

SECOND REGULAR SESSION

SENATE BILL NO. 882

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR FLOTRON.

Read 1st time January 20, 2000, and 1,000 copies ordered printed.

3964S.011

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 393, RSMo, by adding thereto fifteen new sections relating to retail electric choices.

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

Section A. Chapter 393, RSMo, is amended by adding thereto fifteen new sections, to be known as sections 393.960, 393.963, 393.966, 393.969, 393.972, 393.975, 393.978, 393.981, 393.984, 393.987, 393.990, 393.993, 393.996, 393.999 and 393.1002, to read as follows:

393.960. Sections 393.960 to 393.1002 shall be known as "The Electric Industry Restructuring and Customer Choice Act".

393.963. The provision of electricity is an essential service in modern society, and the availability of reliable and low cost supplies of electricity is essential to the economy of this state. However, competitive forces are affecting the market for electric supply as a result of recent federal regulatory and statutory changes, and restructuring activities in other states. Due to these changes, the siting, construction and cost of electric generation increasingly will be governed by competitive forces. The provisions of this chapter shall be construed to allow, where practicable: competition to function as a substitute for regulation in the provision and pricing of electric supply services; to ensure the reliability and safety of the transmission and distribution systems; to maintain and advance the efficiency, diversity, and economy of electric supply services; and to ensure fair treatment of utility employees, investors and customers. Competition should not, however, be mandated for customers of municipally owned electric utility systems which are uniquely situated and subject to local governance. Because an efficient competitive market for electric supply is unlikely to develop without comprehensive tax reform, customer choice of electric supplier shall not be implemented prior to implementation of a usage tax based on the

amount of electricity sold or delivered in lieu of local sales, use, or gross receipts taxes and franchise fees.

393.966. As used in sections 393.900 to 393.914, the following terms mean:

(1) "Aggregate", to combine the loads of retail customers for the purpose of purchasing electric supply service;

(2) "Aggregator", any entity, including a municipality or municipal electric utility, that, as an intermediary, puts together customers into a buying group for the purchase of electric supply service;

(3) "Assignee", a person, other than an electric utility, to which an interest in intangible transition property is assigned, sold, or transferred;

(4) "Broker", any entity that acts as an agent or intermediary in the sale and purchase of electric supply service to retail customers but does not take title to electric power and energy;

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

(6) "Control area services", those services offered within transmission or distribution systems to which a common automatic control scheme is applied in order to match available electric power and energy with demand, maintain scheduled interchange with other control areas, provide operating reserves, and ensure the safe and coordinated operation of the transmission and distribution facilities within a designated control area, but not when offered as a part of either traditional utility services or the comparable bundled utility services offered by a municipal utility in its service area;

(7) "Corporate Support Services", joint corporate oversight, governance, support systems, and personnel shared by an electric supplier, including an electric utility, its parent holding company, or a separate affiliate created to perform corporate support services. Examples of services and systems that may be shared include, but are not limited to, human resources, procurement, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support, corporate services, corporate secretary, lobbying, and corporate planning;

(8) "Decommissioning costs", all reasonable costs and expenses that are expected to be incurred or are actually incurred prior or subsequent to, and at the time of, decommissioning in connection with the final entombment, decontamination, dismantlement, removal, disposal, or other disposition of a nuclear power plant and of the structures, systems and components of that plant, or any radioactive materials associated with the plant, including all costs and expenses expected to be incurred or actually incurred in connection with the preparation for decommissioning, such as

engineering and other planning expenses, and to be incurred prior to or after the actual decommissioning occurs, such as physical security and radiation monitoring expenses, less proceeds of insurance, salvage or resale of machinery, construction equipment or apparatus, the cost of which is charged as a decommissioning expense in the electric utility's accounts;

(9) "Distribution service", the transportation of electricity over a distribution system and the associated metering, meter reading and billing services, extensions of distribution lines, connection of retail customers to the distribution system, and disconnection of retail customers from the distribution system, but not when offered as a part of either traditional utility services or the comparable bundled utility services offered by a municipal utility in its service area;

(10) "Distribution system", the physical plant used to distribute electricity from the point it leaves the transmission system to the point it passes through the retail customer's meter, including all real property, personal property, facilities, structures, wires, meters, and appurtenances used for or in connection with or to facilitate the distribution of electricity;

(11) "Electric supplier", every person, cooperative, corporation, electrical corporation, municipal corporation, municipality, company, association, joint stock company or association, firm, partnership, individual, or other entity, their lessees, trustees, or receivers appointed by any court whatsoever, that offers electric supply service to one or more retail customers, and shall include without limitation, electric utilities, rural electric cooperatives, municipal utilities that have made the election provided for in section 393.999, resellers, aggregators, brokers, power marketers, and owners and operators of on-site generation, self-generation, or cogeneration plants that were constructed after January 1, 2001;

(12) "Electric supply service", the provision of electric power or energy for sale, lease, or in exchange for other value received, to one or more retail customers (including any associated transmission or control area services), but not including either traditional utility services or the comparable bundled utility services that are offered by a municipal utility in its service area;

(13) "Electric utility", an investor-owned electrical corporation that is a public utility providing traditional utility services as of August 28, 2000, or a successor corporation providing distribution service following such effective date;

(14) "Eligible rates", those rates specified in an application for a transitional funding order from which instrument funding charges may be deducted and collected. Eligible rates may include any of the following: rates for traditional utility services, rates for unbundled electric supply service pursuant to subsection 5 of section 393.972, rates for distribution service, rates for transmission service, and transition

charges;

(15) "Existing regulatory asset", those assets that were reported by an electric utility as regulatory assets on its Form 1 report to the Federal Energy Regulatory Commission and created prior to August 28, 2000, as a result of electric utilities being required through the regulated rate-making process or other regulation to capitalize all or part of an incurred cost that would otherwise have been charged to expense and includes, without limitation, capitalized costs associated with renegotiated fuel supply contracts, deferred maintenance costs, deferred income taxes, post-retirement benefits, refinancing of debt, recovery of impaired generation assets, merger costs, environmental costs, and phase-in of generation costs;

