.3(5).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 62 to 63, 69 to 71.

United States Supreme Court Annotations

Public utilities, wholesale electricity contract rates, just and reasonable presumption, serious harm to consuming public standard, see Morgan Stanley Capital Group Inc. v. Public Utility Dist. No. 1 of Snohomish County, Wash., 2008, 128 S.Ct. 2733, 554 U.S. 527, 171 L.Ed.2d 607, on remand 547 F.3d 1081, on remand 2008 WL 5272843.

NOTES OF DECISIONS

Sufficiency of evidence 1

1. Sufficiency of evidence

The evidence did not support the finding of the Public Service Commission (PSC) that 13.25 percent was a fair rate of return on an electrical utility’s common equity where 4 experts testified on the issue, all 4 relied on the discounted cash flow methodology, and the estimates of 3 of the experts fell within the 12 to 13 percent range, whereas the fourth expert’s estimate of 14 percent was reduced to 12.96 percent after his upward adjustments had been rejected. Hamm v. South Carolina Public Service Com’n (S.C. 1992) 309 S.C. 282, 422 S.E.2d 110. Electricity 11.3(5)

The decision of the Public Service Commission (PSC) to include in an electrical utility’s rate base 400 megawatts of investment in a nuclear power plant, which had previously been excluded from its base as part of the phase‑in of a new plant, was supported by the PSC’s findings that the rerating was the result of normal operating and engineering constraints, and that there was no evidence of operational imprudence. Hamm v. South Carolina Public Service Com’n (S.C. 1992) 309 S.C. 282, 422 S.E.2d 110. Electricity 11.3(2)

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

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

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Library References

Electricity 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 63, 74.

NOTES OF DECISIONS

In general 1

Rate increase 2

1. In general

Where plaintiff which purchased electric power from defendant utility for industrial purposes allegedly withdrew its opposition to defendant’s application for rate increase because of fraudulent misrepresentation as to rate which would be charged if such opposition was withdrawn, proper remedy, if any, of plaintiff was by petition with public service commission for a change of rate in force on ground that it was unjust, and discriminatory, and by appeal from any adverse decision thereon in the state courts and not by seeking damages from defendant for fraud and deceit. Code S.C.1952, Sections 24‑32, 24‑35, 24‑112. United Merchants & Mfrs. v. South Carolina Elec. & Gas Co., 1953, 113 F.Supp. 257.

The Public Service Commission exceeded its statutory authority by requiring the South Carolina Electric and Gas Company to refund more than seven million dollars to its retail electric customers as a result of the sale and purchase of energy between the company and other energy producers since the commission may prescribe refunds in only two specific instances: pursuant to Section 58‑28‑880 for the difference between new rates under bond and those ultimately found to be just and reasonable by the commission, and under Section 58‑27‑960 for a past charge in excess of the applicable rate. Since the rates in question had previously been approved by the commission, the refund was barred by the Section 58‑27‑960 prohibition against reparations based on unreasonableness where the rate had been approved by law. South Carolina Elec. and Gas Co. v. Public Service Commission (S.C. 1980) 275 S.C. 487, 272 S.E.2d 793.

2. Rate increase

Public Service Commission (PSC) electric utility rate increase order, which seemed to be predicated both on statement that increased competition was inevitable and future events were unforeseeable and on statement that investors’ perception of risk to industry due to deregulation and increased competition should be factor in determining utility’s rate of return, would be construed as being predicated on investors’ perception of risk, which was based on expert testimony, and, thus, would be upheld under substantial evidence rule. South Carolina Energy Users Committee v. Public Service Com’n of South Carolina (S.C. 1998) 332 S.C. 397, 505 S.E.2d 342. Electricity 11.3(6); Electricity 11.3(7)

Public Service Commission (PSC) rate increase order permitting electric utility to accumulate storm damage reserve fund to offset expenses in event of catastrophic weather damage to its equipment did not convert utility into insurer, and, thus, order did not constitute impermissible regulation of insurance. South Carolina Energy Users Committee v. Public Service Com’n of South Carolina (S.C. 1998) 332 S.C. 397, 505 S.E.2d 342. Electricity 11.3(6)

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

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

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

Library References

Electricity 11.3(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 61 to 63.

NOTES OF DECISIONS

In general 1

1. In general

Under Section 58‑27‑830, a public utility is required to bill its customers each day at the applicable rate as filed under its rate schedule; accordingly, a pro rata method operating so that a customer’s bill would be computed at a combination of the old rates and the new rates in proportion to the number of July days compared to August days in that customer’s billing cycle was a reasonable method of billing. Hamm v. South Carolina Public Service Com’n (S.C. 1984) 283 S.C. 402, 323 S.E.2d 780.

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

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

HISTORY: 1962 Code Section 24‑34; 1952 Code Section 24‑34; 1942 Code Section 8555‑2; 1932 (37) 1497; 1934 (38) 1452; 1935 (39) 207; 1937 (40) 493; 1969 (56) 740; 1972 (57) 2757.

CROSS REFERENCES

Authorization for rates and charges, electric systems, see S.C. Code of Regulations R. 103‑303.

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Library References

Electricity 11.5(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 72 to 73.

NOTES OF DECISIONS

In general 1

1. In general

A utility’s proration method, operating so that a customer’s bill would be computed at a combination of the old rates and the new, in proportion to the number of July days compared to August days in that particular customer’s billing cycle was a reasonable method of billing. Hamm v. South Carolina Public Service Com’n (S.C. 1984) 283 S.C. 402, 323 S.E.2d 780. Electricity 11.4; Gas 14.6

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

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

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

Library References

Electricity 11.3(6), 11.5(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 63, 72 to 74.

NOTES OF DECISIONS

In general 1

1. In general

Customer may apply for change at any time. The South Carolina law gives any customer of an electrical utility the right at any time to apply for a revision in utility rates. United Merchants & Mfrs. v. South Carolina Elec. & Gas Co. (C.A.4 (S.C.) 1953) 208 F.2d 685.

And change may be ordered at any time after hearing. The South Carolina law gives the Public Service Commission the right at any time to change electrical utility rates after a hearing. United Merchants & Mfrs. v. South Carolina Elec. & Gas Co. (C.A.4 (S.C.) 1953) 208 F.2d 685.

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

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

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

CROSS REFERENCES

Implementation of rate change without notice and hearing, see Section 58‑27‑870.

Library References

Electricity 11.3.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 61 to 63, 66 to 71, 74 to 78.

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

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

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

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

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

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

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

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

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

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

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

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

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

Editor’s Note

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

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

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

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

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

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

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

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

CROSS REFERENCES

Distributed energy resource program, see Section 58‑39‑130.

Net energy metering rates, metering equipment, net electrical energy measurement, report, costs, see Section 58‑40‑20.

Submittal of estimates of incremental or avoided costs for the next twelve months, hearing, regulations, report, expiration, see Section 58‑39‑140.

Library References

Electricity 11.3.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 61 to 63, 66 to 71, 74 to 78.

NOTES OF DECISIONS

In general 1

Sufficiency of evidence 2

1. In general

The Public Service Commission (PSC) exceeded its authority in making adjustments to the recoverable fuel costs of an utility on the bases of the factors enumerated in Section 58‑27‑865(E), since these factors merely provide a test for prudent or reasonable behavior, and do not create discretionary factors for PSC’s use in the computation of recoverable fuel costs. Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com’n (S.C. 1992) 310 S.C. 539, 426 S.E.2d 319.

