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1/10/2024 Scrivener's error corrected

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**VERSIONS OF THIS BILL**

[01/09/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/909_20240109.docx)

[01/10/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/909_20240110.docx)

[01/16/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/909_20240116.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 58-3-20 RELATING TO THE MEMBERSHIP OF THE PUBLIC SERVICE COMMISsION, SO AS TO REDUCE THE NUMBER OF COMMISSIONERS FROM 7 TO 5 AND TO PROVIDE FOR QUALIFICATIONS, ELECTIONS, AND TERMS OF SERVICE OF THE COMMISSIONERS; TO AMEND SECTION 58-3-250 RELATING TO THE PUBLIC SERVICE COMMISSION’S ORDERS AND DECISIONS, SO AS TO PROVIDE REQUIREMENTS FOR VERBAL DIRECTIVES MADE DURING A COMMISSION BUSINESS MEETING AND SERVICE OF ALL FINAL ORDERS AND DECISIONS FOLLOWING A VERBAL DIRECTIVE; TO AMEND SECTION 58-4-10(B) RELATING TO THE OFFICE OF REGULATORY STAFF’S REPRESENTATION OF “PUBLIC INTEREST” BEFORE THE COMMISSION, SO AS TO AMEND “PUBLIC INTEREST”; TO AMEND SECTION 58-4-40(C) RELATING TO CONFLICTS OF INTEREST, SO AS TO PROHIBIT AN EMPLOYEE OF THE OFFICE OF REGULATORY STAFF FROM BEING INVOLVED IN A MATTER BEFORE THE COMMISSION FOR FIVE YEARS IF THE MATTER INVOLVES THE BUSINESS WITH WHICH THE EMPLOYEE WAS FORMERLY EMPLOYED; TO AMEND SECTION 58-27-2100 RELATING TO FINDINGS AND ORDERS OF THE COMMISSION, SO AS TO PROVIDE REQUIREMENTS FOR VERBAL DIRECTIVES MADE AT A COMMISSION BUSINESS MEETING AND SERVICE OF THE FINAL WRITTEN ORDER FOLLOWING A VERBAL DIRECTIVE; TO REQUIRE THE PUBLIC UTILITIES REVIEW COMMITTEE TO RETAIN AN INDEPENDENT EXPERT TO CONDUCT A COMPREHENSIVE STUDY OF ANY STATE OR FEDERAL OFFICIAL BOARD OR COMMISSION WITH SIMILAR ROLES TO THE PUBLIC SERVICE COMMISSION OR THE OFFICE OF REGULATORY STAFF, TO PROVIDE FOR THE SCOPE OF STUDY, AND TO REQUIRE A REPORT TO BE ISSUED TO THE GENERAL ASSEMBLY BY JANUARY 1, 2025; TO ADD ARTICLE 24, CHAPTER 27, TITLE 58 TO ESTABLISH AN ENERGY IMBALANCE MARKET, AND TO PROVIDE FOR THAT MARKET’S REQUIREMENTS AND PROCESSES AND TO MAKE RELATED FINDINGS; TO ADD SECTION 58-37-45 SO AS TO ESTABLISH FINDINGS BY THE GENERAL ASSEMBLY RELATING TO ECONOMIC DEVELOPMENT, FUTURE ENERGY RESOURCES, TRANSITION FROM COAL-FIRED ELECTRICITY GENERATION, AND CONSIDERATIONS FOR THE PUBLIC SERVICE COMMISSION TO TAKE INTO ACCOUNT WHEN EVALUATING INTEGRATED RESOURCE PLANS; TO ADD SECTION 58-31-205 SO AS TO PERMIT THE PUBLIC SERVICE AUTHORITY TO JOINTLY OWN ELECTRIC GENERATION AND TRANSMISSION FACILITIES WITH INVESTOR-OWNED ELECTRIC UTILITIES AND TO PROVIDE CERTAIN CONDITIONS FOR OWNERSHIP; TO ADD SECTION 58-33-20(10) SO AS TO DEFINE “LIKE FACILITY”; TO AMEND ARTICLE 3, CHAPTER 33, TITLE 58 RELATING TO CERTIFICATION OF MAJOR UTILITY FACILiTIES, SO AS TO PROVIDE FOR ADDITIONAL CONSIDERATIONS FOR A CERTIFICATE, PROVIDE WHAT ACTIVITIES MAY OCCUR PENDING CONSIDERATION OF AN APPLICATION, AND PROVIDE FOR PROCESSES AND PROCEDURES FOR AN APPLICATION AND RELATED PUBLIC HEARING; TO ADD SECTION 55-33-175, SO AS TO ESTABLISH THAT THE GRANT OF A CERTIFICATE FOR A GENERATION FACILITY OR DETERMINATION IT CONSTITUTES A LIKE FACILITY REPLACEMENT CONSTITUTES A CONCLUSIVE DETERMINATION THAT A PUBLIC PURPOSE EXISTS FOR SUPPORTING THE CONDEMNATION OF PROPERTY REASONABLY DETERMINED TO BE NECESSARY OR CONVENIENT FOR THE RELATED FACILITY; TO ADD 55-33-195 SO TO PROVIDE THE GENERAL ASSEMBLY’S ENCOURAGEMENT OF DOMINION ENERGY AND THE PUBLIC SERVICE AUTHORITY TO PREPARE TO CONSTRUCT ONE OR MORE NATURAL GAS-FIRED COMBINED CYCLE GENERATION FACILITIES AND FOR RELATED TRANSMISSION FACILITIES, DUKE ENERGY CAROLINAS TO MAKE NECESSARY DETERMINATION RELATED TO CONSTRUCTING A SECOND POWERHOUSE AT BAD CREEK PUMPED HYDRO STATION, AND TO ENCOURAGE DUKE ENERGY CAROLINAS AND DUKE ENERGY PROGRESS TO MAKE DETERMINATIONS RELATED TO CONSTRUCTING HYDROGEN CAPABLE NATURAL GAS GENERATION, AND TO MAKE CERTAIN FINDINGS AND INSTRUCTIONS RELATED TO THESE PROJECTS; TO ADD SECTION 58-33-196, SO AS TO ENCOURAGE STUDIES RELATED TO SMALL MODULAR NUCLEAR FACILITIES, REQUIRE ANNUAL PROJECT REPORTS TO THE PUBLIC SERVICE COMMISSION BY ANY UTILITY PURSUING DEPLOYMENT OF THESE NUCLEAR FACILITIES, AND PERMIT ELECTRICAL UTILITIES TO APPLY FOR A STATE GRANT TO PAY FOR RELATED STUDIES; TO ADD SECTION 58-33-440 SO AS TO ESTABLISH THE “POWERSC INNOVATION FUND” FOR THE PURPOSE OF ESTABLISHING A SOUTH CAROLINA ENERGY INNOVATION HUB AND AWARDING GRANTS ON A COMPETITIVE BASIS, AND TO PROVIDE FOR CERTAIN REQUIREMENTS RELATED TO THE FUND; TO AMEND SECTIONS 58-33-310 AND 320, RELATED TO JUDICIAL REVIEW OF MATTERS FROM THE PUBLIC SERVICE COMMISSION, SO AS TO PROVIDE THAT A FINAL ORDER ISSUED BY THE COMMISSION PURSUANT TO CHAPTER 33, TITLE 58, IS IMMEDIATELY APPEALABLE TO THE SOUTH CAROLINA SUPREME COURT, TO PROVIDE FOR AN EXPEDITED HEARING, AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 58‑37‑10, RELATING TO DEFINiTIONS, SO AS TO DEFINE “COST-EFFECTIVE” AND “DEMAND-SIDE MANAGEMENT PILOT PROGRAM”; TO AMEND SECTION 58‑37‑20, RELATING TO THE ADOPTION OF PROCEDURES ENCOURAGING ENERGY EFFICIENCY AND CONSERVATION, SO AS TO PROVIDE FOR FINDINGS BY THE GENERAL ASSEMBLY TO EXPAND DEMAND-SIDE MANAGEMENT PROGRAMS, AND TO REQUIRED ELECTRICAL UTILITIES TO PROVIDE AN ANNUAL REPORT TO THE PUBLIC SERVICE COMMISSION REGARDING DEMAND-SIDE MANAGEMENT PROGRAMS; TO AMEND SECTION 58-37-30, RELATING TO REPORTS ON DEMAND-SIDE ACTIVITIES OF GAS AND ELECTRIC UTILITIES, SO AS TO MAKE TECHNICAL CHANGES; TO ADD SECTION 58-37-35, SO AS TO PERMIT AN ELECTRICAL UTILITY TO PROPOSE PROGRAMS AND INCENTIVES TO ENCOURAGE DEMAND-SIDE MANAGEMENT PROGRAMS WHERE A CUSTOMER USES A CUSTOMER-SITED DISTRIBUTION ENERGY RESOURCE OR COMBINATION OF RESOURCES TO REDUCE ELECTRIC CONSUMPTION OR THE CUSTOMER’S CONTRIBUTION TO THE ELECTRICAL UTILITY’S SYSTEM OR LOCAL COINCIDENTAL PEAK DEMAND; TO AMEND SECTION 58-37-40(B), RELATED TO INTEGRATED RESOURCE PLANS, SO AS TO ESTABLISH REQUIREMENTS, PROCESSES AND PROCEDURES FOR A UTILITY’S TRANSMISSION AND DISTRIBUTION RESOURCE PLAN; TO AMEND SECTION 58-40-10, RELATING TO DEFINITIONS, SO AS TO AMEND THE DEFINITION OF “CUSTOMER-GENERATOR” AND TO ADD THE DEFINITIONS OF “REMOTE NET METERING”, “REMOTE NET METERING CUSTOMER”, AND “REMOTE NET METERING CREDIT”; TO AMEND SECTION 58-40-20, RELATING TO NET ENERGY METERING, SO AS TO REQUIRE THE PUBLIC SERVICE COMMISSION TO PROVIDE CERTAIN ENTITIES THE OPPORTUNITY TO OFFSET ALL OR PART OF THEIR ELECTRICITY NEEDS THROUGH RENEWABLE ENERGY RESOURCES, AND TO REQUIRE THE COMMISSION TO OPEN A DOCKET TO ESTABLISH A REMOTE NET METERING PROGRAM FOR EACH ELECTRICAL UTILITY BY JANUARY 1, 2025, AND TO PROVIDE REQUIREMENTS AND PROCEDURES FOR THESE PROGRAMS; TO AMEND SECTION 58‑41‑10, RELATING TO DEFINITIONS, SO AS TO ADD THE DEFINITION OF “ENERGY STORAGE FACILITY”; TO ADD CHAPTER 43, TITLE 58 SO AS TO ESTABLISH FINDINGS AND REQUIREMENTS FOR PROGRAMS RELATING TO RESILIENT ENERGY RESOURCES AND RENEWABLE ENERGY MICROGRIDS; TO REQUIRE THE OFFICE OF REGULATORY STAFF TO CONDUCT A STUDY TO EVALUATE THE POTENTIAL COSTS AND BENEFITS OF ESTABLISHING A NONPROFIT ENTITY TO SERVE AS A THIRD-PARTY ADMINISTRATOR FOR ENERGY EFFICIENCY PROGRAMS AND OTHER DEMAND-SIDE MANAGEMENT PROGRAMS AND TO ESTABLISH THE SCOPE OF THE STUDY; TO AMEND SECTION 58-31-227, RELATED TO RENEWABLE ENERGY FACILITIES AND RESOURCES FOR THE PUBLIC SERVICE AUTHORITY, SO AS TO PROVIDE FOR COMPETITIVE PROCUREMENT OF ANCILLARY SERVICES, ENERGY STORAGE FACILITIES, AND OTHER ENERGY SOURCES, AND TO PROVIDE FOR ADDITIONAL REQUIREMENTS; TO ADD CHAPTER 42 TO TITLE 58 TO ESTABLISH REQUIREMENTS, PROCESSES AND PROCEDURES FOR ELECTRiCAL UTILITIES TO OBTAIN RENEWABLE ENERGY AND ENERGY STORAGE RESOURCES THROUGH COMPETITIVE PROCUREMENT AND TO ESTABLISH REQUIREMENTS FOR ELECTRICAL UTILITIES TO OBTAIN VARIABLE FUEL-COST GENERATION FACILITIES, NON-VARIABLE FUEL-COST GENERATION FACILITIES AND DEMAND-SIDE RESOURCES THROUGH COMPETITIVE PROCUREMENT; TO ADD SECTIONS 58-27-861, SO AS TO PROVIDE FOR DEFINITIONS AND CERTAIN RATE TERMS FOR QUALIFYING CUSTOMERS; TO ADD SECTION 58‑27‑862, SO AS TO PROVIDE FOR DEFINITIONS AND CERTAIN TERMS OF SERVICE AND RATES FOR AN ELIGIBLE ELECTRIC CUSTOMER; TO AMEND SECTION 48-1-100, RELATED TO PERMITS FOR DISCHARGE OF WASTES OR AIR CONTAMINANTS, SO AS TO ESTABLISH PROCESSES AND PROCEDURES FOR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO REVIEW AN APPLICATION FOR CERTIFICATION PURSUANT TO SECTION 401 OF THE CLEAN WATER ACT, AND TO FURTHER PROVIDE FOR APPLICATION MODIFICATIONS AND PERMITTED ACTIVITIES BY THE APPLICANT PENDING REVIEW OF AN APPLICATION FOR CERTIFICATION OR A PERMIT; TO ADD SECTION 48-1-105, SO AS TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ESTABLISH PROCESSES AND PROCEDURES FOR EXPRESS PERMIT AND CERTIFICATION REVIEWS FOR CERTAIN WATER RELATED PERMITS, APPROVALS, OR CERTIFICATIONS.

