

SECOND REGULAR SESSION

SENATE BILL NO. 781

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Read 1st time January 6, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2451S.02I

AN ACT

To amend chapter 393, RSMo, by adding thereto twenty-four new sections relating to retail choice in electric service.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 393, RSMo, is amended by adding thereto twenty-four new sections, to be known as sections 393.800, 393.803, 393.806, 393.809, 393.812, 393.815, 393.818, 393.821, 393.824, 393.827, 393.830, 393.833, 393.836, 393.839, 393.840, 393.842, 393.845, 393.848, 393.851, 393.854, 393.857, 393.860, 393.863 and 393.866, to read as follows:

393.800. Sections 393.800 to 393.866 shall be known as "The Electric Utility Restructuring Act".

393.803. As used in sections 393.800 to 393.866, the following terms mean:

- (1) "Affiliated with", ownership of a controlling interest in or by another entity;**
- (2) "Aggregate", to combine the loads of retail consumers for the purpose of purchasing generation service;**
- (3) "Aggregator", any entity that, as an intermediary, puts together consumers into a buying group for the purchase of generation service;**
- (4) "Broker", any entity that acts as an agent or intermediary in the sale and purchase of generation service to retail consumers but does not take title to the generation service;**
- (5) "Commencement date", the date established by the commission, pursuant to section 393.806, on which choice of supplier of generation service shall begin for retail consumers of electric service in Missouri unless otherwise provided in sections 393.812 or 393.815;**
- (6) "Commission", the Missouri public service commission;**
- (7) "Competitive electricity provider" or "CEP", a marketer, broker, aggregator,**

retail electric provider or other entity selling generation service to consumers at retail, but does not include any exempt utility;

(8) "Competitive transition adjustment rate", a rate set by the commission to collect either competitive transition losses or competitive transition gains;

(9) "Competitive transition gains", the positive difference between market value for generation and embedded generation costs;

(10) "Competitive transition losses", the negative difference between market value for generation and embedded generation costs;

(11) "Default provider", the entity that provides generation services to retail electric consumers who have not otherwise chosen a competitive electricity provider;

(12) "Distribution services", services provided from the point where electricity enters the distribution system to the point at which the electricity is delivered to consumers, including metering and meter reading;

(13) "Distribution utility", any electric public utility engaged in the furnishing of distribution services to consumers under a certificate of convenience and necessity issued by the commission, any nonexempt municipal electric distribution system or any nonexempt electric cooperative distribution system;

(14) "Electric cooperative", any cooperative formed pursuant to the provisions of chapter 394, RSMo, or any nonstock member-owned cooperative corporation;

(15) "Electric utility", an electric public utility, municipal electric utility or electric cooperative;

(16) "Electric public utility", an electrical corporation, as defined in section 386.020, RSMo, the rates of which are regulated by the commission;

(17) "Exempt electric utility", any municipal electric utility that has not elected pursuant to section 393.812 to participate fully in competition in retail sales of generation service or any electric cooperative that has not elected pursuant to section 393.815 to participate in competition in retail sales of generation service;

(18) "FERC", means the Federal Energy Regulatory Commission;

(19) "Functional separation", the division of the business functions into separate business units including, but not limited to, generation, transmission and distribution;

(20) "Generation assets", all real property, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, generation of electricity;

(21) "Generation service", the provision of electricity to a consumer through transmission and distribution utilities but does not include transmission or distribution services;

(22) "High-level radioactive waste":

(a) Irradiated reactor fuel;

(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for uranium processing irradiated reactor fuel; and

(c) Solids into which such liquid wastes have been converted;

(23) "High-level radioactive waste disposal costs", costs incurred for disposal of high-level radioactive waste from a nuclear generating facility;

(24) "Incumbent electric utility", an electric utility authorized to provide generation, transmission and distribution services in a specific geographic area prior to the commencement date of retail competition, or a successor in interest to such company;

(25) "Low-level radioactive waste", radioactive waste not classified as one of the following: high-level radioactive waste, transuranic waste, spent nuclear fuel or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(26) "Low-level radioactive waste disposal costs", costs incurred for disposal of low-level radioactive waste from a nuclear generating facility;

(27) "Marketer", any entity that takes title to generation service and acts as an agent or intermediary in the sale and purchase of generation service to retail consumers;

(28) "Mitigation", the prudent efforts on the part of an electric public utility to reduce costs such that under normal cost of service regulation prices could have been reduced but instead of reducing prices generation asset cost recovery occurs by an amount equal to these cost reductions thus reducing competitive transition losses;

(29) "Municipal electric utility", a municipally owned or operated electric power system, as defined in section 91.025, RSMo;

(30) "Nuclear decommissioning costs", costs that the Federal Nuclear Regulatory Commission considers to be nuclear decommissioning costs or that are approved by the commission;

(31) "Provider of last resort", the entity that provides generation services to retail electric consumers whose generation services from a competitive electricity provider have been discontinued or who have not been able to acquire generation services from a competitive electricity provider;

(32) "Rate unbundling", the specification of separate rates for distinct components of service including, but not limited to, generation, transmission and distribution;

(33) "Regional transmission organization" or "RTO", an organization regulated by the FERC which plans and operates a transmission system over which it has

jurisdiction and which has been approved by the FERC as an RTO that complies with FERC criteria;

(34) "Renewable energy sources" defined as usable energy recovered from solar, wind, biomass, and landfill and lagoon methane gas to generate electricity;

(35) "Retail consumer" or "consumer", the ultimate consumer of electric power, irrespective of the quantity purchased;

(36) "Service territory", the service territory authorized for a utility pursuant to section 386.800, RSMo, sections 393.106 and 393.170 and all other applicable laws, and rules adopted by the commission pursuant to such sections;

(37) "Standard offer", an open offer for service by a CEP to all retail consumers who qualify for service under the terms and conditions of that offer;

(38) "Transmission services", services provided from the point where electricity is generated to the point at which the electricity enters the distribution system;

(39) "Transmission utility", any electric utility or other entity engaged in the furnishing of transmission services.

393.806. 1. Except as otherwise provided in sections 393.800 to 393.866, on and after the commencement date:

(1) All consumers of electricity in areas of the state served by competitive electricity providers shall have the right to purchase generation service directly from the competitive electricity provider of the consumer's choice in accordance with the provisions of sections 393.800 to 393.866;

(2) Beginning on the commencement date, all retail consumers of electric service in areas of the state served by competitive electricity providers shall be permitted to choose the supplier or suppliers of their choice, under one or more of the following means:

(a) Taking service directly from a competitive electricity provider under a standard offer;

(b) Taking service directly under the terms of a bilateral contract with a competitive electricity provider;

(c) Taking service through a market aggregator who will negotiate directly with one or more generation suppliers on behalf of the retail consumer; or

(d) Taking service from the incumbent distribution utility as a default provider or provider of last resort;

(3) Sale of generation service by competitive electricity providers shall not be subject to rate regulation by the commission.