The Public Service Commission’s (PSC) reduction of a utility’s nonrecoverable fuel cost, based on the factors enumerated in Section 58‑27‑865(E) for the determination of prudent decision making, was outside of PSC’s authority since its inquiry should have ended once it had used these factors to determine that the fuel costs were the result of management’s imprudence. Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com’n (S.C. 1992) 310 S.C. 539, 426 S.E.2d 319. Electricity 11.3(4)

Section 58‑27‑865(E) requires the Public Service Commission to evaluate the conduct of the utility in making decisions which results in higher fuel costs, and, if the utility has acted unreasonably, and higher fuel costs are incurred as a result, the utility should not be permitted to pass along the higher fuel costs to its customers. Hamm v. South Carolina Public Service Com’n (S.C. 1987) 291 S.C. 119, 352 S.E.2d 476.

A utility cannot insulate itself from its responsibility under Section 58‑27‑865 by delegating decision‑making authority to a third party. Hamm v. South Carolina Public Service Com’n (S.C. 1987) 291 S.C. 119, 352 S.E.2d 476. Public Utilities 128

2. Sufficiency of evidence

Substantial evidence supported the Public Service Commission’s (PSC) finding that the 2‑week outage offset against nonrecoverable fuel costs for prudent maintenance performed on a nuclear power plant was authorized, even though the maintenance was performed during a 3‑week forced training outage caused by imprudent management, since a utility is entitled to offset its damages to the public by maximizing its use of any down time. Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com’n (S.C. 1992) 310 S.C. 539, 426 S.E.2d 319. Electricity 11.3(6)

The Public Service Commission’s finding that utility had made a reasonable effort to minimize added fuel costs was not supported by the record, showing that the unplanned shut down of one of its nuclear reactors, which ultimately resulted in the added fuel costs, was caused by the failure of an engineering firm, hired by the utility, to modify interim seismic pipe supports to comply with NRC standards, and there was no evidence of any effort by the utility to ensure that the engineering firm’s work complied with NRC standards. Hamm v. South Carolina Public Service Com’n (S.C. 1987) 291 S.C. 119, 352 S.E.2d 476.

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

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

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

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

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

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

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

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

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

Cross References

Applicability of limitations on rate filings contained in subsection (E) to filings under Base Load Review Act, see Section 58‑33‑295.

Library References

Electricity 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 63, 74.

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

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

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

Library References

Electricity 11.3.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 61 to 63, 66 to 71, 74 to 78.

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

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

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

Library References

Electricity 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 63, 74.

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

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

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

CROSS REFERENCES

Bond required of public utility appealing from rate decision, see Section 58‑1‑30.

Library References

Electricity 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 63, 74.

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

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

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

Library References

Electricity 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 63, 74.

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

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

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

CROSS REFERENCES

Electric systems, customer relations, adjustment of bills, see S.C. Code of Regulations R. 103‑340.

Library References

Electricity 11.3, 11.5(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 61 to 63, 66 to 78.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 49, Public Utilities and Transportation.

NOTES OF DECISIONS

In general 1

1. In general

The Public Service Commission exceeded its statutory authority by requiring the South Carolina Electric and Gas Company to refund more than seven million dollars to its retail electric customers as a result of the sale and purchase of energy between the company and other energy producers since the commission may prescribe refunds in only two specific instances: pursuant to Section 58‑28‑880 for the difference between new rates under bond and those ultimately found to be just and reasonable by the commission, and under Section 58‑27‑960 for a past charge in excess of the applicable rate. Since the rates in question had previously been approved by the commission, the refund was barred by the Section 58‑27‑960 prohibition against reparations based on unreasonableness where the rate had been approved by law. South Carolina Elec. and Gas Co. v. Public Service Commission (S.C. 1980) 275 S.C. 487, 272 S.E.2d 793.

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

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

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

Library References

Electricity 11.3(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 61 to 63.

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

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

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

Library References

Electricity 11.2(2).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 60, 64 to 65.

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

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

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

Library References

Electricity 11(3).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 54 to 55.

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

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

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

Library References

Electricity 11.2.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 60, 64 to 65.

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

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

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

Library References

Electricity 11(5).

Westlaw Topic No. 145.

C.J.S. Electricity Section 51.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 24‑51] is limited to contracts as to rates and conditions of service and is not so broad as to exempt from regulation a contract to provide service in an area in which a municipality was not permitted by Code 1962 Section 24‑63 to operate without obtaining a certificate. City of Orangeburg v. Moss (S.C. 1974) 262 S.C. 299, 204 S.E.2d 377.

Commission cannot regulate contracts without regard to location of customers. This section [Code 1962 Section 24‑51] explicitly denies to the Commission any authority to regulate any contracts made with its customers without regard as to whether such customers are within or without the municipality. City of Orangeburg v. Moss (S.C. 1974) 262 S.C. 299, 204 S.E.2d 377.

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

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

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

Library References

Electricity 11.3(2), 11.3(3).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 66 to 68.

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

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

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

Library References

Electricity 11.3(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 61 to 63.

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

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

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

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

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

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

Editor’s Note

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

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

Library References

Electricity 11.3.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 61 to 63, 66 to 71, 74 to 78.

ARTICLE 9

Extension and Abandonment of Service; Transfer of Property

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

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

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

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

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

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

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

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

Editor’s Note

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

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Library References

Electricity 8.4, 9(1), 9(2).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 9 to 10, 40, 42, 45 to 48, 50.

NOTES OF DECISIONS

In general 1

1. In general

In an appeal from an order of the Public Service Commission requiring a city to sell its electric plant and facilities to an electric cooperative and assigning the area served by the city to the electric cooperative, there was no statutory authority for the Commission to assign the cooperative to the area when the city had serviced the area for 44 years and desired to continue doing so. City of Camden v. Public Service Com’n of South Carolina (S.C. 1984) 283 S.C. 380, 323 S.E.2d 519.

An electric cooperative is not an “electrical utility” within the meaning of this section [Code 1962 Section 24‑61] because the Commission may not require it to extend its facilities. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6.

Which means utility subject to Commission’s control. The words “electrical utility” are used in the second sentence of this section [Code 1962 Section 24‑61] in the same sense as that expression is used in the preceding sentence, namely, an electrical utility subject to regulation by the Public Service Commission. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6.

Order equivalent to order to extend facilities. An order of the Commission denying relief to a cooperative power company seeking to prevent a private power company from constructing a power line and directing the private power company to perform its contract to supply electricity to a broadcasting company was, in effect, an order “after due hearing” requiring the private power company to extend its facilities. Pee Dee Elec. Co‑op. v. Public Service Commission (S.C. 1956) 229 S.C. 155, 92 S.E.2d 171. Electricity 11(4)

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

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

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

Library References

Electricity 8.4, 9(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 40, 42, 45 to 48, 50.

NOTES OF DECISIONS

In general 1

1. In general

Constitutional grant of power to municipalities to operate electrical facilities is no more than a constitutional provision to permit municipal activities previously held ultra vires and does not limit power of state to regulate such activities through the Public Service Commission. Const. art. 8, Section 5; Code 1962, Sections 24‑1, 24‑62. City of Orangeburg v. Moss (S.C. 1974) 262 S.C. 299, 204 S.E.2d 377.

