CHAPTER 37

Energy Supply and Efficiency

**SECTION 58‑37‑10.** Definitions.

 As used in this chapter unless the context clearly requires otherwise:

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

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

HISTORY: 1992 Act No. 449, Part IV Section 1, eff July 1, 1992; 1997 Act No. 26, Section 1, eff May 21, 1997.

Editor's Note

1992 Act No. 449, Part I Section 1, eff July 1, 1992, provides as follows:

"SECTION 1. This act may be cited as the South Carolina Energy Conservation and Efficiency Act of 1992."

[For a complete list of code sections affected by 1992 Act No. 449, see Statutory Tables Volume, Table B, allocation of Acts.].

**SECTION 58‑37‑20.** Public Service Commission; adoption of procedures encouraging energy efficiency and conservation.

 The South Carolina Public Service Commission may adopt procedures that encourage electrical utilities and public utilities providing gas services subject to the jurisdiction of the commission to invest in cost‑effective energy efficient technologies and energy conservation programs. If adopted, these procedures must: provide incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end‑use technologies that are cost‑effective, environmentally acceptable, and reduce energy consumption or demand; allow energy suppliers and distributors to recover costs and obtain a reasonable rate of return on their investment in qualified demand‑side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities; require the Public Service Commission to establish rates and charges that ensure that the net income of an electrical or gas utility regulated by the commission after implementation of specific cost‑effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented. For purposes of this section only, the term "demand‑side activity" means a program conducted by an electrical utility or public utility providing gas services for the reduction or more efficient use of energy requirements of the utility or its customers including, but not limited to, utility transmission and distribution system efficiency, customer conservation and efficiency, load management, cogeneration, and renewable energy technologies.

HISTORY: 1992 Act No. 449, Part IV Section 1, eff July 1, 1992; 1997 Act No. 26, Section 2, eff May 21, 1997.

**SECTION 58‑37‑30.** Reports on demand‑side activities of gas and electric utilities; forms.

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

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

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

HISTORY: 1992 Act No. 449, Part IV Section 1, eff July 1, 1992.

**SECTION 58‑37‑40.** Integrated resource plans.

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

 (1) Each electrical utility must submit its integrated resource plan to the commission. The integrated resource plan must be posted on the electrical utility's website and on the commission's website.

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

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

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

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

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

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

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

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

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

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

 (i) customer energy efficiency and demand response programs;

 (ii) facility retirement assumptions; and

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

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

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

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

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

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

 (C)(1) The commission shall have a proceeding to review each electrical utility's integrated resource plan. As part of the integrated resource plan filing, the commission shall allow intervention by interested parties. The commission shall establish a procedural schedule to permit reasonable discovery after an integrated resource plan is filed in order to assist parties in obtaining evidence concerning the integrated resource plan, including the reasonableness and prudence of the plan and alternatives to the plan raised by intervening parties. No later than three hundred days after an electrical utility files an integrated resource plan, the commission shall issue a final order approving, modifying, or denying the plan filed by the electrical utility.

 (2) The commission shall approve an electrical utility's integrated resource plan if the commission determines that the proposed integrated resource plan represents the most reasonable and prudent means of meeting the electrical utility's energy and capacity needs as of the time the plan is reviewed. To determine whether the integrated resource plan is the most reasonable and prudent means of meeting energy and capacity needs, the commission, in its discretion, shall consider whether the plan appropriately balances the following factors:

 (a) resource adequacy and capacity to serve anticipated peak electrical load, and applicable planning reserve margins;

 (b) consumer affordability and least cost;

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

 (d) power supply reliability;

 (e) commodity price risks;

 (f) diversity of generation supply; and

 (g) other foreseeable conditions that the commission determines to be for the public interest.

 (3) If the commission modifies or rejects an electrical utility's integrated resource plan, the electrical utility, within sixty days after the date of the final order, shall submit a revised plan addressing concerns identified by the commission and incorporating commission‑mandated revisions to the integrated resource plan to the commission for approval. Within sixty days of the electrical utility's revised filing, the Office of Regulatory Staff shall review the electrical utility's revised plan and submit a report to the commission assessing the sufficiency of the revised filing. Other parties to the integrated resource plan proceeding also may submit comments. No later than sixty days after the Office of Regulatory Staff report is filed with the commission, the commission at its discretion may determine whether to accept the revised integrated resource plan or to mandate further remedies that the commission deems appropriate.

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

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

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

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

HISTORY: 1992 Act No. 449, Part IV Section 1, eff July 1, 1992; 1997 Act No. 26, Sections 3, 4, eff May 21, 1997; 2019 Act No. 62 (H.3659), Section 7, eff May 16, 2019.

Effect of Amendment

2019 Act No. 62, Section 7, rewrote the section, establishing mandatory contents of integrated resource plans and providing for certain reporting requirements.

**SECTION 58‑37‑50.** Agreements for energy efficiency and conservation measures; interest rate; recovery of costs; installation liability; energy audits; exemptions.

 (A) As used in this section:

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

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

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

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

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

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

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

 (C) Any agreement permitted by subsection (B) must state plainly the interest rate to be charged to finance the costs of the energy efficiency and conservation measures. The interest rate must be a fixed rate over the term of the agreement and must not exceed four percent above the stated yield for one‑year treasury bills as published by the Federal Reserve at the time the agreement is entered. Any indebtedness created under the provisions of this section may be paid in full at any time before it is due without penalty.

 (D) An electricity provider or natural gas provider may recover the costs, including financing costs, of these measures from its members or customers directly benefiting from the installation of the energy efficiency and conservation measures. Recovery may be through a meter conservation charge to the account of the member or customer and any such charge must be shown by a separate line item on the account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY: 2010 Act No. 141, Section 1, eff March 31, 2010; 2011 Act No. 56, Section 1, eff June 14, 2011.

**SECTION 58‑37‑60.** Independent study to evaluate integration of emerging energy technologies.

 (A) The commission and the Office of Regulatory Staff are authorized to initiate an independent study to evaluate the integration of renewable energy and emerging energy technologies into the electric grid for the public interest. An integration study conducted pursuant to this section shall evaluate what is required for electrical utilities to integrate increased levels of renewable energy and emerging energy technologies while maintaining economic, reliable, and safe operation of the electricity grid in a manner consistent with the public interest. Studies shall be based on the balancing areas of each electrical utility. The commission shall provide an opportunity for interested parties to provide input on the appropriate scope of the study and also to provide comments on a draft report before it is finalized. All data and information relied on by the independent consultant in preparation of the draft study shall be made available to interested parties, subject to appropriate confidentiality protections, during the public comment period. The results of the independent study shall be reported to the General Assembly.

 (B) The commission may require regular updates from utilities regarding the implementation of the state's renewable energy policies.

 (C) The commission may hire or retain a consultant to assist with the independent study authorized by this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of the consultant authorized by this subsection.

HISTORY: 2019 Act No. 62 (H.3659), Section 8, eff May 16, 2019.