2. The commission shall determine the commencement date of retail electric competition, which shall be the later of January 1, 2004, or the date the commission determines that an adequate number of competitive electricity providers have been

certified by the commission to provide a sufficiently competitive market for retail electric service, as determined by conditions specified in section 393.824, and that all provisions of sections 393.800 to 393.866 which must be implemented prior to commencement of retail electric competition have been implemented, which shall include, at a minimum:

(1) A separate hearing for each electric public utility to allow the commission to determine each electric public utility's transition plan. At a minimum, a transition plan shall include: just, reasonable and affordable rate levels for each class of service; functional separation; unbundled rates for each class of service; a recovery mechanism for generation costs incurred by the local distribution utility as default provider and as provider of last resort; rate caps; competitive transition adjustment losses or gains; and mitigation for competitive transition losses;

(2) A separate hearing for each electric public utility to allow the commission to determine the market power of the incumbent electric public utility. At a minimum, market power determinations shall include mitigation that is required to make electricity markets sufficiently competitive;

(3) A rulemaking for all electric public utilities to allow the commission to determine consumer protections. At a minimum, consumer protections shall include: bill component disclosures; marketing and billing practices; discontinuation of service for nonpayment; and procedures and conditions for granting, denying, limiting, suspending or revoking competitive electricity provider licenses;

(4) A rulemaking for all electric public utilities to allow the commission to determine new functions for distribution utilities. At a minimum, the determination shall include: open and nondiscriminatory access to retail consumers; codes of conduct for distribution utilities; use of utility names and logos; procedures for providing load forecasts to statewide power pool and competitive electricity providers; the period of time for applying switching fees; and conditions to deter frequent switching of competitive electricity providers; and

(5) A separate tariff filing with the commission by each electric public utility to implement by the commencement date the tariff requirements of the new functions of the distribution utilities. At a minimum, new distribution utility functions shall include: tariff provisions for unbundled distribution and transmission rates; mechanisms and rates required for recovering generation costs incurred by the distribution utility as default provider and as provider of last resort; the application of rate caps in determining the competitive transition adjustment rate; switching fees; and conditions to deter frequent switching of competitive electricity providers.

393.809. 1. On and after the commencement date:

(1) Service territories of distribution utilities shall be retained and distribution

utilities that are subject to the jurisdiction of the commission shall continue to be regulated by the commission as provided by law and standards for inspection, maintenance, repair and replacement of distribution facilities shall be maintained;

(2) Generation service purchased at retail shall be delivered to the consumer only through a distribution utility authorized to provide such service where the service is delivered and through transmission utilities holding certificates of convenience and necessity issued by the commission and serving the territory where the service is delivered;

(3) There shall be no restriction on the ownership of transmission facilities;

(4) Affiliates of electric public utilities and nonexempt electric utilities may own electric generation assets, and may sell generation directly to retail consumers, provided that the generation and marketing assets, personnel and services are operationally and financially separate from the transmission and distribution functions of the electric utility pursuant to procedures and standards established by the commission by rule;

(5) The commission shall establish the appropriate rates for distribution services and for consumer services including metering, meter reading and billing in a separate hearing for each electric public utility. The commission's order establishing these rates will be issued at least six months prior to the commencement date; provided that nothing in sections 393.800 to 393.866 shall be construed to grant the commission any ratemaking authority with regard to transmission and distribution services provided by municipal electric utilities or electric cooperatives. Consolidated billing shall be provided by a local distribution utility upon a receipt of a request from a retail electric consumer on a form which meets standards established by the commission;

(6) Distribution utilities purchasing generation service for consumers served by the distribution utility as a default provider or provider of last resort shall purchase such generation service at the best available price in the market for purchases having comparable terms and conditions, such as supply reliability, contract amount, contract length and time-of-use flexibility. The commission shall monitor compliance with this subdivision;

(7) Any owner or operator of an electric generation plant shall be subject to commission jurisdiction with regard to the safe operation of such plant and all other aspects of operation of such plant other than the prices charged for generation sales from such plant to the same extent as such owner or operator is subject to the commission's jurisdiction on the effective date of this section;

(8) If an electric utility is party to a collective bargaining agreement recognized by state or federal law and if as a result of the transition to a competitive retail electric market the electric utility creates, acquires or merges with any other entity, that entity

shall continue to recognize and bargain with the representative of the employees employed by the electric utility at the time of the creation, acquisition or merger and shall refrain from making unilateral changes in the employee's terms and conditions of employment. Further, any successor employer shall remain bound to the terms of the collective bargaining agreement to the extent permitted by federal law.

2. All electric public utilities must separate their business functions providing competitive services from their business functions providing regulated services six months prior to the commencement date. Municipal electric utilities and electric cooperatives must separate their business functions providing competitive services from their business functions that do not provide competitive services on or before the date the utility begins to participate in competition for retail electric service.

393.812. 1. In a municipality served by a municipal electric utility, electric competition in retail sales of generation service shall continue in any territory annexed by a municipality if such competition exists in such territory at the time of annexation. In the case where the municipal electric utility has not elected to participate fully in competition in retail sales of generation service, the municipal electric utility shall not be subject to the provisions of sections 393.800 to 393.866 other than the provisions of section 393.833 and shall not sell generation service at retail to consumers outside the utility's service territory. The municipal electric utility shall be required to provide all competitive electricity providers open access to the utility's distribution services in the annexed territory on a nondiscriminatory basis at fair and reasonable rates equal to the unbundled rates which the municipal electric utility charges to its retail consumers that do not have a choice of competitive electricity provider. Any competitive electricity provider denied such access shall have a cause of action in the circuit court of the county where the municipality is located or, if the municipality is located in more than one county, the county where the greatest portion of the population of the municipality resides. If the court finds that the municipal electric utility denied the competitive electricity provider access to the municipal electric utility's distribution services in the annexed territory on a nondiscriminatory basis at fair, reasonable and affordable rates, the court may enjoin the municipal electric utility from further denial of such access and may order the municipal electric utility to pay the competitive electricity provider any damages arising from the denial.

2. Except as provided by subsection 1 of this section, a municipal electric utility shall not participate in competition in retail sales of generation service unless:

(1) The governing body or administrative board of the municipality owning or operating the utility or the voters residing in the service territory of the municipal electric utility elect as provided in subsection 3 of this section for the municipal electric utility to participate fully in competition in retail sales of generation service. If the

governing body, administrative board or voters elect full participation, the municipal electric utility shall be subject to all of the provisions of sections 393.800 to 393.866, except that the provisions of section 393.818 shall not apply and provided that nothing in sections 393.800 to 393.866 shall be construed to grant the commission any ratemaking authority with regard to transmission and distribution services provided by municipal electric utilities and such municipal electric utility may sell generation service at retail to any consumer eligible to receive service from a competitive electricity provider, regardless of the consumer's location;

(2) The governing body or administrative board of the municipality owning or operating the utility or the voters residing in the service territory of the municipal electric utility may elect as provided in subsection 3 of this section for the municipal electric utility to participate in competition in retail sales of generation service only within the municipal electric utility's service territory. If the governing body, administrative board or voters elect such participation, the municipal electric utility shall not be subject to the provisions of sections 393.800 to 393.866 other than the provisions of section 393.833. The municipal electric utility shall be required to provide all competitive electricity providers open access to the municipal electric utility's distribution services on a nondiscriminatory basis at fair and reasonable rates equal to the unbundled rates which the municipal electric utility charges to its retail consumers that do not have a choice of competitive electricity provider. Any competitive electricity provider denied such access shall have a cause of action in the circuit court of the county where the municipality is located or, if the municipality is located in more than one county, the county where the greatest portion of the population of the municipality resides. If the court finds that the municipal electric utility denied the competitive electricity provider open access to the municipal electric utility's distribution services on a nondiscriminatory basis at fair and reasonable rates, the court may enjoin the utility from further denial of such access and may order the municipal electric utility to pay the competitive electricity provider any damages arising from the denial.