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

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

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

CROSS REFERENCES

Requirement that lighting structures in unassigned area be considered single premises and may be served by electric supplier pursuant to customer choice provisions of this section or by electric utility that has certificate to serve such structures, see Section 4‑9‑30.

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

LAW REVIEW AND JOURNAL COMMENTARIES

Amending of Certificate of Public Convenience. 25 S.C. L. Rev. 319.

NOTES OF DECISIONS

In general 1

Injunctions 3

Jurisdiction 2

1. In general

The exception enumerated in Section 58‑27‑1230(c) embraces a 2‑prong test. First, the territory into which the electric service will be extended must be contiguous to that already occupied by the extending utility. Second, the contiguous territory must not be receiving similar service from another utility. Under the statute, “proximity” of similar service is not a factor. Rather, the similar service must not be provided anywhere in the contiguous territory by another utility. Duke Power Co. v. Public Service Com’n of South Carolina (S.C. 1989) 300 S.C. 210, 387 S.E.2d 241.

The Bond Act exempted a city from obtaining a Certificate of Public Convenience and Necessity, as required by Section 58‑27‑1230, for an extension of electric lines financed under the Act. The exemption set forth in Section 6‑21‑400 of the Act is not limited only to agency approval for issuance of securities and establishment of utility rates. Rather, the statute exempts a borrowing municipality from obtaining any state permits when extending its system through financing under the Bond Act. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1989) 299 S.C. 95, 382 S.E.2d 888.

A municipality may either consent to expanded electrical service by a supplier assigned by the Public Service Commission, or may itself serve new premises and customers within the assigned, annexed area. Blue Ridge Elec. Co‑op., Inc. v. City of Seneca (S.C. 1989) 297 S.C. 283, 376 S.E.2d 514. Electricity 8.1(2.1)

A city that owned and operated an electric distribution system properly began servicing an area contiguous to territory occupied by the city and not already receiving service, without obtaining a certificate of public convenience as required by Section 58‑27‑1230, since the extension of service was deemed to be in the public convenience. City of Camden v. Public Service Com’n of South Carolina (S.C. 1984) 283 S.C. 380, 323 S.E.2d 519. Electricity 8.1(2.1)

Legislature’s denial to the Public Service Commission of any authority to regulate any contract made with customers of municipally operated electrical utilities without regard to whether such customers are within or without the municipality is limited to contracts as to rates and conditions of service and does not exempt from regulation a contract to provide service in area in which municipality is not permitted by statute to operate without obtaining a certificate. Code 1962, Sections 24‑51, 24‑63, 24‑67; Const. art. 8, Sections 1, 5. City of Orangeburg v. Moss (S.C. 1974) 262 S.C. 299, 204 S.E.2d 377.

Allegation that defendant power company would construct power line into noncontiguous territory without certificate of convenience and necessity in violation of law was not ground upon which to restrain competition between plaintiff public service authority and defendant power company but involved determination of purely regulatory matters over which the courts have no jurisdiction. Code 1962, Sections 24‑1 et seq., 24‑63, 24‑67, 24‑134, 24‑161 et seq.; Const. art. 9, Sections 14, 21. South Carolina Public Service Authority v. Carolina Power & Light Co. (S.C. 1964) 244 S.C. 466, 137 S.E.2d 507. Electricity 8.1(4)

The purpose underlying this section [Code 1962 Section 24‑63] was to prevent competition between utilities rendering service of the same kind so as to eliminate waste incident to a duplication of facilities. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6.

The words “electrical utility” only apply to a utility under the regulation of the Public Service Commission. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6.

Certificate not required. An order of the Commission denying relief to cooperative power company seeking to prevent a private power company from constructing a power line and directing the private power company to perform its contract to supply electricity to a broadcasting company was, in effect, an order “after due hearing” requiring the private power company to extend its facilities within the meaning of Code 1962 Section 24‑61 and therefore no certificate of public convenience was required under this section [Code 1962 Section 24‑63]. Pee Dee Elec. Co‑op. v. Public Service Commission (S.C. 1956) 229 S.C. 155, 92 S.E.2d 171. Electricity 11(4)

2. Jurisdiction

Public Service Commission had jurisdiction to consider complaints of electric cooperative concerning contract of municipality to provide electrical service to subdivision outside city limits. Code 1962, Sections 24‑51, 24‑63, 24‑67; Const. art. 8, Sections 1, 5. City of Orangeburg v. Moss (S.C. 1974) 262 S.C. 299, 204 S.E.2d 377.

Determination of territory to be served by privately owned electrical utilities is regulatory matter which has been placed within original jurisdiction of Public Service Commission, and over which the courts have no jurisdiction except by way of review. Code 1962, Sections 24‑1 et seq., 24‑63, 24‑67, 24‑134, 24‑161 et seq.; Const. art. 9, Sections 14, 21. South Carolina Public Service Authority v. Carolina Power & Light Co. (S.C. 1964) 244 S.C. 466, 137 S.E.2d 507. Electricity 8.1(4)

3. Injunctions

Complaint of public service authority alleging that it had contracted to supply electric service to newly constructed industrial plant, that defendant power company thereafter, without required certificate of public convenience and necessity, commenced construction of power line to new plant for purpose of supplying electrical service and depriving it of its customer, failed to show that it did not have an adequate remedy at law for damages sustained by reason of interference with its contract with one customer and therefore stated no cause of action for injunctive relief. Code 1962, Section 24‑63. South Carolina Public Service Authority v. Carolina Power & Light Co. (S.C. 1964) 244 S.C. 466, 137 S.E.2d 507. Injunction 1547

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

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

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

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

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

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

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

LAW REVIEW AND JOURNAL COMMENTARIES

Amending of Certificate of Public Convenience. 25 S.C. L. Rev. 319.

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

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

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

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

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

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

NOTES OF DECISIONS

In general 1

1. In general

Public Services Commission (PSC) did not have authority to address the lawfulness of city’s provision of electrical service, in action brought by county residents challenging the adequacy of electric service provided by city, where lawfulness of city’s provision of service was not raised by the pleadings. Relief from alleged inadequate electric service by city was limited by statute to ordering city to improve its electric service. City of Camden v. Public Service Com’n of South Carolina (S.C. 1999) 335 S.C. 580, 518 S.E.2d 262. Electricity 11(5)

Legislature’s denial to the Public Service Commission of any authority to regulate any contract made with customers of municipally operated electrical utilities without regard to whether such customers are within or without the municipality is limited to contracts as to rates and conditions of service and does not exempt from regulation a contract to provide service in area in which municipality is not permitted by statute to operate without obtaining a certificate. Code 1962, Sections 24‑51, 24‑63, 24‑67; Const. art. 8, Sections 1, 5. City of Orangeburg v. Moss (S.C. 1974) 262 S.C. 299, 204 S.E.2d 377.

Public Service Commission had jurisdiction to consider complaints of electric cooperative concerning contract of municipality to provide electrical service to subdivision outside city limits. Code 1962, Sections 24‑51, 24‑63, 24‑67; Const. art. 8, Sections 1, 5. City of Orangeburg v. Moss (S.C. 1974) 262 S.C. 299, 204 S.E.2d 377.

Determination of territory to be served is within original jurisdiction of Commission. The determination of the territory to be served by privately owned electrical utilities is a regulatory matter which has been placed within the original jurisdiction of the Public Service Commission, and over which the courts have no jurisdiction except by way of review. South Carolina Public Service Authority v. Carolina Power & Light Co. (S.C. 1964) 244 S.C. 466, 137 S.E.2d 507. Electricity 8.1(4)

The words “electrical utility” only apply to a utility under the regulation of the Public Service Commission. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6.

