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H. 4022

STATUS INFORMATION

General Bill

Sponsors: Reps. Finlay, Atwater, Huggins, Toole and Forrest

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Introduced in the House on March 22, 2017

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

Summary: Base load review and project development orders

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/22/2017	House	Introduced and read first time (House Journal-page 8)
3/22/2017	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 8)
4/4/2017	House	Member(s) request name added as sponsor: Atwater, Huggins, Toole, Forrest

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VERSIONS OF THIS BILL

[3/22/2017](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION [58-33-440](#) SO AS TO SPECIFY THE PROVISIONS OF LAW APPLICABLE TO BASE LOAD REVIEW ORDERS AND PROJECT DEVELOPMENT ORDERS ISSUED FOR CERTAIN UTILITY FACILITY CONSTRUCTION PROJECTS BEFORE JANUARY 1, 2017; TO AMEND SECTION [58-33-220](#), RELATING TO DEFINITIONS IN THE BASE LOAD REVIEW ACT, SO AS TO REVISE DEFINITIONS; TO AMEND SECTION [58-33-240](#), RELATING TO THE BURDEN OF ESTABLISHING THE PRUDENCE OF UTILITIES PLAN CONSTRUCTION PROJECTS, SO AS TO REVISE THE SCOPE AND SPECIFIC REQUIREMENTS OF THIS BURDEN, AND TO INCLUDE PROVISIONS CONCERNING CONTRACTUAL DELEGATIONS OF DECISION MAKING AUTHORITY TO THIRD PARTIES; TO AMEND SECTION [58-33-250](#), RELATING TO APPLICATIONS FOR BASE LOAD REVIEW ORDERS, SO AS TO REVISE REQUIREMENTS FOR INFORMATION CONCERNING ANTICIPATED CONSTRUCTION SCHEDULES AND TO REQUIRE ANTICIPATED PAYMENT SCHEDULES; TO AMEND SECTION [58-33-270](#), RELATING TO BASE LOAD REVIEW ORDER CONTENTS, SO AS TO REQUIRE ANTICIPATED CONSTRUCTION SCHEDULES AND ANTICIPATED PAYMENT SCHEDULES, TO REQUIRE ITEMIZATION OF CAPITAL COSTS BY SCOPE OF WORK, AND TO PROVIDE THAT THE OFFICE OF REGULATORY STAFF MAY PETITION THE PUBLIC SERVICE COMMISSION FOR ORDERS MODIFYING RETURNS ON EQUITY TO BE APPLIED TO FUTURE RATES, SUBJECT TO CERTAIN LIMITATIONS AND NOTICE REQUIREMENTS; TO AMEND SECTION [58-33-275](#), RELATING TO ADDITIONAL BASE LOAD REVIEW ORDER CONTENTS, SO AS TO MAKE CONFORMING CHANGES AND TO PROVIDE THE EXTENT TO WHICH THE COMMISSION MAY GRANT PETITIONS OF THE OFFICE OF REGULATORY STAFF INTENDED TO SAFEGUARD THE PUBLIC INTEREST, AND TO DELETE EXISTING LANGUAGE CONCERNING SANCTIONS INVOLVING CAPITAL COSTS AND COSTS OF CAPITAL THAT THE COMMISSION MAY IMPOSE FOR DEVIATIONS FROM BASE LOAD REVIEW ORDERS; TO AMEND SECTION [58-33-280](#), RELATING TO UTILITY REQUESTS FOR APPROVAL OF REVISED RATES, SO AS TO MAKE CONFORMING CHANGES BY LIMITING THE APPLICABILITY OF REVISED RATES FOR BASE LOAD REVIEW ORDERS ISSUED AFTER DECEMBER 31, 2017, TO REVISE CERTAIN PROCEDURAL DEADLINES, AND TO DELETE PROVISIONS CONCERNING THE EXTENT TO WHICH CAPITAL COSTS AND COSTS OF CAPITAL MAY BE RECOVERED IN ASSOCIATION WITH IMPRUDENT COSTS, AMONG OTHER THINGS; AND TO AMEND SECTION [58-33-298](#), RELATING TO TIME LIMITS FOR BASE LOAD RATE CHANGE FILINGS, SO AS TO APPLY THE SAME TIME LIMITS APPLICABLE TO CERTAIN OTHER RATE CHANGES.

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

SECTION 1. Article 7, Chapter 33, Title 58 of the 1976 Code is amended by adding:

"Section [58-33-440](#). (A) For projects whose base load review order was issued before January 1, 2017, the law in effect at the time of the issuance of the original base load review order must be applied for the purposes of that project.