(16) "Holder", a holder of transition bonds, including a trustee, collateral agent, nominee, or other such person acting for the benefit of such a holder;

(17) "Implementation costs", all reasonable costs incurred by an electric utility in meeting its obligations pursuant to sections 393.960 to 393.1002, including, but not limited to, costs incurred in implementing:

(a) Consumer education programs;

(b) New billing or other computer systems; or

(c) Programs, such as offers of voluntary severance, retraining, early retirement, out placement, and related benefits, that are designed to mitigate the impact on electric utility employees of workforce reductions that occur in conjunction with the implementation of such sections;

(18) "Instrument funding charge", a nonbypassable charge authorized in a transitional funding order to be applied and invoiced to each retail customer, a class of retail customers of an electric utility, or other person or group of persons obligated to pay eligible rates from which the instrument funding charge has been deducted and stated separately pursuant to subdivision (4) of subsection 2 of section 393.996;

(19) "Intangible transition property", all right, title, and interest of an electric utility or assignee in, to, under, and pursuant to a transitional funding order, including the right, title, and interest of such electric utility or assignee to impose and receive instrument funding charges and all related revenues (including, without limitation, related recoveries for stranded costs, transition charge adjustments or condemnation awards), collections, claims, payments, money, or proceeds of the transitional funding order, whether or not such intangible transition property is characterized on the books of the electric utility as a regulatory asset, a cost incurred by the electric utility, or otherwise. Intangible transition property arises and exists only to the extent that instrument funding charges are authorized in a transitional funding order that becomes effective in accordance with section 393.996. Such intangible transition property shall continue to exist to the extent provided in the transitional funding

order;

(20) "Issuer", any party, other than an electric utility, which has issued transition bonds. The term "issuer" includes any corporation, public authority, trust, financing vehicle, partnership, limited liability company or other entity;

(21) "Municipal utility", a municipally owned or operated electric power system or a joint municipal utility commission;

(22) "Nonbypassable charge", a charge that retail customers cannot avoid by switching to electric supply service, switching electric suppliers, or installing facilities to bypass distribution service;

(23) "Power marketer", any entity that takes title to electric power and energy and acts as an agent or intermediary in the sale and purchase of electric supply service to retail customers;

(24) "Retail customer", a single entity using electric power or energy for end use purposes at a single premises and does not include an aggregator or aggregated loads of individual retail customers. Each entity using electric power or energy for end use purposes at a single premises shall be deemed to be a separate retail customer even if its load is aggregated with the loads of other retail customers;

(25) "Rural electric cooperative", a corporation organized pursuant to chapter 394, RSMo, for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas;

(26) "Service area", the geographic area within which an electric utility, municipal utility or rural electric cooperative may lawfully build distribution facilities and provide traditional utility services or comparable public utility services to retail customers as of August 28, 2000, and includes the location of any retail customer to which the electric utility, municipal utility or rural electric cooperative was lawfully providing such utility services on the effective date;

(27) "Small nonresidential customer", a nonresidential retail customer consuming fifteen thousand kilowatt-hours or less of electricity annually;

(28) "Temporary electric supply service", a service provided by an electric utility to retail customers in its service area that are taking distribution service from that utility and that have been abandoned by their chosen electric supplier, which is priced as set forth in subsection 6 of section 393.972;

(29) "Traditional utility services", the bundled tariffed services offered by the electric utility pursuant to tariffs approved by the commission pursuant to section 393.150 or 393.155, prior to August 28, 2000, including the associated transmission and distribution of electricity and control area services, metering, meter reading and billing, and connection and disconnection of retail customers taking such services, or the comparable bundled utility services that are offered by a rural electric cooperative

to its customers in its service area;

(30) "Transition bonds", any instruments, pass-through certificates, notes, debentures, certificates of participation, bonds, certificates of beneficial interest, or other evidences of indebtedness or instruments evidencing a beneficial interest which are issued by or on behalf of an electric utility or issuer pursuant to a transitional funding order; which are issued pursuant to an executed indenture, pooling agreement, security agreement, or other similar agreement of an electric utility or issuer creating a security interest, ownership interest, or other beneficial interest in intangible transition property; and the proceeds of which are to be used for the purposes set forth in paragraph (e) of subdivision (3) of subsection 1 of section 393.996;

(31) "Transition costs", those costs that were incurred by an electric utility for the purpose of generating electricity for, or supplying electricity to, retail customers in this state, and which were being recovered through rates for traditional utility service prior to August 28, 2000, but which are unlikely to be recovered through competitive market rates, and includes costs associated with power purchase contracts, but does not include decommissioning costs, existing regulatory assets, implementation costs, or costs that will be recovered through rates for transmission or distribution services;

(32) "Transitional funding order", means an order of the commission issued pursuant to section 393.996 creating and establishing intangible transition property and the rights of any person in such property, and approving the sale, pledge, assignment, or other transfer of intangible transition property, the issuance of transition bonds, and the imposition and collection of instrument funding charges;

(33) "Transmission system", those facilities that are subject to the jurisdiction of the Federal Energy Regulatory Commission and used to transport electricity from the point where the electricity is generated to the point at which the electricity enters the distribution system, including all real property, personal property, facilities, structures, wires, meters, and appurtenances, used for or in connection with or to facilitate the transmission of electricity;

(34) "Transmission service", the transportation of electricity over the transmission system, but not when offered as part of traditional utility services or the comparable bundled utility services that are offered by a municipal utility in its service area.

393.969. 1. Beginning on December 31, 2004, each retail customer in the service area of an electric utility or rural electric cooperative, other than one that is lawfully taking service from a municipal utility, shall have the option of choosing to take electric supply service from any electric supplier authorized to provide electric supply service in that service area, unless the effective date for customer choice has been

delayed as set forth in subsection 2 of this section. Each such customer shall also have the option of continuing to take service from the electric utility or rural electric cooperative pursuant to subsection 5 of section 393.972. An electric utility or rural electric cooperative may adopt procedures for the processing and implementation of customers' elections to take service from one or more electric suppliers in order to ensure an orderly transition and the maintenance of reliable service. Such procedures shall be provided to and reviewed by the commission as part of the manual described in subdivision (4) of subsection 4 of section 393.972. A retail customer electing to take an electric supply service other than the unbundled electric supply service provided pursuant to subsection 5 of section 393.972 shall make that choice using the forms or in the manner approved by the commission.

