**South Carolina General Assembly**

124th Session, 2021-2022

**H. 5162**

**STATUS INFORMATION**

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Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Utilities - Rates

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/29/2022 House Introduced and read first time ([House Journal‑page 29](file:///h:\hj\20220329.docx))

3/29/2022 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 29](file:///h:\hj\20220329.docx))

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**VERSIONS OF THIS BILL**

[3/29/2022](file:///p:\pprever\2021-22\5162_20220329.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “EXTREME WEATHER AND ENERGY TRANSITION RATEPAYER PROTECTION ACT” BY ADDING ARTICLE 8 TO CHAPTER 27, TITLE 58 SO AS TO, AMONG OTHER THINGS, DEFINE RELEVANT TERMS, TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO ORDER ALTERNATIVE FINANCING MECHANISMS INCLUDING THE ISSUANCE OF RATEPAYER PROTECTION BONDS TO REDUCE THE TOTAL AMOUNT OF COSTS INCLUDED IN CUSTOMER RATES, TO PROVIDE THAT AN ELECTRICAL UTILITY MAY PETITION THE COMMISSION FOR A FINANCING ORDER AND TO SPECIFY THE PETITION’S CONTENTS, TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO ADOPT RULES TO IMPLEMENT THE PROVISIONS OF THIS ACT, TO PROVIDE THAT THE RATEPAYER PROTECTION BONDS AUTHORIZED BY THIS ACT ARE NOT A DEBT OR A GENERAL OBLIGATION OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, AGENCIES, OR INSTRUMENTALITIES, AND TO PROHIBIT THE STATE OR ANY STATE AGENCIES, OR INSTRUMENTALITIES, INCLUDING THE PUBLIC SERVICE COMMISSION, FROM TAKING CERTAIN ACTIONS INCLUDING, BUT NOT LIMITED TO, ALTERING THE PROVISIONS OF THIS ACT THAT AUTHORIZE THE PUBLIC SERVICE COMMISSION TO CREATE AN IRREVOCABLE CONTRACT RIGHT OR CHOSE IN ACTION BY THE ISSUANCE OF A FINANCING ORDER, TAKING OR PERMITTING ANY ACTION THAT IMPAIRS THE VALUE OF QUALIFIED ELECTRIC PROPERTY OR THE SECURITY FOR THE RATEPAYER PROTECTION BONDS OR REVISES THE QUALIFIED ENERGY COSTS FOR WHICH RECOVERY IS AUTHORIZED, OR IN ANY WAY IMPAIRING THE RIGHTS AND REMEDIES OF THE BONDHOLDERS, ASSIGNEES, AND OTHER FINANCING PARTIES.

Whereas, it is a matter of statewide importance to protect ratepayers from costs associated with extreme weather events and with the transition away from uneconomic coal-fired generation units; and

Whereas, securitization provides rate security for ratepayers as securitizing debt lowers carrying costs to customers compared to conventional utility financing methods; and

Whereas, securitization allows a utility to recover costs by issuing bonds, with lower financing costs than if the costs were placed into rates using conventional financing methods with a higher return on equity; and

Whereas, with securitization, the utility’s costs are not added to the rate base, so customers are not held responsible for paying the debt costs, return on equity, and income taxes the utility would have incurred using conventional financing methods; and

Whereas, it is in the public interest to protect ratepayers from the costs associated with the closure of economical coal-fired generation units prior to the expiration of their useful life through promoting the development of lower cost clean energy to reduce costs on customers and reduce the carbon dioxide emissions from the South Carolina electric generating system; and

Whereas, alternative financing mechanisms may result in lower costs to electric utility customers and it is in the public interest to provide alternative financing mechanisms that utilities may use to reduce the total amount of costs being included in customers’ rates resulting from extreme weather events and the retirement of uneconomic coal‑fired generation units; and

Whereas, in the context of a fully integrated utility monopoly, the ratepayers bear the entire burden of risk if a utility’s generation choice becomes uneconomic to run prior to the expiration of it’s useful life; and

Whereas, it is necessary to protect ratepayers from risk through providing an alternative to requiring ratepayers to continue paying for a profit return in addition to the debt costs on a utility’s generation choice that is no longer economical to operate. Now, therefore,

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

SECTION 1. This act may be known and cited as the “South Carolina Extreme Weather and Energy Transition Ratepayer Protection Act”.

SECTION 2. Chapter 27, Title 58 of the 1976 Code is amended by adding:

“Article 8

Extreme Weather and Energy Transition Ratepayer Protections

Section 58‑27‑1100. As used in this article:

(1) ‘Ancillary agreement’ means a bond, insurance policy, letter of credit, reserve account, surety bond, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with ratepayer protection bonds.

