To: Public Utilities

MISSISSIPPI LEGISLATURE REGULAR SESSION 2008
By: Senator(s) Mettetal To: Public Utilities

SENATE BILL NO. 2793
(As Sent to Governor)

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

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

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

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

(a) To promote and foster the prudent, timely expansion
and construction of, and long-term availability of, adequate and
appropriate levels of electric generation by electric public
utilities, as described in Section 77-3-3(d)(i), with diversity as
to the means of such generation and as to the sources of fuel for
such generation, including nuclear fuel, coal and other reliable
fuel sources;
(b) That such availability is essential to the orderly and effective operation of a reliable electric system in this state and will be vital to economic stability and growth within the State of Mississippi and to the public interest, and that the generation and related operations of electric public utilities are affected with the public interest;

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

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

(e) To promote and foster economic development; and

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

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

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

(a) The term "generating facility" means a new electric public utility base load generating facility located in the State of Mississippi having, or potentially having, base load-serving characteristics and incorporating such generating technologies or fuel sources as may be approved by the commission, including
equipment or facilities relating thereto such as related,
connected or necessary electric transmission facilities, and:

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

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

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

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

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

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

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

77-3-105. (1) (a) The commission is fully empowered and
authorized to include in an electric public utility's rate base
and rates, as used and useful components of furnishing electric
service, all expenditures determined to be prudently-incurred
pre-construction, construction, operating and related costs that
the utility incurs in connection with a generating facility
(including but not limited to all such costs contained in the
utility's "Construction Work in Progress" or "CWIP" accounts),
whether or not the construction of any generating facility is ever
commenced or completed, or the generating facility is placed into
commercial operation. However, all costs incurred before the
passage of this act may be reflected in rates only upon an order
of the Public Service Commission after a finding of prudency.

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

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

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

(e) Once the commission grants a facilities
certificate, no public utility shall abandon or cancel
construction of a generating facility without approval from the
commission based on a finding that the construction is no longer in the public interest. Notwithstanding any provisions of this act to the contrary, if the generating facility is abandoned or cancelled without the approval of the commission, the commission shall determine whether the public interest will be served to allow (i) the recovery of all or part of the prudently incurred pre-construction, construction and related costs in connection with the generating facility and related facilities, (ii) the recovery of a return on the unrecovered balance of the utility's prudently-incurred costs at a just and reasonable rate of return to be determined by the commission, or (iii) the implementation of credits, refunds or rebates to ratepayers to defray costs incurred for the generating facility.

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

(b) The Executive Director of the Public Utilities Staff and the commission may enter into professional services contracts with one or more consultants to audit pre-construction, construction and related costs incurred for a generating facility and to make such reports and provide testimony thereon as may be required by the executive director or the commission, as applicable. Such contracts shall be considered to be for auditor
or utility rate expert services under Section 25-9-120. Costs associated with such professional service contracts shall not exceed Three Hundred Fifty Thousand Dollars ($350,000.00) for work performed on any given nuclear generating facility and Two Hundred Thousand Dollars ($200,000.00) on any given non-nuclear generating facility, in any twelve-month period; provided, however, the Public Utilities Staff and the commission may by rule, after notice and hearing, modify these amounts. The consultants shall submit periodically to the executive director or the commission, as applicable, for approval of payment, itemized bills detailing the work performed. The executive director or the chairman of the commission, as applicable, shall requisition the audited public utility to make the requisite payments to such consultants. Payments by the audited public utility shall be considered as pre-construction, construction, operating or related costs and recoverable pursuant to paragraph (c) of subsection (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

Members of the advisory board shall receive per diem and
expenses which shall be paid from the contingent expense funds of
their respective houses in the same amounts as provided for
committee meetings when the Legislature is not in session;
however, no per diem and expenses for attending meetings of the
advisory board shall be paid to legislative members while the Legislature is in session.

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