CHAPTER 31

Public Service Authority

ARTICLE 1

General Provisions

**SECTION 58‑31‑10.** Creation of South Carolina Public Service Authority; offices.

There is hereby created a body corporate and politic to be known as the South Carolina Public Service Authority (herein called the "Public Service Authority"), with a principal office in the town of Moncks Corner near the Santee‑Cooper power dam and navigation locks in Berkeley County, and with such branch offices in the State of South Carolina as the directors may determine.

HISTORY: 1962 Code Section 59‑1; 1952 Code Section 59‑1; 1942 Code Section 8555‑11; 1934 (38) 1507; 1944 (43) 1430.

**SECTION 58‑31‑20.** Board of directors; advisory board.

(A) The Public Service Authority consists of a board of twelve directors who reside in South Carolina and who have the qualifications stated in this section, as determined by the State Regulation of Public Utilities Review Committee pursuant to Section 58‑3‑530(14), before being appointed by the Governor with the advice and consent of the Senate as follows: one from each congressional district of the State; one from each of the counties of Horry, Berkeley, and Georgetown who reside in authority territory and are customers of the authority; and two from the State at large, one of whom must be chairman. Two of the directors must have substantial work experience within the operations of electric cooperatives or substantial experience on an electric cooperative board, including one of the two who must have substantial experience within the operations or board of a transmission or generation cooperative. A director shall not serve as an employee or board member of an electric cooperative during his term as a director. Each director shall serve for a term of seven years, except as provided in this section. At the expiration of the term of each director and of each succeeding director, the Governor, with the advice and consent of the Senate, must appoint a successor, who shall hold office for a term of seven years or until his successor has been appointed and qualified. In the event of a director vacancy due to death, resignation, or otherwise, the Governor must appoint the director's successor, with the advice and consent of the Senate, and the successor‑director shall hold office for the unexpired term. A director may not receive a salary for services as director until the authority is in funds, but each director must be paid his actual expense in the performance of his duties, the actual expense to be advanced from the contingent fund of the Governor until the time the Public Service Authority is in funds, at which time the contingent fund must be reimbursed. After the Public Service Authority is in funds, the compensation and expenses of each member of the board must be paid from these funds, and the compensation and expenses must be fixed by the advisory board established in this section. Members of the board of directors may be removed for cause, pursuant to Section 1‑3‑240(C), by the Governor of the State, the advisory board, or a majority thereof. A member of the General Assembly of the State of South Carolina is not eligible for appointment as Director of the Public Service Authority during the term of his office. No more than two members from the same county may serve as directors at any time.

(B) Candidates for appointment to the board must be screened by the State Regulation of Public Utilities Review Committee and, prior to confirmation by the Senate, must be found qualified by meeting the minimum requirements contained in subsection (C). The review committee must submit a written report to the Clerk of the Senate setting forth its findings as to the qualifications of each candidate. A candidate must not serve on the board, even in an interim capacity, until he is screened and found qualified by the State Regulation of Public Utilities Review Committee.

(C) Each member must possess abilities and experience that are generally found among directors of energy utilities serving this State and that allow him to make valuable contributions to the conduct of the authority's business. These abilities include substantial business skills and experience, but are not limited to:

(1) general knowledge of the history, purpose, and operations of the Public Service Authority and the responsibilities of being a director of the authority;

(2) the ability to interpret legal and financial documents and information so as to further the activities and affairs of the Public Service Authority;

(3) with the assistance of counsel, the ability to understand and apply federal and state laws, rules, and regulations including, but not limited to, Chapter 4 of Title 30 as they relate to the activities and affairs of the Public Service Authority; and

(4) with the assistance of counsel, the ability to understand and apply judicial decisions as they relate to the activities and affairs of the Public Service Authority.

(D) For the assistance of the board of directors of the Public Service Authority, there is hereby established an advisory board to be known as the advisory board of the South Carolina Public Service Authority, to be composed of the Governor of the State, the Attorney General, the State Treasurer, the Comptroller General, and the Secretary of State, as ex officio members, who must serve without compensation other than necessary traveling expenses. The advisory board must perform any duties imposed on it pursuant to this chapter, and must consult and advise with the board of directors on any and all matters which by the board of directors may be referred to the advisory board. The board of directors must make annual reports to the advisory board, which reports must be submitted to the General Assembly by the Governor, in which full information as to all of the acts of said board of directors shall be given, together with financial statement and full information as to the work of the authority. On July first of each year, the advisory board must designate a certified public accountant or accountants, resident in the State, for the purpose of making a complete audit of the affairs of the authority, which must be filed with the annual report of the board of directors. The Public Service Authority must submit the audit to the General Assembly.

HISTORY: 1962 Code Section 59‑2; 1952 Code Section 59‑2; 1942 Code Section 8555‑12; 1934 (38) 1507; 1973 (58) 716; 1974 (58) 2121; 2005 Act No. 137, Section 5, eff May 25, 2005; 2012 Act No. 279, Section 26, eff June 26, 2012.

Editor's Note

Section 3 of 1974 Act No. 988 (1974 (58) 2121), provides that:

"Notwithstanding any other provision of law to the contrary, including Section 1 of this act [amending this section], the board of directors shall consist of all members serving on the board of directors on the effective date of this act, and all members serving on the board of directors on the effective date of this act are hereby specifically authorized to complete their respective terms of office as provided by the law or laws in effect prior to the effective date of this act." The act was approved April 18, 1974, and made effective on approval.

2005 Act No. 137, Section 10, provides as follows:

"Responsibilities and duties of the directors of the Public Service Authority created by the provisions of this act are in addition to responsibilities and duties created by other provisions of law."

2005 Act No. 137, Section 11, provides in part as follows:

"The provisions in SECTIONS 4 and 5 are effective for directors confirmed on or after this act's effective date. Notwithstanding any other provision of this act, the Senate Judiciary Committee shall act instead of the State Regulation of Public Utilities Review Committee, mutatis mutandis, for any appointment made on or before July 1, 2005."

**SECTION 58‑31‑30.** Powers of Authority.

(A) The Public Service Authority has power to develop the Cooper River, the Santee River, and the Congaree River in this State, as instrumentalities of intrastate, interstate, and foreign commerce and navigation; to produce, distribute, and sell electric power; to acquire, treat, distribute, and sell water at wholesale; to reclaim and drain swampy and flooded lands; and to reforest the watersheds of rivers in this State; and also has all powers which may be necessary or convenient for the exercise of these powers including, without limiting the generality of the foregoing, the following powers:

(1) to have perpetual succession as a corporation;

(2) to sue and be sued;

(3) to adopt, use, and alter a corporate seal;

(4) to acquire, purchase, hold, use, lease, mortgage, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest therein;

(5) to divert water from the Tail Race Canal by means of canals, flumes, or otherwise and to build, construct, maintain, and operate canals, dams, locks, aqueducts, reservoirs, draw‑spans, ditches, drains, and roads, and to lay and construct any tunnels, penstocks, culverts, flumes, conduits, mains, and other pipes necessary or useful in connection therewith;

(6) to divert waters from the Santee River by means of a canal or canals, flume or flumes, or otherwise, and to construct and maintain a dam of any height or size for the purpose of impounding said waters and to discharge the same into the Cooper River, or otherwise;

(7) to build, acquire, construct, and maintain power houses and any and all structures, ways and means, necessary, useful or customarily used and employed in the manufacture, generation, and distribution of water power, steam electric power, hydroelectric power, and any and all other kinds of power, including power transmission lines, poles, telephone lines, substations, transformers, and generally all things used or useful in the manufacture, distribution, purchase, and sale of power generated by water, steam, or otherwise;

(8) to manufacture, produce, generate, transmit, distribute, and sell water power, steam electric power, hydroelectric power, or mechanical power within and without the State of South Carolina;

(9) to reclaim and drain swampy and flooded lands;

(10) to reforest the watersheds of the Cooper, Santee, and Congaree Rivers and to prevent soil erosion and floods;

(11) to make bylaws for the management and regulation of its affairs;

(12) to appoint officers, agents, employees, and servants, to prescribe their duties, and to fix their compensation;

