

By: Senator(s) Mettetal

To: Public Utilities

SENATE BILL NO. 2793
(As Sent to Governor)

1 AN ACT TO CREATE A NEW ARTICLE TO BE CODIFIED AS ARTICLE 2,
2 CHAPTER 3, TITLE 77, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
3 PUBLIC SERVICE COMMISSION TO UTILIZE AN ALTERNATE METHOD OF COST
4 RECOVERY OF CERTAIN BASE LOAD GENERATION; TO CREATE A NEW SECTION
5 TO BE CODIFIED AS SECTION 77-3-101, MISSISSIPPI CODE OF 1972, TO
6 DECLARE FINDINGS OF THE LEGISLATURE; TO CREATE A NEW SECTION TO BE
7 CODIFIED AS SECTION 77-3-103, MISSISSIPPI CODE OF 1972, TO DEFINE
8 CERTAIN TERMS; TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
9 77-3-105, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE PUBLIC
10 SERVICE COMMISSION TO INCLUDE IN AN ELECTRIC PUBLIC UTILITY'S RATE
11 BASE CERTAIN EXPENDITURES DETERMINED TO BE PRUDENTLY-INCURRED
12 PRE-CONSTRUCTION, CONSTRUCTION, OPERATING AND RELATED COSTS
13 INCURRED IN CONNECTION WITH A CERTAIN BASE LOAD GENERATING
14 FACILITY; TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
15 77-3-107, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSION TO
16 PROMULGATE RULES AND REGULATIONS THAT MAY INCLUDE A PREFERENCE FOR
17 OWNERSHIP OF A GENERATING FACILITY BY AN INVESTOR-OWNED ELECTRIC
18 PUBLIC UTILITY OR BY AN ELECTRIC PUBLIC UTILITY OWNING AND
19 OPERATING GENERATION AND TRANSMISSION FACILITIES; TO CREATE NEW
20 SECTION 77-3-109, MISSISSIPPI CODE OF 1972, TO CREATE A
21 LEGISLATIVE ADVISORY BOARD TO PROVIDE CERTAIN OVERSIGHT TO THE
22 PUBLIC SERVICE COMMISSION IN THE EXECUTION OF CERTAIN DUTIES; AND
23 FOR RELATED PURPOSES.

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

25 **SECTION 1.** The following shall be codified as Section
26 77-3-101, Mississippi Code of 1972:

27 77-3-101. The Legislature finds, determines and declares the
28 following to be in the public interest and the policy of the State
29 of Mississippi:

30 (a) To promote and foster the prudent, timely expansion
31 and construction of, and long-term availability of, adequate and
32 appropriate levels of electric generation by electric public
33 utilities, as described in Section 77-3-3(d)(i), with diversity as
34 to the means of such generation and as to the sources of fuel for
35 such generation, including nuclear fuel, coal and other reliable
36 fuel sources;



37 (b) That such availability is essential to the orderly
38 and effective operation of a reliable electric system in this
39 state and will be vital to economic stability and growth within
40 the State of Mississippi and to the public interest, and that the
41 generation and related operations of electric public utilities are
42 affected with the public interest;

43 (c) That new base load electric generating technologies
44 are and will continue to be important in the planning and
45 development of public utility electric generation, and that the
46 State should take advantage of advances in nuclear, coal and other
47 technologies, including technologies that reduce or minimize, or
48 that facilitate the future reduction or minimization of, regulated
49 air emissions;

50 (d) To take advantage of financial and other incentives
51 afforded and provided by the federal Energy Policy Act of 2005 for
52 the construction of certain electric generating facilities and any
53 federal or state legislative or other incentives that may from
54 time to time become available and to require that all such
55 incentives be utilized for the benefit of such generating
56 facilities;

57 (e) To promote and foster economic development; and

58 (f) To promote and foster the State of Mississippi's
59 energy independence by encouraging the development and utilization
60 of fuel sources derived from the State of Mississippi's natural
61 resources.