2. Unless comprehensive tax reform replacing local sales, use, or gross receipts taxes and franchise fees with taxes based on the amount of electricity consumed or delivered has been placed into effect by July 1, 2004, customer choice shall not begin until six months after the date that such amendment or tax reform has been placed into effect.

393.972. 1. Prior to January 31, 2008, the commission shall not approve an increase in an electric utility's rates that are in effect for traditional utility services on January 1, 2001, unless it finds that:

(1) The electric utility has formally waived its right to implement transition charges pursuant to subsection 7 of this section; or

(2) The electric utility's costs of providing traditional utility services have increased due to:

(a) A change in federal or state law or regulation or other circumstance beyond the electric utility's control, including without limitation any requirement by an independent system operator, regional transmission organization or similar entity, or a federal or state agency with jurisdiction, that the electric utility incur extraordinary expenses to repair, upgrade or expand its transmission and distribution facilities;

(b) If the electric utility serves less than five hundred thousand customers in this state, the inclusion in rate base of a generation plant which was under construction prior to August 28, 2000, and was placed into service within eighteen months of such date, and which increases the electric utility's total generation capacity by more than ten percent; or

(c) An event that has a major effect on the electric utility such as an act of God, an extended outage or shutdown of a major generating unit or units, or a significant increase in the cost of fuel or purchased power; or

(3) The electric utility's return on common equity (calculated as its net income applicable to common stock divided by the average of its beginning and ending

balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission) falls below ten percent for a calendar year; and

(4) The proposed increase in the electric utility's rates for traditional utility services is just and reasonable.

2. Prior to January 31, 2008, the commission shall not initiate or, unless requested by the electric utility, authorize or order, any change by way of a decrease, restructuring, or unbundling, in the electric utility's rates for traditional utility services. On or after January 31, 2008, the commission shall require each electric utility to withdraw its tariffs for, and cease to offer, traditional utility services.

3. On or before July 1, 2003, an electric utility shall file with the commission rate schedules that set forth separate charges for distribution services and for the electric supply services described in subsections 5 and 6 of this section, and, if applicable, decommissioning costs and transition costs. Transition costs shall be separately stated and calculated as set forth in subsection 7 of this section. Decommissioning charges shall meet the requirements of subsection 8 of this section. Terms and conditions associated with all unbundled rates and charges shall be filed by the electric utility with the commission at the time of filing these separate unbundled rates. On or before July 1, 2003, the electric utility shall also file with the commission, for informational purposes only, the tariff or tariffs for transmission or control area services that it has on file with the Federal Energy Regulatory Commission. An electric utility may propose other regulated, unbundled rates and charges associated with distribution and electric supply service, as appropriate. An electric utility may also elect to unbundle its rates for traditional utility services for billing purposes, but shall not be required to do so.

4. The initial rates for distribution services shall be based upon the electric utility's direct and indirect costs of providing unbundled distribution service, including the electric utility's then current cost of capital, its implementation costs, and existing regulatory assets.

(1) The electric utility shall submit written evidence with its initial unbundled rate filing to support its proposed unbundled rates and charges for distribution services, which shall identify both the direct and indirect costs associated with each proposed rate for distribution service.

(2) The method used to determine the cost of service for each customer class, to the extent practicable, shall permit identification of cost differences attributable to variations in demand, energy, voltage delivery level, customer density, and other factors.

(3) The commission shall approve rates, charges, terms, and conditions for

distribution service that allow the electric utility to recover its costs of owning, operating and maintaining its distribution system and providing distribution services to retail customers, and its implementation costs and existing regulatory assets. The commission may subsequently modify rates for distribution service pursuant to section 393.150, except that such rates must continue to meet the standard for cost recovery specified in this subdivision.

(4) At the time it files its proposed rate schedule for distribution service, the electric utility shall also file with the commission a manual identifying the business processes, procedures and practices that it will use to ensure an orderly transition and the maintenance of reliable service when offering distribution service as a separate, unbundled service. The commission shall have the power, following notice and hearing, to modify such initial processes, procedures and practices. Thereafter, such manual may be revised as needed by the electric utility, but a copy of any revisions shall be provided to the commission when made.

(5) The commission may, prior to January 1, 2003, adopt rules governing the form and content of the filings to be made pursuant to this subsection.

5. On or before July 1, 2003, an electric utility shall file unbundled rates for the provision of electric supply service as a tariffed service to each of its customer classes established for distribution services. The electric utility shall charge these rates during those periods when the retail customer is no longer eligible to take traditional utility service but has not entered into a contract or accepted a standard offer for electric supply service with an electric supplier.

(1) An electric utility shall continue offering traditional utility service from August 28, 2000:

- (a) To residential retail customers through January 31, 2008;**
- (b) To nonresidential retail customers with maximum electrical demand of less than one megawatt through January 31, 2007; and**
- (c) To nonresidential retail customers with maximum electrical demands of one megawatt or greater through January 31, 2006.**

(2) A retail customer that is no longer eligible to take traditional utility service but which has not chosen an electric supplier pursuant to section 393.972 will receive electric supply service under the rates filed pursuant to this subsection and distribution service from the electric utility.