(13) to fix, alter, charge, and collect tolls and other charges for the use of their facilities of, or for the services rendered by, or for any commodities furnished by, the Public Service Authority at rates to be determined by it, these rates to be at least sufficient to provide for payment of all expenses of the Public Service Authority, the conservation, maintenance, and operation of its facilities and properties, the payment of principal and interest on its notes, bonds, and other evidences of indebtedness or obligation, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such notes, bonds, or other evidences of indebtedness or obligation;

(14) as necessary to borrow money, make and issue negotiable notes, bonds, and other evidences of indebtedness including refunding and advanced refunding notes, bonds, and other evidences of indebtedness, of the Public Service Authority; to secure the payment of these obligations or any part of them by mortgage, lien, pledge, or deed of trust, on all or any of its property, contracts, franchises, or revenues including the proceeds of the refunding and advanced refunding notes, bonds, and other evidences of indebtedness and the investments in which these proceeds are invested and the earning on and income from them; to invest its monies including without limitation its revenues and the proceeds of these notes, bonds, or other evidences of indebtedness, in obligations of, or obligations the principal of and interest on which are guaranteed by or are fully secured by contracts with, the United States of America, in obligations of any agency, instrumentality, or corporation which has been or may be created by or pursuant to an act of Congress of the United States as an agency, instrumentality, or corporation of them, in direct and general obligations of the State of South Carolina, and in certificates of deposit issued by any bank, trust company, or national banking association. The authority, when investing in certificates of deposit, shall invest in certificates of deposit issued by institutions authorized to do business in South Carolina if the institutions offer terms which, in the opinion of the authority, are equal to or better than those offered by other institutions; to make such agreements with the purchasers or holders of the notes, bonds, or other evidences of indebtedness, or with others in connection with any of these notes, bonds, or other evidences of indebtedness, whether issued or to be issued, as the Public Service Authority shall deem advisable; and in general to provide for the security for said notes, bonds, or other evidences of indebtedness and the rights of the holders of them; provided, that in the exercise of the powers in this section granted to issue advanced refunding notes, bonds, or other evidences of indebtedness, the Public Service Authority may, but is not required to, avail itself of or comply with any of the provisions of the Advanced Refunding Act, Sections 11‑21‑10 to 11‑21‑80;

(15) to endorse or otherwise guarantee the obligations of a corporation all of the voting stock of which the Public Service Authority may own or acquire;

(16) without limitation of the foregoing, to borrow money from the United States Government or any corporation or agency created, designed, or established by the United States;

(17) to make contracts of every name and nature and to sue and be sued thereon; to enter into agreements providing for binding arbitration between the parties thereto; and to execute all instruments necessary or convenient for the carrying on of its business;

(18) to have power of eminent domain;

(19) to mortgage, pledge, hypothecate, or otherwise encumber all or any of the property, real, personal, or mixed, or facilities, or revenues of the Public Service Authority as security for notes, bonds, evidences of indebtedness, or other obligations of the Public Service Authority;

(20) to do all acts and things necessary or convenient to carry out the powers granted to it by this chapter or any other law;

(21) to investigate, study, and consider all undeveloped power sites and navigation projects in the State and to acquire or develop the same as need may arise in the same manner as herein provided. Provided, always, nevertheless, that said investigations, studies, and considerations of said South Carolina Public Service Authority herein created shall be limited to the Congaree River and its tributaries below the confluence of the Broad and Saluda Rivers and the Wateree tributary of the Santee River at and near a point at or near Camden, South Carolina. Provided, however, that the Public Service Authority shall have no power at any time or in any manner to pledge the credit and the taxing power of the State or any of its political subdivisions, nor shall any of its obligations or securities be deemed to be obligations of the State or of any of its political subdivisions; nor shall the State be legally, equitably, or morally liable for the payment of principal of and interest on such obligations or securities. The State of South Carolina does hereby pledge to and agree with any person, firm, or corporation, the government of the United States and any corporation or agency created, designated, or established by the United States, subscribing to or acquiring the notes, bonds, evidences of indebtedness, or other obligations to be issued by the Public Service Authority for the construction of any project, that the State will not alter or limit the rights hereby vested in the Public Service Authority until the said notes, bonds, evidences of indebtedness, or other obligations, together with the interest thereon, are fully met and discharged; provided, that nothing herein contained shall preclude such limitation or alteration if and when and after adequate provisions shall be made by law for the protection of those subscribing to or acquiring such notes, bonds, evidences of indebtedness, or other obligations of the Public Service Authority. The State of South Carolina or any political subdivision shall in no way be responsible for any debts or obligations contracted by or for the authority, and the board of directors of the authority, the advisory board, and the officers shall make no debt whatsoever for the payment of which the State or any political subdivision shall in any way be bound. It is intended that the project to be developed hereunder and any and all projects undertaken by the provisions of this chapter shall be financed as self‑liquidating projects and that the credit and taxing powers of the State, or its political subdivisions, shall never be pledged to pay said debts and obligations;

(22) to acquire or purchase, if requested to do so, or to construct, operate, and maintain all structures and facilities necessary, useful, or customarily used and employed in the treatment and distribution of water for industrial, commercial, domestic, or agricultural purposes within the counties of Berkeley, Calhoun, Charleston, Clarendon, Colleton, Dorchester, Orangeburg, and Sumter. The provisions of this section do not apply to the acquisition or purchase of existing electric systems;

(23) to acquire, treat, transmit, distribute, and sell water at wholesale within the counties of Berkeley, Calhoun, Charleston, Clarendon, Colleton, Dorchester, Orangeburg, and Sumter if requested in writing to do so by the governing body of any incorporated municipality, by the governing body of any special purpose district providing water service in the unincorporated areas of each county, or by the governing body of each county for those unincorporated areas not so provided water service by a special purpose district. The authority may not transfer water from one river basin to another except for those located in the counties specified in this item. However, the authority shall prepare and maintain its books and records for its water supply operations separate and apart from its books and records for the generation, transmission, and distribution of electric power. The costs of water supply operations, including the loss of the generation of hydroelectric power, may not affect rates and charges for electric service. Water must be offered for sale by the authority on a nondiscriminatory basis without regard to whether electricity is also purchased from the authority.

Without limiting the generality of the foregoing, the Public Service Authority shall have power and is authorized as necessary to issue its negotiable bonds and to secure the payment of the same by mortgage, lien, pledge, or deed of trust on or of all or any of its property, contracts, franchises, or revenues. These bonds must be authorized by resolution of the board of directors and bear the date or dates, be in the forms, and contain the provisions as the board of directors may determine. Any resolution or resolutions authorizing any notes, bonds, or other evidences of indebtedness may contain provisions, which must be a part of the contract with the holders of them, as to (a) the rates of tolls and other charges for use of the facilities of, or for the services rendered by, or for the commodities furnished by the Public Service Authority, (b) the setting aside of reserves or sinking funds and the regulation and disposition of them, (c) reserving the right to redeem the notes, bonds, or other evidences of indebtedness at such prices, not exceeding one hundred five per cent of the principal amount of them and accrued interest, as may be provided, (d) limitations on the issuance of additional bonds, (e) the terms and provisions of any mortgage or deed of trust securing the bonds or under which the same may be issued, and (f) any other or additional agreements with the holders of the notes, bonds, or other evidences of indebtedness.

The Public Service Authority may enter into any mortgages, deeds of trust, or other agreements with any bank or trust company or other person or persons in the United States having power to enter into the same, including the United States Government or any agency or creature thereof, as security for the notes, bonds, or other evidences of indebtedness and may transfer, convey, mortgage, or pledge all or any of the property, contracts, franchises, or revenues of the Public Service Authority thereunder. Such mortgage, deed of trust, or other agreement may contain provisions as may be customary in the instruments or as the Public Service Authority may authorize including, but without limitation, provisions as to (a) the construction, operation, maintenance, and repair of the properties or facilities of the Public Service Authority, (b) the application of funds and the safeguarding of funds on hand or on deposit, (c) the rights and remedies of the trustee and the holders of the bonds, (d) possession of the mortgaged properties, and (e) the terms and provisions of the bonds, and also may provide for a franchise for operation of the property and business of the Public Service Authority, or any part thereof, to any person, firm, or corporation, including the United States Government, or any agency thereof, acquiring the mortgaged property or any part thereof upon foreclosure for a period of not to exceed twenty years from the date of the acquisition.