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

**PART I**

**Public Service Commission and Office of Regulatory Staff**

SECTION 1. Section 58-3-20 of the S.C. Code is amended to read:

Section 58-3-20. (A) The commission is composed of seven five members to be elected by the General Assembly in the manner prescribed by this chapter. Each member must have:

(1) a baccalaureate or more advanced degree from:

(a) a recognized institution of higher learning requiring face-to-face contact between its students and instructors prior to completion of the academic program;

(b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(c) an institution of higher learning chartered before 1962; and

(2) a background of substantial duration and an expertise in at least one of the following:

(a) energy issues;

(b) telecommunications issues;

(c) consumer protection and advocacy issues;

(d) water and wastewater issues;

(e) finance, economics, and statistics;

(f) accounting;

(g) engineering; or

(h) law.

(B)(1) Beginning in 2004, the members of the Public Service Commission must be elected to staggered terms. In 2004, the members representing the Second, Fourth, and Sixth Congressional Districts must be elected for terms ending on June 30, 2006, and until their successors are elected and qualify. Thereafter, members representing the Second, Fourth, and Sixth Congressional Districts must be elected to terms of four years and until their successors are elected and qualify. In 2004, the members representing the First, Third, and Fifth Congressional Districts and the State at large must be elected for terms ending on June 30, 2008, and until their successors are elected and qualify. Thereafter, members representing the First, Third, and Fifth Congressional Districts and the State at large must be elected to terms of four years and until their successors are elected and qualify. Notwithstanding the provisions of this section, members representing the First, Third, and Fifth Congressional Districts shall serve until the expiration of their terms, and in 2013, members representing the First, Third, and Fifth Congressional Districts must be elected for terms ending on June 30, 2016, and until their successors are elected and qualified.

(2) In the event there are Seven Congressional Districts, the member elected from the State at large shall serve until the expiration of his term, and in 2013, a member representing the Seventh Congressional District must be elected for a term ending on June 30, 2016, and until his successor is elected and qualified. Thereafter, the member representing the Seventh Congressional District must be elected to terms of four years and until his successor is elected and qualified. Upon the election and qualification of the member representing the Seventh Congressional District, the at-large member elected to satisfy the requirements of subsection (C) immediately shall cease to be a member of the commission.

(C) The General Assembly must provide for the election of the seven-member commission and elect its members based upon the congressional districts established by the General Assembly pursuant to the latest official United States Decennial Census. If the number of congressional districts is less than seven, additional members must be elected at large to provide for a seven-member commission. In the event the congressional districts established by the General Assembly are under review by a court for compliance with statutory or constitutional requirements, an election scheduled pursuant to this section shall not be held until a final determination is made by the courts regarding the congressional districts. The inability to hold an election due to judicial review of the congressional districts does not constitute a vacancy on the commission and the commissioners serve until their successors are elected and qualify.

The General Assembly must provide for the elections of commission members as follows:

(a) one member must reside in the Dominion Energy South Carolina balancing authority area;

(b) one member must reside in the South Carolina Public Service Authority balancing authority area;

(c) one member must reside in either the Duke Energy Carolinas balancing authority area or the Duke Energy Progress East balancing authority area collectively, the “Duke Energy balancing authority area”; and

(d) two members must be at‑large members who reside in South Carolina without reference to balancing authority areas listed in subitems (a) through (c ).

A member of the commission must be a qualified elector in the State of South Carolina, and with respect to subitems (a) through (c), in the balancing authority area for the seat in which the member serves.

(2)(a) The term for members serving on the commission as of the effective date of this act shall terminate on June 30, 2024.

(b) The initial term for the members residing in the Dominion Energy South Carolina balancing authority area, South Carolina Public Service Authority balancing authority area, and the first statewide, at-large member shall be for the term beginning on July 1, 2024, ending on June 30, 2027, and until their successors are elected and qualify. Thereafter, the members representing these seats shall be elected for a three-year term and until the successors are elected and qualify.

(c) The initial term for the member residing in the Duke Energy balancing authority area, and the second statewide, at-large member shall be for the term beginning on July 1, 2024, ending on June 30, 2029, and until their successors are elected and qualify. Thereafter, the members representing these seats shall be elected for a three-year term and until the successors are elected and qualify.

(d) The General Assembly must give due consideration to race, gender, and other demographic factors to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the consumer population of this State.

(D)(C) The Governor may fill vacancies in the office of commissioner until the successor in the office for a full term or an unexpired term, as applicable, has been elected by the General Assembly. In cases where a vacancy occurs on the commission when the General Assembly is not in session, the Governor may fill the vacancy by an interim appointment. The Governor must report the interim appointment to the General Assembly and must forward a formal appointment at its next ensuing regular session.

SECTION 2. Section 58-3-250 of the S.C. Code is amended to read:

Section 58-3-250. (A) All final orders and decisions of the commission must be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and must include:

(1) findings and conclusions, and the reasons or bases therefor, upon all the material issues of fact or law presented in the record and relied upon for a ruling; and

(2) the appropriate rule, order, sanction, relief, or statement of denial thereof.

(B) A copy of every final order or decision under the seal of the commission must be served by electronic service, registered or certified mail, upon all parties to the proceeding or their attorneys. Service of every final order or decision upon a party or upon the attorney must be made by emailing a copy of the order to the party's email address provided to the commission or by mailing a copy to the party's last known address. If no email or other address is known, however, service shall be made by leaving a copy with the chief clerk of the commission. The order takes effect and becomes operative when served unless otherwise designated and continues in force either for a period designated by the commission or until changed or revoked by the commission. If, in the judgment of the commission, an order cannot be complied with within the time designated, the commission may grant and prescribe additional time as is reasonably necessary to comply with the order and, on application and for good cause shown, may extend the time for compliance fixed in its order.

(C) When the commission issues a verbal directive at a business meeting, it must provide a legal and factual rationale for each of its primary conclusions. All final orders and decisions of the commission must be published and served on the parties within ninety days following the presentation of a verbal directive at a commission business meeting.

SECTION 3. Section 58-4-10(B) of the S.C. Code is amended to read:

(B) Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before the commission. The regulatory staff must represent the public interest of South Carolina before the commission. For purposes of this chapter only, “public interest” means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer or the form of electric service customers elect to pursue as protected by Section 58‑27‑845, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services including approval of the recovery of such prudent utility costs as are necessary to provide safe, affordable, reliable, and high‑quality utility services.

SECTION 4. Section 58-4-40(C) of the S.C. Code is amended to read:

(C) No person may be an employee of the Office of Regulatory Staff if the Public Service Commission regulates a business with which he is associated and this relationship creates a continuing or frequent conflict with the performance of his official responsibilities. If the commission regulates a business with which an employee of the Office of Regulatory Staff was formerly employed, the employee must be excluded from involvement in proceedings concerning that business for five years from the starting date of employment at the Office of Regulatory Staff.

SECTION 5. Section 58-27-2100 of the S.C. Code is amended to read:

Section 58-27-2100. After the conclusion of a hearing the Commission shall make and file its findings and order with its opinion, if any. Its findings shall be in sufficient detail to enable the court on review to determine the controverted questions presented by the proceeding and whether proper weight was given to the evidence. If the commission issues a verbal directive at a business meeting prior to publishing the final written order, it must publish the final written order within ninety days of the presentation of the verbal directive. All verbal directives must include a legal and factual rationale for each of the primary conclusions.

SECTION 6. The Public Utilities Review Committee shall retain a third‑party, independent expert consultant to conduct a comprehensive study of any official board or commission of any state or of the United States having a similar jurisdiction, role, or responsibilities as the South Carolina Public Service Commission or the Office of Regulatory Staff. The scope of such study shall, at a minimum, review and compare various states’ commissions’ or staffs’ processes of election or appointment, structures, responsibilities, qualifications, technical subject matter experts on staff, compensation, ex parte rules and procedures, and their role and organization. The third‑party, independent expert consultant must be selected by the Chair and Vice‑Chair of the Review Committee. The third‑party, independent expert consultant shall prepare and deliver this report, along with its recommendations to the General Assembly by January 1, 2025.

**PART II**

**Energy Imbalance Market**

SECTION 7.Chapter 27, Title 58 of the S.C. Code is amended by adding:

Article 24

Energy Imbalance Market

Section 58-27-2700. As used in this article:

(1) “Energy imbalance market” means an organized wholesale market entity established for the purpose of coordinating and efficiently managing the dispatch of electricity among participating electrical utilities to balance intra-hour generation and load that:

(a) does not require participating electrical utilities to become members of any regional transmission organization;

(b) employs security-constrained economic dispatch market optimization software to centrally dispatch all available participating supply resources on a lowest cost basis at subhourly intervals;

(c) settles market transactions based on transparent locational marginal pricing that accounts for energy, transmission congestion, and losses;

(d) does not provide a market for centralized resource adequacy procurement nor ancillary services, which functions remain with electrical utilities;

(e) improves reliability through expanded access to a wider range of generation and demand-side management options to address real-time contingencies, greater ability to manage real-time flows within system operating limits from a diverse set of resources, enhanced situational awareness of the system, faster delivery of replacement generation after depletion of shared reserves, and greater integration of variable energy resources;

(f) does not assume a participating electrical utility’s responsibility to reliably meet its service obligations or otherwise maintain reliability within its service area;

(g) coordinates utilization of transmission capacity made available by market participants to accommodate market transactions;

(h) does not require an electrical utility to cede operational control of its transmission facilities or otherwise assume an electrical utility’s responsibility to manage additions and upgrades to its transmission system;

(i) has a structure of governance or control that is independent of any market participant, and no member of its board of directors has an affiliation with a market participant or with an affiliate of a market participant during the member’s tenure on the board so as to unduly affect the energy imbalance market’s performance;

(j) employs an independent entity responsible for monitoring the market for actual or potential ineffective market rules, market abuses, market power, or violations of market rules; and

(k) has an inclusive and open stakeholder process that does not place unreasonable burdens on or preclude meaningful participation by any stakeholder group.

(2) “Transmission utility” means an electrical utility, including the South Carolina Public Service Authority, that:

(a) is a wholesale electricity supplier or transmitter; and

(b) owns and operates electric transmission lines capable of transmitting electric energy at a voltage of one hundred kilovolts or more.

Section 58-27-2710. (A) The General Assembly finds:

(1) Much of the electric service provided in South Carolina is currently provided by vertically integrated providers of electric distribution and transmission services.

(2) The State has adopted measures to diversify the resources used to reliably meet the energy needs of consumers in this State through Act 62 of 2019, Act 90 of 2021, and through other measures.

(3) The General Assembly established the Electricity Market Reform Measures Study Committee pursuant to Act 187 of 2020 to study whether to recommend any of a variety of electricity market reform measures, encompassing the full range of possible market reforms that may further promote the development of and access to low cost, reliable resources for the benefit of South Carolina consumers.