3. (1) The governing body of a municipality owning or operating a municipal electric utility may submit, by ordinance, to the qualified voters residing in the municipal electric utility's service territory a proposition for the municipal electric utility to participate in competition in retail sales of generation service. If a majority of the voters voting on the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the final canvass of the election results.

(2) Upon a petition filed in accordance with subsection 4 of this section, the governing body of a municipality owning or operating a municipal electric utility shall

submit to the qualified voters residing in the municipal electric utility's service territory a proposition for the municipal electric utility to participate in competition in retail sales of generation service. If a majority of the voters voting on the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the final canvass of the election results.

(3) The governing body of a municipality owning or operating a municipal electric utility may elect, by ordinance, to participate in competition in retail sales of generation service, subject to a protest petition filed in accordance with subsection 4 of this section within thirty days after the adoption of the ordinance. If such petition is so filed, there shall be submitted to the qualified voters residing in the municipal electric utility's service territory a proposition for the municipal electric utility to participate in competition in retail sales of generation service. If a valid protest petition is not submitted or if, upon submission of valid protest petition and an election, a majority of the voters voting on the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the adoption of the ordinance or the final canvass of the election results.

4. (1) A petition provided for by this section shall be filed with the county election authority and shall be signed by at least ten percent of the qualified voters in the municipal electric utility's service territory who voted in the most recent gubernatorial election.

(2) If the petition requests an election to participate fully in competition in retail sales of generation service as provided by subdivision (1) of subsection 2 of this section, the following shall appear on the petition:

"We request an election to determine whether the municipal electric utility of the city of (insert name of city) shall be allowed to sell generation service to consumers outside the municipal electric utility's current service territory and shall allow its current consumers to choose their provider of generation services."

(3) If the petition requests an election to participate in competition in retail sales of generation service only within the municipal electric utility's service territory as provided by subdivision (2) of subsection 2 of this section, the following shall appear on the petition:

"We request an election to determine whether the municipal electric utility of the city of (insert name of city) shall allow its consumers to choose their provider of generation services."

5. (1) When a proposition is submitted pursuant to this section to participate fully in competition in retail sales of generation service as provided by subdivision (1)

of subsection 2 of this section, the county election authority shall cause the following proposition to be placed on the ballot in the municipal electric utility's service territory at the next general election or at a special election called for the purpose of voting on the proposition:

"Shall the municipal electric utility of the city of (insert name of city) be allowed to sell generation service to consumers outside the utility's current territory and allow its current consumers to choose their provider of generation services?"

☐ YES

☐ NO

(2) When a proposition is submitted pursuant to this section to participate in competition in retail sales of generation service only within the municipal electric utility's service territory as provided by subdivision (2) of subsection 2 of this section, the county election authority shall cause the following proposition to be placed on the ballot in the municipal electric utility's service territory at the next general election or at a special election called for the purpose of voting on the proposition:

"Shall the municipal electric utility of the city of (insert name of city) allow its consumers to choose their provider of generation services?"

☐ YES

☐ NO

6. An election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for such elections in the county.

7. The governing body or administrative board of a municipality is authorized to spend public moneys of the municipality to inform voters in an unbiased manner about probable impacts of participation in retail competition.

8. (1) If a municipal electric utility has elected to participate in competition in retail sales of generation service as provided by subdivision (1) or (2) of subsection 2 of this section, the municipal electric utility shall not subsequently elect to discontinue participation in competition in retail sales of generation service.

(2) If a municipal electric utility has elected to participate in competition in retail sales of generation service only within the municipal electric utility's service territory as provided by subdivision (2) of subsection 2 of this section, the municipal electric utility may subsequently elect to participate fully in competition in retail sales of generation service as provided by subdivision (1) of subsection 2 of this section.

9. If a municipal electric utility does not elect to participate fully in competition in retail sales of generation service as provided by subdivision (1) of subsection 2 of this section, the municipal electric utility shall not sell generation service at retail to consumers outside the utility's service territory.

10. If a municipal electric utility elects to participate fully in competition in retail sales of generation service and provides service to consumers in a political subdivision in the service territory outside of the municipality, the municipal electric

utility shall make a payment in lieu of tax to such other municipality or other political subdivision in the amount of any business license taxes, if any, which apply to other providers of such energy services providing services in such other municipality or other political subdivision in which the municipal electric utility is providing service.

393.815. 1. An electric cooperative may elect to participate in competition in retail sales of generation service. To elect to participate, the board of directors of the cooperative shall adopt a resolution pursuant to chapter 394, RSMo, to participate in competition in retail sales of generation service. An electric cooperative electing to participate in competition in retail sales of generation service shall notify the commission in writing and shall begin such participation thirty days following the provision of notice to the commission.

2. Once an electric cooperative participates in competition in retail sales of generation service the electric cooperative shall not subsequently elect to discontinue participation.

3. Except as otherwise provided in section 393.106, if an electric cooperative has not elected to participate in competition in retail sales of generation service, the electric cooperative shall not sell generation service at retail to consumers outside of those areas in which the electric cooperative is otherwise authorized by law to sell such generation unless the electric cooperative subsequently elects to participate in competition in retail sales of generation service nor shall such electric cooperative sell generation service in territories served by another utility on the commencement date unless the public service commission determines it to be in the public interest.

4. If the board of directors chooses to participate in competition in retail sales of generation service, the electric cooperative shall be subject to all of the provisions of sections 393.800 to 393.866, except that the provisions of section 393.818 shall not apply and provided that nothing in sections 393.800 to 393.866 shall be construed to grant the commission any ratemaking authority with regard to transmission and distribution services provided by electric cooperatives, and such electric cooperative may sell generation service at retail to any consumer eligible to receive service from a competitive electricity provider, regardless of the consumer's location.

393.818. 1. Following the process established in this section, the rates of electric public utilities competing in the retail sale of generation service shall be adjusted to recover a reasonable amount of prudently incurred, net, verifiable positive competitive transition losses, if any. The amount of recovery shall be determined by the commission pursuant to this section only for electric public utilities.

2. Each electric public utility, and any successor, shall have the duty to mitigate competitive transition losses.

3. (1) Each electric public utility shall file with the commission proposed dates

for filing its transition plan for the purpose of determining: just, reasonable and affordable rate levels for each class of service; functional separation; unbundled rates for each class of service; a recovery mechanism for generation costs incurred by the distribution utility as default provider and as provider of last resort; rate caps; competitive transition losses or gains; and mitigation of competitive transition losses. The commission shall set the filing dates for each electric public utility to begin no later than six months after August 28, 2000. Electric public utilities with purported competitive transition losses and transition plans to recover and mitigate competitive transition losses shall have scheduling priority over electric public utilities with no competitive transition losses.

(2) The commission may allow an electric public utility whose earnings exceed the allowed rate of return to apply such excess earnings toward the mitigation of competitive transition losses at any time prior to the commencement date.