(B) The powers conferred by subsection (A) upon the board of directors may not be construed to give the board of directors the power to sell, lease, or dispose of, except by way of mortgage or deed of trust, all of the property, real, personal, or mixed, of the authority, but the board of directors may sell, lease, or dispose of any surplus property which it may acquire and which the board of directors deems not to be necessary for the purpose of the development. Without prior approval from the General Assembly by act, the authority must not sell, transfer, lease, dispose of, or convey any property, real, personal, or mixed, of the authority used in the generation, transmission, or distribution of electricity, beyond that property considered to be surplus. However, the authority may lease property owned by the authority, including property within the authority's Federal Energy Regulatory Commission Project boundaries, provided the lease does not substantially or materially impair its ability to meet electricity generation, transmission, and distribution needs of its ongoing operation including an adequate reserve capacity and such growth in needs as reasonably may be forecasted. Further, the lease must be in the best interests of the authority as defined in Section 58‑31‑55(A)(3).

Without prior approval from the General Assembly by act, the authority must not inquire into the feasibility of the sale, transfer, lease, disposal, or conveyance of property, real, personal, or mixed, of the authority that is used in the generation, transmission, or distribution of electricity unless the sale, transfer, lease, disposition, or conveyance would not materially impair the authority's ability to meet generation, transmission, and distribution needs of its ongoing operation including an adequate reserve capacity and such growth in needs as reasonably may be forecasted.

HISTORY: 1962 Code Section 59‑3; 1952 Code Section 59‑3; 1942 Code Section 8555‑13; 1934 (38) 1507; 1974 (58) 2297; 1978 Act No. 419 Section 1, eff March 6, 1978; 1978 Act No. 604, eff July 13, 1978; 1987 Act No. 45 Section 1, eff April 28, 1987; 1987 Act No. 156 Sections 1, 2, eff June 10, 1987; 1989 Act No. 79, Section 1, eff May 17, 1989; 1996 Act No. 283, Sections 1, 2, eff May 6, 1996; 2005 Act No. 137, Section 6, eff May 25, 2005.

Editor's Note

Section 2 of 1978 Act No. 419 provides as follows:

"This act shall apply to all existing contracts entered into by the Public Service Authority."

2005 Act No. 137, Section 10, provides as follows:

"Responsibilities and duties of the directors of the Public Service Authority created by the provisions of this act are in addition to responsibilities and duties created by other provisions of law."

**SECTION 58‑31‑40.** Remedies upon default of obligations; appointment of receiver.

Any resolution authorizing any notes, bonds or other evidences of indebtedness, and any mortgage or trust indenture or other agreement entered into pursuant thereto, may, whether or not any such obligations are or are to be secured by mortgage, provide that in the event that (a) default shall be made in the payment of the interest on any or all such obligations when and as the same shall become due and payable, (b) default shall be made in the payment of the principal of any or all such obligations when and as the same shall become due and payable, whether at the maturity thereof, by call for redemption or otherwise or (c) default shall be made in the performance of any agreement made with the purchasers or successive holders of any such obligations, and such default shall have continued for such period, if any, as may be prescribed by said resolution or said mortgage, trust indenture or other agreement in respect thereof, the trustees under such mortgage, trust indenture or other agreement entered into in respect of the obligations authorized thereby (or, if there shall be no such mortgage, trust indenture or other agreement, or trustee thereunder, a trustee appointed in the manner provided in such resolution or resolutions by the holders of not less than twenty‑five per centum in aggregate principal amount of the obligations authorized thereby and at the time outstanding) may, and upon the written request of the holders of twenty‑five per centum in aggregate principal amount of the obligations authorized by such resolution or resolutions at the time outstanding, shall, in his or its own name, but for the equal and proportionate benefit of the holders of all of such obligations, and with or without having possession thereof:

(1) By mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the holders of such obligations;

(2) Bring suit upon such obligations, the coupons appurtenant thereto, or both;

(3) By action or suit in equity, require the Authority to account as if it were the trustee of an express trust for the holders of such obligations;

(4) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such obligations;

(5) After such notice to the Authority as such resolution may provide, declare the principal of all such obligations due and payable, and if all defaults shall have been made good, then with the written consent of the holder or holders of twenty‑five per centum in aggregate principal amount of such obligations at the time outstanding, annul such declaration and its consequences;

Provided, however, that the holders of a majority in principal amount of such obligations at the time outstanding shall, by instrument or instruments in writing delivered to such trustee, have the right to direct and control any and all action taken or to be taken by such trustee under this section.

Any such resolution, mortgage, indenture or agreement may likewise provide that in any such suit, action or proceeding, any such trustee, whether or not all of such obligations have been declared due and payable, and with or without possession of any thereof, shall be entitled as of right to the appointment of a receiver who may enter upon and take possession of all or any part of the properties of the Authority and operate and maintain the same, and fix, collect and receive rates, tolls, and charges sufficient to provide revenues to pay the items specified in clause 13 of Section 58‑31‑30 hereof and all costs and disbursements of such suit, action or proceeding, such revenues to be applied in conformity with the provisions of this chapter and the resolution or resolutions authorizing such obligations, or the mortgage, indenture or other agreement pursuant to which the same shall have been issued. In any suit, action or proceeding by any such trustee, the reasonable fees, counsel fees and expenses of such trustee and of the receiver or receivers, if any, shall constitute taxable disbursements, and all costs and disbursements allowed by the court shall be a first charge upon any revenues pledged to secure the payment of such obligations. The circuit court of the county of Richland, and the circuit court of any other county wherein is located the principal office or any branch office of the Authority or wherein any of its property or facilities may be located, or any of such courts, shall have jurisdiction of any such suit, action or proceeding by any such trustee, and of all property involved therein. In addition to the powers hereinafter specifically provided for, each such trustee shall have and possess all powers necessary or appropriate for the exercise of any thereof, or necessary or appropriate for the general representation of the holders of such obligations in the enforcement of their right or rights.

None of the remedies provided for in this section shall be deemed to be exclusive, and any one or more than one or all thereof shall be available in connection with any default and with any subsequent default.

HISTORY: 1962 Code Section 59‑4; 1952 Code Section 59‑4; 1942 Code Section 8555‑14; 1939 (41) 95.

**SECTION 58‑31‑50.** Right to and procedure for acquisition of property by Authority.

The Public Service Authority may acquire by purchase, gift, condemnation, or in any other manner, any lands, waters, water rights, riparian rights, flowage rights, easements, licenses, franchises, engineering data, construction plans, or estimates prepared for the development of the Cooper River and Santee River or any other real or personal property necessary or useful in carrying out any of its purposes or exercising any of its powers; but before the board of directors may acquire and pay for, without condemnation any plans, specifications, franchises, or any kind of property, belonging to or to belong to any private corporation previously chartered by this State or any other state for the purpose of developing the Santee‑Cooper project, a full report of the proposed purchase must be submitted in writing to the advisory board, which shall order a public hearing on the proposed purchase and due notice of the hearing must be given by advertisement to be published in at least three daily papers published in the State twice each week for two consecutive weeks. The advisory board shall carefully investigate the proposed purchase, and shall file its report in writing with the Secretary of State and the board of directors of the Public Service Authority. If the report recommends a price for the proposed purchase, the board of directors may enter into a contract for the purchase; if the report disapproves the proposed purchase, the board of directors may submit any amended proposed agreement, which must be heard by the advisory board in the same manner, or shall proceed with condemnation; the price to be paid to any private corporation for any of its property is subject to the approval of the original purchaser of the first notes, bonds, or other evidence of indebtedness issued under this chapter. The Public Service Authority shall have the right of eminent domain to carry out the purposes of this chapter.

HISTORY: 1962 Code Section 59‑5; 1952 Code Section 59‑5; 1942 Code Section 8555‑15; 1934 (38) 1507; 1987 Act No. 173 Section 50, eff nine months from approval by Governor (approved by Governor on June 30, 1987).

