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To: Senator Luke Rankin, Chair, Senate Judiciary Committee
From: Lynn S. Teague, Vice President of Issues and Action, LWVSC
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Ref: Suggested Language Changes, S.446

You requested our recommendations for amendment of some aspects of H.446. I have included our thoughts on specific changes throughout the bill in this submission, since there was insufficient time to address our concerns during oral testimony last week.

In general, we are concerned that individual interested parties have a diminished role in the process outlined in S.446. While we greatly appreciate the efforts of ORS to fulfill their mission to represent the public interest before the Public Service Commission (PSC), ORS is charged with representing very diverse interests – not just the concerns of the various classes of the consuming public but also supporting the building and maintenance of a high quality and reliable energy supply and economic development. Their voice in the process outlined in S.446 is not equivalent to the ongoing participation of the independent Consumer Advocate or representatives of individual parties. Furthermore, at present some versions of related bill H.3309 would further tilt ORS inappropriately toward representing utility interests over those of consumers, compounding this problem.

We also note that some of the current language is simply unclear. For example, are “aggrieved parties” limited to those who are already recognized as interested parties in a full rate case, one that might have occurred several years earlier? Would this term include other parties who can demonstrate that they can qualify as interested parties?

We hope that our individual recommendations for language changes outlined in the text that follows will be considered.

S.446

A BILL

TO AMEND THE SOUTH CAROLINA CODE OF LAWS SO AS TO ENACT THE “ELECTRIC RATE STABILIZATION ACT”; AND BY ADDING ARTICLE 24 TO CHAPTER 27, TITLE 58, SO AS TO ALLOW ELECTRIC UTILITIES TO REQUEST THE PUBLIC SERVICE COMMISSION TO ADJUST THEIR RATES ANNUALLY, ADJUST UTILITY RATES, ESTABLISH THE BASELINE RATE ORDER AND REQUIREMENTS FOR ADJUSTMENTS IN RATES, PROVIDE PROTECTIONS FOR CUSTOMERS, AND AUTHORIZE AN ADDITIONAL ELECTRIC UTILITY POSITION FOR THE OFFICE OF REGULATORY STAFF.

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

SECTION 1. This act may be cited as the “Electric Rate Stabilization Act”.

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

Article 24

Electric Rate Stabilization Act

Section 58-27-2700. A public utility providing retail electric service, in its discretion and at any time, may elect to have the terms of this article apply to its rates and charges for retail electric service, on a prospective basis, by filing a notice of the election with the commission and on the same day and by the same means serving a copy on the Office of Regulatory Staff. Upon receipt of notice of the election, the commission shall proceed to make the findings and establish the ongoing procedures required for adjustments in base rates to be made under this article. In carrying out the procedures established by this article with respect to such an election, the commission shall rely upon and utilize the approved rates, charges, revenues, expenses, capital structure, returns, and other matters established in the public utility's most recent general rate proceeding pursuant to Section 58-27-860; provided, however, that the most recent order must have been issued no more than five years prior to the initial election to come under the terms of this article and the utility must file an application for a general rate proceeding every five years after such election. A public utility may combine an election under this article with the filing of a rate proceeding pursuant to Section 58-27-860. The commission shall include the findings required by this article in its rate orders issued in the Section 58-27-860 proceedings, and the election shall remain in effect until the next general rate proceeding.

Section 58-27-2710. The election by a utility to have the terms of this article apply to its rates and charges for retail electric service once made shall remain in effect until the next general rate proceeding for the public utility under Section 58-27-860, at which time the public utility may then elect to continue the applicability of this article to its rates and charges or elect to opt out of the provisions of this article, however, in a proceeding under this article or in a general rate proceeding, the commission may terminate the applicability of this article for a utility if evidence shows a deterioration in quality of service, safety, service reliability, or power quality. The applicant may withdraw its request to come under the terms of this article at any time before the entry of a final order of the commission on the merits of the proceeding in which the election is made or on a petition for rehearing in the proceeding.

Section 58-27-2720. In issuing its order pursuant to Section 58-27-2710, and in addition to the other requirements of Section 58-27-2710, if a proceeding pursuant to that section is required, then:

(1) the commission shall specify a range for the utility's cost of equity that includes a band of ~~fifty~~ one hundred basis points (~~0.50~~ 1.00 percentage points) below ~~and fifty basis points (0.50 percentage points) above~~ the cost of equity on which rates have been set; and

(2) the commission separately shall state the amount of the utility's net plant in service, construction work in progress, accumulated deferred income taxes, inventory, working capital, and other rate base components. It also shall state the utility's depreciation expense, operating and maintenance expense, income taxes, taxes other than income taxes, other components of income for return, revenues, capital structure, cost of debt, overall cost of capital, and earned return on common equity. The figures stated shall be those which the commission has determined to be the appropriate basis on which rates were set in the applicable orders.