An “interested” person or corporation under this section [Code 1962 Section 24‑67] is one who has a legal right which will be injuriously affected by a proposed construction or operation. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6.

Under showing that, while co‑operative power company’s lines passed nearer broadcasting station, these lines were capable of rendering service which could be rendered by private power company’s next closest line, and that private power company, being subject to regulation, would be better able to render continuous service, Public Service Commission order directing private power company to perform its contract to supply electricity to broadcasting company was not arbitrary, capricious, or without evidentiary support. Code 1952, Sections 24‑61, 24‑63, 24‑67. Pee Dee Elec. Co‑op. v. Public Service Commission (S.C. 1956) 229 S.C. 155, 92 S.E.2d 171. Electricity 11(4)

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

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

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

Editor’s Note

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

CROSS REFERENCES

Exemption of cooperatives and foreign corporations transacting business under Electric Cooperative Act from control by Public Service Commission, see Section 33‑49‑50.

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

NOTES OF DECISIONS

In general 1

1. In general

The words “electrical utility” only apply to a utility under the regulation of the Public Service Commission. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6.

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

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

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

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

Library References

Electricity 11(2), 11.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 51 to 53, 56 to 59.

NOTES OF DECISIONS

Review 1

1. Review

Statute which appellant requested reviewing court to consider and to apply to facts of case on review, but which had not been presented to or considered by lower court, was not properly before reviewing court. Code 1952, Section 24‑69. Carroway v. Carolina Power & Light Co. (S.C. 1954) 226 S.C. 237, 84 S.E.2d 728. Appeal And Error 170(1)

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

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

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

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

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

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

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

Library References

Electricity 8.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 23, 28 to 42.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

NOTES OF DECISIONS

In general 1

1. In general

Relation of landlord and tenant created by operating agreement between traction and power companies. Columbia Ry., Gas & Electric Co. v. Jones (S.C. 1922) 119 S.C. 480, 112 S.E. 267.

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

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

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

Library References

Eminent Domain 35.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Section 45.

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

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

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

Library References

Eminent Domain 179.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Sections 312 to 321.

C.J.S. Federal Civil Procedure Section 335.

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

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

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

Library References

Eminent Domain 207.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Sections 374 to 382.

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

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

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

Library References

Electricity 8.1(1).

Eminent Domain 164.

Westlaw Topic Nos. 145, 148.

C.J.S. Electricity Sections 31 to 33, 37 to 40, 42.

C.J.S. Eminent Domain Sections 206 to 209.

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

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

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

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

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

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

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

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

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

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

Editor’s Note

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

CROSS REFERENCES

Furnishing of electric service in any area which becomes part of any municipality, see Section 58‑27‑670.

Powers of electric cooperatives, see Section 33‑49‑250.

Library References

Electricity 8.1, 11.5(1).

Eminent Domain 35.

Westlaw Topic Nos. 145, 148.

C.J.S. Electricity Sections 23, 28 to 42, 72 to 73.

C.J.S. Eminent Domain Section 45.

C.J.S. Industrial Co‑Operative Societies Sections 1 to 4, 6 to 44.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

The amended provisions of Sections 58‑27‑670 and 58‑27‑1360, effective June 6, 1984, apply to areas annexed or incorporated after the effective date of the amendment. City of Westminster v. Blue Ridge Elec. Co‑op., Inc. (S.C.App. 1988) 295 S.C. 93, 366 S.E.2d 611, appeal dismissed 295 S.C. 106, 366 S.E.2d 611.

In action for declaratory judgment to determine constitutionality of Code Section 58‑27‑1360 governing acquisition of electric utility facilities following annexation of utility’s service area, trial court did not err in refusing to determine what facility city was required to acquire nor in refusing to instruct arbiters concerning element of compensation utility was entitled to receive because rendering requested instructions would constitute denial of arbitration, would require trial judge to hold hearing on merits to determine what facilities city must acquire, and would frustrate plain language of Code Section 58‑27‑1360, which provides that arbiter shall make decision on just compensation. Blue Ridge Elec. Co‑op. v. Combined Utility System of City of Easley (S.C. 1983) 279 S.C. 135, 303 S.E.2d 91. Eminent Domain 212

2. Constitutional issues

Sections 58‑27‑670 and 58‑27‑1360, as amended by Act 431 of the 1985 General Assembly do not contravene South Carolina Constitution Article VIII, Section 15 or South Carolina Constitution Article VIII, Section 16. Thus, a franchisee possessing a valid PSC territorial assignment to serve an area subsequently annexed or duly incorporated is permitted to continue service in that area to those premises being served as of the date of annexation or incorporation. But such a franchisee is prohibited, without prior consent of the municipality, from extending or expanding service in that area by the use of any streets, alleys, public property or public ways after the date of annexation or incorporation. City of Abbeville v. Aiken Elec. Co‑op., Inc. (S.C. 1985) 287 S.C. 361, 338 S.E.2d 831.

ARTICLE 11

Adequacy of Service, Reports, Accounts, and the Like

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

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

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

Library References

Electricity 11.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 51 to 56.

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

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

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

Library References

Electricity 11.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 51 to 56.

NOTES OF DECISIONS

In general 1

1. In general

Relief from alleged inadequate electric service by city was limited by statute to ordering city to improve its electric service; statute permitting reassignment to another provider did not apply to municipalities. City of Camden v. Public Service Com’n of South Carolina (S.C. 1999) 335 S.C. 580, 518 S.E.2d 262. Electricity 11(5)

In an appeal from an order of the Public Service Commission requiring a city to sell its electric plant and facilities to an electric cooperative and assigning the area served by the city to the electric cooperative, there was no statutory authority for the Commission to assign the cooperative to the area when the city had served the area for 44 years and desired to continue doing so. City of Camden v. Public Service Com’n of South Carolina (S.C. 1984) 283 S.C. 380, 323 S.E.2d 519.

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

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

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

Library References

Automobiles 265, 290.

Electricity 14.

Westlaw Topic Nos. 48A, 145.

C.J.S. Electricity Sections 82, 86 to 88, 95 to 96.

C.J.S. Motor Vehicles Sections 512, 531 to 532, 540 to 541.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

National Electric Safety Code has no legislative sanction, although compliance with its provisions is good test of reasonable care. Foreman v. Atlantic Land Corp. (S.C. 1978) 271 S.C. 130, 245 S.E.2d 609. Electricity 14(1)

Where power line is isolated at a sufficient height in compliance with safety codes, a power company is not negligent for failing to further insulate it. Foreman v. Atlantic Land Corp. (S.C. 1978) 271 S.C. 130, 245 S.E.2d 609. Electricity 16(2)

Electric utility was not liable for injuries sustained by workmen when a crane came in contact with a power line, as there was no necessity for the crane to be operated beneath the line and the injury complained of was not reasonably foreseeable in by the utility the exercise of due care. Foreman v. Atlantic Land Corp. (S.C. 1978) 271 S.C. 130, 245 S.E.2d 609.

2. Constitutional issues

This section [Code 1962 Section 24‑93] is constitutional. Southern Power Co. v. Walker (S.C. 1911) 89 S.C. 84, 71 S.E. 356.

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

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

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

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

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

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

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

Library References

Electricity 11.3(4).