(B) For projects whose project development order was issued before January 1, 2017, the law in

effect at the time of the issuance of the original project development order must be applied for the purposes of preconstruction costs incurred under that project. Should a project whose original project development order was issued before the effective date of this section subsequently submit a base load review application, the application must be considered under the law as amended by this section and any subsequent base load review order for that project also is subject to the law as amended by this section."

SECTION 2. Section [58-33-220](#) of the 1976 Code is amended to read:

"Section [58-33-220](#). The following terms, when used in this article, shall have the following meanings, unless another meaning is clearly apparent from the context:

- (1) 'AFUDC' means the allowance for funds used during construction of a plant calculated according to regulatory accounting principles.
- (2) 'Base load plant' or 'plant' means a new coal or nuclear fueled electrical generating unit or units or facility that is designed to be operated at a capacity factor exceeding seventy percent annually, has a gross initial generation capacity of three hundred fifty megawatts or more, and is intended in whole or in part to serve retail customers of a utility in South Carolina, and for a coal plant, includes Best Available Control Technology, as defined by the United States Environmental Protection Agency, for the control of air emissions.
- (3) 'Base load review application' or 'application' means an application for a base load review order under the terms of this article.
- (4) 'Base load review order' means an order issued by the commission pursuant to Section [58-33-270](#) establishing that if a plant is constructed in accordance with an approved construction schedule, approved capital costs estimates, and approved projections of in-service expenses, as defined herein, the plant is considered to be used and useful for utility purposes such that its capital costs are prudent utility costs and are properly included in rates.
- (5) 'Capital costs' or 'plant capital costs' means costs associated with the design, siting, selection, acquisition, licensing, construction, testing, and placing into service of a base load plant, and capital costs incurred to expand or upgrade the transmission grid in order to connect the plant to the transmission grid and includes costs that may be properly considered capital costs associated with a plant under generally accepted principles of regulatory or financial accounting, and specifically includes AFUDC associated with a plant and capital costs associated with facilities or investments for the transportation, delivery, storage, and handling of fuel.
- (6) 'Combined application' means a base load review application which is combined with an application for a certificate under the Utility Facility Siting and Environmental Protection Act, or which involves a plant located outside of the State of South Carolina, and at the utility's option may be combined with an application for new electric rates under Section [58-27-860](#).
- (7) 'Combined proceeding' means a proceeding to consider all aspects of a combined application.
- (8) 'Construction work in progress' means capital costs as defined above associated with a base load plant which have been incurred but have not been included in the utility's plant-in-service.
- (9) 'General rate proceeding' means a proceeding under Section [58-27-810](#) and other applicable

provisions for the establishment of new electric rates and charges, and where orders in general rate proceedings are referenced in this article, these orders include rate orders issued in proceedings or combined proceedings under this article.

(10) 'In-service expenses' means reasonably projected expenses recognized under generally accepted principles of regulatory and financial accounting as a result of a plant commencing commercial operation, including:

(a) expenses associated with operating and maintaining a plant, as well as taxes and governmental charges applicable to the plant including taxes other than income taxes;

(b) depreciation and amortization expenses related to the plant;

(c) revenue requirements related to the utility's cost of capital applied to the investment in supplies, inventories, and working capital associated with the plant; and

(d) other costs determined by the commission to be appropriate for ratemaking purposes. In-service expenses include, but are not limited to, labor, supplies, insurance, general and administrative expenses, and the cost of outside services, but do not include costs recovered as fuel costs pursuant to Section [58-27-865](#).

(11) 'Person' means any individual, group, firm, partnership, or corporation.

(12) 'Preconstruction costs' means all costs associated with a potential nuclear plant incurred before issuance of a final certificate under the Utility Facility Siting and Environmental Protection Act, including, without limitation, the costs of evaluation, design, engineering, environmental and geotechnical analysis and permitting, contracting, other required permitting including early site permitting and combined operating license permitting, and initial site preparation costs and related consulting and professional costs, and shall include AFUDC associated with those costs. For potential nuclear plants located in other states, the costs must be those incurred before issuance of a certificate by the host state under statutes comparable to the Utility Facility Siting and Environmental Protection Act.

(13) 'Proceeding' means the proceeding to consider an application filed under this chapter.

(14) 'Project development application' means an application for a project development order.