(4) The independent consultant hired by the Electricity Market Reform Measures Study Committee found that an energy imbalance market in South Carolina would conservatively produce annual net savings of 4-9 million dollars, which could grow significantly above this level.

(5) The weather events of December 2022 in South Carolina led to widespread power outages and rolling blackouts, raising additional questions about the existing service model’s ability to maintain electric reliability.

(6) The Federal Energy Regulatory Commission has found that energy imbalance markets improve reliability by managing resources that could relieve transmission constraints more effectively, leveraging a larger, more diverse set of resources to operate the system within limits, and creating price signals that lead to actions that could enhance reliability.

(7) An energy imbalance market can increase the reliability of electric service in the State, create substantial cost savings for South Carolina consumers, and stimulate commercial development.

Section 58-27-2720. (A) Except as otherwise provided in subsections (B) and (C) of this section, on or before January 1, 2028, all transmission utilities operating in the State must join the energy imbalance market created under the provisions of this article.

(B) No later than January 1, 2027, the Public Service Commission shall open a docket for the purpose of assessing each transmission utility’s membership in the energy imbalance market. The commission shall approve each transmission utility’s membership in the energy imbalance market unless:

(1) a transmission utility demonstrates that it would not be in the best interests of its customers to join the energy imbalance market; and

(2) the commission determines that the transmission utility joining the energy imbalance market will impair reliability or result in unanticipated net costs to utility consumers.

(C) The commission may delay compliance with the requirement in subsection (A) of this section if a transmission utility demonstrates that it has made all reasonable efforts to comply with the requirement and the energy imbalance market has not received all requisite regulatory approvals by January 1, 2028, but only insofar as necessary to accommodate the delayed approvals.

Section 58-27-2730. (A) As soon as practicable after the effective date of this article, the commission shall retain a third‑party, independent administrator qualified to coordinate all aspects of the development of an energy imbalance market and carry out the responsibilities enumerated in this article. The administrator shall be independent from any electrical utility or prospective energy imbalance market participant and have no affiliation with any electrical utility or prospective energy imbalance market participant. Engagements procured under this provision are exempt from the South Carolina Procurement Code.

(B) No later than January 1, 2025, the administrator shall:

(1) develop an energy imbalance market business plan;

(2) commence design of the energy imbalance market that meets the definition set forth in Section 58‑27‑2700;

(3) initiate regular, inclusive, and open stakeholder meetings, including state entities, to guide design of the energy imbalance market, rules, and tariff;

(4) develop a request for proposals to select an energy imbalance market operator that is independent from any electrical utility or prospective energy imbalance market participant;

(5) conduct a competitive process to select an energy imbalance market operator with due consideration for its ability to provide effective market services while minimizing administrative costs; and

(6) consider the Southeast Energy Exchange Market for the purpose of occupying the role of energy imbalance market operator, but only insofar as it:

(a) conforms to the definition of energy imbalance market as set forth in Section 58‑27‑2700; and

(b) maintains all requisite regulatory approvals for continued operation.

Section 58-27-2740. (A) No later than January 1, 2026, the administrator and energy imbalance market operator shall:

(1) complete design of the energy imbalance market and develop the energy imbalance market tariff and market rules;

(2) file the energy imbalance market tariff and market rules for all regulatory approvals requisite to its operation; and

(3) develop an energy imbalance market implementation plan and timeline that includes submission of periodic updates to the commission.

(B) No later than January 1, 2028, the administrator and energy imbalance market operator shall:

(1) complete development of the market system software and associated infrastructure;

(2) implement the market systems for commencement of market activities upon the admission of transmission utilities in the State as members; and

(3) commence energy imbalance market operations.

Section 58-27-2750. The Commission shall consider allowing, and may allow, a transmission utility to recover energy imbalance market start-up and subscription fees and other prudently incurred costs of participation in the energy imbalance market through rates.

Section 58-27-2760. (A) After the energy imbalance market commences operations, the energy imbalance market operator shall publish quarterly reports listing the costs and benefits associated with the participation of South Carolina transmission utilities in the market, including cost savings and improved operational efficiencies, such as the reduction of the need for real-time flexible reserves.

(B) Starting in 2030, the energy imbalance market operator shall evaluate and include within its reports at least once per year, whether the addition of a day-ahead market or other market enhancements would provide economic or reliability benefits or other significant system benefits.

(C) No later than January 1, 2031, the commission shall open a docket for the purpose of assessing the accumulated benefits to South Carolina consumers since the energy imbalance market began operations and exploring whether additional market enhancements would be in the public interest. Upon completion of the proceeding, the Commission shall submit a report of its findings to the General Assembly.

**PART III**

**Transition from Coal**

SECTION 8.Chapter 37, Title 58 of the S.C. Code is amended by adding:

Section 58-37-45. (A) The General Assembly finds as follows:

(1) Major commercial and industrial enterprises with the potential to bring substantial investments and employment opportunities to this State are increasingly making decisions on the location of new facilities and investments in existing facilities based on the availability of safe, reliable, affordable, and clean energy.

(2) South Carolina electrical utilities are evaluating their existing generation portfolios to determine whether their current reliance on coal-fired electricity generation may be further reduced in order to reduce cost and risk to ratepayers.

(3) As part of that evaluation, building and retaining dispatchable resources such as natural gas generation, pumped hydro, and energy storage, are essential to South Carolina’s clean energy future to ensure reliability.

(4) Growth in renewable generation and associated technologies are important to South Carolina’s clean energy future in mitigating financial and operational risks for customers and utilities in light of limited coal supply and transportation options, as well as market pressures, heightened environmental standards, and associated volatility in fuel costs.

(5) In order to promote economic development and protect the continued long-term reliability of electric service, it is in the public interest of the State to assist electrical utilities in their planned transition away from coal-fired electricity generation in an orderly and disciplined manner that: (a) ensures continued electric system reliability for all customers in a manner that allows utilities to comply with applicable federal and state regulations including, but not limited to, the requirements of NERC, SERC, FERC, NRC, and EPA; (b) seeks to maximize the overall value and lower the overall cost of such future transition from what it could otherwise be; (c) delivers to electric customers benefits of reduced price volatility and access to a cleaner energy mix; and (d) allows for customers to meet their corporate requirements and goals related to renewable energy or carbon-free energy.

(6) In planning to transition away from coal-fired electricity generation, it is in the public interest and the policy of the State to plan for replacement resources that will be operational in advance of coal retirements, and to encourage an orderly transition for each utility that: (a) maintains competitive electric rates; (b) results in an appropriate mix of resources for the generation of electricity that mitigates overall risks to customers in South Carolina; and (c) preserves and improves upon the long-term reliability of the electric grid.

(7) To facilitate an orderly transition away from coal-fired electricity generation and to support the reliability of the electric system and customer options, it is in the public interest of the State to encourage electrical utilities to make transmission and distribution systems smarter, more resilient to adverse weather and cyber and physical security threats, and capable of accommodating diverse generating resources onto the grid, as well as accommodating the grid demands associated with transportation electrification.

(8) Electrical utilities have an important role in the energy transition across their balancing authority areas and have been critical economic development partners for South Carolina for decades by offering affordable power that has helped to attract jobs and associated development, and it is in the best interest of this State to preserve their financial ability to achieve the goal of this policy and achieve important objectives such as the continued investment in, and operation and maintenance of, the electric system, rapid restoration of power after major storms and outages; rate designs and infrastructure necessary to attract business to South Carolina; the ability to obtain financing at attractive rates; and to ensure a viable workforce force providing electricity and to attract such utility workers at market-competitive wages.

(9) It is necessary and in the public interest to encourage investments in electric supply and demand‑side resources that assist in reducing the electric grid’s reliance on coal as a fuel for electric generation, so long as such reduction can be done in a safe, reliable manner focused on least reasonable cost, and that the in‑service dates of such resources are appropriately timed with the retirement of coal‑fired generation.

(B)(1) When evaluating an electrical utility’s integrated resource plan pursuant to Section 58‑37‑40(C), it is in the public interest for the commission to approve utility resource plans that seek to reduce emissions and modernize the electric grid serving South Carolina but only if the utility’s integrated resource plan:

(a) adequately serves anticipated peak electrical load with applicable planning reserve margins,

(b) achieves the most reasonable and prudent levels of ratepayer cost and risk;

(c) maintains or enhances system reliability;

(d) complies with applicable laws and regulations; and

(e) results in an executable resource plan.

(2) In approving a utility’s integrated resource plan pursuant to Section 58‑37‑40(C), the commission shall give substantial weight to resource portfolios that:

(a) leverage existing noncoal‑fired generating assets, including nuclear and pumped hydro, which are located in South Carolina utilities’ balancing authority areas;

(b) maintains or improves system reliability, including through the deployment of dispatchable resources, such as natural gas generation, solar and storage hybrid facilities, pumped hydro, and standalone energy storage, to balance variable energy resources;

(c) utilize grid-connected battery storage;

(d) utilize energy efficiency and demand‑side programs to help reduce peak electrical loads and minimize the amount of generation necessary to replace coal-fired generation;

(e) utilize solar energy and energy storage, sited together or separately, with an appropriate balance of third‑party and utility‑owned assets, with a presumption of reasonableness that the cost of any such resources is reasonable if they are competitively procured across a utility’s balancing authority area;

(f) preserve optionality for future system improvements and cost reductions, including the deployment of on- and off-shore wind generation, as well as emerging technologies such as advanced nuclear generation and hydrogen technologies; and

(g) include investment in and modernization of the utility’s distribution and transmission grid necessary to transition sources of generation away from coal-fired generation, incorporate clean energy, and provide for the electrification of transportation.

**PART IV**

**Electric Facilities and Certifications**

SECTION 9.Article 1, Chapter 31, Title 58 of the S.C. Code is amended by adding:

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

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

SECTION 10. Section 58-33-20 of the S.C. Code is amended by adding:

(10) The term “like facility” with reference to generation facilities and without limitation, includes a facility or facilities that are proposed to provide capacity to replace the capacity of a facility or facilities that are being retired, downrated, mothballed, or dedicated to standby or emergency service, regardless of the fuel type o f the new facility or facilities or their location whether within or outside of the electrical utility’s balancing authority area, or so long as those new facilities will provide an amount of effective load-carrying capacity that in whole or in part will serve to replace the capacity to be lost as result of retirement, and includes associated transmission facilities needed to deliver power from that facility to customer. A “like facility” with reference to transmission facilities, without limitation, includes any facility that represents the rebuilding, reconductoring, rerouting, paralleling, increasing voltage, adding circuits, or otherwise reconfiguring of an existing transmission line or other transmission facilities including, without limitation, projects to increase the capacity of such facilities. A facility or facilities identified as a replacement facility in an integrated resource plan or update filed pursuant to Chapter 37 of this title and approved by the commission shall constitute a like facility for purposes of this chapter.

SECTION 11. Article 3, Chapter 33, Title 58 of the S.C. Code is amended to read:

Article 3

Certification of Major Utility Facilities

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

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

(3) A certificate may be amended.

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

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

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

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

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

(e) which is a transmission line or associated electrical transmission facilities constructed by the South Carolina Public Service Authority, (i) for which construction either is commenced within one year after January 1, 2022, -; or (ii) which is necessary to maintain system reliability in connection with the closure of the Winyah Generating Station, provided that such transmission is not for generation subject to this chapter; or (iii) which is justified by public convenience and necessity to maintain system reliability or promote economic development as determined by the South Carolina Public Service Authority and agreed to by the Office of Regulatory Staff; or

(f) if such facility is located in a utility’s balancing authority area, but outside of South Carolina, and such facility is proposed to serve customers in this State.

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

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

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

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

(b) The commission may, upon a showing of a need, require a commission-approved process that includes:

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

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

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

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

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

(vi) a demonstration that the facility is consistent with an integrated resource plan approved by the commission; and

(vii) treatment of utility affiliates in the same manner as nonaffiliates participating in the request for proposal process.

(9) The commission must give substantial weight to the judgment of the applicant, as operator of the electrical system, concerning the need for the facilities and their contribution to system reliability and efficiency. In proceedings under this chapter, issues related to the applicant’s resource planning models, inputs, and criteria and other matters that were or could reasonably have been considered in the review of the applicant’s integrated resource plan shall be deemed to be conclusively decided and shall not be open for further or duplicative review. The commission must consider matters related to the scope and sufficiency of a utility’s demand‑side plans and activities exclusively in proceedings conducted pursuant to Section 58‑37‑20.