62 **SECTION 2.** The following shall be codified as Section
63 77-3-103, Mississippi Code of 1972:

64 77-3-103. As used in this article:

65 (a) The term "generating facility" means a new electric
66 public utility base load generating facility located in the State
67 of Mississippi having, or potentially having, base load-serving
68 characteristics and incorporating such generating technologies or
69 fuel sources as may be approved by the commission, including



70 equipment or facilities relating thereto such as related,
71 connected or necessary electric transmission facilities, and:

72 (i) Having, or planned or projected to have, an
73 aggregate design capability, based upon manufacturer name plate
74 rating or other appropriate rating as the commission may approve,
75 of generating three hundred (300) megawatts or greater of electric
76 power for a coal gasification or clean coal facility and eight
77 hundred (800) megawatts or greater of electric power for a nuclear
78 facility;

79 (ii) That, in whole or in part, is owned or
80 controlled, or is planned or projected to be owned or controlled,
81 by, or under common control with, an electric public utility
82 certificated to operate as such by the commission with a
83 certificated electric service area located within the State of
84 Mississippi;

85 (iii) That is intended, in whole or in part, to
86 serve retail customers of an electric public utility in
87 Mississippi;

88 (iv) That utilizes technology to reduce or
89 minimize, or to facilitate the future implementation of processes
90 for the reduction or minimization of regulated air emissions; and

91 (v) That may, but shall not be required to, be
92 located at an existing generating facility site.

93 (b) The term "pre-construction" means any and all
94 activities or costs relating to planning, evaluation, screening,
95 licensing, siting, design, development or other similar activities
96 prior to the construction of a generating facility.

97 **SECTION 3.** The following shall be codified as Section
98 77-3-105, Mississippi Code of 1972:

99 77-3-105. (1) (a) The commission is fully empowered and
100 authorized to include in an electric public utility's rate base
101 and rates, as used and useful components of furnishing electric
102 service, all expenditures determined to be prudently-incurred



103 pre-construction, construction, operating and related costs that
104 the utility incurs in connection with a generating facility
105 (including but not limited to all such costs contained in the
106 utility's "Construction Work in Progress" or "CWIP" accounts),
107 whether or not the construction of any generating facility is ever
108 commenced or completed, or the generating facility is placed into
109 commercial operation. However, all costs incurred before the
110 passage of this act may be reflected in rates only upon an order
111 of the Public Service Commission after a finding of prudence.

112 (b) The commission is further empowered and authorized
113 to allow a public utility to accrue a just and reasonable rate of
114 return to be determined by the commission on the unrecovered
115 balance of any pre-construction or construction costs which shall
116 include all costs incurred before the passage of this act and such
117 costs may be reflected in rates only upon an order of the Public
118 Service Commission after a finding of prudence.

119 (c) The commission may order that pre-construction,
120 construction, operating and related costs be reflected in rates
121 either as a part of base rates or through the operation of a rider
122 schedule or other similar rate mechanism, or through a combination
123 thereof, as the commission deems appropriate and in the public
124 interest, and such costs incurred before the passage of this act
125 may be reflected in rates only upon an order of the Public Service
126 Commission after a finding of prudence.

127 (d) Notwithstanding other provisions of this section,
128 recovery of any construction costs incurred in excess of the
129 amount estimated by the public utility in a certificate proceeding
130 will be addressed by the commission in a proceeding after the
131 generating facility is completed and commences commercial
132 operation, upon petition by the public utility.

133 (e) Once the commission grants a facilities
134 certificate, no public utility shall abandon or cancel
135 construction of a generating facility without approval from the



136 commission based on a finding that the construction is no longer
137 in the public interest. Notwithstanding any provisions of this
138 act to the contrary, if the generating facility is abandoned or
139 cancelled without the approval of the commission, the commission
140 shall determine whether the public interest will be served to
141 allow (i) the recovery of all or part of the prudently incurred
142 pre-construction, construction and related costs in connection
143 with the generating facility and related facilities, (ii) the
144 recovery of a return on the unrecovered balance of the utility's
145 prudently-incurred costs at a just and reasonable rate of return
146 to be determined by the commission, or (iii) the implementation of
147 credits, refunds or rebates to ratepayers to defray costs incurred
148 for the generating facility.