Westlaw Topic No. 145.

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

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

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

Library References

Electricity 1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 11(4).

Westlaw Topic No. 145.

ARTICLE 13

Issuance and Sales of Securities

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

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

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

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

NOTES OF DECISIONS

In general 1

1. In general

This article is obviously a regulatory measure designed for the protection of the public interest. South Carolina Elec. & Gas Co. v. Pinckney (S.C. 1950) 217 S.C. 407, 60 S.E.2d 851.

It is only a restriction on the power of a utility to issue securities and compliance with its terms cannot be said to be an act done in the creation of the debt evidenced by the securities issued, so as to render securities signed, sealed and delivered in another state subject to the South Carolina documentary tax. South Carolina Elec. & Gas Co. v. Pinckney (S.C. 1950) 217 S.C. 407, 60 S.E.2d 851.

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

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

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

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

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

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

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

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

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

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

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

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

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

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

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

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

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

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

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

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

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

 No electrical utility shall:

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

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

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

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

CROSS REFERENCES

Permissible sales to employees, see Section 58‑27‑1760.

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Compensation Section 32:187, South Carolina; Purchase of Securities by Electrical Utility Employees.

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

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

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

Library References

Electricity 2.1.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 21 to 27, 43.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Compensation Section 32:187, South Carolina; Purchase of Securities by Electrical Utility Employees.

ARTICLE 15

Commission Hearings, Investigations and Proceedings

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

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

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

CROSS REFERENCES

Public Service Commission regulations pertaining to electric systems, see S.C. Code of Regulations R. 103‑300 et seq.

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

NOTES OF DECISIONS

In general 1

1. In general

The time for filing a petition for a rehearing is clearly a matter involving “pleadings, practice and procedure.” South Carolina Elec. and Gas Co. v. Public Service Commission (S.C. 1979) 272 S.C. 316, 251 S.E.2d 753.

Nonresident witness summoned before railroad commission to testify as president of domestic corporation held exempt from service on him as director of foreign corporation, where petition prayed for rule only against domestic corporation and its officers, notwithstanding information sought by rule was within knowledge of foreign corporation. Act April 8, 1932, 37 St. at Large, p. 1497. State v. Broad River Power Co. (S.C. 1933) 168 S.C. 409, 167 S.E. 644.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

NOTES OF DECISIONS

In general 1

1. In general

Determination of territory to be served is within original jurisdiction of Commission. The determination of the territory to be served by privately owned electrical utilities is a regulatory matter which has been placed within the original jurisdiction of the Public Service Commission, and over which the courts have no jurisdiction except by way of review. South Carolina Public Service Authority v. Carolina Power & Light Co. (S.C. 1964) 244 S.C. 466, 137 S.E.2d 507. Electricity 8.1(4)

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

NOTES OF DECISIONS

In general 1

1. In general

Evidence of an electric utility’s imprudence in incurring costs which entered into its rate increase request may be provided by the Consumer Advocate as an intervenor through Section 37‑6‑605, or through the Public Service Commission’s broad investigatory powers, pursuant to Sections 58‑3‑190 and 58‑27‑1960. Hamm v. South Carolina Public Service Com’n (S.C. 1992) 309 S.C. 282, 422 S.E.2d 110. Public Utilities 165

Service on nonresident witness. Nonresident witness, summoned before Commission to testify as president of domestic corporation, was exempt from service of process on him as director of a different foreign corporation. State v. Broad River Power Co. (S.C. 1933) 168 S.C. 409, 167 S.E. 644. Process 120

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Public Utilities 172.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110, 242.

NOTES OF DECISIONS

In general 1

1. In general

The defendant could not be in contempt of a Circuit Court order where the order merely remanded the matter to the Public Service Commission (PSC), which then made appropriate orders compelling action on the defendant’s part, and where the contempt proceeding was instituted by the plaintiff; if the defendant was in contempt at all, it was from the order of the PSC, and contempt proceedings for violation of an order by the PSC must be brought by the PSC. Broad River Elec. Co‑op., Inc. v. Board of Public Works of City of Gaffney (S.C. 1995) 319 S.C. 230, 460 S.E.2d 386, rehearing denied.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

**SECTION 58‑27‑2050.** Depositions.

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Witnesses 297(1).

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 585 to 587, 597, 600, 602, 609.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

CROSS REFERENCES

Bond required of public utilities appealing from rate decision, see Section 58‑1‑30.

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

NOTES OF DECISIONS

In general 1

1. In general

The time computation statute is inapplicable to proceedings before the Public Service Commission; thus, there being no statute or other provision of law governing the computing of the 10‑day period within which a utility must file a petition for a rehearing of a commission order, the commission was free to promulgate a time computation rule extending beyond a terminal Saturday, Sunday, or holiday the time for filing or serving a required pleading. South Carolina Elec. and Gas Co. v. Public Service Commission (S.C. 1979) 272 S.C. 316, 251 S.E.2d 753.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

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

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

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

Library References

Electricity 1, 11.3(6).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 63, 74.

**SECTION 58‑27‑2150.** Rehearings.

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

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

Library References

Electricity 1, 11.3(6).

Public Utilities 167.

Westlaw Topic Nos. 145, 317A.

C.J.S. Electricity Sections 1 to 7, 63, 74.

C.J.S. Public Utilities Sections 110 to 112, 115, 119 to 129, 219 to 223, 240 to 241.

NOTES OF DECISIONS

In general 1

1. In general

When an order on rehearing is issued by the Public Service Commission (PSC) more than 20 days after the filing of a petition for rehearing, the circuit court has jurisdiction of an action for judicial review if either (1) the appealing party received notice within 20 days of the filing of the petition for rehearing that PSC acted on the petition, and the party filed an action for judicial review within 30 days of the receipt of the order on rehearing, or (2) the appealing party received no notice within 20 days of filing a petition for rehearing that PSC acted on the petition, and the party filed an action for judicial review within 30 days of the expiration of the 20‑day period. Hamm v. South Carolina Public Service Com’n (S.C. 1992) 307 S.C. 188, 414 S.E.2d 149, rehearing denied. Public Utilities 192

An order of the Public Service Commission on rehearing was not void where, although the written order on rehearing was not issued until after the expiration of the 20‑day period set forth in Section 58‑27‑2150, the PSC did “act upon” the petitions for rehearing within the 20‑day period by voting to defer to the circuit court’s assertion of jurisdiction over the matter. Hamm v. South Carolina Public Service Com’n (S.C. 1992) 307 S.C. 188, 414 S.E.2d 149, rehearing denied.

The time computation statute is inapplicable to proceedings before the Public Service Commission; thus, there being no statute or other provision of law governing the computing of the 10‑day period within which a utility must file a petition for a rehearing of a commission order, the commission was free to promulgate a time computation rule extending beyond a terminal Saturday, Sunday, or holiday the time for filing or serving a required pleading. South Carolina Elec. and Gas Co. v. Public Service Commission (S.C. 1979) 272 S.C. 316, 251 S.E.2d 753.

ARTICLE 17

Review of Commission Orders

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

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

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

Editor’s Note

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

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

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

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

CROSS REFERENCES

Applicability of Sections 58‑27‑2310 to 58‑27‑2340 to Joint Municipal Electric Power and Energy Act, see Section 6‑23‑60.

Review of findings, see Section 58‑27‑2100.

Library References

Electricity 1, 11.3(7).

Public Utilities 188.