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

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

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

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

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

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

(2) Each application shall be accompanied by proof of service of a copy of the application on the Office of Regulatory Staff, the chief executive officer of each municipality, and the head of each state and local government agency, charged with the duty of protecting the environment or of planning land use, in the area in the county in which any portion of the facility is to be located, and any local government entity in this State which the applicant identifies at the time of filing as seeking to enforce a local law or local regulation unduly restricting the project. The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

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

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

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

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

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

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

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

(a) the applicant;

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

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

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

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

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

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

Section 58-33-160. (1) The Commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the major utility facility as the Commission may deem appropriate; such conditions shall be as determined by the applicable State agency having jurisdiction or authority under statutes, rules, regulations or standards promulgated thereunder, and the conditions shall become a part of the certificate. The Commission may not must grant a certificate for the construction, operation and maintenance of a major utility facility, either as proposed or as modified by the Commission, unless it shall find and determine if it finds and determines that the applicant has shown:

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

(b) The nature of the probable environmental impact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 58-33-175. The grant of a certificate for a generation facility or a determination that it constitutes a like facility replacement constitutes a conclusive determination for purposes of Chapters 2 and 3, Title 28 and all other purposes that a public purpose exists supporting the condemnation of property reasonably determined by a condemnor to be necessary or convenient for construction and operation of: (a) that facility; (b) any electric transmission facilities proposed to interconnect that facility to the electric grid or to deliver power from that facility to customers; or (c) any natural gas transmission facilities proposed to deliver fuel to that facility. Where a certificate has been granted, the right of the condemnor to access the property for construction and all other purposes allowed under Chapters 2 and 3, Title 28 related to such facilities shall not be delayed by claims that no public purpose exists.

SECTION 12.Article 3, Chapter 33, Title 58 of the S.C. Code is amended by adding:

Section 58-33-195. (A) The General Assembly hereby encourages Dominion Energy South Carolina, Inc. and the Public Service Authority to prepare to construct, alone or jointly, one or more natural gas‑fired combined cycle generation facilities of up to 2,000 MW capacity at or near the site of Dominion Energy South Carolina, Inc.’s former Canadys coal‑fired generation station in Colleton County and other sites in the South Carolina Lowcountry, and further encourages Dominion Energy South Carolina, Inc. and the Public Service Authority to determine any and all electrical transmission facilities to the electric grid or to deliver power from them to the customer. The General Assembly declares that construction of natural gas transmission and delivery facilities to serve these generation facilities are in the public interest of the State of South Carolina. The General Assembly encourages Dominion Energy South Carolina, Inc. and the Public Service Authority to use such information in a filing to the commission to obtain a certificate pursuant to Article 3 of this chapter as soon as practicable, and instructs all government agencies to provide accelerated consideration of any action required to permit or authorize construction and operation of the facilities subject to this section in preference to all other pending nonemergency applications or requests.

(B) The General Assembly hereby encourages Duke Energy Carolinas, LLC to make necessary determinations associated with constructing a second powerhouse using the existing reservoir at Bad Creek Pumped Hydro Station in Oconee County, South Carolina, which will double the size and peak hourly capacity of the facility and to use such determinations and associated informationto make a filing as soon as practicable with the commission to obtain a certificate pursuant to Article 3 of this chapter. The General Assembly further encourages Duke Energy Carolinas, LLC to make determinations as to what may be necessary to interconnect such an expansion of Bad Creek Pumped Hydro Station to the grid or otherwise deliver power from Duke Energy Carolinas, LLC to its customers, and to include such information in any filing to the commission pursuant to Section 58‑33‑110 or as otherwise required by law. The General Assembly further declares that the expansion of the Bad Creek Pumped Hydo Station and associated facilities are in the public interest of the State of South Carolina. The General Assembly instructs all governmental agencies to provide accelerated consideration of any action required to permit or otherwise authorize construction and operation of the facilities subject to this section in preference of all other pending nonemergency applications or requests.

(C) The General Assembly hereby encourages Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to make necessary determinations associated with constructing hydrogen capable natural gas generation or otherwise placing into service such natural gas generation within the utilities’ balancing areas serving South Carolina, and to use such determinations and associated information to make filings as soon as practicable with the commission as may be necessary to obtain certificates pursuant to Article 3 of this chapter or as otherwise required by law. The General Assembly further encourages Duke Energy Carolinas, LLC and Duke Energy Progress to determine what facilities may be necessary to interconnect such natural gas generation to the grid or otherwise deliver power from the utilities to customers, and to include such information in any filing to the commission pursuant to Section 58‑33‑110 or as otherwise required by law. The General Assembly instructs all government agencies to provide accelerated consideration of any action required to permit or otherwise authorize construction or operation of the facilities subject to this section in preference of all other pending nonemergency applications or requests.

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

Section 58-33-196. (A) Electrical utilities are encouraged to explore the potential for deploying nuclear facilities including, but not limited to, small modular nuclear facilities at suitable sites. Suitable sites may include sites of current nuclear facilities, sites where nuclear facilities have been proposed but not constructed, at or near a site of an existing or proposed energy intensive manufacturing facility, in a community that is historically economically disadvantages for the purpose of economic development or other brownfield sites, such as coal generation sites. The entity that establishes a small modular nuclear reactor, including that entity’s parent or affiliate, that holds a license from the U.S. Nuclear Regulatory Commission to construct or operate one or more existing nuclear electrical generating facilities at the time of the application may apply to the commission for a certificate of public convenience and necessity, pursuant to the Utility Facility Siting and Environmental Protection Act and consistent with the requirements of this section, to complete site permitting and construct and operate a small modular nuclear reactor that would qualify as an energy project in an energy community as defined in 26 U.S.C. Section 48(a)(14) if granting the certificate will allow the applicant to apply for, use, or leverage no less than fifty percent of construction costs by federal, state, or local funds, tax credits, grants, loan guarantees, or any other benefits or incentives that can be used to lower the capital or operating costs, directly or indirectly, of the small modular nuclear reactor provided that the costs and benefits of such program are reasonable and prudent relative to the levelized cost of producing electricity from other sources after application of federal, state, and local tax credits and incentives, including consideration of all fuel factor, economic, and environmental benefits, and any of the costs associated with any relative externalities.

(B) Any utility pursuing deployment of such nuclear facilities must provide annual progress reports to the commission. This report may be in writing or in the form of testimony in an appropriate proceeding. The utility must provide cost estimates of related studies, including but not limited to, planning, licensing, and project development to the commission. If the commission finds such estimated costs are reasonable, such costs shall be recoverable through rates even if an application for a certificate under this article has not been filed. Nothing in this section relieves an electric utility of the burden of filing for a certificate under this article and obtaining appropriate approvals from the commission before commencing construction.

(C) Electrical utilities, individually or in combination, may apply for a state grant to pay for such studies as may be necessary to determine the optimum site or sites for additional nuclear generation in South Carolina, up to and including the pursuit of an early site permit, where such grant is not to exceed seventy‑five million dollars, provided that the utility addresses barriers, if any, to the coownership of nuclear facilities located in South Carolina, the anticipated timing of the receipt of an early site permit, and current and anticipated federal benefits applicable to a nuclear site located within South Carolina.

SECTION 14. Article 7, Chapter 33, Title 58 of the S.C. Code is amended by adding:

Section 58-33-440. (A) There is hereby created in the state treasury a special non-reverting fund to be known as the “PowerSC Innovation Fund” (referred to in this section as the “Fund”) that shall be administered by the South Carolina Energy Office (the “Energy Office”). The Fund shall be established on the books of the South Carolina Comptroller General. All amounts appropriated and such other funds as may be made available to the Fund from any other source, public or private, shall be paid into the state treasury and credited to the Fund. Interest earned on money in the Fund shall remain in the Fund and be credited to it. Any money remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to research, develop, or assess the appropriateness of and develop approaches for the implementation of innovative energy and energy efficiency technologies, including, but not limited to: advanced nuclear generation; energy storage; advanced solar generation; geothermal technologies; advancements in efficient space and water heating for residential, commercial, and industrial applications; and building thermal envelope improvement. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller General upon written request signed by the Director of the Energy Office or a duly appointed designee.

(B) The “PowerSC Innovation Program” (the “Program”) is hereby established for the purpose of (1) establishing a South Carolina energy innovation hub from such funds as may be available from the Fund; and (2) awarding grants on a competitive basis from such funds as may be available from the Fund to support energy innovation.

(C) The Program shall be administered by the Energy Office. In administering the Program, the Energy Office shall, in collaboration with the PowerSC Interagency Working Group, establish and publish guidelines and criteria for disbursement of funds pursuant to this section, which shall include and provide for grants to support higher education research on advanced energy technologies, to fund emissions-free energy workforce development programming, and to assist with site selection for future small modular reactor projects in South Carolina. In administering the Program, the Energy Office shall, in collaboration with the Secretary of Commerce, establish and publish guidelines and criteria for disbursement of funds pursuant to this section. A minimum of fifty percent of grant dollars each fiscal year must be spent on advanced nuclear deployment with those funds reverting to all eligible purposes if they are unspent after two years.

(D) The Energy Office shall oversee each grant awarded through the Program and ensure thorough reporting on each such grant.

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

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

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

**PART V**

**Energy Efficiency Programs and Energy Resilience**

SECTION 16. Section 58-37-10 of the S.C. Code is amended to read:

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

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

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

(3) “Cost‑effective” means that the net present value of benefits of a program or portfolio exceeds the net present value of the costs of the program or portfolio, as determined by the program or portfolio which passes any two of the following four tests:

(a) Utility Cost Test, also referred to as the Program Administrator Test;

(b) Total Resource Cost Test;

(c) Participant Cost Test; and

(d) Ratepayer Impact Measure Test.

In evaluating the cost-effectiveness of a program or portfolio, a utility or program administrator must present the results of all four tests.

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

SECTION 17. Section 58-37-20 of the S.C. Code is amended to read:

Section 58-37-20. (A) The General Assembly hereby declares that expanding electrical utility investment in and customer access to demand-side management programs to the maximum extent possible will result in more efficient use of existing resources, promote lower energy bills, protect the public health and safety, and stimulate economic development and employment, and is therefore in the public interest.

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

(C) Each investor-owned electrical utility must submit an annual report to the commission describing the demand-side management programs implemented by the electrical utility in the previous year. The report must document the following:

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

(2) program expenditures, including incentive payments;

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

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

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

(6) the net economic benefits of the demand-side management programs;

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

(8) any other information required by the commission.

(D) To ensure prudent investments by an electrical utility in energy efficiency and demand response, as compared to potential investments in generation, transmission, distribution, and other supply-related utility equipment and resources, the commission must review each investor-owned electrical utility’s portfolio of demand-side management programs on at least a triennial basis to align with review of each utility’s integrated resource plan pursuant to Section 58-37-40. The commission is authorized to order modifications to a utility’s demand-side management portfolio, including program budgets, if it determines that doing so is in the public interest. In evaluating a utility’s portfolio of demand-side management programs to assure reasonableness, promotion of the public interest, and consistency with the objectives of Section 58‑27‑845 and 58‑37‑20, the commission must ensure that:

(1) the utility demonstrated it is pursuing all available and cost-effective energy efficiency and demand-side resources;

(2) the utility’s portfolio of demand-side management programs gives all classes of customers an opportunity to participate and gives due regard to the urgent need for demand-side management programs that serve the needs of low-income customers;

(3) utility demand-side management programs are cost effective, except:

(a) demand-side management programs targeting low-income customers or populations need not be cost effective if a utility’s portfolio of demand-side management programs is cost effective as a whole;

(b) the commission may waive cost-effectiveness reviews as it concerns resilient energy resource programs targeting critical facilities pursuant to Section 58-43-20; and

(c) the commission may approve demand‑side management pilot programs that it determines are in the public interest.

SECTION 18. Section 58-37-30 of the S.C. Code is amended to read:

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

(B) Electric cooperatives providing resale or retail services, municipally-owned electric utilities, and the South Carolina Public Service Authority shall report annually to the State Energy Office on available data regarding the past, on-going, and projected status of demand-side activities management programs and purchase of power from qualifying facilities. For electric cooperatives, submission to the State Energy Office of a report on demand-side activities management programs 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.