(3) An electric public utility may request to apply excess earnings toward mitigation of competitive transition losses and may request such rate treatment from the commission in its transition plan. Application of a reasonable amount of excess earnings toward the mitigation of competitive transition losses for a period of time not to extend beyond the commencement date may be ordered by the commission provided that:

(a) The electric public utility can demonstrate a reasonable likelihood that it will incur competitive transition losses when competition in retail sales of generation service is allowed in Missouri and that some mitigation of competitive transition losses will be achieved by the measures proposed in the recovery plan;

(b) The rates of the electric public utility shall not, as a result of the competitive transition loss mitigation effort, increase above the level in effect as of August 28, 2000; and

(c) The commission's actions to mitigate competitive transition losses through application of excess earnings are based on balancing the interests of retail consumers and electric public utility shareholders. In balancing these interests, the commission may take into account the factors listed in subdivisions (1) to (6) of subsection 6 of this section. The provisions of this section notwithstanding, all electric public utilities shall remain subject to the commission's authority to set just, reasonable and affordable rate levels in all rate proceedings.

(4) After evidentiary hearings, the commission shall establish a transition plan for each electric public utility within eleven months after the electric public utility files its transition plan. For good cause shown, upon petition or upon its own motion, the commission, by issuing a statement in writing setting forth the reasons therefore, may extend, by no more than three months, the period within which it must establish a

transition plan for each electric public utility.

(5) In any subsequent request to the commission for an increase in general rate levels by an electric public utility receiving approval of measures to mitigate competitive transition losses pursuant to this section, the electric public utility shall demonstrate that its rate increase request does not reflect the mitigation measures previously authorized.

4. (1) The transition plan shall incorporate a competitive transition adjustment, which shall be allocated to consumers as provided in subdivision (2) of this subsection. A competitive transition adjustment shall also be applied to all customers receiving services under a special contract that is entered into or renewed after the effective date of sections 393.800 to 393.866.

(2) The transition plan shall establish net, nonmitigatable competitive transition losses and gains, the competitive transition adjustment rate and a transition period designed to recover any such losses expeditiously. During the first five years of the transition period but extending no later than the end of the transition period, the amount of recoverable transition losses, as described in subsection 6 of this section, shall yield a competitive transition adjustment rate which shall not cause the total rate for electric power from a default provider or provider of last resort, including generation services, transmission and distribution services and competitive transition adjustment, for any consumer class to exceed a level determined by the commission to be the total rate consumers would have paid over the same five-year period, absent the requirement that the default provider or provider of last resort competitively purchase generation services; provided that a distribution utility's rates for distribution and transmission service and competitive transition adjustment charged to default consumers and consumers served by the distribution utility as the provider of last resort shall be the same as the rates charged for distribution and transmission service and competitive transition adjustment charged to like consumers obtaining generation from other sources.

(3) An electric public utility may seek, and the commission may approve after hearings, an exception to the limitations set forth in subdivision (3) of subsection 3 of this section only in any of the following circumstances:

(a) The electric public utility is subject to significant unforeseeable increases in the rates of federal or state taxes or other significant changes in law or regulations that would not allow the electric public utility to earn a fair rate of return;

(b) The electric public utility is directed by the commission or a regional transmission organization or its functional equivalent to make extraordinary expenditures to repair or upgrade its transmission or distribution system;

(c) The electric public utility seeks to increase its allowance for nuclear

decommissioning costs, spent fuel storage costs, or the Department of Energy enrichment service costs to reflect new information not available at the time the electric public utility's existing rates were determined, and such costs are not recoverable in the competitive generation market and are not covered in the competitive transition adjustment, and such costs would not allow the electric public utility to earn a fair rate of return.

(4) The transition period for an electric public utility shall begin no earlier than the commencement date and shall last for no more than nine years. Competitive transition adjustments shall only be applied during the transition period.

5. Competitive transition losses shall not be recoverable for reductions in usage occurring in the normal course of business, including those resulting from changes in business cycles, termination of operations, weather, reduced production, changes in manufacturing processes, energy conservation efforts or other similar factors.

6. The commission shall determine the competitive transition losses associated with assets and obligations that are documented in the accounting records of a vertically integrated electric public utility and that are properly allocable to a particular potentially competitive service as of the date on which alternative sellers of similar competitive services begin providing such service to consumers in this state. The electric public utility shall be given a reasonable opportunity to recover the proportion of such losses determined by the commission to be recoverable from retail consumers. In determining the share of losses to be recoverable, the commission shall balance the interests of retail consumers and electric public utility stockholders. The commission shall take into account:

(1) The extent to which the electric public utility was legally required to incur the costs of specific assets and obligations;

(2) The extent to which the market value of the assets and obligations of the electric public utility, relating to the provision of potentially competitive services, exceeds the costs of the assets and obligations;

(3) The effectiveness of the efforts of the electric public utility's efforts to increase the market value of any assets, and to decrease the costs of any obligations, associated with the provision of potentially competitive service;

(4) The extent to which the rates previously established by the commission have compensated shareholders for the risk of not recovering the costs of the assets and obligations;

(5) The effects of the differences between the market value and the cost, including, without limitation, tax considerations, for the assets and obligations; and

(6) If the electric public utility had the discretion to determine whether to incur or mitigate the costs, the conduct of the electric public utility with respect to the costs

of the assets and obligations when compared to other electric public utilities with similar obligations to serve the public.

7. Competitive transition loss adjustments shall be determined on a net basis, be verifiable and shall not reflect transmission and distribution assets. Any electric public utility with Missouri service territory resulting from a merger, acquisition, purchase or sale transaction with another utility or nonutility entity shall not be allowed to increase the amount of competitive transition losses otherwise recoverable from consumers in its Missouri service territory as a result of the merger, acquisition, sale or purchase transaction. Merger premiums or acquisition adjustments reflecting amounts paid for utility or nonutility properties in excess of net book value shall not be included in recoverable competitive transition losses.

8. Costs arising pursuant to prudently incurred purchase power contracts or associated with any buy-out, buy-down or renegotiation of the contracts shall be eligible for inclusion in competitive transition adjustment rate.

9. Any recovery of competitive transition losses shall be through a non-bypassable, nondiscriminatory, appropriately structured competitive transition adjustment rate that is fair to all consumer classes, lawful, limited in duration, and consistent with the promotion of fully competitive markets and, unless the commission determines another rate form and loss allocation is more appropriate, shall be through a fixed per kilowatt hour rate on all sales. Dates to recover competitive transition losses shall only apply to consumers within an electric public utility's retail service territory as it existed prior to the commencement date for retail competition, except for such losses that have resulted from the provision of wholesale power to another utility. The competitive transition adjustment rates shall not apply to the exercise of any competitive alternative that existed prior to August 28, 2000, including, but not limited to, the installation of new self-generation or cogeneration equipment, or the expansion of existing self-generation or cogeneration equipment.

10. Any competitive transition loss recovered through an electric utility's competitive transition adjustment rate shall be used solely for the purpose of reducing such electric public utility's related competitive transition losses.

11. In the instance where an electric public utility provides generation service in Missouri and another state or states, competitive transition losses or gains shall be allocated to the Missouri jurisdiction by the same methodology as the recipient electric public utility's generating plant in service was allocated to the Missouri jurisdiction in the electric public utility's last rate proceeding before the commission, or other method approved by the commission.