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

(2) ‘Bondholder’ means a person who holds a ratepayer protection bond authorized by this article.

(3) ‘Code’ means the Uniform Commercial Code, Title 36 of the 1976 Code.

(4) ‘Commission’ means the Public Service Commission of South Carolina.

(5) ‘Early retirement’ means the permanent closure, decommissioning or retirement of a coal-fired generation plant on a schedule that is earlier than its previously scheduled retirement with the result that the utility has not recovered the entire commission‑approved investment in the facility by the time of its retirement.

(6) ‘Electrical utility’ has the same meaning as provided in Section 58‑27‑10(7).

(7) ‘Financing costs’ includes all of the following:

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

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

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

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

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

(f) any costs incurred by the Commission or the Office of Regulatory Staff for any outside consultants or counsel retained in connection with the securitization of qualified energy costs.

(8) ‘Financing order’ means an order that authorizes the issuance of ratepayer protection bonds; the imposition, collection, and periodic adjustments of a qualified electric charge; the creation of qualified electric property; the sale, assignment, or transfer of qualified electric property to an assignee; a requirement for the applicant to reduce its base rates to the extent that the applicant’s base rates already reflect the revenue requirement of qualified energy costs being financed with ratepayer protection bonds.

(9) ‘Financing party’ means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.

(10) ‘Financing statement’ has the same meaning as provided in Section 36‑9‑102(39).

(11) ‘Pledgee’ means a financing party to which an electrical utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to qualified electric property.

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

(13) ‘Qualified electric activity’ means an activity or activities by an electrical utility, its affiliates, or its contractors directly and specifically in connection with:

(a) the restoration of service and infrastructure associated with electric power outages affecting customers of an electrical utility as the result of a storm or storms, including activities related to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities; or

(b) the early retirement of a coal-fired generating plant.

(14) ‘Ratepayer protection bonds’ means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by an electrical utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission‑approved qualified energy costs and financing costs, and that are secured by or payable from a qualified electric property. If certificates of participation or ownership are issued, references in this section to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

(15) ‘Qualified electric charge’ means the amounts authorized by the Commission to repay, finance, or refinance qualified energy costs and financing costs and that are nonbypassable charges:

(a) imposed on and part of all retail customer bills;

(b) collected by an electrical utility or its successors or assignees, or a collection agent, in full, separate and apart from the electrical utility’s base rates; and

(c) paid by all existing or future retail customers receiving transmission or distribution service, or both, from the electrical utility or its successors or assignees under Commission‑approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of electrical utilities in this State.

(16) ‘Qualified energy costs’ includes all of the following:

(a) ‘Storm recovery’ means, to the extent determined appropriate by the Commission, all incremental costs, including capital costs, appropriate for recovery from existing and future retail customers receiving transmission or distribution service from an electrical utility that an electrical utility has incurred or expects to incur as a result of the applicable storm that are caused by, associated with, or remain as a result of undertaking storm recovery. Such costs may include the electrical utility’s cost of capital from the date of the applicable storm to the date the ratepayer protection bonds are issued calculated using the electrical utility’s weighted average cost of capital as defined in its most recent base rate case proceeding before the Commission net of applicable income tax savings related to the interest component.

(b) ‘Early retirement’ means the pretax costs that the electric utility has incurred or will incur that are caused by or associated with the retirement of coal fired generation facilities currently included in the rate base of an electric utility.

(c) ‘Qualified energy costs’ means the net of applicable insurance proceeds, tax benefits and any other amounts intended to reimburse the electrical utility for storm recovery and other qualified electric activities such as government grants, or aid of any kind and where determined appropriate by the Commission, and may include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the electrical utility’s most recent general rate proceeding. Qualified energy costs may include the cost to replenish and fund any storm reserves and costs of repurchasing equity or retiring any existing indebtedness relating to storm recovery if the Commission determines it is in the public interest.

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

(17) Qualified electric property includes all of the following:

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

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

Section 58‑27‑1105. (A) The Commission may by order authorize alternative financing mechanisms including the issuances of ratepayer protection bonds in accordance with this article to reduce the total amount of costs being included in customer rates for the purposes of:

(1) offsetting and reducing prudently incurred costs due to either a state of emergency declared by the Governor; or

(2) recovering the costs of Commission‑approved investment in electric generation facilities that are retired before their scheduled closure date.