SECTION 19.Chapter 37, Title 58 of the S.C. Code is amended by adding:

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

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

(C) For demand‑side programs or customer incentives proposed in this section, the electrical utility may recover costs through the procedures in Section 58‑37‑20. The prohibition in Section 58‑40‑20(I) against recovery of lost revenues associated with distributed energy resources pursuant to Chapter 39, Title 58 is inapplicable to recovery of net lost revenues associated with a distributed energy resource that is installed as a result of a demand‑side program incentive pursuant to this section or Section 58‑37‑20. An electrical utility may only recover costs associated with resilient energy resources installed as part of a resilient energy resource customer program pursuant to the provisions of Section 58‑43‑30(D).

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

(E) The Office of Regulatory Staff must develop and publish materials intended to inform and educate the public regarding programs available to a customer pursuant to this section. The Office of Regulatory Staff must maintain a list of approved vendors who are qualified and in good standing to provide services associated with these programs including, but not limited to, installation or operation of solar energy systems, battery storage systems, and electric vehicle service equipment.

SECTION 20. Section 58-37-40(B) of the S.C. Code is amended to read:

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

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

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

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

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

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

(i) customer energy efficiency and demand response programs;

(ii) facility retirement assumptions; and

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

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

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

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

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

(j) the utility’s transmission and distribution resource plan.

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

(2) The utility’s transmission and distribution plan must optimize transmission and distribution investments for reliability, economic efficiency and generator interconnection. Each plan must include both:

(a) modeling of the utility’s transmission and distribution system over a 20 year period, including up to date inputs from the generation system based on the utility’s current plans for unit retirement and new generation and purchases. This modeling shall optimize grid investments for lowest cost reliable service across several scenarios, at least one of which shall model the retirement of the utility’s coal generation by 2030; and

(b) demonstration that the utility evaluated a range of cost‑effective transmission and distribution solutions, including non-wires alternatives such as battery energy storage systems and distributed generation, software improvements, joint projects with neighboring and other regional utilities, other upgrades to existing facilities, and other best practices. Modeling must consider dynamic line ratings, power flow control devices, topology optimization techniques, reconductoring and other grid-enhancing technologies and upgrades.

(3) The commission shall retain a statewide independent transmission monitor (“ITM”) who will evaluate utilities’ transmission and distribution plans, advise the Commission in its review of utilities’ plans, and have authority to require additional coordination and planning activities among utilities operating in the state to ensure compliance with this part. The ITM may retain consultants and other support staff as needed. Utilities shall cover the costs of the ITM on a pro rata share based on electric load.

(4) The commission shall also be authorized to approve a shared savings sharing mechanism between customers and electric utilities, allowing utilities to retain a specified percentage of the net present value savings that accrue to ratepayers from utilities’ investments in non-capital transmission and distribution solutions over the twenty year planning period. This benefit sharing mechanism shall allocate up to 30% of the demonstrated long term net benefits to electric utilities in the first five years; up to 20% in years six through ten; and up to 10% beyond year ten.

(5) Six months following the conclusion of the first IRP incorporating transmission and distribution plans, the commission, with support from the ITM, shall submit a report to the General Assembly with findings and recommendations with respect to the need for further reforms, including but not limited to the need for joint planning of the transmission and distribution system, to reliably integrate intermittent generation, to obtain economic benefits across utility territories, to enable economic development through enhanced choice by industrial and large customer choice, and to increase access to resources from a larger regional geographic footprint in service of greater reliability and cost effectiveness.

SECTION 21. Section 58-40-10 of the S.C. Code is amended to read:

Section 58-40-10. As used in this section:

(A) “Commission” means the Public Service Commission of the State of South Carolina.

(B) “Customer” means the person who is named on the electrical utility bill for the premises.

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

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

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

(a) not more than the lesser of one five thousand kilowatts (1,000 5,000 kW AC) or one hundred percent of contract demand if a nonresidential customer, unless the excess capacity beyond one hundred percent of contract demand is designated for a remote net metering program, in which case the total capacity may exceed one hundred percent of contract demand; or

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

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

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

(5) is intended primarily to offset part or all of the customer-generator's own electrical energy requirements, or intended to offset remote net metering customers’ aggregated usage under a remote net metering program; and

(6) meets all applicable safety, performance, interconnection, and reliability standards established by the commission, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the federal Energy Regulatory Commission, and any local governing authorities.

(D) “Electrical utility” shall be defined as in Section 58-27-10; provided, however, that electrical utilities serving less than one hundred thousand customer accounts shall be exempt from the provisions of this chapter.

(E) “Net energy metering” means using metering equipment sufficient to measure the difference between the electrical energy supplied to a customer-generator by an electrical utility and the electrical energy supplied by the customer-generator to the electricity provider over the applicable billing period.

(F) “Renewable energy resource” means solar photovoltaic and solar thermal resources, wind resources, hydroelectric resources, geothermal resources, tidal and wave energy resources, recycling resources, hydrogen fuel derived from renewable resources, combined heat and power derived from renewable resources, and biomass resources.

(G) “Solar choice metering measurement” means the process, method, or calculation used for purposes of billing and crediting at the commission determined value.

(H) “Remote net metering” means the measurement of excess electricity generated by a customer‑generator that is credited on a kilowatt‑hour basis on the remote net metering customers’ bills against the consumption of electricity at multiple, separate meter locations that may not be physically connected to the customer‑generator. The remote net metering customers and the customer‑generator must be within the service territory of the same electrical utility.

(I) “Remote net metering customer” means a customer distinct from the customer‑generator, who takes service under a rate schedule included in the approved solar choice tariff, receives remote net metering credits, and may be located at one or more separate meter locations that are not physically connected to the customer‑generator’s renewable energy system. The remote net metering customers and the customer‑generator may be different entities.

(J) “Remote net metering credit” means the accreditation of energy generation from customer‑generators, after behind the meter consumption, within each solar choice tariff time of use window which is used to offset the consumption of remote net metering customers within the same time of use window. Any generation from the customer‑generator credited to an individual remote net metering customer in excess of the remote net metering customer’s consumption in each time of use window will be credited at the rate of net excess energy, consistent with the approved solar choice tariff. Netting shall occur on a temporal basis consistent with each electric utility’s approved solar choice tariff.

SECTION 22. Section 58-40-20 of the S.C. Code is amended to read:

Section 58-40-20. (A) It is the intent of the General Assembly to:

(1) build upon the successful deployment of solar generating capacity through Act 236 of 2014 to continue enabling market-driven, private investment in distributed energy resources across the State by reducing regulatory and administrative burdens to customer installation and utilization of onsite distributed energy resources;

(2) avoid disruption to the growing market for customer-scale distributed energy resources; and

(3) require the commission to establish solar choice metering requirements that fairly allocate costs and benefits to eliminate any cost shift or subsidization associated with net metering to the greatest extent practicable; and

(4) require the commission to provide agricultural, governmental, nonprofit, low‑income, and multitenant entities the opportunity to offset part or all of their electricity needs through the use of renewable energy resources.

(B) An electrical utility shall make net energy metering available to all customer-generators who apply before June 1, 2021, according to the terms and conditions provided to all parties in Commission Order No. 2015-194. Customer-generators who apply for net metering after the effective date of this act but before June 1, 2021, including subsequent owners of the customer-generator facility or premises, may continue net energy metering service as provided for in Commission Order No. 2015-194 until May 31, 2029.

(C) No later than January 1, 2020, the commission shall open a generic docket to:

(1) investigate and determine the costs and benefits of the current net energy metering program; and

(2) establish a methodology for calculating the value of the energy produced by customer-generators.

(D) In evaluating the costs and benefits of the net energy metering program, the commission shall consider:

(1) the aggregate impact of customer-generators on the electrical utility's long-run marginal costs of generation, distribution, and transmission;

(2) the cost of service implications of customer-generators on other customers within the same class, including an evaluation of whether customer-generators provide an adequate rate of return to the electrical utility compared to the otherwise applicable rate class when, for analytical purposes only, examined as a separate class within a cost of service study;

(3) the value of distributed energy resource generation according to the methodology approved by the commission in Commission Order No. 2015-194;

(4) the direct and indirect economic impact of the net energy metering program to the State; and

(5) any other information the commission deems relevant.

(E) The value of the energy produced by customer-generators must be updated annually and the methodology revisited every five years.

(F)(1) After notice and opportunity for public comment and public hearing, the commission shall establish a “solar choice metering tariff” for customer-generators to go into effect for applications received after May 31, 2021.

(2) In establishing any successor solar choice metering tariffs, and in approving any future modifications, the commission shall determine how meter information is used for calculating the solar choice metering measurement that is just and reasonable in light of the costs and benefits of the solar choice metering program.

(3) A solar choice metering tariff shall include a methodology to compensate customer-generators for the benefits provided by their generation to the power system. In determining the appropriate billing mechanism and energy measurement interval, the commission shall consider:

(a) current metering capability and the cost of upgrading hardware and billing systems to accomplish the provisions of the tariff;

(b) the interaction of the tariff with time-variant rate schedules available to customer-generators and whether different measurement intervals are justified for customer-generators taking service on a time-variant rate schedule;

(c) whether additional mitigation measures are warranted to transition existing customer-generators; and

(d) any other information the commission deems relevant.

(G) In establishing a successor solar choice metering tariff, the commission is directed to:

(1) eliminate any cost shift to the greatest extent practicable on customers who do not have customer-sited generation while also ensuring access to customer-generator options for customers who choose to enroll in customer-generator programs; and

(2) permit solar choice customer-generators to use customer-generated energy behind the meter without penalty.

(H) The commission shall establish a minimum guaranteed number of years to which solar choice metering customers are entitled pursuant to the commission approved energy measurement interval and other terms of their agreement with the electrical utility.

(I) No later than January 1, 2025, the commission shall open a docket to establish a remote net metering program for each electrical utility. Each electrical utility program shall be modeled after the relevant rules and regulations adopted by the commission for net metered customer‑generators pursuant to Section 58‑40‑20 including, but not limited to, use of the solar choice tariff in the calculation of remote net metering credits. The docket shall establish, at a minimum:

(1) tariff and billing provisions, including:

(a) the establishment of remote net metering credit calculation and allocation methodologies;

(b) requirements for monthly allocation of credits to remote net metered customers; and

(c) requirements for consolidated billing in which a remote net metering customer’s monthly bill reflects the net of their utility bill, remote net metering subscription charge, and remote net metering credits;

(2) criteria establishing eligibility for all customer classes to participate in the remote net metering program;

(3) remote net metering subscription size caps for each customer class;

(4) a process for aggregating customer meters such that any meter within the same electric utility service territory is able to be aggregated to enable remote net metering on a monthly basis;

(5) requirements for each electrical utility to provide customers with information about their electrical usage sufficient to allow customers to determine the net bill impact associated with their participation in a remote net metering program and enrollment in the solar choice tariff rate structure;

(6) the provisions of this subsection shall not authorize the commission to alter solar choice tariffs outside of the preestablished five-year review cycle as detailed in subsection (E);

(7) the commission may consider other program elements the commission deems relevant; and

(8) following a hearing on each electrical utility’s proposed remote net metering program, the commission shall issue a final order establishing a remote net energy metering program for each electrical utility no later than January 31, 2026.

(I)(J) Nothing in this section, however, prohibits an electrical utility from continuing to recover distributed energy resource program costs in the manner and amount approved by Commission Order No. 2015-194 for customer-generators applying before June 1, 2021. Such recovery shall remain in place until full cost recovery is realized. Electrical utilities are prohibited from recovering lost revenues associated with customer-generators who apply for customer-generator programs on or after June 1, 2021.

(J)(K) Nothing in the section prohibits the commission from considering and establishing tariffs for another renewable energy resource.

SECTION 23.Section 58-41-10 of the S.C. Code is amended by adding:

(17) “Energy storage facility” means commercially available technology that is capable of absorbing energy and storing it for a period of time for use at a later time including, but not limited to, electrochemical, thermal, and electromechanical technologies. However, this does not include a hydroelectric generating facility over which the Federal Power Commission has licensing jurisdiction.