(a) The rate for the unbundled electric supply service shall be calculated, at the electric utility's sole option, as either a function of:

- a. An exchange traded or other market index, options or futures contract, or other market contracts, applicable to the region in which the electric utility buys and sells electricity;**

b. Market values established through competitive bidding; or
c. Such other basis as the electric utility proposes and the commission approves as resulting in a competitive market rate;

(b) The unbundled rates for the provision of unbundled electric supply pursuant to this subsection should also reflect the load profile and line losses associated with each customer class, and include both the cost of any required reserves and an amount representing a broker's fee that the electric utility could obtain in providing such electric supply service on an untariffed basis;

(c) The unbundled rates for the provision of electric supply service pursuant to this subsection may be calculated for the following four-month periods: February to May, June to September, and October to January. A retail customer taking service as an unbundled supply service pursuant to this subsection shall be required to either notify the electric utility that it will not be taking service under such unbundled rates by electing to take competitive electric supply service on or before January first, for the period February to May, May first for the period June to September, and September first for the period October to January. An electric utility (serving less than five hundred thousand retail customers in this state) may instead offer such unbundled supply service for a six month or one year period and require notice of the customer's election to take competitive electric supply service thirty days prior to the start of such period. A retail customer that does not make the required election to take competitive electric supply service and provide timely notice of such election to the utility must continue to take the unbundled electric supply service offered pursuant to this subsection through the applicable period;

(d) The commission shall review the unbundled rates for electric supply service for compliance with the requirements of this subsection, and shall approve such rates if they comply with the requirements of this subsection. The commission may modify such rates only if it finds that they do not comply with the requirements of this subsection. The commission shall not reject a rate filed pursuant to this subsection on the basis that it is a formula instead of a fixed rate.

(3) A retail customer that has elected to take electric supply service pursuant to section 393.969 shall not be eligible to take or return to traditional utility service or to the unbundled electric supply service offered pursuant to this subsection unless no more than ninety days have passed since such election became effective and the customer has not previously left and returned to traditional utility services or to the unbundled electric supply service offered pursuant to this subsection.

6. An electric utility shall also file unbundled rates for the provision of electric supply service as a temporary electric supply service to those retail customers that are taking distribution service from the electric utility. Temporary electric supply service

shall be priced at a rate that recovers the electric utility's cost of procuring electric power and energy on the spot market and necessary transmission services and control area services at the time the temporary electric supply service is provided, multiplied by a factor of one and one-half, but is never less than the rate for the unbundled electric supply service established pursuant to subsection 5 of this section that would be charged such retail customer if it were eligible for such service. A retail customer shall be entitled to file a complaint at the commission to recover from the electric supplier that was serving such customer at the time the customer defaulted to temporary electric supply service any charges that the customer incurred as a result of defaulting to temporary electric supply service.

7. An electric utility is entitled to a fair opportunity to recover any transition costs that it incurs as a result of implementation of sections 393.960 to 393.1002, and accordingly may, at its sole option, but shall not be required to, after December 31, 2004, and prior to December 31, 2014, implement nonbypassable transition charges to be collected from each retail customer that is not paying rates for traditional utility service. Transition charges shall be billed by the electric utility to retail customers directly or through such customer's electric supplier. Such charges shall be calculated at least annually for each traditional utility service customer class existing on August 28, 2000, by subtracting the market price used to calculate the unbundled electric supply service offered pursuant to subsection 5 of this section (as adjusted for class load profiles, line losses and reserves and applied to the usage of each customer class during the calendar year 2000) from the cost of generation (calculated as two-thirds of the revenues from traditional utility services that the electric utility received during the calendar year 2000, allocated among the customer classes in the same proportion as revenue generated by each such customer class during such year). If an electric utility that has elected to implement transition charges pursuant to this subsection subsequently sells or otherwise transfers all or a substantial portion of its generation plant to an unaffiliated entity for an amount greater than book value, or if its earned rate of return on common equity (calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission) exceeds, for more than three consecutive years during the period January 1, 2005, to December 31, 2014, an amount equal to the sum of the average of the monthly average yields of thirty-year United States Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication and nine percentage points in each calendar year, the commission shall have the authority, following notice and a hearing, to reduce the electric utility's transition charges as necessary to prevent any

overrecovery of transition costs. However, in no event shall a transition charge be less than zero, nor shall an electric utility be required to refund transition charges previously collected.

8. Each electric utility owning an interest in, or having responsibility as a matter of contract or statute, for the decommissioning costs of one or more nuclear power plants shall file a tariff or tariffs that provide for the recovery of such costs by December 31, 2024, through nonbypassable charges to be recovered from each retail customer located in the electric utility's service area. Decommissioning charges shall be billed by the electric utility to retail customers directly or through such customer's electric supplier. Decommissioning costs may be recovered through unbundled charges or through the electric utility's distribution rates.

9. Prior to December 31, 2004, in order to prepare for the transition to competitive markets for electric supply services, an electric utility may at its discretion conduct one or more experiments for the provision or billing of services on a consolidated or aggregated basis, for the provision of real-time pricing, or other billing or pricing experiments, and may include experimental programs offered to groups of retail customers possessing common attributes as defined by the electric utility, such as the members of an organization that was established to serve a well-defined industry group, companies having multiple sites, or closely-located or affiliated buildings, provided that such groups exist for a purpose other than obtaining energy services and have been in existence for at least ten years. The offering of such a program by an electric utility to retail customers participating in the program, and the participation by those customers in the program, shall not create any right in any other retail customer or group of customers to participate in the same or a similar program. The commission shall allow such experiments to go into effect upon the filing by the electric utility of a statement describing the program, and shall not otherwise regulate the rates, terms or conditions associated with an experimental program.

10. Notwithstanding any other of the ratemaking provisions of this chapter, the commission may also, upon an application filed by an electric utility, authorize for some or all of the electric utility's tariffed services, implementation of one or more alternatives to rate of return regulation, such as price caps, formula rates, flexible rate options or performance based rates, that are likely to result in identifiable benefits to retail customers that would not be realized in the absence of such program. The commission shall not, however, have the authority on its own initiative to order an electric utility to implement such an alternative mechanism.

11. On or before July 1, 2003, a rural electric cooperative shall file with the commission rate schedules that set forth separate charges for distribution service for each of its customer classes, and unbundled rates for the provision of electric supply

service that comply with the provisions of subsections 5 and 6 of this section. The rural electric cooperative shall also file the terms and conditions associated with such services and supporting evidence at the time it files the rate schedules required by this subsection. The unbundled distribution rates filed by the rural electric cooperative pursuant to this subsection shall be nondiscriminatory, equivalent to the portion of the rates that the rural electric cooperative charges to its customers taking traditional utility services that are attributable to the distribution of electricity, and not result in cross subsidization between such services and the rural electric cooperative's electric supply or other services.

