



THE LEAGUE OF WOMEN VOTERS OF SOUTH CAROLINA

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H. 4375 - H. 4380: TESTIMONY BEFORE THE CONSTITUTIONAL LAWS SUBCOMMITTEE OF THE JUDICIARY COMMITTEE OF THE HOUSE

14-15 November 2017

We appreciate this opportunity to provide testimony on the very important bills before this subcommittee, representing a major restructuring of the system for regulating our utilities. We agree with much of what is proposed, but have some important concerns that we hope you will consider. We review the bills in the order of the agenda.

H.4375

Recommended Amendment (Technical):

- Change “presently” (“soon” or “in the near future”) to “at present” (“now” or “currently”) on P. 8, L. 4, to properly convey the intent of the “used and useful” provision.

Comments: This bill is important in recognizing that the Base Load Review Act (BLRA) has had effects contrary to the public interest requirements of Section 1. Article IX of the South Carolina Constitution of 1895 and in amending that Act to clarify the intentions of the General Assembly. The detailed definition of imprudence is especially welcome, as are the provisions insuring that the burden of establishing prudence rests with the utility and that the utility is responsible for the actions and decisions of its contractors.

Utilities cannot be allowed to proceed without strong commercial incentives to complete their projects to the “used and “useful” state in a prudent manner that protects the interests of the public. This bill addresses this and we encourage a favorable recommendation from the subcommittee, with the noted editorial change.

We ask the committee to forward this bill with a favorable recommendation, with the recommended amendment.

H. 4379

Recommended Amendment:

- Put the Utilities Consumer Advocate (UCA) in the Office of Regulatory Staff (ORS) rather than the Office of the Attorney General.

Comments: The most important element of this bill is the removal of the requirement that the ORS consider the protection of the financial integrity of utilities. That is not the function of government regulation of a monopoly. With this change, the ORS will face far fewer internal mission conflicts in the future. We also

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applaud the very important strengthened ability of the ORS to acquire information from utilities through subpoena power and to exact penalties for failure to disclose material information.

The UCA is also a welcome addition, focusing attention on the central purpose of government regulation of monopolies, the protection of consumers. We question, however, placing that office in the Office of the Attorney General. With removal of internal conflicts in the mission, we believe that the UCA could function more effectively within the ORS, which is the home agency of the technical and legal information base needed for effective protection of ratepayers and the general public. We believe that the argument for placing the UCA in ORS is strengthened by the nonpartisan nature of the ORS. We encourage the committee to forward this bill with the recommended change.

We ask the committee to forward this bill with a favorable recommendation, with the recommended amendment.

H.4377

Recommended Amendments:

- Consider alternatives to appointment by congressional district.
- Educate new Public Service commission (PSC) members on the danger of “regulatory capture” as an aspect of the continuing education required under §58-3-30(C) on page 4.
- Strictly limit Public Service Commission (PSC) members to two terms.

Comments: The proposed changes in the PSC are generally welcome improvements. However, we have concerns about continuation of the distribution of membership by congressional districts. In our experience, there has been evidence of too strong a regional focus by some commissioners, placing greater importance on jobs in their specific region than on overall oversight of the regulated utilities in the interest of consumers and the general public.

We are also concerned that our experience of the PSC has pointed towards a high level of identification with the regulated industry, referred to by economists as “regulatory capture.” Rep. Kirkman Finlay confirmed evidence of this on the PSC from personal experience during a recent meeting of the House Ratepayer Protection Committee, but it has been apparent to many other observers. This is not a matter of illegally corrupt activity, but simply the process through which over time regulators begin to take on the point of view of, and identify with, the industry that they regulate. The best corrective for this would be a combination of education on the issue for members and strict term limits for commissioners.

It is also essential for the General Assembly to make it clear that although members of the PSC might be selected from congressional districts, they are responsible for considering every issue in the light of the welfare of the state as a whole. The focus of some commissioners on job creation and property tax revenues for their own areas at the expense of the larger consumer and economic development interest has been a contributing factor in the problems that we see today.

We ask the committee to forward this bill with a favorable recommendation, with the recommended amendments.

H. 4376

Recommended Amendment:

- Revise the qualifications enumerated in § 58-31-20(C) (p. 4) to require two directors with substantial work experience in an electric utility that engages in construction and management of energy generation facilities, and at least one director with experience in an electric cooperative.

Comments: The establishment of clear qualifications for the Public Service Authority (PSA) board is important. We appreciate the need to have representation from the cooperatives that are PSA's primary customers, but believe that it is important to those customers and to all South Carolina citizens that the board have the expertise to hold up its end of the work of the energy industry, construction and management of facilities to generate electricity, both for distribution through its own service area and through cooperatives. The wording of the qualifications as currently written could lead to a board lacking that expertise, since cooperatives do not typically undertake base load generation. This deficiency on both the Santee Cooper and SCANA boards is one of the reasons we find ourselves in a terrible situation regarding V. C. Summer today.

Bringing the PSA under the authority of the regulatory system that oversees other energy providers in South Carolina is essential and we are very glad to see it addressed.

We ask the committee to forward this bill with a favorable recommendation, with the recommended amendment.

H. 4378

Recommended Amendments:

- There should be fewer legislators and more citizen members on the Utilities Oversight Committee (UOC). Ideally this entity would be independent of the General Assembly, to provide distance between the regulatory process and the political nature of legislative work. However, that seems to be under consideration by neither the House or the Senate, so a split of no more than four legislators and no fewer than five to seven citizens is recommended on the UOC.
- There should be an explicit emphasis on consumer interest representation among citizen members of the UOC.
- UOC members, their immediate family members, or businesses with which they are associated should not derive income from a contractual or financial relationship, including a consultant or independent contractor's relationship, with a regulated utility or an entity controlled by, affiliated with, or existing for the benefit of a regulated utility.

Comments: The replacement of the State Regulation of Public Utilities Review Committee (PURC) by the UOC is an improvement, but not as substantial a change as we had hoped for in this crucial agency.

Of all of the entities addressed in this series of bills, it is especially important that PURC/UOC members are aware that utilities do not exist primarily to serve the public good, and that when the interests of their shareholders inevitably at times conflict with the interests of ratepayers and the public, they will surely choose to serve their shareholders first. PURC/UOC has a substantial influence on the entire regulatory

system. If it fails to protect consumers and the general public interest, and to demand that of others over whom they have oversight, no one will.

Prior to the Westinghouse bankruptcy announcement and widespread recognition of the problems at V. C. Summer, those of us who attended PURC meetings were struck by some members' over-confidence in the utilities and over-reliance on the perspective presented by the utilities. "Regulatory capture" is a common problem in which those involved in regulating an industry over time assume the point of view of the regulated industry. The protections against repeating that experience with the UOC do not seem adequate.

In addition to this overall tendency in regulatory environments, legislators bring additional influences to the mix. South Carolina's utilities have cultivated goodwill in the General Assembly very aggressively through decades of lobbying activities and campaign contributions, and can be expected to continue to do so, probably with increased vigor.

We ask the committee to forward this bill with a favorable recommendation, with the recommended amendments.

H.4380

Comments: We appreciate this bill to provide for refunding of revenues collected under the BLRA through various forms of misrepresentation to regulators and nondisclosure of project failures arising from imprudent management. It complements efforts in the judicial and regulatory systems to address these problems.

We ask the committee to forward this bill with a favorable recommendation.