SECTION 24.Title 58 of the S.C. Code is amended by adding*:*

CHAPTER 43

Resilient Energy Resources and Renewable Energy Microgrids

Section 58-43-10. It is the intent of the General Assembly to promote and encourage customers of electrical utilities to invest in distributed energy resources to provide for energy resilience for their homes and businesses during prolonged electric grid outages, to encourage electrical utilities to make investments in the electric grid that mitigate disruptions from extreme weather, and to leverage customers’ private investments in distributed energy resources to make the grid more resilient, reliable, and efficient.

Section 58-43-20. For purposes of this chapter:

(1) “Critical facility” means any property within a class of buildings or facilities that are determined by the commission to be critical to public health and safety during a prolonged grid outage including, but not limited to, supercritical facilities such as police stations, fire stations, public emergency shelters, hospitals, and urgent care facilities, and subcritical facilities such as grocery stores and gas stations.

(2) “Energy storage device” means any commercially available technology, including batteries and batteries paired with onsite generation, that is capable of retaining and storing energy by chemical, thermal, mechanical, or other means for use at a later time.

(3) “Grid support services” means the dispatch and control of a resilient energy resource by an electrical utility or aggregator of distributed energy resources to provide services that contribute to the efficient or reliable operation of the grid including, but not limited to, frequency regulation, voltage support, spinning reserves, local or system peak demand reduction, demand response, and avoidance or deferral of a transmission or distribution upgrade or capacity expansion.

(4) “Renewable energy microgrid” means a group of interconnected loads and renewable or resilient energy resources, within clearly defined electrical boundaries, including at a single facility or customer premises, that acts as a single controllable entity with respect to its interaction with the electrical utility’s grid and is able to operate in parallel to the electrical utility in a grid-connected mode and to operate in an island mode that electrically isolates the entity from the electrical utility’s grid. A customer with a contract demand of over 500kW may utilize combined heat and power or other efficient nonrenewable resource within a renewable energy microgrid provided that the nameplate capacity of the nonrenewable resource does not exceed twenty‑five percent of the total combined generating capacity, excluding capacity from any onsite battery storage, located within a renewable energy microgrid.

(5) “Resilient energy resource” means a renewable energy microgrid or renewable energy resource located on the premises of a customer of an electrical utility that is paired with an energy storage device and an advanced inverter capable of performing autonomous functions which allow such facility to operate in island mode during electrical outages to provide emergency power to onsite facilities or facilities on a microgrid, and to operate in parallel with the electrical utility’s grid under normal conditions to supply some combination of electric power and grid services to the electrical utility’s grid according to the dispatch orders or defined operational conditions of the electrical utility.

Section 58-43-30. (A) Electrical utilities may propose, for commission approval, programs to encourage retail customer adoption of resilient energy resource facilities across residential, commercial, municipal, industrial, and other relevant customer classes of electrical utilities. Utilities must pursue federal funding and grants for these programs whenever possible. The program must provide up-front incentives for energy storage devices to retail electric customers who purchase, lease, or install a resilient energy resource on the customer’s premises or retrofit an existing distributed energy resource facility to meet the eligibility requirements of the resilient energy resource program. Residential customers must participate in the solar choice program adopted pursuant to Section 58‑40‑20 to be eligible for an incentive pursuant to this section.

(B) Each electrical utility must offer an up-front incentive based on the maximum rated kilowatt output of an energy storage device to encourage customers to install and utilize a resilient energy resource for emergency back‑up power to the premises and to provide grid support services in accordance with the contract pursuant to Section 58‑43‑40. The incentive must be sufficient to support a reasonable payback period for the resilient energy resource, accounting for all value received by the retail customer through solar choice or net metering programs, revenue paid to the retail customer for providing grid-support services, and the resilience value of avoided service outages or disruptions provided by the resilient energy resource.

(C) The commission must evaluate the cost‑effectiveness of the up‑front incentive for energy storage devices using the Utility Cost Test. The commission must investigate adapting the Utility Cost Test for evaluating demand‑side measures to include the locational value of resilient energy resources. The commission must approve any program that is cost‑effective under that test. The commission may waive cost‑effectiveness reviews as it concerns any subprogram targeting critical facilities.

(D) An electrical utility may recover all reasonable and prudent program costs associated with administering customer incentives pursuant to this section and may include incentives offered under this section in base rates for the period of time that such facilities are enrolled in a grid-support services tariff pursuant to Section 58‑43‑40.

Section 58-43-40. (A) If an electrical utility proposes a resilient energy resource program, it must also propose for commission review and approval, a tariff for service and standard offer contracts that provide fair and adequate compensation to resilient energy resources for providing grid support services including, but not limited to, system peak demand reduction, local coincidental peak demand reduction, demand response, ancillary services, and other functions that are demonstrated to integrate and accommodate interconnection distributed energy resources in a cost effective manner. The utility must propose for commission approval initial values for each type of grid-support function and electrical utilities must update those values through the annual fuel adjustment proceeding and make a compliance filing to update the grid-support tariff. The utility must also propose for commission approval terms and conditions for all standard offer grid-support contracts that fix compensation rates for tenure options of two, five, and ten years.

(B) The owner or operator of a resilient energy resource may elect to receive direct payment for providing applicable services under a grid-support tariff or designate a retail electric account on the same premises of the resilient energy resource to receive a monetary bill credit to be applied against the customer’s monthly electric bill throughout the contract term.

(C) A retail customer utilizing a resilient energy resource must not be assessed a standby charge or other additional fee or charge for operating a resilient energy resource during the contract period of a grid-support service provided for in this section. Nothing in this section precludes a utility from charging a resilient energy resource for the reasonable costs of interconnection and metering required to facilitate grid-support services.

(D) All compensation paid or credited to the owner or operator of a resilient energy resource facility for grid-support services under an approved tariff must be recoverable through the electric utility’s fuel adjustment clause.

SECTION 25. (A) The Office of Regulatory Staff shall conduct a study to evaluate the potential costs and benefits of establishing a nonprofit entity to serve as a third‑party administrator for energy efficiency programs and other demand‑side management programs funded by, or potentially funded by, one or more public utility companies in this State.

(B) This study must consider the experience of third-party energy efficiency and demand-side management administrators in other states.

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

(1) whether third‑party administration could reduce administrative costs, as compared to separate administration of energy efficiency programs on the part of one or more investor‑owned electrical and gas utilities, electric cooperatives, municipally owned electrical utilities, and the South Carolina Public Service Commission;

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

(3) whether third‑party administration is an appropriate mechanism to increase ratepayer energy savings in the case of utilities that have experienced lower historical performance in terms of annual and cumulative energy savings as a percentage of retail sales;

(4) whether third‑party administration offers opportunities to more efficiently administer programs that save electricity, gas, and water, and to obtain more comprehensive energy savings for a broader range of customers, and to facilitate improved and more independent evaluation, measurement, and verification of program performance, as compared to programs separately administered by individual utilities;

(5) whether a third‑party administrator could promote more uniform program rules and offerings across utility programs and territories in a manner that facilitates enhanced participation by vendors and contractors who deliver energy efficiency services and whether such administration could facilitate workforce development to support energy efficiency and demand‑side management in South Carolina;

(6) whether a third‑party administrator could enhance delivery of nonenergy benefits such as resilience, reliability, health, economic development, energy security, and pollution reduction; and

(7) whether a third‑party administrator could effectively pursue nonratepayer funding, such as federal, state, or local governmental support, as a means of either reducing reliance of ratepayer funds or increasing the scope, reach, or effectiveness of energy efficiency and demand‑side management programs.

(D) The Office of Regulatory Staff must conduct this study with assistance from the South Carolina Energy Office. This study must also be conducted with public input from stakeholders through written comments and at least one public forum.

(E) The Office of Regulatory Staff is authorized to retain the services of an expert or consultant with expertise and experience in the successful implementation of independently administrated, ratepayer-funded energy efficiency programs. The Office of Regulatory Staff is exempt from the procurement code for the purposes of retaining assistance services for this study for costs that do not exceed one hundred fifty thousand dollars.

(F) The Office of Regulatory Staff must initiate the study either: (a) within six months after the effective date of this act; or (b) if funding is not immediately available for the study, as soon as practicable but not later than sixty days after receiving funds capable of being used for the study. Once the study commences, the Office of Regulatory Staff shall complete the study and its report within twelve months and a copy of the report must be provided to the General Assembly. This report, at a minimum, shall include recommendations and information regarding the possible creation of a statewide third‑party energy efficiency coordinator and specifically include a recommendation as to whether a nonprofit entity should serve as a third‑party administrator for energy efficiency programs and other demand‑side management programs.

(G) If the study recommends that a nonprofit entity should serve as a third‑party administrator for energy efficiency programs and other demand‑side management programs, the Public Service Commission is authorized to appoint such an entity to carry out the duties under this section if the commission determines that having such a third-party administrator is in the public interest and consistent with law. Upon notice and hearings as the commission may require, the commission may issue rules, regulations, and orders pursuant to this chapter to implement applicable programs and measures under this section.

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

**PART VI**

**COMPETITIVE PROCUREMENT**

SECTION 26. Section 58-31-227 of the S.C. Code is amended to read:

Section 58-31-227. (A) The Public Service Authority shall file for commission approval of a program for the competitive procurement of energy, capacity, ancillary services, and environmental attributes from renewable energy facilities and energy storage facilities to meet needs for new generation and energy storage resources identified by the Authority in its Integrated Resource Plans or other planning processes. A competitive procurement program may be used to procure any subset of energy, capacity, ancillary services, and environmental attributes, as determined appropriate by the commission. The commission may not grant approval unless the commission finds and determines that the Public Service Authority has satisfied all requirements of this section, that the proposed program includes, but is not limited to, annual orderly procurements unless otherwise provided in an approved integrated resource plan, and that the proposed program is in the best interests of the customers of the Public Service Authority. The commission may adopt procedures to implement the requirements of this section and shall retain continuing oversight and approval authority over all aspects of an approved program to ensure any approved program complies with this section and is in the best interests of the customers of the Public Service Authority.

(B) The Public Service Authority shall procure renewable energy and energy storage resources, or the output of those facilities, subject to the following requirements:

(1) Renewable energy and energy storage resources, or their output, procured by the Public Service Authority shall be procured via a competitive solicitation process open to all independent market participants that meet minimum eligibility requirements.

(2) The Public Service Authority shall issue public notification of its intention to issue a competitive renewable solicitation at least ninety days prior to the release of each solicitation, including the proposed procurement volume, process, and timeline.

(3) The Public Service Authority shall provide for a reasonable time period for interested parties to review and comment on proposed requests for proposals, bid instructions, and bid evaluation criteria prior to finalization and issuance.

(3)(4) Renewable energy facilities eligible to participate in a competitive procurement are those that have a valid interconnection request on file and that use renewable energy resources identified in Section 58-39-120(F) and may include battery storage devices charged exclusively by renewable energy.

(5) Energy storage facilities eligible to participate in a competitive procurement are those identified in Section 58‑42‑20.

(6) The commission may determine if use of an independent evaluator or independent administrator is appropriate.

(C) The Public Service Authority shall make publicly available at least forty-five days prior to each competitive solicitation:

(1) A commission-approved pro forma contract to inform market participants of the procurement terms and conditions. The pro forma contract will (i) include standardized and commercially reasonable requirements for contract performance security consistent with market standards; (ii) define limits and compensation for resource dispatch and curtailments that limit uncompensated curtailment to a specified portion of estimated annual output; (iii) a pricing mechanism to adjust bids up or down prior to construction according to a formula incorporating significant changes in project costs and interest rates; and (iv) an option to contract a facility’s energy and capacity through a tolling contract rather than the facility’s hourly output.

(2) A commission-approved bid evaluation methodology that ensures all bids are treated equitably, including price and nonprice evaluation criteria. Nonprice criteria will at minimum include consideration of diversity in resource size and geographic location.

(3) Interconnection requirements and study methodology, including how bids without existing interconnection studies will be treated for purposes of evaluation.

(D) After bids are submitted and evaluated, winning bids will be selected based upon the published evaluation methodology.

(E) The Public Service Authority shall issue a public report summarizing the results of each competitive solicitation within sixty days of the award notifications. The report will include, at minimum, a summary of the submitted bids and an anonymized list of the project awards, including their size, location, average award price and tenor, and award price range.

(F) Competitive procurement conducted pursuant to this section shall include the procurement of variable fuel‑cost generation facilities when required by the commission pursuant to Section 58‑42‑40.