12. An electric utility or a rural electric cooperative offering distribution service or electric supply services pursuant to this section may establish a reasonable term of service, notice period for terminating or electing service, and provisions regarding early termination of service.

393.975. 1. A retail customer that is eligible to choose its electric supplier pursuant to section 393.969 shall have the right to:

(1) Receive nondiscriminatory access to electric supply services and distribution services as provided in sections 393.960 to 393.1002 and according to the terms and conditions set forth in the applicable contracts or tariffs for such services;

(2) Be connected to the electric grid according to the terms and conditions set forth in the applicable contracts or tariffs for such services and the rules and regulations adopted by the commission governing the connection and disconnection of service;

(3) Aggregate with other customers for the purpose of procuring electric supply service when eligible to do so, subject to the provisions of subsection 2 of this section;

(4) Receive traditional utility service, unbundled electric supply service or temporary electric supply service as set forth in section 393.972 and according to the terms and conditions set forth in the applicable tariffs;

(5) Receive without charge once each calendar year and upon request, from the electric utility or rural electric cooperative from which it is taking service, its most recent twelve months of historical usage information, if reasonably available, and to receive such information more frequently, at reasonable intervals, for a cost based fee;

(6) Avoid or refuse to pay any charges for any nontariffed service or equipment that the retail customer has not contracted or otherwise agreed to pay for;

(7) Maintain the privacy of customer account information made available to the electric utility, rural electric cooperative or municipal utility from which it is taking service.

2. An electric utility shall allow any voluntary grouping of customers to aggregate their loads for the purpose of procuring electric supply service, including

without limitation, those having a common agent with contractual authority to purchase electric power and energy and delivery services on behalf of all customers in the grouping which has obtained a certificate pursuant to section 393.908 to act as an aggregator. However, aggregations of load must meet the applicable criteria for the delivery of electric power and energy established by a regional reliability council, by an independent system operator or regional transmission organization, or by another organization responsible for overseeing the integrity and reliability of the transmission system used in providing electric supply services, as such criteria are in effect from time to time. No electric supplier, electric utility, rural electric cooperative or municipal utility shall be required to offer or allow net metering for aggregated loads.

3. The commission shall have the authority to adopt such rules and regulations as it deems necessary to protect residential and small nonresidential customers against unfair or unnecessarily intrusive practices in the marketing, offering, or provision of electric supply services and, to ensure fair billing practices. The commission shall also have the authority to extend existing rules for the cold weather maintenance of service for residential retail customers to all electric suppliers.

4. The commission shall establish and provide for the operation of a database to compile a list of customers who object to receiving telephone solicitations. The commission may operate the database or contract with another entity to operate the database.

393.978. 1. Electric utilities, rural electric cooperatives, and municipal utilities shall be the exclusive providers of distribution services to structures within the state. Nothing in sections 393.960 to 393.1002 shall be construed to authorize any change of distribution service provider or make lawful any service that was unlawful prior to the adoption of sections 393.960 to 393.1002. Where there is more than one lawful provider of distribution services in an area, the initial customer at a new structure may choose among those distribution providers. Once such a selection is made, however, no subsequent change of distribution service provider at a structure shall be made except as provided in sections 91.025, 393.106, and 394.315, RSMo.

2. Only an electric utility, rural electric cooperative or municipal utility that is providing traditional utility service or a comparable bundled utility service, or distribution service, to a retail customer may connect that customer to, or disconnect that customer from, the electric grid.

3. Electric utilities and rural electric cooperatives shall provide an option through tariff or contract by which other electric suppliers may issue a single consolidated bill both for electric supply service and for the distribution service provided by the electric utility or rural electric cooperative. As part of such option, the electric utility or rural electric cooperative may impose commercially reasonable terms

with respect to credit and collection, require partial payments made by retail customers to be credited first to the tariffed services provided by the electric utility or rural electric cooperative, and retain the right to disconnect retail customers if it does not receive payment for its tariffed services in the same manner that it would be permitted to if it had billed for the services itself.

4. Electric utilities shall not have an obligation to build new generation plants to supply retail customers, and shall not have any obligation to supply such customers from their own generation facilities. An electric utility shall have no obligation to purchase or maintain reserve supplies of electricity in order to provide temporary electric supply service. An electric utility shall not be liable to any current or future retail customer served by another electric supplier if that customer's electric supplier fails to supply the customer in accordance with its contract. The commission shall not order an electric utility to provide any service other than traditional utility services, unbundled electric supply service as set forth in subsection 5 of section 393.972, distribution service, or temporary electric supply service as set forth in subsection 6 of section 393.972.

5. Electric suppliers may:

(1) Enter into contracts for electric supply services with those retail customers that are eligible to choose an electric supplier pursuant to section 393.969, and that are taking distribution service from an electric utility, rural electric cooperative, or municipal utility that has made the election provided for in section 393.999;

(2) Publish "standard offers" for electric supply services to be made available to retail customers that meet the criteria, and agree to accept the terms and conditions, stated in the standard offer; and

(3) To establish a term of service, notice period for terminating or electing service, and provisions governing early termination of service. A retail customer may change its electric supplier subject to a tariff or contract terms and conditions. Any notice provisions, or provision for a fee, charge or penalty with early termination of a contract, shall be conspicuously disclosed in any contract. A customer shall remain responsible for any unpaid charges owed to the electric supplier at the time it switches to another provider.