Section 58-27-2730. The utility shall file with the commission monitoring reports for each twelve-month period ending on March 31, June 30, September 30, and December 31 of each year, the filings to be made no later than the fifteenth day of the third month following the close of the period. The utility shall serve a copy of such reports on the Office of Regulatory Staff and all parties of record in the utility's last general rate proceeding on the same day and by the same means as they are provided to the commission. These quarterly monitoring reports shall include:

(1) the utility's actual net plant in service, construction work in progress, accumulated deferred income taxes, inventory, working capital, and other rate base components. The report shall also show the utility's depreciation expense, operating and maintenance expense, income taxes, taxes other than income taxes, other components of income for return, revenues, capital structure, cost of debt, overall cost of capital, and

earned return on common equity;

(2) all applicable accounting and pro forma adjustments historically permitted or required by the commission for the utility in question or for similarly situated utilities, authorized by general principles of utility accounting, or authorized by accounting letters or orders issued by the commission. This authorization may occur either in a general rate hearing or in any other type of filing or hearing that the commission considers appropriate. However, other parties shall be given sufficient opportunity to review and provide comments on any proposed accounting letter or order issued after the initial order allowing future base rate adjustments pursuant to this article;

(3) pro forma adjustments to annualize for the twelve-month period any rate adjustments imposed pursuant to this article or other events affecting only part of the period covered by the filing so that the annualization is required to show the effects of those events on the utility's earnings going forward; and

(4) pro forma or other adjustments required to properly account for atypical, unusual, or nonrecurring events.

(5) all supporting documentation and workpapers in working format.

Section 58-27-2740. (A) In the monitoring report filed for the twelve-month period ending December thirty first of each year, the utility shall provide additional schedules indicating the following revenue calculations:

(1) if the utility's earnings exceed the upper end of the range established in the order, then the utility shall calculate the reduction in revenue required to lower its return on equity to the the cost of equity on which rates have been set ~~midpoint of the range established in the order~~; or

(2) if the utility's earnings are below the lower range established in the order, then the utility shall calculate the additional revenue required to increase its return on equity to the midpoint of the range established in the order.

(B) The utility also shall provide a schedule that specifies changes in its tariff rates required to achieve any indicated change in revenue.

(C) The proposed rate changes, filed by the utility, shall conform as nearly as is practicable with the revenue allocation principles contained in the most recent rate order.

Section 58-27-2750. The Office of Regulatory Staff shall, and intervenors may, conduct discovery and review the monitoring report filed pursuant to Section 58-27-2730 and Section 58-27-2740 to determine compliance with its terms, taking into account the findings of any audit conducted by the Office of Regulatory Staff concerning compliance with Section 58-27-2730 and Section 58-27-2740. The Office of Regulatory Staff shall, and intervenors may, propose those adjustments it determines to be required to bring

the report into compliance with Section 58-27-2740. Based upon that report and the evidence of record and the findings of any audit conducted by the Office of Regulatory Staff, the commission shall order the utility to make the adjustments to tariff rates necessary to achieve the revenue levels indicated in Section 58-27-2740; provided that, the Commission shall not approve an upward adjustment in rates under the authority of this section that exceeds 2% per year for each customer class, cumulatively, of the rates set in the most recent general rate case, nor shall it approve an upward adjustment in rates under the authority of this section for a calendar year during which the National Bureau of Economic Research has declared the existence of an economic recession.

Section 58-27-2760. The procedures contained in this section shall apply to monitoring reports related to the quarter ending December 31.

(1) The utility shall file the monitoring reports annually with the commission and Office of Regulatory Staff on or before March 15.

(2) In cases where the monitoring report indicates rate adjustments are required, or where it otherwise appears to the commission or the Office of Regulatory Staff that an adjustment in rates may be warranted under this article, the commission shall issue a Notice of Filing annually on or before March 31 and require interested persons to file a petition to intervene annually on or before May 31.

(3) The Office of Regulatory Staff shall conduct an audit of the monitoring report to ascertain the reasonableness and prudence of all matters contained therein and specify any changes that the Office of Regulatory Staff determines to be necessary to correct errors in the report or to otherwise bring the report into compliance with this article. The Office of Regulatory Staff's audit report shall be verified and provided to the commission and to the utility and made available annually to all parties of record no later than June 1.

(4) The utility and other parties of record shall be allowed until June 15 of each year to file verified written comments and submit documentary evidence to the commission and the Office of Regulatory Staff related to the proposed adjustment in rates ~~Office of Regulatory Staff's audit report~~ and may request a non-evidentiary hearing before the commission concerning the Office of Regulatory Staff's report.