(G) The commission is authorized to adopt rules or procedures for conducting a procurement authorized by this section.

SECTION 27.Title 58 of the S.C. Code is amended by adding:

CHAPTER 42

Competitive Procurement

Section 58-42-10. The General Assembly finds as follows:

(1) The renewable energy and energy storage resource additions proposed by the state’s electrical utilities and the South Carolina Public Service Authority in their 2023 integrated resource plans filed with the commission are cost-effective and will preserve or enhance system reliability and are therefore in the public interest.

(2) The electrical utilities and the South Carolina Public Service Authority shall procure such resources through a competitive process consistent with the requirements of Section 58-31-227 and this chapter.

(3) Renewable and energy storage resources in addition to those proposed in the 2023 integrated resource plans filed by the electrical utilities and the South Carolina Public Service Authority shall be evaluated by the commission consistent with the requirements of Section 58‑37‑40 and, if approved, shall be procured through a competitive procurement consistent with the requirements of Section 58‑31‑227 and this chapter.

Section 58-42-20. For purposes of this chapter:

(1) “Energy storage facility” means commercially available technology that can absorb energy and store it for use later including, but not limited to, electrochemical, thermal, and electromechanical technologies.

(2) “Non‑variable fuel cost generation resources” are generation resources that are typically commercially available for a fixed price per unit of energy produced and which do not include an adjustment or pass-through for the variable cost of fuel, such that, within a portfolio of generation resources, they function to provide a physical hedge against fuel cost volatility. Such resources include, but are not limited to, solar and wind generation resources.

Section 58-42-30. (A) Electrical utilities shall file for commission approval of a program for the competitive procurement of energy, capacity, ancillary services, and environmental attributes from renewable energy and energy storage facilities located in the electrical utility’s balancing authority area to meet needs for new generation and energy storage resources identified by the electrical utility’s integrated resource plan or other planning process. A competitive procurement program may be used to procure any subset of energy, capacity, ancillary services, and environmental attributes, as determined appropriate by the commission. The commission may not grant approval unless the commission finds and determines that the electrical utility has satisfied all the requirements of this section, the proposed program includes, but is not limited to, annual orderly procurements unless otherwise provided in an approved integrated resource plan, and the proposed program is in the best interests of the customers of the electrical utility. The commission may adopt procedures to implement the requirements of this section.

(B) Electrical utilities shall procure renewable energy and energy storage resources, or the output of those facilities, subject to the following requirements:

(1) Renewable energy and energy storage resources, or their output, procured by electrical utilities shall be procured via a competitive solicitation process open to all independent market participants that meet minimum eligibility requirements.

(2) The electrical utility shall issue public notice of its intention to issue a competitive renewable or storage solicitation, or both, at least ninety days prior to the release of each solicitation. This notice must include the proposed procurement volume, process, and timeline.

(3) The electrical utility shall provide a reasonable period of time for interested parties to review and comment on proposed requests for proposals, bid instructions, and bid evaluation criteria prior to finalization and issuance.

(4) Renewable energy facilities eligible to participate in a competitive procurement are those that use renewable energy resources identified in Section 58‑39‑120(F).

(5) Energy storage facilities eligible to participate in a competitive procurement are those identified in Section 58‑42‑20.

(6) Use of an independent evaluator or independent administrator as determined appropriate by the commission.

(7) Utility affiliates shall be treated in the same manner as nonaffiliates participating in the procurement process.

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

(1) A commission-approved pro forma contract to inform prospective market participants of the procurement terms and conditions. The pro forma contract must: (i) include standardized and commercially reasonable requirements for contract performance security consistent with market standards; (ii) define limits and compensation for resource dispatch and curtailments; (iii) provide a pricing mechanism to adjust bids up or down prior to construction according to a formula incorporating significant changes in project costs and interest rates; and (iv) include an option to contract a facility’s energy and capacity through a tolling contract rather than the facility’s hourly output.

(2) A commission-approved bid evaluation methodology that ensures all bids are treated equitably, including price and nonprice evaluation criteria.

(3) Interconnection requirements and study methodology, including specification of how bids without existing interconnection studies must be treated for purposes of evaluation.

(D) After bids are submitted and evaluated, winning bids will be selected based upon the published evaluation methodology.

(E) An electrical utility shall issue a public report summarizing the results of each competitive solicitation within sixty days of the award notifications. The report shall include, at minimum, a summary of the submitted bids and an anonymized list of the project awards, including their size, location, average award price and tenor, and award price range.

(F) The results of competitive procurement programs within an electrical utility’s balancing area outside of South Carolina that serve customers in the electrical utility’s balancing area within South Carolina may be approved or accepted by the commission if such programs are determined to enable economic, reliable, and safe operation of the electric grid in a manner consistent with the public interest. Electrical utilities are permitted to recover costs incurred through such competitive procurement through rates established pursuant to Section 58-27-865 or Section 58-27-870.

(G) The commission may determine that a competitive procurement program within an electrical utility’s balancing authority outside of South Carolina that serves customers in the utility’s balancing authority within South Carolina satisfies the requirements of this section.

(H) Competitive procurement pursuant to this section shall include the procurement of variable fuel‑cost generation facilities when required by the commission pursuant to section 58‑42‑40.

(I)(1) Beginning no later than one year after the effective date of this section and continuing for three additional years thereafter, each electrical utility and the South Carolina Public Service Authority shall conduct an annual competitive procurement of non-variable fuel cost generation resources and energy storage resources in a manner consistent with the requirements of 58-31-227 and this chapter.

(2) The volume of non-variable fuel cost generation resources for each annual competitive procurement, shall be an amount equal to 12.50% of the respective annual average alternating current (“AC”) peak load demand of the electrical utility or the South Carolina Public Service Authority for the previous five years.

(3) The volume of energy storage resources for procurement over the full four-year period covered by this section shall be equal to 10% of the respective annual average alternating current (“AC”) peak load demand of the electrical utility or the South Carolina Public Service Authority for the years 2019 through 2023. Energy storage resources procured pursuant to this section may be stand-alone or hybrid storage resources.

(4) Consistent with the requirements of 58-37-40, the commission shall determine whether it is in the public interest to require an electrical utility or the South Carolina Public Service Authority to procure non-variable fuel cost generation resources or energy storage resources in addition to those required by this section. Any such additional resources shall be procured through a competitive procurement consistent with the requirements of 58-31-227 and this chapter.

(5) Qualifying facilities owned by small power producers shall be eligible for ten-year fixed price contracts for energy and capacity at least until the competitive procurement requirements of this section have been satisfied. The volume of non-variable fuel cost generation resources required to be procured by each electrical utility and the Public Service Authority pursuant to this section shall be reduced by the alternating current (“AC”) nameplate capacity of any qualifying facility for which such electrical utility or the authority enters into a power purchase agreement after the effective date of this section.

(J) The commission is authorized to adopt rules or procedures for conducting a procurement authorized by this section.

Section 58-42-40. (A)(1) Except for generation facilities that are awarded a bid in a commission-approved competitive procurement of renewable energy or energy storage process, neither an electrical utility nor the South Carolina Public Service Authority shall commence construction of a variable fuel‑cost generation facility in the State of South Carolina without first demonstrating in a commission-approved integrated resource plan or other resource planning proceeding that the facility to be constructed has been evaluated against other generation and demand‑side resources in a manner that thoroughly considers cost, risk, reliability, and any regulatory requirements likely to apply in a facility’s planned lifetime.

(2) If the commission determines that nonvariable fuel‑cost generation or demand side resources feasibly meet the same electric system needs as the proposed variable fuel-cost generation facility, the electrical utility or the Public Service Authority, as applicable, shall, within the competitive procurement process authorized by Sections 58‑42‑30 or 58‑31‑227, procure the necessary resources.

(B) If the commission determines that nonvariable fuel-cost generation or demand‑side resources feasibly meet the same electric system needs as the proposed variable fuel-cost generation facility, the electrical utility, or the Public Service Authority, as applicable, shall procure those resources within the competitive procurement process authorized by this chapter or Section 58‑31‑227.

(C) Any procurement process required by this section shall also include:

(1) the use of an independent administrator when conducting a procurement;

(2) a report from the independent administrator to the commission regarding the transparency, completeness, and integrity of the bidding process;

(3) a reasonable period of time for interested parties to review and comment on proposed requests for proposals, bid instructions, and bid evaluation criteria prior to finalization and issuance, subject to any information that is confidential or is a trade secret; however, the independent administrator shall have access to such information;

(4) a determination by the commission as to the reasonableness of the procurement process prior to finalization and issuance;

(5) a requirement that nonvariable fuel-cost portfolios and portfolios that minimize the reliance on variable-cost fuel be considered and evaluated using equivalent methods;

(6) a requirement that both utility and nonutility owned resources be evaluated in system planning and transmission planning models;

(7) a requirement that any portfolio that includes new variable-cost fuel generation undergo a stochastic evaluation for cost and reliability risk;

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

(9) a demonstration that the facility is consistent with system needs identified within an integrated resource plan approved by the commission;

(10) treatment of utility affiliates in the same manner as nonaffiliates participating in the bidding process; and

(11) commission approval of the selected portfolio, an alternative portfolio evaluated pursuant to items (5) and (6), or a portfolio modified by the commission pursuant to the public interest.

(D) The commission is authorized to adopt rules or procedures for conducting a procurement authorized by this section.

**PART VII**

**Electric Industrial Customers**

SECTION 28. Article 7, Chapter 27, Title 58 of the S.C. Code is amended by adding:

Section 58-27-861. (A) For purposes of this section:

(1) “Retail electric supplier” or “supplier” means any entity selling retail electric power to the public, including investor-owned electric utilities, the South Carolina Public Service Authority, electric cooperatives, but excludes municipal electric utilities. It may also include an independent power producer that sells retail electric power to the public or provides electric power for its own use.

(2) “Marginal cost” means the supplier’s forecasted marginal cost for producing energy over the term of the rate proposal.

(3) “Rate proposal” means the rates, terms, and conditions for electric service offered by a supplier to a qualifying customer.

(4) “Qualifying new customer” means an industrial customer that agrees to locate new operations in South Carolina and “qualifying expansion load” means an industrial customer that agrees to expand its existing facility or restart all or a portion of an existing facility, which expansion or restart will result in additional electrical load and, in each case, such new facility, expansion or restart, or addition would result in the addition of a minimum of:

(a) 5 megawatts;

(b) 50 new employees; or

(c) capital investment of ten million dollars.

(5) “Qualifying at risk customer” means a current customer whose continued or future operation is at risk because current and forecasted power costs at standard rates are not economic or because power costs at standard rates are not competitive with rates available to similar loads in other states.

(6) “Qualifying customer’ means any customer meeting the definitions in item 4 and 5 above.

(B) As a condition of a rate proposal to a qualifying customer, the customer must agree to maintain operations for the lesser of five years or the term of the rate proposal.

(C) Notwithstanding any other provision of law, each supplier shall provide, upon request by a qualifying customer a rate proposal containing terms and conditions that would incentivize and encourage the customer to retain existing workforce or to employ additional workforce and to make capital investments in South Carolina.

(D) The supplier and the qualifying customer may negotiate the rate, terms and conditions or a rate proposal, including a fixed rate for a term based on a fuel hedge arrangement.

(E) At a minimum each supplier shall offer a rate proposal to a qualifying customer that shall consist of:

(1) a discounted monthly demand charge ($/kW-month) shall be determined as a percentage of the otherwise applicable demand charge for firm or interruptible service as follows:

(a) 15% for months 1‑12;

(b) 25% for months 13‑24;

(c) 50% for months 25-36;

(d) 65% for months 37-48;

(e) 80% for months 49-60;

(f) 0% for month 60 and all months afterwards;

(2) an energy charge which shall be the same energy charge ($/kWh), including fuel adjustment charge, of the otherwise applicable firm or interruptible service; and

(3) all other monthly charges under the applicable firm or interruptible rates.

Section 58-27-862. (A) For purposes of this section:

(1) “Incumbent utility” means (a) the electrical utility pursuant to Section 58-27-10, (b) the Public Service Authority of South Carolina, or (c) other person or corporation, including cooperatives, having the right, absent this self-supply option, to provide retail electric service to an eligible electric customer.

(2) “Transmission tariff” means an open access transmission tariff, reciprocity tariff, or other tariff to provide transmission and distribution services unbundled from other services.