**SECTION 58‑31‑55.** Standards for director's discharge of duties; immunity.

(A) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he reasonably believes to be in the best interests of the Public Service Authority. As used in this chapter, "best interests" means a balancing of the following:

(a) preservation of the financial integrity of the Public Service Authority and its ongoing operation of generating, transmitting, and distributing electricity to wholesale and retail customers on a reliable, adequate, efficient, and safe basis, at just and reasonable rates, regardless of the class of customer;

(b) economic development and job attraction and retention within the Public Service Authority's present service area or areas within the State authorized to be served by an electric cooperative or municipally owned electric utility that is a direct or indirect wholesale customer of the authority; and

(c) subject to the limitations of Section 58‑31‑30(B) and item (3)(a) of this section, exercise of the powers of the authority set forth in Section 58‑31‑30 in accordance with good business practices and the requirements of applicable licenses, laws, and regulations.

(B) In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the Public Service Authority whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(C) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (B) unwarranted.

(D) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(E) An action against a director for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has occurred, or within two years after the time when the cause of action is discovered or should reasonably have been discovered, whichever occurs sooner. This limitations period does not apply to breaches of duty which have been concealed fraudulently.

HISTORY: 2005 Act No. 137, Section 7, eff May 25, 2005.

Editor's Note

2005 Act No. 137, Section 10, provides as follows:

"Responsibilities and duties of the directors of the Public Service Authority created by the provisions of this act are in addition to responsibilities and duties created by other provisions of law."

**SECTION 58‑31‑56.** Conflict of interest transactions.

(A) A conflict of interest transaction is a transaction with the Public Service Authority in which a director of the Public Service Authority has a direct or indirect interest. A conflict of interest transaction is not voidable by the Public Service Authority solely because of the director's interest in the transaction if any one of the following is true:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors, and the board of directors or a committee authorized, approved, or ratified the transaction; or

(2) the transaction was fair to the Public Service Authority and its customers.

If item (1) has been accomplished, the burden of proving unfairness of any transaction covered by this section is on the party claiming unfairness. If item (1) has not been accomplished, the party seeking to uphold the transaction has the burden of proving fairness.

(B) For purposes of this section, a director of the Public Service Authority has an indirect interest in a transaction if:

(1) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or

(2) another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the Public Service Authority.

(C) For purposes of subsection (A)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (A)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

HISTORY: 2005 Act No. 137, Section 7, eff May 25, 2005.

Editor's Note

2005 Act No. 137, Section 10, provides as follows:

"Responsibilities and duties of the directors of the Public Service Authority created by the provisions of this act are in addition to responsibilities and duties created by other provisions of law."

**SECTION 58‑31‑57.** Suits for breach of duty.

Wholesale and retail customers of the Public Service Authority and electric cooperatives that are indirect customers of the Public Service Authority may bring suit against Public Service Authority directors asserting a breach of any duty arising under Sections 58‑31‑55 and 58‑31‑56. If it is proved that a director violated the provisions of Section 58‑31‑55 or Section 58‑31‑56, he is subject to liability under the same theories of liability as for a breach of duty by a corporate director pursuant to Title 33 and South Carolina common law. Liability under this section shall be limited to disgorgement of any ill‑gotten gain and damages of not more than fifty thousand dollars per occurrence and reasonable attorney's fees and costs. If the customer prevails, the court may also grant appropriate equitable relief and may award reasonable attorney's fees and costs. Any remedy granted or damages awarded pursuant to this section do not relieve a director from criminal liability or preclude criminal prosecution.

HISTORY: 2005 Act No. 137, Section 7, eff May 25, 2005.

Editor's Note

2005 Act No. 137, Section 10, provides as follows:

"Responsibilities and duties of the directors of the Public Service Authority created by the provisions of this act are in addition to responsibilities and duties created by other provisions of law."

**SECTION 58‑31‑60.** Duties and powers of board of directors.

The powers of the Public Service Authority shall be exercised by the board of directors, with the exception of such duties as this chapter shall impose upon the advisory board. A majority of the members of the board of directors shall constitute a quorum of the board for the purpose of organizing the Public Service Authority and conducting the business thereof and for all other purposes and all action may be taken by vote of a majority of directors present unless in any case the bylaws shall require a larger number. The board of directors shall have full authority to manage the property and business of the Public Service Authority, and to prescribe, amend and repeal bylaws, rules and regulations governing the manner in which the general business of the Public Service Authority may be conducted and the powers granted to it may be exercised and embodied. The board of directors shall fix and determine the number of officers, agents, employees and servants of the Public Service Authority and their respective compensation and duties, and may delegate to one or more of their number, or to one or more of such officers, agents, employees or servants, such powers and duties as it may deem proper. Each director shall give bond for the faithful performance of his duties as such director in the penal sum of at least ten thousand dollars, the premium for the first bonds to be paid by the Governor from his contingent fund to be reimbursed when the Authority is in funds, and all subsequent premiums to be paid from funds of the Authority. The board of directors shall require similar bonds in such amounts as they may determine from any or all officers, agents and employees in position of responsibility or trust. The position of director of the Public Service Authority is not a public office, and the State shall in no wise be responsible for the acts of the directors, but each director and his surety and the Public Service Authority shall be responsible for all acts of the director in connection with the functions herein provided for.

Forthwith upon the appointment and organization of the Public Service Authority it shall proceed with the improvement and development of the Cooper River, the Santee River, the Congaree River and their tributaries upstream to the confluence of the Broad and Saluda Rivers and upstream on the Wateree River to a point at or near Camden for the aid and benefit of commerce and navigation, flood control and drainage, and for the development of the hydroelectric power inherent therein. The Authority shall investigate other power and navigation projects in the State and shall have power to acquire or develop desirable ones as early as practicable.

HISTORY: 1962 Code Section 59‑6; 1952 Code Section 59‑6; 1942 Code Section 8555‑16; 1934 (38) 1507; 1974 (58) 2121.

**SECTION 58‑31‑70.** Use of facilities and operation of business of Authority.

The use of the facilities of the Public Service Authority and the operation of its business shall be subject to the rules and regulations from time to time adopted by the Public Service Authority; provided, however, that the Public Service Authority shall not be authorized to do anything which will impair the security of the holders of the notes, bonds or other evidences of indebtedness of the Public Service Authority or violate any agreement with them or for their benefit.

HISTORY: 1962 Code Section 59‑7; 1952 Code Section 59‑7; 1942 Code Section 8555‑17; 1934 (38) 1507.

**SECTION 58‑31‑80.** Purpose of Authority; exemption from taxation; Authority shall make certain payments in lieu of taxes.

The Public Service Authority is created primarily for the purpose of developing the Cooper River, the Santee River, the Congaree River, and their tributaries upstream to the confluence of the Broad and Saluda Rivers and upstream on the Wateree River to a point at or near Camden and other similar projects as instrumentalities of intrastate, interstate, and foreign commerce and navigation; of reclaiming wastelands by the elimination or control of flood waters, reforesting the watersheds of the rivers and improving public health conditions in those areas. It is found that the project authorized by this chapter is for the aid of intrastate, interstate, and foreign commerce and navigation, and that the aid and improvement of intrastate, interstate, and foreign commerce and navigation, the development, sale, and distribution of hydroelectric power, and the treatment, sale, and distribution of water at wholesale are in all respects for the benefit of all the people of the State, for the improvement of their health and welfare and material prosperity, and are public purposes, and being a corporation owned completely by the people of the State, the Public Service Authority is required to pay no taxes or assessments upon any of the property acquired by it for this project or upon its activities in the operation and maintenance of the project, except as provided in this section. The securities and other obligations issued by the Public Service Authority, their transfer and the income from them at all times are free from taxation. However, unless otherwise provided in any contract with an agency of the United States Government as assists in financing the projects contemplated in this section or any other agency from which the funds may be secured, all electrical energy developed by the authority must be sold at rates in the determination of which the taxes which the project would pay if privately owned, to the extent provided in this section, as well as other rate‑making factors properly entering into the manufacture and distribution of the energy must be considered. After payment of necessary operating expenses and all annual debt requirements on bonds, notes, or other obligations at any time outstanding and the discharge of all annual obligations arising under finance agreements with the United States or any agency or corporation of the United States and indentures or other instruments under which bonds have been, or may be issued, the authority shall pay annually to the various counties of the State a sum of money equivalent to the amount paid for taxes on properties at the time of their acquisition by the authority, acquired, or to be acquired, in the counties, and the authority shall pay to all municipalities and school districts in the counties in which the authority has acquired, or may acquire properties, a sum of money equivalent to the amount paid for taxes to the school districts and municipalities on the properties at the time of their acquisition by the authority; and no other taxes may be considered in the fixing of the rates of the authority. From the funds to be paid under this section the counties, school districts, and municipalities annually shall apply a sum sufficient for the debt requirements for bonds and other obligations of the counties, school districts, and municipalities for which the properties were taxed at the time of their acquisition by the authority, with the remainder of the funds to be expended in accordance with law.