12. The commission may allow electric public utilities to recover a competitive transition loss, subject to its determination in the context of a rate case proceeding that

the competitive transition losses and rates designed to recover these losses are equitable, appropriate, balanced, in the public interest and consistent with the intent of sections 393.800 to 393.866. The burden of proof for any claim for recovery of competitive transition losses shall be borne by the electric public utility making such claim.

13. The commission, upon its own motion when evidence of need is apparent, or upon application by an electric public utility or its successor, may, after hearings, review and determine the remaining, if any, competitive transition losses or gains. Such review may reconcile the difference between actual and expected competitive prices for electricity. Any over-recovery or under-recovery may be incorporated into revised competitive transition adjustment rates to be applied prospectively.

393.821. 1. To ensure that all consumers receive service in the competitive market in all portions of the state where retail electric consumers may purchase generation service from the competitive electricity provider of the consumer's choice, there is hereby established a statewide pool to help distribution utilities serve as the providers of last resort and as default providers.

2. The statewide pool shall cease to exist five years following the commencement date, if the pool provides service to less than ten percent of residential consumers, unless the commission determines, prior to that date, that the statewide pool will be needed after that date to ensure that a sufficiently competitive retail electric market is available to consumers of all classes, and, in such case, the commission shall establish a specific date to revisit the continued need for the statewide pool.

3. The statewide pool shall be governed by a board of directors selected as provided in this subsection. The board shall consist of nine members, including the chairman of the statewide pool, all of whom shall be selected by the commission. Board members selected by the commission and shall be persons without a substantial financial interest in electric generation or transmission service, as determined by the commission and shall meet all other membership requirements established by the commission.

4. The board may employ necessary staff and maintain any facilities necessary to carry out its duties. The board, on behalf of the statewide pool, also may contract for the supply of necessary administrative and support services.

5. According to procedures established by the commission, each local distribution utility shall provide load forecasts for the entire load for which it provides distribution services.

6. Each competitive electricity provider shall provide, to each distribution utility, a list of its retail electric consumers which are served by that utility. The

distribution utility shall also provide to each competitive electricity provider the corresponding estimate of the competitive electricity provider's total load requirements pursuant to procedures established by the commission by rule.

7. The statewide pool shall contract to purchase electric service for that portion of the total load that either is not served directly by competitive electricity providers or is otherwise served by distribution utilities as default providers and as providers of last resort, including transmission to the distribution substations of each local distribution utility.

8. The commission shall establish procedures which allow each local distribution utility to collect, from consumers, the costs of purchases to serve consumers as a default provider or provider of last resort. The commission may establish a purchased electricity adjustment mechanism, including annual reconciliation for differences between charges to distribution utilities for purchases to serve consumers as a default provider or provider of last resort and collections from consumers for such service.

9. At any time, any consumer may cancel generation services from the default provider or provider of last resort. The commission shall establish, by rule, procedures requiring a positive indication by a consumer that the consumer is canceling purchases from the default provider or provider of last resort and procedures that will ensure that consumers leaving the default provider or provider of last resort have paid for all of the costs which they have caused to be incurred by the distribution utility.

10. The commission shall set a date by which consumers who have choice of competitive electricity provider may elect to obtain service from a competitive electricity provider. Consumers who do not elect service by that date shall default to service from their default provider. After that date, consumers may switch providers, subject to the following:

(a) A provider of generation services in Missouri may impose a reasonable switching fee for consumers that cancel service with that provider within a period of time established by the commission by rule, of initially purchasing generation services from that provider. This switching fee shall not exceed a nominal charge covering only the administrative costs incurred by the generation provider. A distribution utility may seek approval from the commission of a service charge to recover the reasonable and necessary costs of providing administration of such provider changes pursuant to this subsection;

(b) Retail electric generation service shall be provided to any consumer requesting to switch service to any competitive electricity provider or to the default provider; provided that the commission may also set conditions for service from the default provider to deter consumers from frequently switching between competitive electricity providers and the default provider; provided that any limit on the switching

fee established pursuant to this subsection shall not apply to any costs incurred by the competitive electricity provider or default provider on behalf of the consumer which have not yet been billed to the consumer.

11. The statewide pool shall be subject to regulation by the Federal Energy Regulatory Commission (FERC). Unless otherwise provided in this section, the statewide pool shall comply with the registration, licensing and other provisions of section 393.839 that are applicable to all competitive electricity providers.

393.824. 1. The commission shall have a continuing obligation to investigate the degree of market concentration for generation services and to make a determination whether or not the markets for generation services are sufficiently competitive to the extent that generation prices cannot be maintained significantly above what would otherwise be competitive levels through the actions of an individual supplier or a group of suppliers.

2. Before the commencement date, the commission shall hold separate hearings for each electric public utility to determine the market power of the incumbent electric public utility. At a minimum, market power determinations will identify any mitigation required to make electricity markets sufficiently competitive. If, in these hearings or at another time, the commission finds that markets for generation services are not sufficiently competitive, it shall implement necessary remedies, including imposing price caps on generation owners with market power, requiring owners of generation with market power to offer generation services at prices based on established market indices, and taking such other measures, but not including ordering divestiture of assets, as may be necessary to ensure that Missouri retail electricity consumers are able to choose services from generation markets that are sufficiently competitive. At the commencement date, adequate mitigation of market power must be in place to ensure sufficiently competitive markets for generation services.

3. The commission shall make all investigations necessary and order all remedies necessary to ensure that, except for incumbent electric public utilities and their generation subsidiaries and affiliates, no entity owns or has a controlling interest in more than twenty percent of the installed generating capacity located in or capable of delivering competitive power into any destination market for generation services corresponding to incumbent electric public utility service territories and to ensure that, on and after five years following the commencement date, at least seventy-five percent of load in an incumbent electric public utility's service territory is capable of being served through generation other than that owned by the incumbent electric public utility or its subsidiaries or affiliates.

393.827. 1. No less than six months before the commencement date, the commission shall adopt rules and regulations requiring that consumers' retail electric

bills and any standard offers shall disclose such components as the commission determines adequately inform consumers. Separate components shall include, but not be limited to:

- (1) Generation service charges;**
- (2) Distribution service charges;**
- (3) Transmission service charges;**
- (4) Competitive transition adjustment rates; and**
- (5) Taxes.**

2. No less than six months before the commencement date, the commission shall adopt rules and regulations establishing procedures:

(1) To ensure that generation service of a consumer of a competitive electricity provider is not switched to another competitive electricity provider without reliable confirmation of the consumer's intent to make the change;

(2) For handling of complaints of unauthorized switching of a consumer's generation service from one competitive electricity provider to another;

(3) For retail customer billing practices. At a minimum, consumers should be given the option to receive a single bill for electric service that includes distribution, transmission and generation services. Competitive electric providers shall be allowed to bill their consumers for generation services or to contract with the local distribution utility to provide a combined bill for distribution, transmission and generation services, if requested by the consumer;

(4) For investigating disputes between consumers and competitive electricity providers; and

(5) To institute a complaint mechanism for resolution of such disputes.

3. Before January 1, 2003, the commission shall adopt rules and regulations establishing procedures and standards for a competitive electricity provider to discontinue a consumer's generation service for the consumer's nonpayment and to reconnect the consumer's service.