Westlaw Topic Nos. 145, 317A.

C.J.S. Electricity Sections 1 to 7, 75 to 78.

C.J.S. Public Utilities Sections 244, 246 to 267, 271 to 272.

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative Law ‑ The Scope of Judicial Review of Decisions of Administrative Agencies in South Carolina. 23 S.C. L. Rev. 472.

NOTES OF DECISIONS

In general 1

1. In general

Customer may appeal from denial of rate relief. When the application of an electrical utility’s customer to the Public Service Commission for relief, alleging the rates charged it were discriminatory, was denied by the Commission, the customer had a right under South Carolina law to appeal from this decision to the courts of the State. United Merchants & Mfrs. v. South Carolina Elec. & Gas Co. (C.A.4 (S.C.) 1953) 208 F.2d 685.

When an order on rehearing is issued by the Public Service Commission (PSC) more than 20 days after the filing of a petition for rehearing, the circuit court has jurisdiction of an action for judicial review if either (1) the appealing party received notice within 20 days of the filing of the petition for rehearing that PSC acted on the petition, and the party filed an action for judicial review within 30 days of the receipt of the order on rehearing, or (2) the appealing party received no notice within 20 days of filing a petition for rehearing that PSC acted on the petition, and the party filed an action for judicial review within 30 days of the expiration of the 20‑day period. Hamm v. South Carolina Public Service Com’n (S.C. 1992) 307 S.C. 188, 414 S.E.2d 149, rehearing denied. Public Utilities 192

Public Service Commission action seeking injunctive relief against city for violation of its order, under Code 1962 Section 24‑118 [Code 1976 Section 58‑27‑210] was not barred by previous action by city against Commission for judicial review of that order under Code 1962 Section 24‑161 [Code 1976 Section 58‑27‑2310] on the ground that the first action was between the same parties for the same cause, as the two actions are based on separate statutes. South Carolina Public Service Commission v. City of Rock Hill (S.C. 1977) 268 S.C. 405, 234 S.E.2d 228.

Determination of territory to be served by privately owned electrical utilities is regulatory matter which has been placed within original jurisdiction of Public Service Commission, and over which the courts have no jurisdiction except by way of review. Code 1962, Sections 24‑1 et seq., 24‑63, 24‑67, 24‑134, 24‑161 et seq.; Const. art. 9, Sections 14, 21. South Carolina Public Service Authority v. Carolina Power & Light Co. (S.C. 1964) 244 S.C. 466, 137 S.E.2d 507. Electricity 8.1(4)

Allegation that defendant power company would construct power line into noncontiguous territory without certificate of convenience and necessity in violation of law was not ground upon which to restrain competition between plaintiff public service authority and defendant power company but involved determination of purely regulatory matters over which the courts have no jurisdiction. Code 1962, Sections 24‑1 et seq., 24‑63, 24‑67, 24‑134, 24‑161 et seq.; Const. art. 9, Sections 14, 21 South Carolina Public Service Authority v. Carolina Power & Light Co. (S.C. 1964) 244 S.C. 466, 137 S.E.2d 507. Electricity 8.1(4)

Commission’s orders have force of law. Orders of the Public Service Commission issued under the powers and authority vested in it have the force and effect of law. Pee Dee Elec. Co‑op. v. Public Service Commission (S.C. 1956) 229 S.C. 155, 92 S.E.2d 171. Public Utilities 169.1

They are presumptively valid. The Commission’s findings of fact are presumptively correct and its orders presumptively reasonable and valid. Pee Dee Elec. Co‑op. v. Public Service Commission (S.C. 1956) 229 S.C. 155, 92 S.E.2d 171.

And will not be reversed unless arbitrary or unsupported by evidence. A court cannot substitute its judgment for that of the Commission upon a question as to which there is room for a difference of intelligent opinion, and an order of the Commission will not be set aside except upon a convincing showing that it is without evidence to support it or that it embodies arbitrary or capricious action as a matter of law. Pee Dee Elec. Co‑op. v. Public Service Commission (S.C. 1956) 229 S.C. 155, 92 S.E.2d 171. Public Utilities 194

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

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

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

CROSS REFERENCES

Bond required of public utility appealing from rate decision, see Section 58‑1‑30.

Library References

Electricity 1, 11.3(7).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 75 to 78.

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

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

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

Library References

Electricity 1, 11.3(7).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 1 to 7, 75 to 78.

ARTICLE 19

Penalties

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

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

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

CROSS REFERENCES

Electric systems, customer relations, adjustment of bills, see S.C. Code of Regulations R. 103‑340.

Library References

Electricity 11.1(3), 21.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 59, 136 to 137.

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

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

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

Library References

Electricity 11.1(3), 21.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 59, 136 to 137.

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

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

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

Library References

Electricity 11.3(7).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 75 to 78.

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

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

HISTORY: 1962 Code Section 24‑174; 1952 Code Section 24‑174; 1942 Code Section 8555‑7; 1932 (37) 1497; 2006 Act No. 318, Section 218, eff May 24, 2006.

Library References

Electricity 11.3(7).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 75 to 78.

**SECTION 58‑27‑2450.** Principals responsible for act of agents.

 In construing and enforcing the provisions of this chapter relating to penalties the act, omission or failure of any officer, agent or employee of any corporation or person acting within the scope of his official duties or employment shall in every case be deemed to be also the act, omission or failure of such corporation or person.

HISTORY: 1962 Code Section 24‑175; 1952 Code Section 24‑175; 1942 Code Section 8555‑7; 1932 (37) 1497.

Library References

Electricity 11.1(3), 21.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 59, 136 to 137.

**SECTION 58‑27‑2460.** Penalties not applicable to municipality but to officers, agents or employees personally.

 The penalties herein prescribed shall not be deemed to apply to municipalities, but the act, omission or failure of an officer, agent or employee of a municipality constituting a violation of this chapter or of any lawful order of the Commission, or any part thereof, although acting for the municipality, shall subject him personally to the penalties herein prescribed.

HISTORY: 1962 Code Section 24‑176; 1952 Code Section 24‑176; 1942 Code Section 8555‑7; 1937 (40) 1497.

Library References

Electricity 11.1(3), 21.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 59, 136 to 137.

ARTICLE 21

Termination of Electric Service Due to Nonpayment

**SECTION 58‑27‑2510.** Definitions.

 For purposes of this article:

 (1) “Licensed health care provider” means a licensed medical doctor, physician’s assistant, nurse practitioner, or advanced‑practice registered nurse.

 (2) “Special needs account customer” means the account of a residential customer:

 (a) when the customer can furnish to the utility a certificate on a form provided by the utility and signed by a licensed health care provider that states that termination of electric service would be dangerous to the health of the customer or a member of his household at the premises to which electric service is rendered; or

 (b) who suffers from Alzheimer’s disease or dementia as certified by a licensed health care provider.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006; 2012 Act No. 122, Section 5, eff February 22, 2012.

**SECTION 58‑27‑2520.** Termination procedures; contents.

 (A) Each electrical utility must establish written procedures for termination of service due to nonpayment for a special needs account customer at any time and for all residential customers during weather conditions marked by extremely cold or hot temperatures. Each electrical utility must submit its procedures to the Office of Regulatory Staff by November 1, 2006. Any subsequent revisions must be submitted semiannually by March first or September first.

