LEAGUE OF WOMEN VOTERS® OF SOUTH CAROLINA

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Testimony to the LCI Public Utilities Subcommittee

The League of Women Voters of South Carolina (LWVSC) appreciates the opportunity to address this committee. We begin by saying that the League shares with many others a deep concern for the effects of energy generation on our environment. However, in our testimony we focus instead on basic "good government" issues related to utility regulation and on how they are related to the impact of current and projected economic activity in South Carolina. Broadly, we ask that you:

- Preserve the ability of the State to protect us from the power of monopolies.
- Do not establish preferential treatment of utilities over citizens and citizen groups during regulatory processes.
- Protect residential ratepayers.
- Allow agencies to do their jobs in assessing individual projects; don't reach their conclusions regarding individual projects for them.
- Require data centers to fully pay their own way.

Regulatory Responsibility

First, the basic principle underlying our system of utility regulation should not get lost in the sea of technical details associated with energy regulation. The State gives our utilities a monopoly and therefore greater protection from risks that most investments get. This includes guaranteed customers and an assured return on investment (ROI), conditions that most business can only envy. In return, utilities are expected to submit to effective, evidence-based, objective regulation to protect the interests of the state and its people.

However, H.3309 would replace effective protections enacted following the V. C. Summer debacle with a very weak regulatory regime. The Public Service Commission (PSC) mission at present states that they have the power to "to fix just and reasonable standards, classifications, regulations, practices, and measurements of service."[1] The mission of the Office of Regulatory Staff {ORS) is to represent the public interest, defined as "the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high-quality utility services."[2] There is ample protection here for utilities. Nevertheless, they want more.

Section 3 of H. 3309 would amend §58-3-140 to require that the PSC will:

(2)c provide fair regulation of election utilities in the interest of the public in a manner that maintains the financial integrity of the electrical utility by assuring a sufficient and fair rate of return, . . .

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[1] https://psc.sc.gov

[2] https://ors.sc.gov

Section 5 of H.3309 redefines the ORS mission (§58-4-10) as including:

(B)(2)(3) preservation of the financial integrity of the State's public utilities to the extent necessary to provide for the continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

Our concern about these changes is especially focused on language making the State responsible for considering the "financial integrity"[3] of utilities. This change, a return to the regulatory conditions that led to V. C. Summer, is apparently intended to direct state agencies to make decisions to ensure that utility finances have, as the *Oxford English Dictionary* tells us in their primary definition of "integrity," "no part or element taken away or wanting; undivided or unbroken state; material wholeness, completeness, entirety."

Financial integrity so defined is properly within the authority and fiduciary responsibility of utility governing boards, not the State. This "fiscal integrity" language was removed from the ORS mission statement in the 2018 post-V. C. Summer precisely reforms because it created conflicting demands for the agency, demands that were ultimately irreconcilable with protecting either ratepayers or economic development efforts.

This proposed change is also unnecessary and redundant. Dominion (market cap over $44 billion) and Duke (market cap over $81 billion) have ratepayer-funded armies of attorneys and technical specialists to protect their interests, far outnumbering the resources available to ORS and the PSC. Requiring that State agencies also take on greater responsibility for protection of the utilities would double-charge taxpaying ratepayers for protecting utility interests, while diluting the ability of agencies to protect the rest of us.

Under current law, state regulators consider in their decision-making "continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." If that isn't good enough for the utilities, they have a problem that the State can't solve.

Other Problematic Provisions

Many other aspects of regulation are weakened in this bill. The current PSC mission requires that they consider all sides as they regulate just and reasonable rates and service of public utilities through an impartial and thorough quasi-judicial process. That is as it should be. There must be:

- No private *ex-parte* communication for utilities; this would permit them to directly lobby PSC commissioners and staff with no intervenors present to assess and challenge their claims.

Further, there must be:

- No instruction to ORS to represent utility interests before FERC, without consideration of the facts of the case,
- no weakening of the consumer advocate role,
- no special weighting of testimony from utilities,

[3] This term is not defined in the bill. "Financial integrity" has been defined by the United Nations Policy Centre for Governance, as "ensuring the financial system operates in a clean, transparent, and accountable way." We do not believe that this is what the utilities are demanding the State pursue here.