393.830. 1. No less than six months before the commencement date, the commission shall adopt rules and regulations requiring that, on and after the commencement date for retail competition, a transmission or distribution utility, other than an exempt electric utility, shall provide transmission or distribution services to all generation service consumers in the distribution utility's service territory, to all municipal electric utilities and electric cooperatives that are not exempt electric utilities and to all competitive electricity providers, whether affiliated with the distribution utility, municipal electric utility or electric cooperative or not, at rates and on terms of access and conditions comparable to the transmission utility's or distribution utility's own use of its system.

2. To the extent that an electric public utility, a nonexempt municipal electric utility or a nonexempt electric cooperative is vertically integrated, it shall functionally separate its regulated and competitive services as provided pursuant to section 393.809.

3. No later than six months before the commencement date, the commission shall unbundle the rates for the distribution utility's regulated services.

4. (1) The commission shall adopt rules and regulations, effective on and after the commencement date for retail competition, establishing standards of conduct for transmission and distribution utilities that are competitive electricity providers or that are affiliated with a competitive electricity provider, for the purpose of ensuring that:

(a) The competitive electricity provider, with respect to the provision of the generation service, maintains an arm's length relationship with the utility;

(b) The business or organizational relationship, or both, between the utility and the competitive electricity provider shall not allow concentration of market power nor interfere with the development of effective competition in retail sales of generation service;

(2) Such standards shall include, but not be limited to, a requirement that:

(a) The utility shall not give, through a tariff provision or otherwise, the utility's affiliated competitive electricity provider or customers of the utility's affiliated competitive electricity provider preference over nonaffiliated competitive electricity providers or customers of nonaffiliated competitive electricity providers in matters relating to distribution or transmission services;

(b) All regulated distribution and transmission services offered by the utility, including any discount, rebate or fee waiver, shall be available to all similarly situated customers and competitive electricity providers simultaneously and on the same basis, to the extent technically possible, and without undue or unreasonable discrimination;

(c) The utility shall not sell or otherwise provide distribution or transmission services to the utility's affiliated competitive electricity provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for those services;

(d) The utility shall process all similar requests for a distribution or transmission service in the same manner and within the same period of time;

(e) The utility shall not condition or tie the provision of any distribution or transmission service or rate agreement by the utility to the provision of any service in which an affiliated competitive electricity provider is involved;

(f) The utility shall process all similar requests for information in the same manner, and within the same period of time. The utility shall not provide information to an affiliated competitive electricity provider without a request when information is made available to, nonaffiliated competitive electricity providers only upon

request. The utility shall not allow an affiliated competitive electricity provider preferential access to any nonpublic information regarding the distribution or transmission system or customers taking service from the utility that is not made available to nonaffiliated competitive electricity providers upon request. The utility shall instruct all of its employees not to provide affiliated competitive electricity providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information;

(g) Except with the customer's consent, employees of the utility shall not share with any affiliated competitive electricity provider or any nonaffiliated electricity provider:

a. Any market information acquired from the affiliated competitive electricity provider or from any nonaffiliated competitive electricity provider; or

b. Any market information developed by the utility in the course of responding to requests for distribution or transmission service;

(h) The utility and competitive electricity provider affiliated with the utility shall keep separate books of accounts and records.

5. The rules and regulations adopted by the commission shall not preclude any competitive retail electric provider associated or affiliated with a distribution utility from using the name or a name similar to that of the distribution utility; but the commission may prescribe rules for how such names or logos may be used and what disclosures or disclaimers may be required.

393.833. 1. A competitive electricity supplier shall provide generation service to its consumers and shall provide proof, to the RTO, of adequate capacity reserve in the amount and under the conditions established by the RTO or shall purchase such services from the RTO.

2. A distribution utility is not liable for damages to any current or future consumer if the consumer's competitive electricity provider fails to deliver service in accordance with its contract with the consumer.

3. A distribution utility is not required to purchase any reserve supply of electricity to fulfill the obligations imposed by this section.

4. Except as provided by subsection 1 and subdivision (2) of subsection 2 of section 393.812, the provisions of this section shall not apply to any exempt electric utility.

393.836. 1. In areas of the state served by competitive electricity providers, consumers of all classes shall be entitled to aggregate their electrical loads on a voluntary basis if each consumer agrees to do so by a positive written declaration. Aggregation may be accomplished by private entities, by political subdivisions or on any other basis made available by market opportunities.

2. If a political subdivision seeks to serve as an aggregator on behalf of residential consumers, the political subdivision shall offer the opportunity to purchase generation service to all residential consumers within the subdivision's jurisdiction. However, if a political subdivision serves as an aggregator, the subdivision shall not require consumers within the subdivision's jurisdiction to purchase generation service from the subdivision.

393.839. 1. On and after the commencement date for retail competition, no competitive electricity provider shall sell any generation service to a consumer for consumption within this state without having first obtained from the commission a license, subject to rules and regulations established by the commission, to engage in business as a competitive electricity provider. The commission may establish a fee requirement for such license.

2. The commission shall adopt rules and regulations establishing procedures and conditions that a competitive electricity provider shall be required to comply with to obtain and maintain a license to engage in business as a competitive electricity provider. The commission may suspend or revoke a license granted pursuant to this section to any licensee found to have violated or failed to meet any requirement of this section. Such procedures and conditions shall include procedures and conditions relating to:

(1) Reliability of service, including, but not limited to, a requirement that the applicant file with the commission evidence satisfactory to the commission that the applicant has the ability to enter into binding interconnection arrangements for transmission and distribution services and that the applicant has complied with all applicable requirements of the RTO regarding adequate capacity reserve;

(2) Financial and operational fitness, including, but not limited to:

(a) A requirement that the applicant file with the commission evidence satisfactory to the commission that the applicant has financial capacity sufficient to refund deposits to retail consumers in the case of bankruptcy, nonperformance or any other reason; and

(b) A requirement that, when the commission determines necessary, the applicant shall file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to the applicant's consumers;

(3) Billing practices and consumer service, including, but not limited to, a requirement of disclosure of consumer complaints filed against the applicant with a regulatory agency other than the commission during the twelve months before the filing of the application;

(4) Disclosure of pending legal actions against the applicant;

(5) Disclosure of the names and business addresses of all affiliates of the applicant;

(6) Requiring that the applicant file with the commission an agreement to collect and remit all state and local sales and use taxes and local business license taxes to the proper collecting authority, provided that such agreement shall state that the applicant waives its right to challenge the validity of the agreement and its right to the refund of amounts paid pursuant to the agreement;

(7) A requirement that the licensed competitive electricity provider file a quarterly report with the commission which provides comprehensive data, as specified by the commission, regarding the fraction of sales by the licensed competitive electricity provider to the various classes of consumer, including residential, commercial and industrial, and a requirement that the sales by the licensed competitive electricity provider during the current quarter to residential consumers shall make up a fraction of the competitive electricity provider's total sales which is no less than ninety percent of the fraction of residential sales out of the statewide total of sales for the corresponding quarter during the preceding year or, no less than ninety percent of the fraction of residential sales in each municipality and in each service territory of an electric public electric utility served by the competitive electricity provider for the reporting quarter. This requirement may be met by any of the following: direct sales to residential consumers, sales to aggregators based on their fraction of sales to residential consumers, sales to a local distribution utility based on its fraction of sales to residential consumers or sales to the statewide pool established in section 393.821, which are resold to local distribution utilities based on its fraction of sales to residential consumers. The commission shall establish a process for reporting and verification of compliance with the requirements of this subdivision.