HISTORY: 1962 Code Section 59‑8; 1952 Code Section 59‑8; 1942 Code Section 8555‑18; 1934 (38) 1507; 1941 (42) 365; 1987 Act No. 156 Section 3, eff June 10, 1987.

**SECTION 58‑31‑90.** Payments in lieu of taxes to certain counties and school districts.

Beginning with the tax year 1965, after the payment of all necessary operating expenses and all annual debt requirements on bonds, notes or other obligations at any time outstanding and the discharge of all obligations arising under finance agreements and indentures or other instruments under which bonds or obligations have been or may be issued, and after payment into the general fund of the State the sum of at least two hundred twenty‑five thousand dollars annually, the South Carolina Public Service Authority shall pay annually to the counties of Orangeburg, Calhoun, Sumter, Clarendon, Berkeley, Horry and Georgetown and school districts therein additional sums of money in lieu of taxes on lands acquired prior to the year 1950 for reservoirs, lakes, canals, structures and adjoining properties of the Santee‑Cooper Hydroelectric and Navigation Project in amounts equivalent to that paid in 1964 for sums in lieu of taxes on such lands to the counties and school districts therein. Provided, that all additional sums to be paid under this section shall be used for the support of the public schools within the counties and districts involved.

HISTORY: 1962 Code Section 59‑8.1; 1965 (54) 326.

**SECTION 58‑31‑100.** Payment of additional sums in lieu of taxes.

Beginning with the fiscal year 1974‑75 and in each fiscal year thereafter, after payment of the sums in lieu of taxes provided for by Sections 58‑31‑80 and 58‑31‑90, the Public Service Authority shall make the following additional payments in lieu of taxes:

(1) To any county in which it holds legal title to lands developed for commercial or residential purposes, a sum equal to ten percent of the annual rentals received from the lease of those lands during the fiscal year.

(2) To the counties in which it owns, or leases and operates, electric generating facilities, a sum equal to fifteen percent of the amount paid in the fiscal year into the General Fund of the State, which sum shall be allocated among the counties concerned in the proportion which the generating capacity of the Public Service Authority located and in operation in each such county bears to the total of the Public Service Authority's generating capacity located and in operation in all such counties.

(3) To the counties of Berkeley, Horry and Georgetown, a sum equal to ten percent of the amount paid during the fiscal year into the General Fund of the State, which sum shall be allocated among those counties in the proportion which the kilowatt hour sales, excluding sales for resale, made by the Public Service Authority in each such county bears to the total of the kilowatt hour sales, excluding sales for resale, made by the Public Service Authority in all such counties.

HISTORY: 1962 Code Section 59‑8.2; 1974 (58) 2352.

**SECTION 58‑31‑110.** Net earnings; disposition and use.

The South Carolina Public Service Authority is a corporation, completely owned by and to be operated for the benefit of the people of this State. Any and all net earnings of the Public Service Authority not necessary for the prudent conduct and operation of its business in the best interests of the Public Service Authority as defined by Section 58‑31‑55(A)(3) or to pay the principal of and interest on its bonds, notes, or other evidences of indebtedness or other obligations, or to fulfill the terms and provisions of any agreements made with the purchasers or holders thereof or others must be paid over semiannually to the State Treasurer for the general funds of the State and must be used to reduce the tax burdens on the people of this State. Nothing in this section shall prohibit the authority from paying to the State each year up to one percent of its projected operating revenues, as such revenues would be determined on an accrual basis, from the combined electric and water systems.

HISTORY: 1962 Code Section 59‑9; 1952 Code Section 59‑9; 1942 Code Section 8555‑19; 1934 (38) 1507; 2005 Act No. 137, Section 8, eff May 25, 2005.

Editor's Note

2005 Act No. 137, Section 10, provides as follows:

"Responsibilities and duties of the directors of the Public Service Authority created by the provisions of this act are in addition to responsibilities and duties created by other provisions of law."

**SECTION 58‑31‑120.** Authority shall use labor and materials from this State.

As far as may be practicable and not in conflict with any statute of the United States or the rules or regulations of any agency thereof which may assist in financing any project undertaken pursuant to this chapter, the Public Service Authority shall use and give preference to South Carolina workmen and South Carolina materials. As far as may be practicable, and not to conflict with any rules of the United States Government or any agency thereof which may assist in financing the development herein proposed, the Public Service Authority shall use South Carolina materials and shall make purchases within the State where possible. As far as may be practicable, the labor to be employed on the development herein provided for shall be resident South Carolina workmen, and the same shall be allocated to each county in the State ratably, as the need for employment may exist, and, as far as may be practicable, as reflected by the rolls of the unemployed in the various public employment offices in each county in South Carolina.

HISTORY: 1962 Code Section 59‑10; 1952 Code Section 59‑10; 1942 Code Section 8555‑20; 1934 (38) 1507.

**SECTION 58‑31‑130.** Credit and taxing power of the State and its subdivisions shall not be involved; liability for payment of securities.

Nothing contained in the provisions of this chapter shall, at any time or in any manner, involve the credit and taxing power of the State, or of any of its political subdivisions; nor shall any of the securities or other evidences of indebtedness authorized to be issued in and by this chapter ever be or constitute obligations of the State or of any of its political subdivisions; nor shall the State or any of its political subdivisions ever be liable or responsible, in any way, for the payment of the principal or interest of or on such security or other evidences of indebtedness.

HISTORY: 1962 Code Section 59‑11; 1952 Code Section 59‑11; 1942 Code Section 8555‑21; 1934 (38) 1507.

**SECTION 58‑31‑140.** State and its subdivisions shall never levy taxes or appropriate funds for project.

It is hereby declared that the State and any of its political subdivisions shall never levy any tax to pay any obligations incurred in building this project or make any appropriation to carry on the work of developing the Santee‑Cooper power project.

HISTORY: 1962 Code Section 59‑12; 1952 Code Section 59‑12; 1942 Code Section 8555‑22; 1934 (38) 1507.

**SECTION 58‑31‑150.** Amendments or repeal of chapter; effect.

The right to alter, amend, or repeal this chapter is hereby expressly reserved and disclosed, but no such amendment or repeal shall operate to impair the obligation of any contract made by said corporation under any power conferred by this chapter.

HISTORY: 1962 Code Section 59‑13; 1952 Code Section 59‑13; 1942 Code Section 8555‑23; 1934 (38) 1507.

**SECTION 58‑31‑160.** Authority may construct Santee‑Cooper project.

The Public Service Authority may construct the Santee‑Cooper hydroelectric and navigation project as outlined and described in the license issued by the Federal Power Commission to Columbia Railway and Navigation Company for the construction of project No. S. C. 199, dated April 2, 1926 and amended February 14, 1927, May 31, 1933 and May 13, 1937, and on license drawings prepared and filed with said Commission at the time of the issuance of said license and said amendments and thereafter as required by the terms and provisions of said license and the amendatory plans and drawings filed or to be filed by the Public Service Authority with said Commission and approved or to be approved by said Commission or as outlined and described in any new license or licenses that the Authority may obtain from said Commission under the terms of this chapter.

HISTORY: 1962 Code Section 59‑14; 1952 Code Section 59‑14; 1942 Code Section 8555‑27; 1939 (41) 277.