(B) In addition to the other requirements of this article, prior to approving any such financing order, the Commission must find that the proposed issuance of ratepayer protection bonds and the imposition and collection of qualified electric charges:

(1) are just and reasonable;

(2) are consistent with the public interest;

(3) constitute a prudent and reasonable mechanism for the financing of approved costs; and

(4) will provide substantial, tangible, and quantifiable net present value savings or other benefits to customers that are greater than the benefits that would have been achieved absent the issuance of such bonds.

(C) The provisions of the financing order must ensure that the proposed structuring, marketing, and pricing of the ratepayer protection bonds will:

(1) materially lower overall costs to customers or avoid or mitigate rate impacts to customers relative to traditional methods of financing and recovering costs from customers; and

(2) achieve the maximum net present value of customer savings, as determined by the Commission in a financing order, consistent with market conditions at the time of sale and the terms of the financing order.

Section 58‑27‑1110. (A) An electrical utility may petition the Commission for a financing order. The petition shall include all of the following:

(1) a description of the qualified electric activities that the electrical utility has undertaken or proposes to undertake and the reasons for undertaking the activities, or if the electrical utility is subject to a settlement agreement as contemplated by subsection (B), a description of the settlement agreement;

(2) the qualified energy costs and estimate of the costs of any qualified electric activities that are being undertaken but are not completed;

(3) an indicator of whether the electrical utility proposes to finance all or a portion of the qualified energy costs using customer‑backed bonds. If the utility proposes to finance a portion of the costs, the electrical utility must identify the specific portion in the petition. By electing not to finance a portion of the qualified energy costs using ratepayer protection bonds, an electrical utility shall not be deemed to waive its right to recover the costs pursuant to a separate proceeding with the Commission;

(4) an estimate of the financing costs related to the customer‑backed bonds;

(5) an estimate of the qualified electric charges necessary to recover the qualified energy costs, including, if relevant, the storm recovery reserve amount determined appropriate by the Commission, and financing costs and the period for recovery of the costs;

(6) when ratepayer protection bonds are used to recover the remaining undepreciated capital invested in a generating facility, the estimated annual revenue requirement currently collected in rates related to the investment being retired.

(7) a comparison between the net present value of the costs to customers that are estimated to result from the issuance of ratepayer protection bonds and the net present value of costs that would result from the application of the traditional method of financing and recovering the qualified energy costs from customers. The comparison should demonstrate that the issuance of ratepayer protection bonds and the imposition of qualified electric charges are expected to provide the maximum quantifiable benefits to customers; and

(8) advance notice and direct testimony and exhibits supporting the petition.

(B) If an electrical utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in qualified energy costs and the electrical utility proposes to finance all or a portion of the principal costs using ratepayer protection bonds, then the electrical utility must file a petition with the Commission for review and approval of those costs no later than ninety days before filing a petition for a financing order pursuant to this section.

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

(a) within fourteen days after the date the petition is filed and deemed to be complete, the Commission shall establish a procedural schedule that permits a Commission decision no later than two hundred seventy days after the date the petition is filed and deemed to be complete; and

(b) no later than two hundred seventy days after the date the petition is filed and deemed complete, the Commission shall issue a financing order or an order modifying or rejecting the petition. A party to the Commission proceeding may petition the Commission for reconsideration of the financing order within five days after the date of its issuance.

(2) A financing order issued by the Commission to an electrical utility shall include all of the following elements:

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

(b) a finding that the proposed issuance of ratepayer protection bonds and the imposition and collection of a qualified electric charge are expected to provide substantial and quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of customer‑backed bonds;

(c) a requirement that the customer backed bonds must:

(i) have a scheduled final maturity of no longer than thirty years and a final legal maturity date that is no later than thirty‑two years from the issue date; and

(ii) be rated AA or better, or the equivalent, by a major independent credit-rating agency at the time of issuance.

(d) a finding that the structuring and pricing of the ratepayer protection bonds are reasonably expected to result in the lowest qualified electric charges and maximum customer benefits consistent with market conditions at the time the ratepayer protection bonds are priced and the terms set forth in such financing order;

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

(f) when customer‑backed bonds are used to recover undepreciated investment in a generating facility, a requirement that the utility reduce its base rates to the extent that the cost of the generating facility are currently reflected in base rates;

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

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

(i) the qualified electric property that is, or shall be, created in favor of an electrical utility or its successors or assignees and that shall be used to pay or secure ratepayer protection bonds and all financing costs;

(j) the degree of flexibility to be afforded to the electrical utility in establishing the terms and conditions of the ratepayer protection bonds including, but not limited to, repayment schedules, expected interest rates, and other financing costs;

(k) how qualified electric charges will be allocated among customer classes;

(l) a requirement that, after the final terms of an issuance of ratepayer protection bonds have been established and before the issuance of ratepayer protection bonds, the electrical utility determines the resulting initial qualified electric charge in accordance with the financing order and that such initial qualified electric charge be final and effective upon the issuance of such ratepayer protection bonds without further Commission action so long as the qualified electric charge is consistent with the financing order. Nothing in this subsection prohibits the Commission from determining a preissuance review process is necessary to protect the public interest;

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

(n) any other conditions that the Commission determines are in the public interest.