3. In addition to any requirements adopted pursuant to subsection 2 of this section, a competitive electricity provider, in order to qualify for a license, shall be required to:

(1) Establish an office in this state;

(2) Submit evidence satisfactory to the commission that the provider complies with the provisions of subsection 4 of this section;

(3) Make an appointment, in writing, of the secretary of state, or the secretary's successor in office, to be the competitive electricity provider's agent for service of process in any action or proceeding arising out of the competitive electricity, provider's engaging in business as such in this state. Such appointment, in writing, shall be evidence of the competitive electricity provider's agreement that any such process that is served on the secretary of state shall be of the same legal force and validity as if served upon the competitive electricity provider personally within the state; and

(4) Establish a consumer call center.

4. If a competitive electricity provider or an affiliate of a provider had a service territory in this state before the commencement date for retail competition, the provider shall not be eligible for a license unless there are competitive generation services available in such territory, as determined by standards established by the commission.

5. If, after reviewing the license application of a competitive electricity provider, the commission finds that the applicant is qualified to be a competitive electricity provider, the commission shall issue a license to the applicant.

6. After notice and an opportunity for hearing in accordance with chapter 536, RSMo, the commission may deny an application for a license to engage in business as a competitive electricity provider or may limit, suspend or revoke a license if the action is necessary to protect the interests of the public or to enforce the provisions of sections 393.800 to 393.866 or a rule and regulation of the commission.

7. In determining whether an applicant is qualified for a license to engage in business as a competitive electricity provider or whether to deny an application for a license or to limit, suspend or revoke a license, the commission may consider whether the applicant for or holder of the license, or any affiliate thereof, has engaged in any activities that are inconsistent with provisions of reliable service to consumers or with effective competition in retail sales of generation service.

8. A license to engage in business as a competitive electricity provider shall be valid for a term of five years and shall be renewable under the terms and conditions established by the commission and in effect at the time of renewal.

9. The commission shall adopt rules and regulations establishing procedures for application, renewal and issuance of licenses.

10. Rules and regulations adopted pursuant to this section:

(1) Shall not be unreasonable;

(2) Shall not unnecessarily delay or inhibit the initiation and development of competition in retail sales of generation service; and

(3) May establish, when appropriate to carry out the provisions of sections 393.800 to 393.866, different requirements for licensing competitive electricity providers of:

(a) Different services; or

(b) Similar services to different classes of consumers.

11. If a public entity, other than a municipal electric utility or electric cooperative that does not participate in retail sales of generation service pursuant to sections 393.812 and 393.815, serves as an aggregator, it may not require consumers within its jurisdiction to purchase generation service from that entity.

393.840. 1. The commission shall prescribe, by rule, a standard whereby competitive electricity providers may offer retail consumers electricity generated from renewable energy resources, as well as requirements for compliance with said standard. The standard shall include a portfolio requirement for new renewable energy sources of three percent in 2005, five percent in 2008 and seven and one-half percent in 2015. This standard shall apply to the average of all energy sold by the retail provider, whether it is self-generated or purchased from some other source. No competitive electricity provider shall purport to offer for sale electricity generated from renewable energy resources unless such electricity meets the standards established pursuant to this section.

2. The commission shall establish, by rule, a certification process for competitive electricity providers to ascertain whether a competitive electricity provider meets the standards of this section through self-generation or the purchase of renewable energy from some other source in Missouri or outside Missouri.

3. As used in this section, "renewable energy resources" shall mean electric generation sources from generation facilities which are sustainable and environmentally sound facilities, as determined by factors which include fuel type, technology and the environmental impacts of the facility, and shall not include electric generation from facilities which produce undue adverse air, water or land use impacts, including impacts associated with the gathering of generation feedstocks.

4. The commission may revoke or suspend the license of any competitive electricity provider found to have violated the provisions of this section.

393.842. 1. The state, the commission and Missouri electric utilities shall cooperate with the federal government, other states in the region and regional reliability councils to establish regional transmission organizations or their functional equivalents to operate the transmission system.

2. Each electric public utility, electric cooperative, and municipal electric utility doing business in Missouri shall join a regional transmission organization (RTO), or functional equivalent, prior to July 1, 2002.

3. The RTO, or functional equivalent, shall:

(1) Independently manage and control transmission facilities of any electric utility;

(2) Provide for nondiscriminatory access to and use of the transmission system at a FERC-approved regional transmission rate for buyers and sellers of electricity;

(3) Direct or provide the transmission activities of the control area operators;

(4) Calculate import capabilities, transmission line loading limits, and other such measures;

(5) Direct transmission line loading relief and generation redispatch for

reliability purposes;

(6) Coordinate, plan, and order the installation of new transmission facilities;

(7) Adopt standards for inspection, maintenance, repair, and replacement for the transmission facilities under its control and direct the inspection, maintenance, repair, and replacement of all facilities under its control; and

(8) Implement procedures and act to assure the provision of adequate and reliable service. These standards must be consistent with the reliability criteria no less stringent than those established by the North American Electric Reliability Council or its successors.

4. Any electric utility that is not a member of such a regional entity as of July 1, 2002, shall file by July 1, 2002, a plan with the commission which sets forth a means of independently operating its transmission system so as to ensure nondiscriminatory open-access and the reliable provision of electricity service, and shall show good cause why it should not join an RTO or its functional equivalent as an independent transmission company. If the commission determines that the proposal submitted by the electric utility does not adequately provide for independently operating its transmission system or that the electric utility has not shown good cause for not joining an RTO or its functional equivalent, the commission will order the electric utility to join an RTO.

393.845. On and after August 28, 2000, nothing shall preclude the commission from approving, proposing or endorsing performance based or incentive rate mechanisms and rate caps as part of the commission's rate making process for electric public utilities for the purpose of benefiting both consumers and electric public utilities, allowing more expeditious setting of rates with consideration of factors other than cost of service and allowing, consistent with subdivision (3) of subsection 3 of section 393.818, the mitigation of a reasonable amount of competitive transition losses.

393.848. 1. (1) Upon complaint or upon its own motion, for good cause shown, the commission shall conduct an investigation of the impact on the proper functioning of a fully competitive retail electricity market, including the effects of mergers, consolidations, acquisition or disposition of assets or securities of competitive electricity providers, transmission congestion and anti-competitive or discriminatory conduct affecting the retail distribution of electricity.

(2) The commission may require a competitive electricity provider to provide information, including documents and testimony, in accordance with the commission's rules and regulations regarding the discovery of information.

(3) Confidential, proprietary or trade secret information provided under this section shall not be disclosed to any person not directly employed or retained by the commission to conduct the investigation without the consent of the party providing the

information.

(4) Notwithstanding the prohibition on disclosure of information in subdivision (3) of this subsection, the commission shall disclose information obtained under this subsection to the office of the public counsel under an appropriate confidentiality agreement, and may disclose to other parties under appropriate conditions. The commission may disclose the information to appropriate federal or state law enforcement officials if it determines that the disclosure of the information is necessary to prevent or restrain a violation of federal or state law and it provide the party that provided the information with reasonable notice and opportunity to prevent or limit disclosure.