**SECTION 58‑31‑170.** Designation of Lake Moultrie and Lake Marion.

One of the lakes belonging to the State, constructed by the South Carolina Public Service Authority on the Cooper River near Pinopolis, in Berkeley County, shall hereafter be known as Lake Moultrie, and the other lake belonging to the State, constructed by the Authority on the Cooper River in the same area, shall be known as Lake Marion.

HISTORY: 1962 Code Section 59‑15; 1944 (43) 1182.

**SECTION 58‑31‑180.** Diversion of water from Sampit River, Penney Royal Creek and their tributaries for use in operation of generating plant.

(1) The South Carolina Public Service Authority is hereby authorized to divert water from the Sampit River, Penney Royal Creek and their tributaries for use in connection with the operation of an electric generating plant to be constructed in Georgetown County between the Sampit River, Penney Royal Creek and Winyah Bay and to discharge such water, or so much thereof as is not consumed, into Winyah Bay. Such diversion shall not exceed two thousand cubic feet of water per second each day, and may be accomplished by canals, conduits, ditches, pipes or other proper structures.

(2) Nothing contained in this section shall be construed to waive the public law or regulations of the State of South Carolina as to pollution control.

(3) This section shall not affect the right of any person to recover, in a court of competent jurisdiction, damages sustained as a result of the diversion of water permitted by this section.

HISTORY: 1962 Code Section 59‑16; 1970 (56) 2484.

**SECTION 58‑31‑190.** Diversion of water from Santee River and its tributaries for use in operation of generating plant.

The South Carolina Public Service Authority is hereby authorized to divert water from the Santee River, and its tributaries for use in connection with the operation of an electric generating plant to be constructed in Georgetown County between the Sampit River, Penney Royal Creek and Winyah Bay and to discharge such water, or so much thereof as is not consumed into Turkey Creek, and thereto Penney Royal Creek and thereto into Sampit River. Such diversion shall not exceed one hundred cubic feet of water per second each day, and shall be accomplished by pipes or other underground structures. Such diversion shall not in any manner reduce the water level or flow rate of the Santee River and its tributaries.

Nothing contained in this section shall be construed to waive the public law or regulations of the State of South Carolina as to pollution control.

This section shall not affect the right of any person to recover, in a court of competent jurisdiction, damages sustained as a result of the diversion of water permitted by this section.

HISTORY: 1962 Code Section 59‑16.1; 1973 (58) 623.

**SECTION 58‑31‑200.** Joint ownership of nuclear electric generating station in Fairfield County.

The South Carolina Public Service Authority shall have the power to become a joint owner with one or more privately owned electric utilities in existing or future nuclear electric generation units, and related transmission facilities, to be constructed on a site at or near Parr Shoals in Fairfield County and specifically the power to plan, finance, acquire, own, operate, and maintain joint ownership interest in such plants and facilities necessary or incidental to the generation and transmission of electric power generated at the plant, and to make such plans and enter into such contracts or other agreements as are necessary or convenient for the planning, financing, acquisition, construction, ownership, operation, and maintenance of the plant and facilities; provided, however, that the Public Service Authority's joint ownership interest shall be equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction of the plant and facilities and the Public Service Authority shall own and control a like percentage of the electrical output thereof; provided, further, that the Public Service Authority shall be severally liable, in proportion to its joint ownership interest in the plant and facilities, for the acts, omissions, or obligations performed, omitted, or incurred by the operator or other owners of the plant while acting as the designated agent of the Public Service Authority for purposes of constructing, operating, or maintaining the plant and facilities or any of them, but shall not otherwise be liable, jointly or severally, for the acts, omissions, or obligations of the operator or other owners of the plant; nor shall any money or property of the Public Service Authority be credited or otherwise applied to the account of the operator or other owners of the plant, or be charged with any debt, lien, or mortgage as a result of any debt or obligation of the operator or other owners of the plant.

HISTORY: 1962 Code Section 59‑17; 1973 (58) 79; 2006 Act No. 281, Section 1, eff May 23, 2006.

**SECTION 58‑31‑210.** Public Service Authority empowered to enter joint ownership of electric generation and transmission facilities with Central Electric Power Cooperative.

The South Carolina Public Service Authority shall have the power to become a joint owner with Central Electric Power Cooperative, Inc., of electric generation and transmission facilities, the power to plan, finance, acquire, own, operate and maintain an undivided interest in such plants and facilities necessary or incidental to the generation and transmission of electric power and the power to make plans and enter into such contracts as are necessary or convenient for the planning, financing, acquisition, construction, ownership, operation and maintenance of such plants and facilities; provided, however, that the Public Service Authority shall own a percentage of such plants and facilities equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction of the plants and facilities and shall own and control a like percentage of the electrical output thereof; provided, further, that the Public Service Authority shall be severally liable in proportion to its ownership share of such plants and facilities for the acts, omissions or obligations performed, omitted or incurred by Central Electric Power Cooperative, Inc., while acting as the designated agent of the Public Service Authority for purposes of constructing, operating or maintaining the plants and facilities or any of them, but shall not otherwise be liable, jointly or severally, for the acts, omissions or obligations of Central Electric Power Cooperative, Inc.; nor shall any money or property of the Public Service Authority be credited or otherwise applied to the account of Central Electric Power Cooperative, Inc., or be charged with any debt, lien or mortgage as a result of any debt or obligation of Central Electric Power Cooperative, Inc. Nothing in this section shall be construed to prevent the Public Service Authority from leasing facilities or interests therein from Central Electric Power Cooperative, Inc., and incurring obligations under such leases.

HISTORY: 1979 Act No. 46 eff April 16, 1979.

**SECTION 58‑31‑220.** Authorization for Public Service Authority to adopt calendar year as its fiscal year.

The Public Service Authority may adopt the calendar year as its fiscal year, but the adoption does not affect payments made by the Authority to the general fund of the State.

HISTORY: 1988 Act No. 658, Part II, Section 31, eff June 8, 1988.

**SECTION 58‑31‑230.** Public Service Authority broadband authority.

(A) As used in this section, unless the context otherwise requires:

(1) "Unaffiliated communications service provider" means a "communications service provider", as defined under Section 58‑9‑3010(8), and including, but not limited to, electric cooperatives and their broadband affiliates, that is not controlled by or under common control with the Public Service Authority.

(2) "Excess fiber capacity" means fiber optic capacity owned or controlled by the Public Service Authority, constructed to provide internal communications in support of the provision of electric services, and that is unused, available, and in excess of the capacity needed by the Public Service Authority, including its reserve margins, for its internal communications in furtherance of its provision of electric service.

(B) Subject to the provisions set forth in this section, the Public Service Authority shall only lease excess fiber capacity that is used for providing any broadband service to a third party through an arrangement in which the unaffiliated communications service provider provides the broadband service.

(C) The Public Service Authority may cause or allow unaffiliated communications service providers to lease excess fiber capacity through an arrangement in which the unaffiliated communications service provider uses such capacity to provide broadband service; provided such lease shall, subject to the requirements of Section 58‑31‑30(a)(13), charge rates, fees, or other charges on a nondiscriminatory basis pursuant to a written contract, at market rates and on terms and conditions that are not harmful to competition.

(D) With regard to the lease of excess fiber capacity pursuant to subsection (C), the Public Service Authority must:

(1) submit rates, terms, and conditions to the Office of Regulatory Staff for review and comment;

(2) post rates, fees, and other charges along with terms and conditions on its publicly available website;

(3) within fifteen business days of entering any written contract post conspicuous notice of the contract on its publicly available website; and

(4) within ten days after a written request, make each contract for the lease of excess fiber capacity available for public inspection on an unredacted basis.

(E) Nothing in this section conveys or confers any implied or express grant of authority to the Public Service Authority to directly provide broadband service or act as a broadband service provider, as these terms are defined in Section 58‑9‑3010(5) and (6) and any legal rights which may or may not belong to the Public Service Authority related to broadband services, if any, are neither expanded nor contracted by this section.

(F) To the extent the Public Service Authority determines, in its sole discretion, to provide any communications service provider including, without limitation, electric cooperatives and their broadband affiliates, access to any pole, duct, conduit, easement, or right of way owned or controlled by the Public Service Authority, for the purpose of providing retail broadband service, it must provide such access to any other communications service provider for the purpose of providing retail broadband service on a nondiscriminatory basis and subject to the Public Service Authority's terms and conditions. Nothing in this section shall prohibit the Public Service Authority from denying access to a pole, duct, or conduit if it determines there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles. The terms of this subsection shall not apply to leasing by the authority of excess fiber capacity.