(3) A financing order issued to an electrical utility may provide that creation of the electrical utility’s qualified electric property is conditioned upon, and simultaneous with, the sale or other transfer of the qualified electric property to an assignee and the pledge of the qualified electric property to secure customer‑backed bonds.

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

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

(6) If deemed required by the Commission in a financing order, within one business day after the final terms of the ratepayer protection bonds are determined, the electric utility shall provide an issuance advice letter to the Commission. No later than the date the issuance advice letter is filed, each lead underwriter of the ratepayer protection bonds and any ratepayer protection bonds securities shall file with the Commission an independent certification confirming that the structuring, marketing, and pricing of the ratepayer protection bonds and any associated securities in fact resulted in the lowest charges consistent with market conditions at the time the ratepayer protection bonds were priced and the terms set forth in the financing order.

(a) The issuance advice letter must be in the form approved in a financing order and include the final terms of the ratepayer protection bonds issuance, up‑front financing costs, and on‑going financing costs. The issuance advice letter shall include a certification from the electric utility, as a condition to closing, certifying the sale of ratepayer protection bonds complies with the requirements of this section.

(b) By no later than noon on the fourth business day after the final terms of the ratepayer protection bonds are determined, the Commission shall either approve the issuance advice letter or deliver an order to the electric utility to prevent the issuance of the ratepayer protection bonds. To the extent the Commission does not respond to the issuance advice letter or deliver an order to prevent the issuance of the ratepayer protection bonds within the time period proscribed in the financing order, the ratepayer protection bonds may be issued without further action of the Commission.

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

(E) Within sixty days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within thirty days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of South Carolina. Review on appeal shall be based solely on the record before the Commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and state and federal law and is within the authority of the Commission under this section.

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

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

Section 58‑27‑1115. (A) The Commission may adopt rules to implement the provisions of this article.

(B) The Commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this chapter, consider the customer‑backed bonds issued pursuant to a financing order to be the debt of the electrical utility other than for federal income tax purposes, consider the qualified electric charges paid under the financing order to be the revenue of the electrical utility for any purpose, or consider the qualified energy costs or financing costs specified in the financing order to be the costs of the electrical utility, nor may the Commission determine any action taken by an electrical utility which is consistent with the financing order to be unjust or unreasonable.

Section 58‑27‑1120. The electric bills of an electrical utility that has obtained a financing order and caused ratepayer protection bonds to be issued must comply with the provisions of this subsection; however, the failure of an electrical utility to comply with this subsection does not invalidate, impair, or affect any financing order, qualified electric property, qualified electric charge, or ratepayer protection bonds. The electrical utility must do the following:

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

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

Section 58‑27‑1125. (A) The following provisions apply to qualified electric property:

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

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

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

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

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

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

(7) Ratepayer protection bonds must be nonrecourse to the credit or any assets of the electrical utility other than the qualified electric property as specified in the financing order and any rights under any ancillary agreement.

(B) The following provisions apply to security interests:

(1) The creation, perfection, and enforcement of any security interest in qualified electric property to secure the repayment of the principal and interest and other amounts payable in respect of ratepayer protection bonds; amounts payable under any ancillary agreement and other financing costs are governed by this subsection and not by the provisions of the Uniform Commercial Code.

(2)(a) A security interest in qualified electric property is created, valid, binding, and perfected upon the latter of:

(i) the financing order is issued;

(ii) a security agreement is executed and delivered by the debtor granting the security interest;

(iii) the debtor has rights in the qualified electric property or the power to transfer rights in the qualified electric property; or

(iv) value is received for the qualified electric property. (b) The description of qualified electric property in a security agreement is sufficient if the description refers to this section and the financing order creating the qualified electric property.

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

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

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

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

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

(C)(1) The following provisions apply to the sale, assignment, or transfer of qualified electric property:

(a) Any sale, assignment, or other transfer of qualified electric property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller’s right, title and interest in, to, and under the qualified electric property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and state income tax purposes. For all purposes other than federal and state income tax purposes, the parties’ characterization of a transaction as a sale of an interest in qualified electric property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in qualified electric property may be created only when all of the following have occurred:

(i) the financing order creating the qualified electric property has become effective;

(ii) the documents evidencing the transfer of qualified electric property have been executed by the assignor and delivered to the assignee; and

(iii) value is received for the qualified electric property. (b) After such a transaction, the qualified electric property is not subject to any claims of the transferor or the transferor’s creditors, other than creditors holding a prior security interest in the qualified electric property perfected in accordance with this section.