 (B) The procedures for termination must include the following:

 (1) notification procedures so that the customer is made aware of an impending termination and the time within which he must make arrangements for payment prior to termination;

 (2) arrangements for a payment arrangement plan to enable a residential customer, who has a satisfactory payment history as determined by the public utility, to pay by installments where the customer is unable to pay the full amount due for electric service;

 (3) a procedure to advise customers who are unable to pay the full amount due or who are not approved for a payment arrangement plan that they may contact local social service agencies to determine the availability of public or private assistance with the payment of electric bills;

 (4) a schedule of termination that takes into account the availability of the acceptance of payment and the reconnection of service; and

 (5) the standards for determining weather conditions marked by extremely cold or hot temperatures.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

Library References

Electricity 11.1(1), 11.4.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 52 to 53.

**SECTION 58‑27‑2530.** Third‑party notification program.

 An electrical utility must consider establishing and maintaining a third‑party notification program to allow a residential customer to designate a third party to be notified if the electric service is scheduled for termination.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

Library References

Electricity 11.1(1), 11.4.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 52 to 53.

**SECTION 58‑27‑2540.** Disconnection when public safety emergency exists.

 Notwithstanding another provision of this article, an electrical utility may disconnect a customer when it is determined that a public safety emergency exists.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

Library References

Electricity 11.1(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 52 to 53.

**SECTION 58‑27‑2550.** Promulgation of regulations.

 Nothing in the article prohibits the commission from promulgating detailed regulations governing termination of service by an electrical utility so long as the regulations include the termination and third‑party notification protections provided by this article.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

Library References

Electricity 11.1(1).

Westlaw Topic No. 145.

C.J.S. Electricity Sections 52 to 53.

**SECTION 58‑27‑2560.** Private right of action; duty of care.

 This article does not create a new private right of action or a new duty of care. This article does not diminish, increase, affect, or evidence any duty of care existing under the laws of this State prior to the effective date of this article.

HISTORY: 2006 Act No. 313, Section 5, eff June 1, 2006.

ARTICLE 23

Lease of Renewable Electric Generation Facilities Program

**SECTION 58‑27‑2600.** Definitions.

 As used in this article:

 (A) “Customer‑generator lessee” means the lessee of a renewable electric generation facility which:

 (1) generates electricity from a renewable energy resource;

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

 (a) not more than the lesser of one thousand kilowatts (1,000 kW AC) or one hundred percent of contract demand if a nonresidential customer; or

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

 (3) is located on a premises or residence owned, operated, leased, or otherwise controlled by the customer‑generator lessee that is also the premises or residence served by the renewable electric generation facility;

 (4) is interconnected and operates in parallel phase and synchronization with the retail electric provider for the premises or residence and has been approved by that retail electric provider;

 (5) is intended only to offset part or all of the customer‑generator lessee’s own retail electrical energy requirements for each respective premises or residence or to enable the customer‑generator lessee to obtain a credit for or engage in the sale of energy from the renewable electric generation facility to that customer‑generator lessee’s retail electric provider or its designee; and

 (6) meets all applicable safety, performance, interconnection, and reliability standards established by the commission or the retail electric provider, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the federal Energy Regulatory Commission, and any local governing authorities.

 (B) “Retail electric provider” means an electrical utility as defined in Section 58‑27‑10 and also means other entities that provide retail electric service in South Carolina, but excluding electric cooperatives organized under the laws of a state other than South Carolina.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Sections 9, 10, provide as follows:

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

“SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties’ right to appeal the matter.”

**SECTION 58‑27‑2610.** Lease of renewable electric generation facility.

 (A) An entity that owns a renewable electric generation facility, located on a premises or residence owned or leased by an eligible customer‑generator lessee to serve the electric energy requirements of that particular premises or residence or to enable the customer‑generator lessee to obtain a credit for or engage in the sale of energy from the renewable electric generation facility to that customer‑generator lessee’s retail electric provider or its designee, shall be permitted to lease such facility exclusively to a customer‑generator lessee under a lease, provided that the entity complies with the terms, conditions, and restrictions set forth within this article and holds a valid certificate issued by the Office of Regulatory Staff. An entity owning renewable electric generation facilities in compliance with the terms of this article shall not be considered an “electrical utility” under Section 58‑27‑10 if the renewable electric generation facilities are only made available to a customer‑generator lessee for the customer‑generator lessee’s use on the customer‑generator lessee’s premises or the residence where the renewable electric generation facilities are located, or for the sale of energy to that customer‑generator lessee’s retail electric provider or its designee, and pursuant to a lease.

 (B) All customer‑generator lessees that interconnect renewable electric generation facilities to a retail electric provider’s transmission or distribution system must enroll in the applicable rate schedules made available by that retail electric provider, subject to the participation limitations set forth therein or in the policy adopted by the retail electric provider not subject to Section 58‑40‑20(B), and the customer‑generator lessee shall otherwise comply with all requirements of Section 58‑40‑10, et seq., or the policy adopted by the retail electric provider not subject to Section 58‑40‑10, et seq.

 (C) To comply with the terms of this article, each customer‑generator lessee renewable electric generation facility shall serve only one premises or residence, and shall not serve multiple customer‑generator lessees or multiple premises or residences.

 (D) Any lease of a renewable electric generation facility not entered into pursuant to this article is prohibited. The owner of a renewable electric generation facility subject to any lease entered into outside of this program shall be considered an “electrical utility” under Section 58‑27‑10.

 (E) This section shall not be construed as allowing any sales of electricity from renewable electric generation facilities directly to any customer of any retail electric provider by the owner. This article shall not be construed as abridging or impairing any existing rights or obligations, established by contract or statute, of retail electric providers to serve South Carolina customers. The electrical output from any renewable electric generation unit leased pursuant to this program shall be the sole and exclusive property of the customer‑generator lessee.

 (F) An entity and its affiliates that lawfully provide retail electric service to the public may offer leases of renewable generation facilities in those areas or territories where it provides retail electric service. No such provider or affiliate shall offer or enter into leases of renewable generation facilities in areas served by another retail electric provider.

 (G) The costs an electrical utility incurs in marketing, installing, owning, or maintaining solar leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating electrical utility customers through rates, provided, however, that an electrical utility and the customer‑generator lessees which lease facilities from it may participate on an equal basis with other lessors and lessees in any applicable programs provided pursuant to Chapter 39 of this title, 1976 Code Sections 58‑39‑110, et seq. and nothing in this section shall prevent the reasonable and prudent costs of a utility’s distributed energy resource programs, including the provision of incentives to its own lessees and other allowable costs, from being reflected in a utility’s rates as provided for in Chapter 39 or as otherwise permitted under generally applicable regulatory principles.

 (H) The total installed capacity of all renewable electric generation facilities on a retail electric provider’s system that are leased pursuant to this article shall not exceed two percent of the previous five‑year average of the retail electric provider’s South Carolina residential and commercial contribution to coincident retail peak demand and two percent of the previous five‑year average of the retail electric provider’s South Carolina industrial contribution to coincident retail peak demand. A provider may refuse to interconnect with customers where to do so would result in this limitation being exceeded. Every retail electric provider must establish a program for new installations of leased equipment to permit the reservation of capacity on its system including provisions to prevent or discourage abuse of such programs. Such programs must provide that only prospective individual customer‑generator lessees may apply for, receive, and hold reservations. Each reservation shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned except as part of the sale of the underlying premises. Requests for reservations to electrical utilities as defined in Section 58‑27‑10 shall accompany applications for interconnection of the leased facilities pursuant to Chapter 40, Title 58 and the reservation shall remain in force only so long as the application or permit for interconnection remains active. Electrical utilities as defined in Section 58‑27‑10 shall submit programs establishing the terms of such reservations to the commission for approval.