(15) 'Project development order' means an order establishing the prudence of a utility's decision to incur preconstruction costs associated with a nuclear plant or potential nuclear plant.

(16) 'Return on equity' means the return on common equity established in the base load review order for a plant. But, if the order in the utility's most recent general rate proceeding was issued no more than five years before the date of filing of the application or combined application, or if such an order is issued after the application, combined application or base load review order related to the plant is filed, then at the utility's option, the rate of return on common equity established in that order shall be the rate of return used for computing future rate revisions under this article. A project-specific return on equity set hereunder shall apply exclusively to the establishment of the weighted average cost of capital under this article and shall not be used for reporting or any other purpose.

(17) 'Revised rates' means a revised schedule of electric rates and charges reflecting a change to the

utility's then current nonfuel rates and charges to add incremental revenue requirements related to a base load plant as authorized in this article. For a nuclear plant under construction, until it enters commercial operation the rate adjustments related to the plant shall include recovery of the weighted average cost of capital applied to the outstanding balance of capital costs of that plant only and shall not include depreciation or other items constituting a return of capital to the utility. For a coal plant, no revised rates shall be allowed except that an adjustment under Section [58-33-280\(J\)\(1\)](#) shall be permitted to take effect on or after the date commercial operations of the plant commence.

(18) 'Revised rates order' means an order issued by the commission approving, modifying, or denying the utility's request to charge revised rates under this article, which revised rates order an aggrieved party may contest in an adversarial hearing before the commission.

(19) 'Revised rates proceedings' means all proceedings to consider an application for revised rates or review of a revised rates order.

(20) 'Utility' means a person owning or operating equipment or facilities for generating, transmitting, or delivering electricity to South Carolina retail customers for compensation but it shall not include electric cooperatives, municipalities, the South Carolina Public Service Authority, or a person furnishing electricity only to himself, itself, its residents, employees, or tenants when the electricity is not resold or used by others.

(21) 'Utility Facility Siting and Environmental Protection Act' means Section [58-33-10](#) and other applicable provisions of this chapter.

(22) 'Weighted average cost of capital' ~~or 'cost of capital'~~ means the utility's average cost of debt and equity capital:

- (a) incorporating the return on equity;
- (b) incorporating the utility's current weighted average cost of debt;
- (c) weighting (a) and (b) according to the utility's capital structure for ratemaking purposes, as established in the order in the utility's last general rate proceeding, updated to reflect the utility's current levels of debt and equity capital; and
- (d) adjusting the result for the effect of income taxes.

(23) 'Cost of capital' means the costs of financing a base load plant calculated using the weighted average of cost capital methodology.'

SECTION 3. Section [58-33-240](#) of the 1976 Code is amended to read:

"Section [58-33-240](#). (A) Except as otherwise specified in this article, all procedural requirements that apply to general rate proceedings by law or regulation shall apply to proceedings and combined proceedings, to revised rates proceedings, and to the judicial review of orders issued under this article. The requirements related to the form and content of applications in general rate proceedings, however, only shall apply to proceedings or combined proceedings which include an application for new electric rates under Section [58-27-860](#) and only shall apply to that part of the application or combined application which is filed under Section [58-27-860](#)."

(B) As to combined proceedings, the procedural requirements related to general rate proceedings shall control over any inconsistent provisions in other statutes; provided, however, that provisions of Section [58-33-140](#) of the Utility Facility Siting and Environmental Protection Act related to parties and appearances shall apply to proceedings involving facilities located in this State to the extent parties seek to appear to raise issues arising under that act.

(C) In proceedings to review revised rates orders, no further notice to the public, customers, and others is required additional to that provided upon filing of the proceeding or combined proceeding. In proceedings to review revised rates orders, the utility's revised rates filing shall serve as the application and the utility must be considered to be the applicant.

(D) In proceedings and combined proceedings, the utility ~~shall have~~ has the burden of proving that the decision to build the plant was prudent, and ~~shall have~~ has the burden of proof as to all matters ~~on which the commission is required to enter findings under Section [58-33-270](#)(A), (B), (C), (D), and (E). Without in any way limiting the conclusive effect of determinations under Section [58-33-225](#) and Section [58-33-275](#), under this article.~~ In cases where this statute allows a party to challenge the prudence of any transaction, cost, or decision of the utility, ~~that party shall be required to make a prima facie case establishing imprudence, and thereafter~~ the burden of proof ~~shall shift to~~ is with the utility to demonstrate the prudence of the transaction cost, or decision by a preponderance of the evidence. To the extent a utility enters a contract with a third party that delegates some or all decision-making authority related to the project, the utility retains the burden of establishing the prudence of specific items of cost or specific third party decisions.