149 (2) (a) The commission is authorized to conduct prudence
150 reviews on a periodic or ongoing basis with regard to any
151 pre-construction, construction, operating and related costs
152 associated with a generating facility, to hold hearings thereon,
153 and to reflect the outcome of such commission reviews, including
154 commission prudence determinations, in the public utility's rates.
155 The commission is authorized to make and issue such prudence
156 determinations as frequently as each calendar quarter. The
157 commission is authorized to set a procedural schedule for such
158 commission determinations. Any such prudence determinations shall
159 be binding in all future regulatory proceedings affecting such
160 generating facility, unless the generating facility is imprudently
161 abandoned or cancelled.

162 (b) The Executive Director of the Public Utilities
163 Staff and the commission may enter into professional services
164 contracts with one or more consultants to audit pre-construction,
165 construction and related costs incurred for a generating facility
166 and to make such reports and provide testimony thereon as may be
167 required by the executive director or the commission, as
168 applicable. Such contracts shall be considered to be for auditor



169 or utility rate expert services under Section 25-9-120. Costs
170 associated with such professional service contracts shall not
171 exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) for work
172 performed on any given nuclear generating facility and Two Hundred
173 Thousand Dollars (\$200,000.00) on any given non-nuclear generating
174 facility, in any twelve-month period; provided, however, the
175 Public Utilities Staff and the commission may by rule, after
176 notice and hearing, modify these amounts. The consultants shall
177 submit periodically to the executive director or the commission,
178 as applicable, for approval of payment, itemized bills detailing
179 the work performed. The executive director or the chairman of the
180 commission, as applicable, shall requisition the audited public
181 utility to make the requisite payments to such consultants.
182 Payments by the audited public utility shall be considered as
183 pre-construction, construction, operating or related costs and
184 recoverable pursuant to paragraph (c) of subsection (1).

185 (c) The provisions of Sections 77-3-37(7)(b) and
186 77-3-39(10) and (15) shall not apply to any proceeding for the
187 change in rates by the commission in connection with a generating
188 facility.

189 (3) Any party aggrieved by any final order of the commission
190 relating to any generating facility shall have a right of direct
191 appeal to the Mississippi Supreme Court. The procedures set out
192 in Section 77-3-72 for direct appeal, including those provisions
193 relating to periods of time in which filings are to be made, shall
194 apply to any commission final order promulgated, in whole or in
195 part, pursuant to this Article 2.

196 **SECTION 4.** The following shall be codified as Section
197 77-3-107, Mississippi Code of 1972:

198 77-3-107. The commission is fully empowered and authorized
199 to promulgate rules and regulations as may be necessary to
200 effectuate the provisions of this act, which may include a
201 preference for ownership, in whole or in part, of a generating



202 facility by an investor-owned electric public utility operating in
203 the State of Mississippi or by an electric public utility owning
204 and operating generation and transmission facilities in the State
205 of Mississippi that, prior to January 1, 2008, was organized under
206 Chapter 184, Laws of 1936, and was comprised of corporate members
207 each of which is an electric power association under Chapter 184.

208 **SECTION 5.** The following shall be codified as Section
209 77-3-109, Mississippi Code of 1972:

210 77-3-109. There is hereby created the Legislative Advisory
211 Board on Alternate Method of Cost Recovery on Base Load Generation
212 for the purpose of advising the Public Service Commission in the
213 performance of its duties and to require the commission to make a
214 written report to the advisory board every six (6) months
215 regarding any activities pertaining to base load generation. The
216 advisory board shall be composed of the following:

217 (a) The Chairman and Vice Chairman of the House Public
218 Utilities Committee, or their designees;

219 (b) The Chairman and Vice Chairman of the Senate Public
220 Utilities Committee, or their designees;

221 (c) The Chairman of the House of Representatives
222 Appropriations Committee, or his designee;

223 (d) The Chairman of the Senate Appropriations
224 Committee, or his designee;

225 (e) The Chairman of the House of Representatives Ways
226 and Means Committee, or his designee; and

227 (f) The Chairman of the Senate Finance Committee, or
228 his designee.

229 Members of the advisory board shall receive per diem and
230 expenses which shall be paid from the contingent expense funds of
231 their respective houses in the same amounts as provided for
232 committee meetings when the Legislature is not in session;
233 however, no per diem and expenses for attending meetings of the



234 advisory board shall be paid to legislative members while the
235 Legislature is in session.

236 **SECTION 6.** This act shall take effect and be in force from
237 and after its passage.