2. If as a result of an investigation conducted under this section, the commission has reason to believe that anti-competitive or discriminatory conduct, including the unlawful exercise of market power is preventing the retail electricity consumers of Missouri from obtaining the benefits of a properly functioning and sufficiently competitive retail electricity market, the commission shall, in addition to the power granted to it in section 393.824:

(1) Refer its findings to the attorney general, the United States Department of Justice, the Securities and Exchange Commission or the Federal Energy Regulatory Commission;

(2) Subject to subdivision (3) of subsection 2 of this section, disclose any information it has obtained in the course of its investigation to the agency or agencies to which it has made a referral;

(3) Intervene, as provided and permitted by law or regulation, in any proceedings initiated as a result of a referral made under subdivision (1) of subsection 2 of this section.

393.851. The commission, before the commencement of retail electric competition, shall carry out an educational program for consumers to:

(1) Inform consumers of the changes in the provision of electric service, including, but not limited to, the availability of competitive electricity providers;

(2) Inform consumers of the requirements relating to disclosures, explanations or sales information for sellers of competitive electricity services;

(3) Provide assistance to consumers in understanding and using the information to make reasonably informed choices about which competitive electricity service to purchase and from whom to purchase it.

393.854. As used in sections 393.298 to 393.302 and sections 393.854 to 393.866, the following terms mean:

(1) "Commission", the Missouri public service commission;

(2) "Distribution system", the physical plant used to provide energy services

including facilities, structures, wires and appurtenances thereto;

(3) "Distributor", an electrical or gas corporation as defined by section 386.020, RSMo, which is authorized by the commission pursuant to this chapter to provide or distribute energy services or a rural electric cooperative established pursuant to chapter 394, RSMo;

(4) "Energy services", the retail sale of electricity to consumers and all associated services that are necessary for its delivery through a distribution system including, but not limited to, the generation, production, transmission, distribution, billing and metering of such services and the retail sale of natural gas, propane or methane to customers or consumers excluding any delivery charges;

(5) "Political subdivision", any county, municipality or village in the state of Missouri;

(6) "Seller", any person who uses, leases or controls the distribution system of a distributor or a political subdivision or any part thereof to sell energy services at retail within the political subdivision other than a distributor or a political subdivision which uses its own distribution system. For this purpose, a sale is deemed to be a sale at retail within a political subdivision if a person sells energy services to a retail customer within the political subdivision, notwithstanding that title to the energy services passes from such person to the retail customer or a third party outside of a political subdivision. A retail consumer of energy services is deemed not to be a seller within the meaning of this section.

393.857. 1. No person, other than a distributor or a political subdivision operating within its territorial limits, shall provide energy services in a political subdivision unless the person is certified by the commission as a seller and files its agreement with the commission to collect and remit all state and local sales and use taxes. All retail sales of energy shall be made by a distributor, seller or a political subdivision operating within its territorial limits. No distributor or political subdivision shall provide energy services to any person who has obtained energy services from a seller unless the seller has been certified as a seller and filed its agreement with the commission to collect and remit all state and local sales and use taxes and the commission has furnished such distributor or political subdivision with evidence of such certification. Electrical and gas corporations shall file tariffs to comply with the provisions of this section.

2. An agreement described in subsection 1 of this section shall expressly state that the seller waives (1) its right to challenge the validity of the agreement and (2) its right to the refund of amounts paid pursuant to the agreement. Any person who otherwise has standing may challenge the validity of this section without signing such agreement by filing an action for a declaratory judgment in circuit court in the county

in which the political subdivision is located. The agreement filed with the commission under subsection 1 of this section shall be limited solely to the requirements of this subsection and the seller's agreement to pay its taxes and provisions which require the seller to make available to the political subdivision or the commission its records, including the right to audit.

3. The commission shall establish procedures for certification pursuant to chapter 536, RSMo.

4. Nothing in this section shall be construed to give any seller the right to use the rights-of-way, utility easements or the distribution system of any distributor or political subdivision for any purpose other than to provide energy services to the seller's retail customers.

5. Any agreement described in subsection 1 of this section shall cease to be effective upon the failure of the seller to fulfill any material obligation under the agreement. The appropriate political subdivision shall notify the commission of any failure to pay any amount required by any agreement described in subsection 1 of this section. Upon such notification, the commission shall immediately notify the seller which shall cease to provide energy services unless it requests a hearing with the commission within fifteen days of the date the notice is filed with the commission. Upon receiving notice from the seller requesting a hearing, the commission shall conduct a hearing to determine whether all material obligations under an agreement have been satisfied. If the commission determines that material obligations have not been satisfied, it shall notify the distributor, and the seller shall thereafter be prohibited from providing energy services from the date set forth in the notice, which shall not be less than thirty days after the commission makes its determination. The distributor shall not provide energy services to the seller if the distributor does not request a hearing after being notified of the seller's material fault or if the commission determines that the seller has failed to satisfy a material obligation of the agreement and thirty days have expired from the date of the commission notification of a breach of a material obligation of any agreement authorized by subsection 1 of this section.

6. This section shall not be construed as conferring any rights on any seller to provide energy services within a political subdivision in the state of Missouri. No seller may provide energy services unless it does so in accordance with all applicable laws and in accordance with the applicable rules of the commission. Any seller of natural gas shall file its agreement with the commission within thirty days from the effective date of this section.

7. Any person liable for the taxes under chapter 144, RSMo, upon proof that such person has paid a tax in another state or political subdivision with respect to a charge

for the sale or transfer of such gas, electricity or energy services, shall be allowed a credit against the tax authorized by chapter 144, RSMo, to the extent of the amount of the tax legally due and paid in the other state or political subdivision with respect to such charge.

393.860. Notwithstanding the provisions of section 1.140, RSMo, to the contrary, the provisions of section 393.857 shall be nonseverable, and if any provision is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of section 393.857.

393.863. 1. In the event that any legal action to challenge the validity of any agreement made pursuant to subsection 1 of section 393.857 is filed in any court of competent jurisdiction, the party initiating that action shall immediately furnish a certified copy of the initial pleading to the commission, which act shall be deemed to suspend the provisions of such agreement pending a final and nonappealable judgment or disposition of such action. Upon receipt of the notification, the commission shall immediately notify each affected political subdivision and person providing energy services of the suspension of those agreements. No seller or distributor shall provide energy services after it receives notice from the commission that the seller's agreements have been suspended pursuant to subsection 1 of section 393.857.

2. In the event that the provisions of section 393.857 are declared to be void or invalid by final judgment of a court of competent jurisdiction, no energy services shall be permitted except upon a finding of public convenience and necessity and compliance with all provisions of this chapter, regulations adopted pursuant to this chapter, and commission orders. No refund of any tax or fee shall be made to any seller that signs an agreement waiving its right to challenge the validity of section 393.857.

393.866. 1. No distributor or political subdivision shall provide energy services to any person who has obtained energy services from a seller unless the seller has been certified as a seller and filed its agreement with the commission to pay all applicable business license taxes and the commission has furnished such distributor or political subdivision with evidence of such certification.

2. Electrical and gas corporations shall file tariffs to enforce the provisions of subsections 1 and 2 of section 393.299.

3. Taxes imposed pursuant to section 393.302 shall be computed by multiplying a rate equal to the applicable business license tax, as authorized by section 66.330, 71.610, 92.045, 94.110 or 94.360, RSMo, or the applicable franchise fee, by all charges for gas, electricity, or energy services to the person using or consuming the gas, electricity, or energy services.

Unofficial

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