(E) In proceedings and combined proceedings, the deadlines contained in Section [58-27-870](#)(B) and (C) ~~shall be~~ are nine months."

SECTION 4. Section [58-33-250](#) of the 1976 Code is amended to read:

"Section [58-33-250](#). The application for a base load review order under this article shall include:

- (1) information showing the anticipated construction schedule for the plant, including estimated substantial completion dates;
- (2) information showing the anticipated components of capital costs ~~and~~ itemized by specific scope of work, the anticipated schedule for incurring them and the anticipated payment schedules;
- (3) information showing the projected effect of investment in the plant on the utility's overall revenue requirement for each year during the construction period;
- (4) information identifying:
 - (a) the specific type of units selected for the plant;
 - (b) the suppliers of the major components of the plant; and
 - (c) the basis for selecting the type of units, major components, and suppliers;
- (5) information detailing the qualification and selection of principal contractors and suppliers, other than those listed in item (4)(c) ~~above~~, for construction of the plant;

- (6) information showing the anticipated in-service expenses associated with the plant for the twelve months following commencement of commercial operation adjusted to normalize any atypical or abnormal expense levels anticipated during that period;
- (7) information required by Section [58-33-270\(B\)\(6\)](#);
- (8) information identifying risk factors related to the construction and operation of the plant;
- (9) information identifying the proposed rate design and class allocation factors to be used in formulating revised rates;
- (10) information identifying the return on equity proposed by the utility pursuant to Section [58-33-220\(16\)](#); and
- (11) the revised rates, if any are requested, that the utility intends to put in place after issuance of the resulting base load review order."

SECTION 5. Section [58-33-270](#) of the 1976 Code is amended to read:

"Section [58-33-270](#). (A) After the hearing, the commission shall issue a base load review order approving rate recovery for plant capital costs if it determines:

- (1) that the utility's decision to proceed with construction of the plant is prudent and reasonable considering the information available to the utility at the time;
- (2) for plants located in this State, that the utility has satisfied the requirements of Section [58-33-160](#) of the Utility Facility Siting and Environmental Protection Act, either in a past proceeding or in the current proceeding if the current proceeding is a combined proceeding; and
- (3) for plants located outside South Carolina, that the utility has satisfied the requirements of Section [58-33-160\(1\)\(a\)](#), [58-33-160\(1\)\(d\)](#), and [58-33-160\(1\)\(f\)](#) of the Utility Facility Siting and Environmental Protection Act.

(B) The base load review order shall establish:

- (1) the anticipated construction schedule for the plant and anticipated substantial completion dates for the plant, including contingencies;
- (2) the anticipated components of capital costs ~~and~~ itemized by scope of work, the anticipated schedule for incurring them, and the anticipated payment schedule, including specified contingencies;
- (3) the return on equity established in conformity with Section [58-33-220\(16\)](#);
- (4) the choice of the specific type of unit or units and major components of the plant;
- (5) the qualification and selection of principal contractors and suppliers for construction of the plant; and
- (6) the inflation indices used by the utility for costs of plant construction, covering major cost components or groups of related cost components. Each utility shall provide its own indices, including: the source of the data for each index, if the source is external to the company, or the

methodology for each index which is compiled from internal utility data, the method of computation of inflation from each index, a calculated overall weighted index for capital costs, and a five-year history of each index on an annual basis.

(C) If revised rates are requested, the base load review order shall specify initial revised rates reflecting the utility's current investment in the plant which must be determined using the standards set forth in Section [58-33-280](#)(B) and implemented according to Section [58-33-280](#)(D).

(D) The base load review order shall establish the rate design and class allocation factors to be used in calculating revised rates related to the plant. In establishing revised rates, all factors, allocations, and rate designs shall be as determined in the utility's last rate order or as otherwise previously established by the commission, except that the additional revenue requirement to be collected through revised rates shall be allocated among customer classes based on the utility's South Carolina firm peak demand data from the prior year.

(E)(1) As circumstances warrant, the utility may petition the commission, with notice to the Office of Regulatory Staff, for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form part of any base load review order issued under this section. The commission shall grant the relief requested if, after a hearing, the commission finds:

(1a) as to the changes in the schedules, estimates, findings, or conditions, that the evidence of record justifies a finding that the changes are not the result of imprudence on the part of the utility; and

(1b) as to the changes in the class allocation factors or rate designs, that the evidence of record indicates the proposed class allocation factors or rate designs are just and reasonable.