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

(a) commingling of qualified electric charges with other amounts;

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

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

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

(e) the obligation of the seller to collect qualified electric charges on behalf of an assignee;

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

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

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

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

(3)(a) Any right that an electrical utility has in the qualified electric property before its pledge, sale, or transfer or any other right created under this section or created in the financing order and assignable under this section or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. (b) Transfer of an interest in qualified electric property to an assignee is enforceable after all of the following have occurred:

(i) the issuance of a financing order;

(ii) the assignor having rights in the qualified electric property or the power to transfer rights in the qualified electric property to an assignee;

(iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of ratepayer protection bonds; and

(iv) the receipt of value for the qualified electric property. (c) An enforceable transfer of an interest in qualified electric property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with this section. The transfer is perfected against third parties as of the date of filing.

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

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

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

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

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

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

Section 58‑27‑1130. The description of qualified electric property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if the description or indication refers to the financing order that created the qualified electric property and states that the agreement or financing statement covers all or part of the property described in the financing order. This section applies to all purported transfers of, and all purported grants or liens or security interests in, qualified electric property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.

Section 58‑27‑1135. All financing statements referenced in this section are subject to Part 5 of Article 9 of the Uniform Commercial Code, except that the requirement as to continuation statements does not apply.

Section 58‑27‑1140. The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any qualified electric property shall be the laws of this State.

Section 58‑27‑1145. Neither the State nor its political subdivisions are liable on any ratepayer protection bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions, agencies, or instrumentalities nor are they special obligations or indebtedness of the State or any agency or political subdivision. An issue of ratepayer protection bonds does not, directly, indirectly, or contingently, obligate the State or any agency, political subdivision, or instrumentality of the State to levy any tax or make any appropriation for payment of the ratepayer protection bonds, other than in their capacity as consumers of electricity. All ratepayer protection bonds must contain on the face thereof a statement to the following effect: ‘Neither the full faith and credit nor the taxing power of the State of South Carolina is pledged to the payment of the principal of, or interest on, this bond.’

Section 58‑27‑1150. All of the following entities legally may invest any sinking funds, monies, or other funds in ratepayer protection bonds:

(1) subject to applicable statutory restrictions on state or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission;

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

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

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

Section 58‑27‑1155. (A) The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the qualified electric property, and other financing parties that the State and its agencies will not take any action listed in this subsection. This subsection does not preclude limitation or alteration if full compensation is made by law for the full protection of the qualified electric charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the electrical utility. The following actions are prohibited:

(1) alter the provisions of this section, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create qualified electric property, and make the qualified electric charges imposed by a financing order irrevocable, binding, or nonbypassable charges;

(2) take or permit any action that impairs or would impair the value of qualified electric property or the security for the ratepayer protection bonds or revises the qualified energy costs for which recovery is authorized;

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

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

(B) Any person or entity that issues ratepayer protection bonds may include the language specified in this subsection in the ratepayer protection bonds and related documentation.

Section 58‑27‑1160. An assignee or financing party is not an electrical utility or person providing electric service by virtue of engaging in the transactions described in this section.

Section 58‑27‑1165. If there is a conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in qualified electric property, this section shall govern.

Section 58‑27‑1170. In making determinations under this article, the Commission may engage independent outside consultants including legal counsel to serve as an advisor or counselor to the Commission. Any advisor will be subject to the communication restrictions pursuant to Section 58‑3‑260(C)(8) applicable to the employees of the Commission.

Section 58‑27‑1175. A violation of this article or of a financing order issued under this article subjects the utility that obtained the order to penalties for each offense of no more than $5,000 and to any other penalties or remedies that the Commission determines are necessary to achieve the intent of this section and the intent and terms of the financing order and to prevent any increase in financial impact to the utility’s ratepayers above that set forth in the financing order. If the Commission orders a penalty or a remedy for a violation, the monetary penalty or remedy and the costs of defending against the proposed penalty or remedy may not be recovered from the ratepayers. The Commission may not make adjustments to qualified electric charges for any such penalties or remedies.

Section 58‑27‑1180. If any provision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this section which is taken by an electrical utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any action remains in full force and effect with respect to all ratepayer protection bonds issued or authorized in a financing order issued under this section before the date that the provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.”

SECTION 3. This act takes effect upon approval by the Governor.

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