- no restrictions on what public testimony can be considered by the PSC, which must be free to evaluate the expertise and interests of all intervenors,
- no automatic victories if a utility just runs out the clock on a proceeding,
- no reduction in the number of commissioners; a broad range of expertise and geographic interest is needed on the PSC, and
- no authorization of work creating irreversible impacts and subject to ratepayer reimbursement based on integrated resources plans (IRPs), which do NOT entail the level of consideration needed to site a project.

Data Center Costs

Finally, H.3309 Section 25 must not be enacted as written. It would permit massive transfer of data center costs to other ratepayers, without corresponding public benefit.

A substantial percentage of the need for increased generating capacity relates to new data centers to fulfill the demands brought by heavy use of artificial intelligence (AI) and crypto currency. They are voracious users of both energy and water. Some co-ops have indicated that they regard data centers as assets because they help balance load on the grid, helping to pay for existing capacity. However, that is not the current situation. Data centers are demanding capacity that doesn't exist now, and a lot of it.

No part of the costs attributable to generating or delivering power for data centers should be passed on to other customers – especially residential and small business ratepayers. Their primary economic benefit is that local governments receive significant property taxes because of large capital investments in the centers. However, their demands on public infrastructure such as roads and schools are low because data centers employ few people and bring little continuing economic activity to the community and the state.

We recognize that some communities would regard the 100 new jobs that some facilities promise as a significant local asset. However, the cost of those jobs is very high, both locally and throughout the utility service area. When utilities charge corporations less than the full cost of providing their energy, including the proportion of generating facility construction costs that they represent, someone else must pay the difference. That would not be the utilities, who have no intention of reducing their guaranteed ROI. Furthermore, very large industrial users would continue to negotiate rates that exempt them from sharing this burden. Therefore, as Section 25 is currently written the rest of us, residential and small business ratepayers. would bear the cost of energy that is used by large corporations, without real benefit to us.

So far, mitigation efforts by the companies have been very unimpressive. In Dorchester County, Google has reached an agreement to mitigate the significant harm of their demands for special deals by providing $1.6 million to weatherize local low-income housing. This is pathetically inadequate, a rounding error in their annual revenues of more than $300 billion and far below what their special deals will cost South Carolinians throughout the utility service area over the years.

To put this in perspective -- 14% of South Carolinians live below the federal poverty level. Another 30% of households live below the ALICE threshold, defined as "Asset Limited, Income Constrained, Employed" households.[4] If Section 25 is enacted as written, all 2.1 million households in our state, including around 940,000 low-income households, would be required to pay for the energy

[4] https://www.unitedforalice.org/state-overview/south-carolina

used by the data centers. It is immoral to ask the 44% of South Carolinians who can't afford a stable life in their community to pay for energy received by profitable corporations, with very little to themselves. In fact, if the facility isn't in their local community and county, there is essentially no benefit to those paying throughout the utility service area, which for each of our major utilities represents many counties. Over the years the cost of special rates for data centers would ultimately be very high for people across South Carolina who are receiving little or nothing in return.

We also consider the issue of risk. This is not idle speculation. Goldman Sachs, among others, is warning that the ROI from AI may be very disappointing for quite some time.[5] Because of this, building energy capacity in response to predicted data center needs bears its own significant risk. In the long run, AI will not go away and will grow, but investors could easily pull back long enough to give South Carolina another very painful energy experience. Again, once a generating facility is approved, someone must pay the ROI. The financial risk for this should be borne by those who stand to make money on these projects if they succeed – companies building data centers and energy companies planning generating capacity to extract profits from supplying them.

Summary

The State of South Carolina has the authority and the responsibility to protect the people and businesses of South Carolina from the potential overreach of the corporations to which it gives monopolies that deprive citizens of choice. There must be no weakening of the overall regulatory structure that is necessary to fulfill that responsibility.

This committee will hear from a wide range of interests and may decide to recommend adjustments to existing law. Any such changes should be minor. We ask that the committee amend this bill to continue our current evidence-based regulatory system that so wisely fosters development of a sound energy industry in South Carolina while protecting users from the potential abuses of a monopoly system.

We also ask that the committee take up the issue of data centers and crypto currency. We are not asking that they be prohibited in South Carolina, but that legislation ensure that they pay the full cost of generating and delivering their energy, as well as standard tax rates without special waivers.

Thank you.

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[5] https://www.businessinsider.com/ai-return-investment-disappointing-goldman-sachs-report-2024-6