6. An electric supplier, including municipal utilities making the election provided for in section 393.999, shall be obligated:

(1) To maintain adequate sources of supply, operating reserves and other reserves, and transmission capacity where applicable, as necessary to meet their contractual obligations, and to comply with all applicable rules, policies, practices and procedures for the use, operation and maintenance of the safety, integrity and reliability of the interconnected electric transmission system that are established by

regional reliability councils, an independent system operator or regional transmission organization or other organization responsible for overseeing the integrity and reliability of the transmission system, set forth in an electric utility's tariffs, or generally followed in the industry;

(2) To fairly disclose to retail customers the prices, terms and conditions of electric supply services prior to obtaining verifiable authorization to provide such services, and comply with related commission regulations on consumer education and marketing;

(3) To comply with applicable safety and environmental regulations, and regulations governing billing and disconnection of service, and to contribute to the goal of ensuring that all customers throughout the state have access to electric supply service as set forth in section 393.984;

(4) To only serve retail customers that are taking distribution service from an electric utility, rural electric cooperative or municipal utility, and to comply with all tariffed terms and conditions for distribution services, transmission services and control area services, and to collect and remit all nonbypassable charges billed on behalf of an electric utility, issuer, or an assignee;

(5) To obtain verifiable authorization from a retail customer before serving or aggregating such customer or changing its electric supplier except as is otherwise provided in a tariff for temporary electric supply service. However, an electric supplier shall not be required to obtain such authorization prior to transferring all or a portion of its retail customer accounts pursuant to a sale or transfer of all or a substantial portion of such supplier's business in this state, when the transferee has a certificate to provide such service or will serve such customers through an affiliate that holds such a certificate, the transferor gives each retail customer notice of such transfer, and the transferee is required to honor the transferor's contracts with such customers;

(6) To keep records and make reports as are necessary for the commission to fulfill its obligations pursuant to sections 393.960 to 393.1002. The commission shall protect from public disclosure any confidential or proprietary information obtained from such records and reports;

(7) To maintain or arrange for the facilities and the personnel necessary to contact the distribution, transmission or control area service provider regarding any emergency or complaint that affects distribution, transmission or control area service, and to immediately notify such provider regarding any emergency; and

(8) To maintain a toll-free number that allows a retail customer served by such supplier to contact the electric supplier twenty-four hours a day.

7. An electric supplier shall not charge or attempt to collect any charges from a retail customer for any nontariffed service or equipment that the retail customer has

not contracted or otherwise agreed to pay for.

8. Neither an electric utility nor an electric supplier shall be required to involuntarily implement any net metering arrangement.

393.981. 1. Nothing in sections 393.960 to 393.1002 is intended to change the rights and obligations under present law defining the geographic areas in which electric utilities, municipal utilities, and rural electric cooperatives may offer distribution services or construct distribution facilities. Following December 31, 2004, or, for municipal utilities, the election of a municipal utility to provide customer choice pursuant to section 393.999, the provisions of sections 91.025, 386.800, 393.106, 394.312 and 394.315, RSMo, shall not apply to electric supply services but shall continue to apply to distribution and transmission services.

2. The commission may, following an evidentiary hearing, adopt rules governing the functional separation of a vertically integrated electric utility's distribution operations from its generation operations as it finds necessary to promote the development of an efficient and effective competitive market for electric supply services. Such rules shall allow the sharing of corporate support services and shall otherwise be designed to minimize the electric utility's costs of functionally separating. The commission may not require an electric utility to divest itself of any assets or operations or otherwise to reorganize its corporate structure. The commission may require an electric utility that owns generation facilities and serves a Standard Metropolitan Statistical Area in this state which has more than one million retail customers to run generation plants that are located in such metropolitan areas during periods of system peak as may be necessary to relieve transmission constraints.

3. The following provisions shall govern the provision of essential facilities or services by an electric utility, rural electric cooperative or municipal utility providing distribution service to an affiliated electric supplier or other electric supplier:

(1) An electric utility or rural electric cooperative providing distribution service to retail customers shall not extend any undue preference or advantage, or unduly discriminate, in favor of its own power supply, other services, divisions, or affiliates, if any, when providing distribution services;

(2) An electric utility or rural electric cooperative shall process all same or similar requests by a nonaffiliated electric supplier for a service, or for information, in the same manner and within the same period of time as it would for an affiliated electric supplier;

(3) In offering electric supply services, an affiliate of an electric utility or rural electric cooperative shall not be prohibited from using the name or logo, or both, of the electric utility; however, the affiliate must disclose its relationship between the electric utility or rural electric cooperative, to clarify that the affiliate is not the same as the

electric utility, and also disclose the fact that in order to receive distribution or other tariffed services from the electric utility or rural electric cooperative, a consumer does not have to purchase the electric supply services offered by the affiliate;

(4) Notwithstanding any other provision in this subsection, or the rules and regulations adopted by the commission pursuant to subsection 2 of this section, an electric utility or rural electric cooperative may take any steps necessary in emergency circumstances to ensure the reliability and safety of the transmission and distribution systems;

(5) An electric utility or rural electric cooperative shall have the right to share corporate support services with its affiliates.

4. The commission shall have the power to adopt accounting rules that are applicable to all electric suppliers and that are designed to prevent cross subsidization between the services offered by any electric supplier and those offered by its affiliates. Such rules shall comply with generally accepted accounting practices and shall not be biased in favor of either the electric supplier or the affiliate.

5. In order to facilitate the development of full and fair competition, and the development of diverse and reliable sources of electric supply, the commission may require any transmission-owning electric utility, municipal utility or rural electrical cooperative, to join an independent system operator, regional transmission organization, or similar entity, that has been approved by the Federal Energy Regulatory Commission for the purposes of independently managing and controlling transmission facilities; providing nondiscriminatory access to and use of the transmission system for buyers and sellers of electricity; directing the transmission activities of the control area operators; coordinating, planning, and ordering the installation of new transmission facilities; adopting inspection, maintenance, repair, and replacement standards for the transmission facilities under its control and directing the maintenance, repair, and replacement of all facilities under its control; and otherwise implementing procedures and acting to assure the provision of adequate and reliable service. If the electric utility, rural electric cooperative, or municipal utility is eligible to join more than one such entity that has been approved by the Federal Energy Regulatory Commission for such purposes, the electric utility, rural electric cooperative or municipal utility may choose which entity it joins.