(G) The Administrative Law Court shall have authority and jurisdiction to enforce compliance with this section.

(H) Nothing in this section:

(1) subjects the Public Service Authority to regulation by the FCC;

(2) constitutes an exercise of, or an obligation or intention to exercise, the right of a state under 47 U.S.C. Section 224(c) to regulate the rates, terms, and conditions for pole attachments, as defined in 47 U.S.C. Section 224(a)(4); or

(3) constitutes a certification or an obligation to certify to the FCC under 47 U.S.C. Section 224.

HISTORY: 2020 Act No. 175 (H.3780), Section 5, eff September 29, 2020.

Editor's Note

2020 Act No. 175, Section 6, provides as follows:

"SECTION 6. This act does not convey or confer any implied or express grant of authority to an investor‑owned electric utility to provide broadband facilities or broadband services as defined in this act and any legal rights which may or may not belong to investor‑owned electric utilities to provide broadband facilities or broadband services at the time of the passage of this act are neither expanded nor contracted by its passage."

ARTICLE 3

Providing Electric Service

**SECTION 58‑31‑310.** Definitions.

The following words and phrases as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) The term "electrical utility" includes 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 production of light, heat or power to or for the public for compensation; but it shall not include an electric cooperative or municipality and shall not include a person, corporation furnishing electricity only to himself or itself, their residents, employees or tenants when such electricity is not resold or used by others.

(2) The term "present service area" means the area or areas hereinafter described, within which the Public Service Authority shall have the right to furnish electrical service to the exclusion of other electrical utilities.

(3) The term "premises" means the building, structure or facility including any expansions or additions thereto, 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" regardless of whether they are separately metered and the charges for such service are calculated independently of charges for service to any other building, structure or facility.

Premises are considered as being served by the Public Service Authority if on July 9, 1973 a contract between the electric consumer and the Public Service Authority has been signed, or any of the facilities for electric service belonging to the Public Service Authority are attached to such premises.

(4) The term "line" means any electric conductors operating at a nominal voltage level of 25 KV or less, measured phase‑to‑phase, except (a) in the case of overhead construction, conductors from the pole or tower nearest the premises of a consumer to the premises, or conductors from a line tap to the premises, and (b) in the case of underground construction, conductors from the transformer (or junction point, if there is one) nearest, on or in the premises of the consumer to the premises. The term "line" includes any electric conductor operating at a nominal voltage level in excess of 25 KV when it is agreed between the Public Service Authority and an affected electric cooperative serving in the county where the conductor is located that the primary purpose and use of the conductor on January 1, 1984, was for the distribution of electric power and not for the transmission of bulk power from one area to another.

HISTORY: 1962 Code Section 59‑18; 1973 (58) 716; 1984 Act No. 399, Section 1, eff July 1, 1984.

**SECTION 58‑31‑320.** Customers to whom Authority shall provide electric service.

After July 9, 1973, the Public Service Authority shall have the right to provide electric service only to, and it shall have the right to serve:

(1) Central Electric Power Cooperative, Inc., including:

(a) all electric cooperatives that are members of Central Electric Power Cooperative, Inc., on July 9, 1973;

(b) any electric cooperative which after July 9, 1973, becomes a member of Central Electric Power Cooperative, Inc.;

(c) any electric cooperative which after July 9, 1973, ceases to be a member of Central Electric Power Cooperative, Inc.; and

(d) in the event Central Electric Power Cooperative, Inc., ceases to exist as a corporate entity, any electric cooperative which was a member of Central Electric Power Cooperative, Inc., at the time of its dissolution;

(2) all premises, customers, and electric cooperatives served by it on July 9, 1973;

(3) its present service area as defined in Section 58‑31‑330;

(4) those areas owned, leased, or controlled by the Public Service Authority adjacent to the lakes and waterways of Federal Power Commission Project No. 199.

If, after July 9, 1973, any customers, premises, or electric cooperatives located outside the present service area of the Public Service Authority as defined in Section 58‑31‑330 and being served by the Public Service Authority, including any subsequent expansions or additions by such customers, premises, or cooperatives, ceases or discontinues accepting electrical service from the Public Service Authority, the Public Service Authority may subsequently sell and furnish electrical service to new customers, premises, or electric cooperatives from its major transmission lines in an amount not exceeding the amount of power the sale of which was lost by reason of such discontinuation of service.

Nothing contained herein shall be construed to restrict the right of the Public Service Authority to furnish electric service to its own premises; to exchange or interchange electric service with, purchase electric energy from, or sell electric energy to any other electrical utility or any joint agency organized and operating pursuant to Chapter 23 of Title 6; to construct additional facilities, within or without its present service area, as defined in Section 58‑31‑330; to construct additional delivery points to or for any of the premises or customers it is authorized to serve as provided for in this section; or to fulfill the growth needs of any customer legally served by it.

HISTORY: 1962 Code Section 59‑19; 1973 (58) 716; 2005 Act No. 137, Section 9, eff May 25, 2005.

Editor's Note

2005 Act No. 137, Section 10, provides as follows:

"Responsibilities and duties of the directors of the Public Service Authority created by the provisions of this act are in addition to responsibilities and duties created by other provisions of law."

**SECTION 58‑31‑330.** Service area of authority.

Except as set forth in this article, the present service area of the Public Service Authority consists of the counties of Berkeley, Georgetown, and Horry; but the following described areas are not included in the Public Service Authority's present service area as defined herein:

(1) That portion of Berkeley County now being served by South Carolina Electric and Gas Company as indicated by crosshatching on Authority Drawing No. E‑1851, entitled "Map of Berkeley County Showing Crosshatched Area being served by S.C.E. & G." and that portion of Berkeley County served by Berkeley Electric Cooperative, Inc., as the service area of Berkeley Electric Cooperative, Inc., is shown on Authority Drawing No. 5032‑E08‑0047A entitled "Map of Berkeley County showing Designated Areas Served by South Carolina Public Service Authority and Berkeley Electric Cooperative".

(2) That portion of Georgetown County now being served by Carolina Power and Light Company as indicated by crosshatching on Authority Drawing No. E‑1850, entitled "Map of Georgetown County Showing Crosshatched Area being served by C. P. & L. Co." and that portion of Georgetown County served by Santee Electric Cooperative, Inc., as the service area of Santee Electric Cooperative, Inc., is shown on Authority Drawing No. 5032‑E08‑0046 entitled "Map of Georgetown County Showing Designated Areas Served by South Carolina Public Service Authority and Santee Electric Cooperative, Inc.".

(3) That portion of Horry County now being served by Carolina Power and Light Company as indicated by crosshatching on Authority Drawing No. E‑1849, entitled "Map of Horry County Showing Crosshatched Area being served by C. P. & L. Co." and that portion of Horry County served by Horry Electric Cooperative, Inc., as the service area of Horry Electric Cooperative, Inc., is shown on Authority Drawing No. 5032‑E08‑0048 entitled "Map of Horry County Showing Designated Areas Served by South Carolina Public Service Authority and Horry Electric Cooperative, Inc.".

The above described drawings, and all explanatory notes, symbols, and legends thereon, as approved by the general manager of the Public Service Authority or his designee and the president of the electrical utility or electric cooperative involved or his designee, are made a part of this article by reference, and must be filed, safeguarded, and maintained as provided in Section 58‑31‑340.

HISTORY: 1962 Code Section 59‑20; 1973 (58) 716; 1984 Act No. 399, Section 2, eff July 1, 1984; 1995 Act No. 12, Section 1, eff March 8, 1995.

**SECTION 58‑31‑340.** Filing and correcting drawings; acquisition of facilities outside service area.

Each of the drawings referred to in Section 58‑31‑330 must be filed in the place provided by law for recording the real estate records of the county concerned, and a certified copy of each drawing must be filed in the office of the Secretary of State. Certified copies of the drawing must be kept available for examination by the public in the principal office of the Public Service Authority, and must be furnished to the electrical utility or electric cooperative concerned.