(5) On or before July 15 of each year, the commission shall issue an initial order setting forth any changes required in the utility's request to adjust rates under this article (the "Initial Order"). In the absence of such an Initial Order, the electric rate adjustment contained in the utility's filing shall be considered granted as filed.

(6) Any electric rate adjustments authorized under the terms of this article shall take effect for all bills rendered on or after the first billing cycle of August of that year.

Section 58-27-2770. In calculating its revenue requirement under Section 58-27-2730, ~~and apart from the recovery of~~ an electric utility may include a return on construction work in progress. In calculating its revenue requirement under Section 58-27-2730 an electric utility ~~may~~ shall not include in plant service its investments in any new electric generating facility of more than ~~two hundred fifty~~ one hundred megawatts, or the costs associated with operating such a facility, except through a general electric rate proceeding under Section 58-27-860 and Section 58-27-870 or through a contested case proceeding for the limited purpose of establishing the prudence and reasonableness of the facility under this section. The prudence of any costs related to plant not used and useful at the time the costs are placed into rates shall remain reviewable at such time as the plant is demonstrated to be fully used and useful.

Section 58-27-2780. Within thirty days of the issuance of an Initial Order pursuant to Section 58-27-2760, or within thirty days of the failure by the commission to issue an order as required pursuant to Section 58-27-2760, any aggrieved party [Is this limited to existing interested parties of record or does it include anyone who can establish themselves as an interested party?] may petition the commission for review of the Initial Order or failure to issue an order and all interested parties of record shall have a right to be heard at an evidentiary hearing on the matter. The party shall serve a copy of such petition on the Office of Regulatory Staff and other parties of record on the same day and by the same means as it is provided to the commission.

Section 58-27-2790. (A) After conducting the hearing required by Section 58-27-2780, the commission shall issue a final order that:

(1) sets forth any changes that are required (1) to the rates approved in the Initial Order issued under Section 58-27-2760(5);

(2) determines the amount of any overcollection or under collection by the utility that resulted from collection of the rates authorized in the Initial Order as compared to the rates authorized in the final order issued under this section; and

(3) establishes a credit to refund the amount of any overcollection, or a surcharge to collect the amount of any undercollection that arose during the time that the rates approved in the Initial Order were collected, and requires the utility to apply the credit or surcharge until such time as the overcollection or undercollection is exhausted.

(B) The commission shall issue any final order required under this section by December thirty-first of the year in which the monitoring report was filed. The order shall make the corrected rates and the credit or surcharge, if any, effective as of the first billing cycle of May of that year.

(C) The provisions of Sections 58-27-2150 and 58-27-2310 concerning rehearing and appeal shall apply

to the orders issued pursuant to this section.

Section 58-27-2800. The review of Initial Orders pursuant to Section 58-27-2780 and Section 58-27-2790 is limited to issues related to compliance with the terms of this article. Matters determined in orders issued pursuant to Section 58-27-2720 are not subject to review except in full rate proceedings pursuant to Section 58-27-2740. Any proceedings pursuant to this article are without prejudice to the right of the commission to issue, or any interested party to request issuance of, a rule to show cause why a full rate proceeding should not be initiated, nor does this article limit the right of a utility to file an application pursuant to Section 58-27-870 for an adjustment to its rates and charges, nor does it impose the restrictions on filings contained in Section 58-27-870(E).

Section 58-27-2810. (A) The Office of Regulatory Staff is authorized to create additional positions as the General Assembly may provide in the annual General Appropriations Act for the purpose of performing its duties under this article; however, no more than two position for each electric utility regulated pursuant to this article may be authorized. All salaries, benefits, expenses, and charges incurred by the Office of Regulatory Staff for these positions must be borne by the electric utilities regulated pursuant to this article.

(B) On or before the first day of July in each year, the Department of Revenue must assess each electric utility regulated pursuant to this article an equal portion of these salaries, benefits, expenses, and charges on June 30 preceding that on which the assessment is made which is due and payable on or before July 15. The assessments must be charged against the electric utilities by the Department of Revenue and collected by the department in the manner provided by law for the collection of taxes from the electric utilities, including the enforcement and collection provisions of Article 1, Chapter 54 of Title 12 and paid, less the Department of Revenue actual incremental increase in the cost of administration into the state treasury as other taxes collected by the Department of Revenue for the State. These assessments are in addition to any amounts assessed pursuant to Section 58-4-60. These assessments must be deposited in a special fund with the State Treasurer's Office from which the salaries, benefits, expenses, and charges shall be paid.

(C) The Office of Regulatory Staff must annually certify to the Department of Revenue on or before May 1 the amounts to be assessed.

SECTION 58-27-2820. This act expires on July 1, 2035, unless otherwise extended by the General Assembly.

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

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