6. Following August 28, 2000, an electric utility may, without obtaining any approval of the commission other than that provided for in this subsection and notwithstanding the requirements of sections 393.190, 393.200, 393.240 and 393.250, RSMo, or any other provision of sections 393.960 to 393.1002, or chapters 386 and 393, RSMo, or any rule or regulation of the commission that would require such approval: implement a reorganization; retire generating plants from service; sell, assign, lease or

otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee provided that the prices, terms and conditions of any power purchase agreement must be approved or allowed into effect by the Federal Energy Regulatory Commission; or use any accelerated cost recovery method including accelerated depreciation, accelerated amortization or other capital recovery methods, or record reductions to the original cost of its assets.

(1) In order to implement a reorganization, retire generating plants from service, or sell, assign, lease or otherwise transfer assets pursuant to this section, an electric utility shall provide the commission with at least thirty days notice of the proposed reorganization or transaction. The notice shall include the following information:

(a) A complete statement of the entries that the electric utility will make on its books and records of account to implement the proposed reorganization or transaction together with a certification from an independent certified public accountant that such entries are in accord with generally accepted accounting principles and, if the commission has previously approved guidelines for cost allocations between the electric utility and its affiliates, pursuant to subsection 4 of section 393.981, a certification from the chief accounting officer of the utility that such entries are in accord with those cost allocation guidelines;

(b) A description of how the electric utility will use proceeds of any sale, assignment, lease or transfer;

(c) A list of all federal approvals or approvals required from departments and agencies of this state, other than the commission, that the electric utility has or will obtain before implementing the reorganization or transaction;

(d) An irrevocable commitment by the electric utility that it will not, as a result of the transaction, increase the transition charges that it is otherwise entitled to collect pursuant to subsection 7 of section 393.972; and

(e) A description of how the electric utility will continue to meet its service obligations.

(2) If the commission has not issued an order initiating a hearing on the proposed transaction within thirty days after the date the electric utility's notice is filed, the transaction shall be deemed approved. The commission may, after notice and hearing, prohibit the proposed transaction if it finds that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner. Any hearing initiated by the commission into the proposed transaction shall be completed, and the commission's final order approving or prohibiting the proposed transaction shall be entered, within ninety days after the date the electric utility's

notice was filed. A sale, assignment, or lease of transmission facilities to an independent system operator, regional transmission organization or similar entity shall be deemed to meet the requirements of this subsection without a hearing and the commission shall not otherwise review such a sale, assignment or lease.

(3) In any proceeding conducted by the commission pursuant to this section, intervention shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and the office of public counsel.

(4) Notwithstanding the provisions of section 386.500, RSMo, the commission must rule on any application seeking rehearing of an order issued pursuant to this section, whether filed by the electric utility or by an intervening party, within fifteen days after the application is filed with the commission.

(5) The commission shall not in any subsequent proceeding, or otherwise, review a reorganization or other transaction authorized by this section, but shall retain the authority to allocate costs among services in rate making proceedings conducted pursuant to section 393.150. For the purposes of calculating depreciation in a test year in a rate case held pursuant to section 386.150, RSMo, the commission may also change, in accordance with generally accepted accounting practices, the rate of depreciation or amortization established by an electric utility pursuant to this subsection.

7. Upon request of an entity that would otherwise qualify to be an exempt wholesale generator under the National Energy Policy Act of 1992 and that is acquiring or has acquired a generating facility pursuant to a sale or transfer authorized by this section, the commission shall enter an order within twenty-one days of such request and without a hearing, finding that allowing such facility to be an eligible facility under the provisions of the National Energy Policy Act of 1992 that apply to exempt wholesale generators:

- (1) Will benefit consumers;
- (2) Is in the public interest; and
- (3) Does not violate state law.

8. Electric suppliers shall not be exempt from state or federal antitrust laws except for those activities that are subject to a clearly articulated and affirmatively expressed policy of this state to replace competition with regulation and where those activities are actively supervised by an officer, commission or agency of the state.

393.984. 1. Any electric supplier, other than one providing tariffed electric supply service pursuant to subsections 5, 6 and 11 of section 393.972, or subsection 3 of section 393.999, must obtain a certificate of service authority from the commission in accordance with this section before serving any retail customer located in this state. An electric supplier may request, and the commission may grant, a certificate of service authority for the entire state or for a specified geographic area of the state.

2. An electric supplier seeking a certificate of service authority shall file with the commission a verified application containing information showing that the applicant meets the requirements of this section. The electric supplier shall serve notice of its application on all electric utilities, municipal utilities and rural electric cooperatives in whose service areas it seeks to provide service. At the time of filing, the electric supplier shall pay to the commission a filing fee of five hundred dollars.

3. An application for a certificate of service authority shall:

(1) Identify the area or areas in which the applicant intends to offer service and the types of services it intends to offer;

(2) Identify how the applicant will contribute to the goal of ensuring that all customers throughout the state have access to electric supply service by such means as are identified in the rule or rules adopted by the commission pursuant to subsection 6 of this section, or are proposed by the applicant and approved by the commission after notice and hearing;

(3) Identify any affiliate of the applicant that is engaged in the provision of electric supply service, transmission service, distribution service or public utility service similar to traditional utility services in this or any other state;

(4) Provide a bond or other demonstration of financial capability to satisfy potential claims or expenses that can reasonably be anticipated to occur as part of the applicant's operations under its certificate, including a failure to honor contractual commitments. The adequacy of the bond or demonstration shall be determined by the commission from time to time. In determining the adequacy of the bond or demonstration, the commission shall consider the extent of the services to be offered, the size of the applicant, and the size of the load to be served, with the objective of ensuring that the commission's financial requirements do not unreasonably erect barriers to market entry;

(5) Demonstrate that the applicant meets each of the criteria identified in subsection 4 of this section.

4. A showing that the applicant is an electric utility, a rural electric cooperative or municipal electric utility providing service in the state shall be prima facie evidence of its financial capability and that it meets the criteria identified in subsection 5 of this section.