Inaccuracies in the drawings discovered after certification and filing must be corrected by preparing revised drawings and approving and filing the revised drawings in the same manner as provided for original drawings.

Nothing contained in Sections 58‑31‑310 through 58‑31‑370 may be construed to prevent the Public Service Authority from acquiring, by purchase, the electric facilities, or any part of them, owned by another electrical utility and located in any of the crosshatched areas described in Section 58‑31‑330. The areas served by facilities purchased by the Public Service Authority shall become a part of the present service area of the Public Service Authority and must be evidenced by revised drawings approved and filed as provided in this section.

HISTORY: 1962 Code Section 59‑21; 1973 (58) 716; 1984 Act No. 399, Section 3, eff July 1, 1984.

**SECTION 58‑31‑350.** Acquisition of facilities within service area.

Distribution facilities belonging to another electrical utility which, after July 9, 1973, are located in the present service area of the Public Service Authority as defined in Section 58‑31‑330, shall be acquired by the Public Service Authority within two years of July 9, 1973 and upon payment to the electrical utility concerned of just compensation therefor. Pending the acquisition of such facilities by the Public Service Authority, electrical service shall continue to be furnished by the electrical utility owning the facilities.

For the purposes of this section, "just compensation" shall consist 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 electrical utility after detaching the portion to be sold including allowance for idle substation capacity caused in the remaining portion of the system.

Just compensation shall otherwise be determined as provided in Section 58‑27‑1360.

HISTORY: 1962 Code Section 59‑22; 1973 (58) 716.

**SECTION 58‑31‑360.** State covenant with holders of obligations of Authority.

In order to protect those subscribing to, purchasing or acquiring the notes, bonds, evidences of indebtedness or other obligations of the Public Service Authority, the State of South Carolina does hereby covenant and agree with any person, firm or corporation, the government of the United States of America, and any corporation or agency created, designated or established by the United States, subscribing to, purchasing or acquiring the notes, bonds, evidences of indebtedness or other obligations heretofore or hereafter issued or incurred by the Public Service Authority for any authorized purpose, that the State will not alter, limit or restrict the power of the Public Service Authority to, and the Authority shall, fix, establish, maintain and collect rents, tolls, rates and charges for the use of the facilities of or for the services rendered or for any commodities furnished by the Public Service Authority, at least sufficient to provide for payment of all expenses of the Public Service Authority, the conservation, maintenance and operation of its facilities and properties and the payment of the principal of and interest on its notes, bonds, evidences of indebtedness or other obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such notes, bonds, evidences of indebtedness or obligations heretofore or hereafter issued or incurred. Provided, however, that prior to putting into effect any increase in rates the Public Service Authority shall give at least sixty days' notice of such increase to all customers who will be affected by the increase.

HISTORY: 1962 Code Section 59‑23; 1973 (58) 716.

**SECTION 58‑31‑370.** Jurisdiction of circuit court.

The circuit court of this State shall have exclusive jurisdiction to hear and determine any dispute arising under Sections 58‑31‑310 through 58‑31‑360.

HISTORY: 1962 Code Section 59‑24; 1973 (58) 716.

**SECTION 58‑31‑380.** Annual report of Authority as to rates.

The Public Service Authority shall annually report to the Office of Regulatory Staff in the same manner as electric cooperatives as to the rates charged by it.

HISTORY: 1962 Code Section 59‑25; 1973 (58) 716; 2006 Act No. 318, Section 219, eff May 24, 2006.

**SECTION 58‑31‑390.** Authority not to service new premises assigned to electric cooperative; exception.

Except as provided in Section 58‑31‑320(1), the Public Service Authority shall serve no new premises within the territory assigned by the Public Service Commission to any electric cooperative.

HISTORY: 1962 Code Section 59‑26; 1973 (58) 716; 1987 Act No. 148 Section 1, eff June 3, 1987.

**SECTION 58‑31‑400.** Submission of annual budget.

The Public Service Authority shall submit its annual budget to the House Ways and Means Committee to be printed as a regular part of the General Appropriation Act. The annual budget is submitted for information purposes only.

HISTORY: 1983 Act No. 138 Section 10, eff June 15, 1983.

**SECTION 58‑31‑420.** Laws applicable to electric service within municipal limits not repealed or modified.

The authority granted in this article shall not repeal or modify other laws applicable to electric service within municipal corporate limits, and any provisions of this article inconsistent with other laws are not applicable within the municipal limits.

HISTORY: 1984 Act No. 399, Section 4, eff July 1, 1984.

**SECTION 58‑31‑430.** Service area to be exclusively served by Authority; reservations; agreements between suppliers.

The Public Service Commission may not assign any portion of the present service area of the Public Service Authority to any electrical utility or electric cooperative and this service area must be exclusively served by the Public Service Authority. Santee Electric Cooperative, Inc., Berkeley Electric Cooperative, Inc., and Horry Electric Cooperative, Inc. may serve those areas reserved to them as provided in Section 58‑31‑330. The Public Service Commission is directed to conform the present assignment under Section 58‑27‑620 to the mandates of this article. Nothing contained in this article may be construed as preventing the Public Service Commission from exercising its jurisdiction over electric cooperative service areas in the manner provided by law. Upon customer choice either the Public Service Authority or an electric cooperative mentioned above may furnish electric service to any new premises which the other supplier has the right to serve pursuant to the provisions of this article, upon agreement of the affected suppliers.

HISTORY: 1984 Act No. 399, Section 4, eff July 1, 1984.

**SECTION 58‑31‑440.** Maintenance of existing lines; customer choice in certain circumstances.

Lines of the Public Service Authority in existence on July 1, 1984, which extend into the service areas of Berkeley Electric Cooperative, Santee Electric Cooperative, and Horry Electric Cooperative, and lines of those cooperatives which extend into the service area of the Public Service Authority may continue to be operated and maintained by the owner of the lines, and premises served by the lines on July 1, 1984, must continue to be so served. The owner of a line in another supplier's service area may exclusively serve any new premises located wholly or partially within three hundred feet of the line. Where the premises are located wholly or partially within three hundred feet of a line of both the Public Service Authority and an electric Cooperative, the customer may choose between those suppliers, and the supplier originally chosen shall continue to have the exclusive right to serve such premises.

HISTORY: 1984 Act No. 399, Section 4, eff July 1, 1984.

**SECTION 58‑31‑450.** Erosion control.

The Public Service Authority shall provide proper vegetation or other method of erosion control on any existing or future rights‑of‑way.

HISTORY: 1984 Act No. 399, Section 5, eff July 1, 1984.

**SECTION 58‑31‑460.** Restrictions on interruption of electric service to residential customer for nonpayment of bill; exceptions.

(A) Except as provided in subsection (B) of this section, the Public Service Authority 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) The Public Service Authority 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 Public Service Authority to give the customer notice of the impending interruption by telephone or electronically; and (3) service must not be interrupted except during hours when the Public Service Authority is accepting cash payments. For purposes of this subsection, a business day is any day in which the Public Service Authority, or an agent, is accepting cash payments.

(C) Nothing contained herein shall be construed so as to relieve the Public Service Authority of the requirements of Act 313 of 2006.

(D) 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 3, eff June 11, 2010.

ARTICLE 5

Termination of Electric Service Due to Nonpayment

**SECTION 58‑31‑510.** 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 Public Service Authority a certificate on a form provided by the Public Service Authority 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 6, eff June 1, 2006; 2012 Act No. 122, Section 6, eff February 22, 2012.

**SECTION 58‑31‑520.** Termination procedures; contents.

(A) The Public Service Authority 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. The Public Service Authority 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 Service Authority, 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 6, eff June 1, 2006.

**SECTION 58‑31‑530.** Third‑party notification program.

The Public Service Authority 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 6, eff June 1, 2006.

**SECTION 58‑31‑540.** Disconnection when public safety emergency exists.

Notwithstanding another provision of this article, the Public Service Authority may disconnect a customer when it is determined that a public safety emergency exists.

HISTORY: 2006 Act No. 313, Section 6, eff June 1, 2006.

**SECTION 58‑31‑550.** 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 6, eff June 1, 2006.