(2) The Office of Regulatory Staff, at its discretion, may petition the commission, with notice to the utility, for an order modifying the return on equity to be applied to future revised rates. The utility may not assert that the decision-making authority was delegated or contracted to a third party to support its petition under this article.

(F) The commission shall consider a request under Section [58-33-270](#)(E) in a new docket which pursuant to Section [58-33-240](#) must be subject to the requirement that the relief requested in this article is considered granted if not denied by order within six months of the date of filing. If the commission fails to issue an order within the period prescribed in this section, a party may move that the commission issue an order granting or denying the application. If the commission fails to issue an order within ten days after the motion is served, the application will be considered granted.

(G) The commission promptly shall schedule a hearing to consider any settlement agreement entered into between the Office of Regulatory Staff, as the party representing the public interest in the proceedings, and the utility applicant, provided that all parties shall have been given a reasonable opportunity to conduct discovery in the docket by the time the hearing is held. The commission may accept the settlement agreement as disposing of the matter, and issue an order adopting its terms, if it determines that the terms of the settlement agreement comport with the terms of this act."

SECTION 6. Section [58-33-275](#) of the 1976 Code is amended to read:

"Section [58-33-275](#). (A) A base load review order shall constitute a final and binding determination that a plant is used and useful for utility purposes, and that its capital costs are prudent utility costs and expenses and are properly included in rates so long as the plant is constructed or is

being constructed within the parameters of:

- (1) the approved construction schedule including contingencies; and
- (2) the approved capital ~~costs~~ cost estimates, itemized by scope of work, including specified contingencies.

(B) Determinations under Section [58-33-275](#)(A) may not be challenged or reopened in any subsequent proceeding, including proceedings under Section [58-27-810](#) and other applicable provisions and Section [58-33-280](#) and other applicable provisions of this article.

(C) So long as the plant is constructed or being constructed in accordance with the approved schedules, estimates, and projections set forth in Section [58-33-270](#)(B)(1) and [58-33-270](#)(B)(2), as adjusted by the inflation indices set forth in Section [58-33-270](#)(B)(~~5~~6), the utility must be allowed to recover its cost of capital or capital costs related to the plant through revised rate filings or general rate proceedings.

(D) Changes in fuel costs will not be considered in conducting any evaluation under this section.

(E) ~~In cases where a party proves by a preponderance of the evidence that there has been a material and adverse deviation from the approved schedules, estimates, and projections set forth in Section [58-33-270](#)(B)(1) and [58-33-270](#)(B)(2), as adjusted by the inflation indices set forth in Section [58-33-270](#)(B)(5), the commission may disallow the additional capital costs that result from the deviation, but only to the extent that the failure by the utility to anticipate or avoid the deviation, or to minimize the resulting expense, was imprudent considering the information available at the time that the utility could have acted to avoid the deviation or minimize its effect. If the Office of Regulatory Staff petitions the commission to safeguard the public interest under this article, the commission may grant the Office of Regulatory Staff's position to the extent that the utility fails to establish prudence of the challenged matter considering the information available to the utility at the time the decision was made."~~

SECTION 7. Section [58-33-280](#) of the 1976 Code is amended to read:

"Section [58-33-280](#). (A) No earlier than one year after filing the application or combined application, and no more frequently than annually thereafter, the utility may file with the commission and serve on the Office of Regulatory Staff requests for the approval of revised rates subsequent to those approved in the base load review order. For base load review orders issued after December 31, 2016, revised rates do not apply to capital costs or in-service expenses incurred for itemized scopes of work not approved in the initial base load review order, to capital costs or in-service expenses incurred after the substantial completion date included in the initial base load review order pursuant to Section [58-33-270](#)(B)(1), or to any modifications approved pursuant to Section [58-33-270](#)(E). Capital costs or in-service expenses not eligible for revised rates may accrue AFUDC and be presented for inclusion as construction work in progress or in rate base in a future general rate proceeding.

(B) A utility must be allowed to recover through revised rates its weighted average cost of capital applied to all or, at the utility's option, part of the outstanding balance of construction work in progress, calculated as of a date specified in the filing. Any construction work in progress not included in any specific filing for revised rates shall continue to earn AFUDC and may be included in rates through future filings. The revised rates filing shall include the most recent monitoring report filed

under Section [58-33-277](#)(A) updated to reflect information current as of the date specified in the filing.