(3) “Electric power” means energy and/or capacity as applicable.

(4) “Electric supplier” means the same meaning as in Section 52-27-610 and shall include the Public Service Authority of South Carolina.

(5) “Eligible electric customer” shall mean any retail electrical customer within the State whose demand during the most recent calendar year exceeded five megawatts or, in the event of a new retail electrical customer, whose demand is expected to exceed five megawatts.

(6) “Electric generation facility” means a facility for generating electric power, including renewable electric generation facilities.

(7) “Renewable electric generation facility” means a facility generating electrical power from solar photovoltaic resources, wind resources, hydroelectric resources, geothermal resources, tidal and wave energy resources, hydrogen fuel derived from renewable resources, combined heat and power derived from renewable resources, and biomass resources, or a combination thereof. It also includes an electric energy storage system if the energy stored is generated from one of the resources listed in this item.

(8) “Transmission services provider” means any person or corporation owning or operating equipment or facilities for transmitting, delivering, or furnishing electricity, including the Public Service Authority of South Carolina and cooperatives.

(9) “Power marketer” means any person or entity engaged in the purchase and resale of wholesale or retail electric power which does not own or operate any equipment or facilities for generating, transmitting, or delivering power.

(10) “Transmission and distribution services” means transmission and distribution services, along with any other services required to deliver electric energy safely and reliably.

(B)(1) Notwithstanding any exclusive retail electric service right granted to any electric supplier or any person or entity under Chapter 27 or 31 of this title, or as otherwise provided by law, an eligible electric customer shall be permitted to purchase electric power from any electric supplier or power marketer.

(2) Any eligible electrical customer may demand, if necessary, that its incumbent utility or any transmission provider develop and offer a transmission tariff for service under this section. Within sixty days of such request the incumbent utility or transmission provider supplier shall offer and maintain such transmission tariff or, if required, apply for approval by the applicable regulatory authority. The transmission tariff offered and maintained shall be just, reasonable, and not discriminate against an eligible electric customer’s rights to access transmission and distribution service, which shall be offered on the same or better terms as the incumbent utility or transmission provider offers those services to itself or others.

(3) Purchases of electric power under this section shall be made under agreements between the eligible electric customer and any combination of: (a) one or more electric suppliers; (b) the owner or operator of an electric generation facility interconnected or proposed to be interconnected with the incumbent utility’s transmission or distribution system; (c) the owner or operator of an electric generation facility that can deliver electric power from such facility to an interconnection with the incumbent utility; or (d) a power marketer.

(4) The rates, terms and conditions of such power purchases shall be at market prices and shall not be subject to commission review or approval.

(5) A power marketer or the owner or operator of an electric generation facility selling electric power to an eligible electric customer shall not be considered an “electrical utility” pursuant to Sections 58‑27‑10, 58‑31‑310, or any other provision of state law, solely by reason of such sale.

(6) An incumbent utility or transmission provider shall have the obligation to offer transmission and distribution services to an eligible electric customer. Such transmission and distribution services shall be offered to an eligible electric customer under the incumbent utility’s transmission tariff on the same or equal terms as the incumbent utility or transmission provider provides transmission and distribution services to others or itself.

(7) An incumbent utility or transmission provider shall offer interconnection to the owner of an electric generation facility serving or intending to serve an eligible electric customer. Interconnection shall be offered in a just, reasonable, and nondiscriminatory manner and on the same or equal terms offered to other interconnection customers.

(8) An electric supplier’s obligation to offer interconnection under this section shall run parallel with an obligation, if applicable, under the Federal Power Act, under rules and regulations of the Federal Energy Regulatory Commission.

(9) An eligible electric customer shall be credited by its incumbent utility with a capacity value for participating in retail choice. The capacity value shall be provided in a just, reasonable, and nondiscriminatory manner, and shall be offered on the same terms as the incumbent utility claims for itself for similar resources.

**PART VIII**

**Water Permits**

SECTION 29. Section 48-1-100 of the S.C. Code is amended to read:

Section 48-1-100. (A) A person affected by the provisions of this chapter or the rules and regulations adopted by the department desiring to make a new outlet or source, or to increase the quantity of discharge from existing outlets or sources, for the discharge of sewage, industrial waste or other wastes, or the effluent therefrom, or air contaminants, into the waters or ambient air of the State, first shall make an application to the department for a permit to construct and a permit to discharge from the outlet or source. If, after appropriate public comment procedures, as defined by department regulations, the department finds that the discharge from the proposed outlet or source will not be in contravention of provisions of this chapter, a permit to construct and a permit to discharge must be issued to the applicant. The department, if sufficient hydrologic and environmental information is not available for it to make a determination of the effect of the discharge, may require the person proposing to make the discharge to conduct studies that will enable the department to determine that its quality standards will not be violated.

(B) The Department of Health and Environmental Control is the agency of state government having jurisdiction over the quality of the air and waters of the State of South Carolina. It shall develop and enforce standards as may be necessary governing emissions or discharges into the air, streams, lakes, or coastal waters of the State, including waste water wastewater discharges.

(C) For an application to obtain certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, the department shall:

(1) within thirty days of receipt of the application, determine whether the application is complete and notify the applicant accordingly. If the department determines an application is incomplete, a notice shall be sent to the applicant specifying all such deficiencies. The applicant may file an amended application or supplemental information to cure the deficiencies identified by the department. An application may be deemed incomplete only if it does not provide sufficient information necessary for the department to determine if the proposed discharges into navigable waters will comply with state water quality requirements. If the department fails to issue a notice as to whether or not the application is complete within the thirty‑day period, the application shall be deemed complete;

(2) within sixty days of receipt of a completed application, either approve or deny the application. Failure of the department to act within the sixty‑day period shall result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of the sixty-day period, which shall not exceed one year from the state’s receipt of the application. The sixty-day review period established by this item shall constitute the “reasonable period of time” for state action on an application for purposes of 33 U.S.C. Section 1341(a)(1), absent a negotiated agreement with the United States Environmental Protection Agency to extend that time frame for a period not to exceed one year;

(3) limit review of the application for certification to water quality impacts from point source discharges from the proposed project into navigable waters located with the State and shall not include other limitations or constitute a review of the proposed activity as a whole;

(4) issue a certification upon determining that the proposed discharge from a point source of the proposed project into navigable waters will comply with state water quality standards;

(5) issue or deny an application, or waive certification, but shall not require an applicant to withdraw an application. The department shall not postpone or delay the review of, or condition delay, or refuse the issuance of, any certification under 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act based upon the applicant’s need for or receipt of any other federal, state, or local permit, certification, license, authorization, or other approval; and

(6) issue a certification upon determining that the proposed discharges into navigable waters will comply with State water quality requirements. The department may include conditions in a certification for any applicable effluent limitations or other limitations necessary to assure the proposed discharges into navigable waters will comply with state water quality requirements. The department shall not impose any other conditions in a certification.

(D) For an applicant to obtain a permit required by Title V of the Clean Air Act, 42 U.S.C. Section 7661, and required for the discharge of air contaminants in subsection (A), the department shall issue the permit, deny the permit, or publish for public notice and comment within ninety calendar days of receipt of an application for a minor modification, within two hundred seventy calendar days of receipt of an application for a major modification, or within fifteen months of receipt of a complete application for a renewal permit. The department shall inform a permit applicant whether or not the application is complete within the time promulgated by the department by regulation. If the department fails to act on an application for a permit within the specified time period, the permit applicant or permittee may commence a contested case with the department.

(E) Except as provided in subsection (G), a person may not, without obtaining a permit required for the discharge of air contaminants in subsection (A), construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility where, at the time of construction, there is no other air contaminant source, equipment, or associated air cleaning device for which a permit is required by this section.

(F) A person who holds a permit required for the discharge of air contaminants in subsection (A) may apply to the department for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants. Except as provided in subsection (G), the permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of any air contaminant without obtaining a permit modification from the department.

(G) A person who: (1) has filed an application to construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility; or (2) holds a permit under this section and who has applied to the department for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants, may undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:

(a) cleaning and grading;

(b) construction of access roads, driveways, and parking lots;

(c) construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities;

(4) construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under this section.

(5) Upon determination that an application for a permit or permit modification is administratively complete, the construction of a new air contaminant source, equipment, or associated air cleaning or emissions control devices may begin prior to permit issuance. The provisions of this item apply only to an application for the addition or modification of an emissions source that is not subject to (i) permit limits set pursuant to programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas, (ii) a residual risk-based hazardous air pollutant standard under 42 U.S.C. Section 7412(f), as amended, or (iii) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the department pursuant to 42 U.S.C. 14 Section 7412(j), as amended. The undertaking of activities allowed in this item shall not entitle the permit or permit modification applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

(H) Except to the extent required by federal or state law, the department shall not refuse to accept an application for a permit, authorization, or certification or refuse to issue any permit, authorization, or certification based solely on the failure of an applicant to obtain another permit, authorization, or certification required for the same project. For the purposes of this section, failure to obtain a permit, authorization, or certification shall not include denial of a permit, authorization, or certification by the department based upon the standards for approval of the permit, authorization, or certification provided by law.

(C)(I) The Department of Health and Environmental Control is the agency of state government having jurisdiction over those matters involving real or potential threats to the health of the people of South Carolina, including the handling and disposal of garbage and refuse; septic tanks; and individual or privately-owned systems for the disposal of offal and human or animal wastes.

SECTION 30.Chapter 1, Title 48 of the S.C. Code is amended by adding:

Section 48-1-105. (A) The department shall develop an express review program to provide express permit and certification reviews. Participation in the express review program is voluntary, and the program shall be supported by the fees determined pursuant to subsection (C) of this section. The department shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any of the following permits, approvals, or certifications:

(1) stormwater permit, land disturbance permit, or stormwater management plan approved by the department;

(2) stream origination certification;

(3) water quality certification;

(4) erosion and sedimentation control plan issued by the department; and

(5) coastal zone consistency certification or critical area permit issued by the department’s Office of Ocean and Coastal Resource Management.

(B) The department shall have the authority to create express permitting options for programs in addition to those listed in subsection (A) where it deems there to be a need or where it determines an express permitting option would create greater efficiencies for the permitting process.

(C)(1) The department shall set the fees for express application review under the express review program at a level sufficient to cover all program expenses.

(2) The maximum permit application fee to be charged under subsection (A) of this section for the express review of a project application requiring all of the permits under items (1) through (5) of subsection (A) shall not exceed five thousand five hundred dollars ($5,500). The maximum permit application fee to be charged for the express review of a project application requiring all of the permits under items (1) through (4) of subsection (A) shall not exceed four thousand five hundred dollars ($4,500). The maximum permit application fee charged for the express review of a project application for any other combination of permits under items (1) through (5) of subsection (A) shall not exceed four thousand dollars ($4,000).

(3) As set forth in subsection (B), express review of a project application involving additional permits or certifications issued by the department other than those under items (1) through (5) of subsection (A) of this section may be allowed by the department, and, notwithstanding any other statute or rule that sets a permit fee, the maximum permit application fee charged for the express review of a project application that includes a permit, approval, or certification designated for express review under subsection (B) shall not exceed four thousand dollars, plus one hundred fifty percent (150%) of the fee that would otherwise apply by statute or rule for that particular permit, approval, or certification.

(4) Additional fees, not to exceed fifty percent of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The department may establish the procedure by which the amount of the fees under this subsection is determined.

(D) No later than July 1, 2025, the department shall adopt permanent rules to implement the express permitting program pursuant to subsection (A).

(E) Until the effective date of the rules required by subsection (D), the department may continue to operate and administer the programs as it did prior to the enactment of this section, using policies published on the department's website and made available to the regulated community on or before July 1, 2023. These policies may be reviewed and updated by the department as needed until the adoption of rules as required by subsection (B), provided that no policy changes shall go into effect until thirty days after the changes are published on the department’s website.

**PART VIII**

**Miscellaneous**

SECTION 31. The General Assembly finds that the sections presented in this act constitute one subject as required by Article III, Section 17 of the South Carolina Constitution, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of energy reform as clearly enumerated in the title.  The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 32.If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 33. This act takes effect upon approval by the Governor. However, the provisions of PART II, Article 24, Chapter 27, Title 58, are contingent upon funding by the General Assembly.

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