 (I) Notwithstanding the provisions of subsection (H), for an electrical utility for which more than fifty percent of the electricity that it generates in South Carolina comes from renewable resources, the total installed capacity of all renewable electric generation facilities on its system that are leased pursuant to this article shall not exceed one‑tenth of one percent of the previous five‑year average of the electrical utility’s South Carolina residential and commercial contribution to coincident retail peak demand and one‑tenth of one percent of the previous five‑year average of the electrical utility’s South Carolina industrial contribution to coincident retail peak demand. Electrical utilities meeting the requirements of this subsection shall not be required to establish a capacity reservation program as required by subsection (H).

 (J)(1) The provisions of this Article 23 related to leased generation facilities shall not apply to:

 (a) facilities serving a single premises that are not interconnected with a retail electric provider;

 (b) facilities owned by customer generators but financed by a third party; or

 (c) facilities used exclusively for standby emergency service or participation in an approved standby generation program operated by a retail electric provider.

 (2) The commission may promulgate regulations consistent with this section interpreting the scope of these exemptions as to electrical utilities.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Sections 9, 10, provide as follows:

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

“SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties’ right to appeal the matter.”

CROSS REFERENCES

Investigation of claims of violations, see Section 58‑27‑2640.

Library References

Electricity 8.4.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 40, 42.

**SECTION 58‑27‑2620.** Application; approval; updates; investigations; revocation; civil penalties; contested cases.

 (A) Before any entity other than an entity lawfully providing retail electric service to the public in this State commences to do business as a lessor of renewable electric generation facilities under the terms of this article, that entity shall submit an application to the Office of Regulatory Staff and provide such information as the Office of Regulatory Staff shall require. In performing its responsibilities under this article, the Office of Regulatory Staff must balance the state’s interest in promoting a market for the provision of renewable electric generation facilities as permitted by this article with an appropriate level of protection for customer‑generator lessees to ensure fair and accurate marketing practices and ensure acceptable performance of renewable electric generation facilities and lessors.

 (B) The application shall be accompanied by such information as the Office of Regulatory Staff shall require and the Office of Regulatory Staff may condition its approval on such terms as the Office of Regulatory Staff shall determine to be just and reasonable to advance the goals of this article of balancing the state’s interest in promoting a market for the provision of renewable electric generation facilities as permitted by this article, with an appropriate level of protection for customer‑generator lessees and to ensure fair and accurate marketing practices.

 (C) Upon review of the application and a finding that the applicant is fit, willing, and able to conduct business in accordance with the provisions of this article, the Office of Regulatory Staff shall approve the application and issue the lessor a certificate permitting the lessor to market and lease renewable electric generation facilities to customer‑generator lessees under the terms of this article.

 (D) The Office of Regulatory Staff is authorized to require the regular updating of information by certificate holders.

 (E) The Office of Regulatory Staff shall receive, compile and investigate customer complaints arising under this article and shall attempt to negotiate consent agreements or other settlements resolving alleged violations of this article.

 (F) As concerns potential violations of this article, lessors of distributed generation resources and their officers, agents, employees, or customers shall be subject to the investigatory powers provided in Sections 58‑4‑50 and 58‑4‑55 to the Office of Regulatory Staff regarding public utilities.

 (G) For the protection of the consuming public, the Office of Regulatory Staff may file a petition with the Administrative Law Court requesting revocation of a certificate for violations of this article. In appropriate circumstances, the Office of Regulatory Staff may request the immediate revocation of a certificate.

 (H) It shall be a violation of law punishable by civil penalty of not more than ten thousand dollars per occurrence for any person subject to subsection (A), either directly or indirectly:

 (1) to solicit business as a lessor of renewable electric generation facilities without a valid certificate issued under this section or otherwise in violation of the terms of this article; or

 (2) to engage in any unfair or deceptive practice in the leasing of renewable electric generation facilities.

 (I) An aggrieved person with standing may file a request for a contested case of a decision of the Office of Regulatory Staff with the Administrative Law Court within thirty days of such decision.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Sections 9, 10, provide as follows:

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

“SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties’ right to appeal the matter.”

Library References

Electricity 8.4.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 40, 42.

**SECTION 58‑27‑2630.** Registration of facility; registry; public inspection of registry; report.

 (A) Not more than thirty days after installation of a renewable electric generation facility leased to a customer‑generator lessee, the lessor shall register the facility with the Office of Regulatory Staff on forms developed and provided by the Office of Regulatory Staff. This registration information must include:

 (1) the name, mailing, and electronic mail address and telephone number of the lessor‑owner;

 (2) the nameplate generating capacity of the facility and its expected annual energy output;

 (3) physical location of the facility;

 (4) the name, mailing, email address, and telephone number of the customer‑generator lessee;

 (5) a description of the intended use of the facility and its output;

 (6) a list of all federal, state, and local licenses and permits required for the construction and operation of the facility, along with a statement regarding whether each has been obtained or applied for;

 (7) the date the facility began or will begin operating;

 (8) the name of the retail electric provider to which the facility has been or will be interconnected;

 (9) an affidavit from the customer‑generator lessee that it will not sell, resell, or attempt to sell or resell the electrical output of the facility to any person, corporation, or entity, other than the customer‑generator lessee’s retail electric provider or its designee, that the primary purpose for the operation of the renewable electric generation facility is to generate electricity for the benefit of the premises where it is located, and that the facility has been or will be operated in substantial compliance with all federal and state laws, rules, and regulations and all local codes and ordinances.

 (B) Office of Regulatory Staff shall maintain a registry of facilities registered pursuant to subsection (A). This information must be available for inspection by the public and is subject to the South Carolina Freedom of Information Act. The Office of Regulatory Staff may require the updating of information on the registry.

 (C) The Office of Regulatory Staff shall review the program established pursuant to this article and issue a report to the State Regulation of Public Utilities Review Committee no later than December 31, 2016, relating to its review, including recommendations regarding the expansion, reduction, or continuance of the program.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Sections 9, 10, provide as follows:

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

“SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties’ right to appeal the matter.”

Library References

Electricity 8.4.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 40, 42.

**SECTION 58‑27‑2640.** Investigation of claims of violations.

 The Office of Regulatory Staff shall have the authority to investigate claims of violations of the provisions of Section 58‑27‑2610 committed by electrical utilities and lessors of renewable electric generation facilities.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Sections 9, 10, provide as follows:

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

“SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties’ right to appeal the matter.”

Library References

Electricity 8.4.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 40, 42.

**SECTION 58‑27‑2650.** Section 58‑27‑2610 contingently effective.

 Section 58‑27‑2610 shall not become effective until the commission has approved net energy metering rates referenced in Chapter 40, Title 58 for all investor‑owned electrical utilities serving more than one hundred thousand retail customer accounts in South Carolina.

HISTORY: 2014 Act No. 236 (S.1189), Section 4, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Sections 9, 10, provide as follows:

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

“SECTION 10. Article 23, Chapter 27, Title 58 shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this article shall be invalidated. Nothing herein shall be construed to affect the parties’ right to appeal the matter.”

Library References

Electricity 8.4.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 40, 42.