(C) Written comments to the commission and the Office of Regulatory Staff concerning the revised rates and the information supporting them shall be allowed within one month of the revised rates filing.

(D) The Office of Regulatory Staff shall review and audit the revised rates and the information supporting them to determine their compliance with the terms of this article. No later than ~~two~~ three months after the date of the revised rates filing, the Office of Regulatory Staff shall serve on the commission and all intervenors and parties of record a report indicating the results of its review and audit and proposing any changes to the revised rates or the information supporting them that the Office of Regulatory Staff determines to be necessary to comply with the terms of this article.

(E) Written comments related to the report may be filed with the commission within one month from the date of the filing of the report. Comments must be served on the Office of Regulatory Staff and simultaneously mailed or electronically transmitted to the utility and to all intervenors and parties of record who previously appeared and filed comments. The Office of Regulatory Staff may revise its report considering comments filed.

(F) No later than ~~four~~ five months after the date of the revised rates filing, the commission shall issue a revised rates order granting, modifying, or denying revised rates as filed by the utility. In the absence of such a revised rates order, the revised rates shall be considered to be approved as filed. If the commission fails to issue an order within the period prescribed in this section, a party may move that the commission issue an order granting or denying the application. If the commission fails to issue an order within ten days after the motion is served, the application will be considered granted.

(G) Where both Office of Regulatory Staff and the utility agree in writing on the revised rates to be implemented, the commission shall give substantial weight to the agreement in issuing its revised rates order.

(H) If the utility is granted a rate increase in the revised rates order, the utility shall provide notice to its customers with the next billing. The utility may implement revised rates for bills rendered on or after a date selected by the utility, which may not be sooner than thirty days after revised rates are approved.

(I) Upon implementation of revised rates under this article, the utility will cease to accrue AFUDC on that component of its construction work in progress on which it is recovering its weighted average cost of capital through revised rates.

(J) Other provisions of this article notwithstanding:

(1) The utility may file a final set of revised rates for a plant to go into effect upon commercial operation of the plant, the filing to be made no sooner than seven months before the projected date that the plant is to commence commercial operations. In the final revised rates the utility may include recovery of the weighted average cost of capital applied to all or part of the capital costs associated with the plant. In all cases, the decision to seek recovery in revised rates of less than the full amount of its cost must be at the utility's sole discretion. Rate adjustments to reflect the revenue requirements related to in-service expenses must be included in the final revised rates and shall be based on the

utility's most current budget estimates of those expenses for the succeeding twelve-month period at the time the final revised rates are filed or actual expenses, if available.

(2) If the commission rejects a revised rate filing on grounds that may be corrected in a subsequent filing, or if the utility withdraws a revised rate filing before a revised rates order is issued, the utility may file a subsequent request for revised rates at any time thereafter.

(3) The utility may seek to recover any capital costs, in-service expenses, or other costs not included in or eligible for revised rates through future general rate proceedings.

(4) Revised rates shall not be allowed, under Section [58-33-270](#)(C) or under Section [58-33-280](#), for coal plants located in South Carolina that were certificated for construction under the Utility Facility Siting and Environmental Protection Act before December 31, 2007, or for coal plants located outside of South Carolina if certificated under a state statute analogous to the Utility Facility Siting and Environmental Protection Act before December 31, 2007.

(K) Where a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance of the evidence that the decision to abandon construction of the plant was prudent. ~~Without limiting the effect of Section [58-33-275](#)(A), recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs.~~ If the utility proves that the decision to abandon the plant was prudent, the commission shall order the amortization and recovery through rates of the investment in the abandoned plant as part of an order adjusting rates under this article.

(L) After completion of a plant that is subject to a base load review order, the Office of Regulatory Staff shall conduct an audit of the utility revenues, expenses, and rates consistent with the audits conducted of filings for new electric rates under Section [58-27-860](#). The audit must be based on a twelve-month test period ending no later than December thirty-first of the calendar year following the year in which the plant entered commercial operation and must be filed with all parties to the base load review proceeding within four months of the conclusion of the test period."

SECTION 8. Section [58-33-298](#) of the 1976 Code is amended to read:

"Section [58-33-298](#). Filings under this article ~~may not be considered in applying the limitations on~~ are limited to the same time requirements as rate filings contained in Section [58-27-870](#)(E), unless otherwise provided in this article."

SECTION 9. This act takes effect upon approval by the Governor.

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