5. The commission shall grant the application for a certificate of service authority only if it makes the findings set forth in this subsection based on the verified application and such other evidence as the applicant may submit:

(1) That the applicant possesses sufficient technical, financial and managerial resources and abilities to provide the service for which it seeks a certificate of service authority. In determining the level of technical, financial and managerial resources

and abilities which the applicant must demonstrate, the commission shall consider:

(a) The characteristics, including the size and financial sophistication, of the customers that the applicant seeks to serve; and

(b) Whether the applicant seeks to provide electric power and energy using property, plant and equipment that it owns, controls or operates;

(2) That the applicant has demonstrated compliance with section 393.911, and will comply with all applicable federal, state, regional and industry statutes, rules, policies, practices and procedures for the use, operation, and maintenance of the safety, integrity and reliability, of the interconnected electric transmission system;

(3) That the applicant will only provide service to retail customers that are eligible to choose an electric supplier pursuant to sections 393.960 to 393.1002 and that are taking distribution service from an electric utility, municipal utility or rural electric cooperative in whose service area such retail customer is located, and that the applicant will make an adequate contribution to the goal of ensuring that all customers throughout the state have access to electric supply service;

(4) That the applicant has procedures in place to comply with any record keeping or reporting requirement established by the commission pursuant to section 393.978, and any accounting rules adopted by the commission pursuant to subsection 4 of section 393.981;

(5) That the applicant will either pay, or collect from retail customers and remit to the electric utility, all nonbypassable charges that it has billed on behalf of the electric utility pursuant to the option described in subsection 3 of section 393.978;

(6) That the applicant has established an office in this state and an agent for service of process;

(7) That if the applicant, its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utilities, rural electric cooperatives, or municipal utilities that have made the election provided for by section 393.999, in whose service area or areas the electric supply service will be offered, the applicant, its corporate affiliates or principal source of electricity, as the case may be, provides distribution and transmission services to such electric utilities, rural electric cooperatives, or municipal utilities that are reasonably comparable to those offered by the electric utility, rural electric cooperative, or municipal utilities, or, if the applicant or applicant's principal source of energy is a generation or transmission cooperative operating in this state, then all of the cooperative members or their affiliates have complied with the provisions of section 393.972, and provided further,

that the applicant agrees to certify annually to the commission that it is continuing to provide such distribution services and that it has not knowingly assisted any person or entity to avoid the requirements of this section. For purposes of this subdivision, "principal source of electricity" shall mean a single source that supplies at least sixty-five percent of the applicant's electric power and energy, and the purchase of transmission and distribution services pursuant to a filed tariff under the jurisdiction of the Federal Energy Regulatory Commission or a state public utility commission shall not constitute control of access to the provider's transmission and distribution facilities; and

(8) That if the applicant is an entity not currently providing traditional utility services or comparable utility services in this state, it has filed 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, and as part of such commitment or agreement has waived any right it might have to challenge the validity of the commitment or agreement and its right to the refund of amounts paid pursuant to the commitment or agreement.

6. An applicant shall notify the commission of any changes in the information set forth in its application during the time that the application is pending before the commission.

7. On or before January 1, 2003, the commission shall adopt a rule or rules setting forth in detail the form and required contents for an application for a certificate of service authority.

393.987. 1. The commission shall implement and maintain through January 1, 2008, a consumer education program as set forth in this section to provide residential and small commercial retail customers with information to help them understand their service options in a competitive market for electric supply services, and their rights and responsibilities.

2. The commission shall form a working group following the enactment of sections 393.960 to 393.1002. This group shall consist of representatives of the investor-owned electric utilities in this state; representatives of municipal utilities, rural electric cooperatives and electric suppliers; representatives of organizations representing the interests of residential and small commercial retail customers; and employees of the commission.

3. Within six months of formation, the working group appointed pursuant to this section shall develop a package of printed educational materials which meet the requirements of subsection 4 of this section and shall submit such package to the commission for approval, along with recommendations for implementing this consumer education program. Such materials shall consider the needs of different types of

consumers in this state, such as elderly, low-income, multilingual, minority, rural and disabled customers. The working group shall issue recommendations to the commission on how such education program can be implemented through a variety of communication methods, including specifically mass media, distribution of printed material, public service announcements, and posting on the Internet.

4. At a minimum, the materials constituting the consumer education program submitted to the commission by the working group shall include concise explanations or descriptions of the following:

(1) The structure of the electric utility industry following the enactment of sections 393.960 to 393.1002 and a glossary of basic terms;

(2) The choices available to consumers pursuant to sections 393.960 to 393.1002;

(3) A customer's rights, risks and responsibilities in receiving electric supply service through a contract or standard offer or taking tariffed unbundled supply service offered pursuant to subsection 5 of section 393.972, or temporary electric supply service;

(4) The legal obligations of electric suppliers pursuant to sections 393.960 to 393.1002;

(5) Services that an electric utility is required to provide pursuant to tariffed rates;

(6) The components of a bill that could be received by a customer taking electric supply services;

(7) The complaint procedures by which consumers may seek a redress of grievances against an electric supplier and a list of phone numbers of the commission, the office of public counsel or other entities that can provide information and assistance to customers; and

(8) Additional information available from the commission upon request.

5. Within forty-five days following the submission required of the working group by subsection 3 of this section, the commission shall approve or disapprove the educational materials and recommendations for program implementation. The commission shall be deemed to have approved the educational program materials and recommendations unless the commission disapproves of any such material or recommendation within forty-five days following the date of receipt.

6. The commission may adopt rules and regulations governing the distribution of approved consumer education materials, except that the costs of printing and distributing approved consumer education materials shall be funded by an appropriation from the general revenue fund. No part of the cost of administering or implementing this section shall be included in the assessment of expenses made by the commission pursuant to section 386.370, RSMo.

7. The commission shall also adopt a uniform disclosure form or forms, to be used by electric suppliers in summarizing an offer to sell electric supply services. Electric suppliers shall be required to complete the appropriate form and provide it to retail customers prior to obtaining verifiable authorization to provide service to such customer, in order to enable consumers to compare the prices, terms and conditions offered by such suppliers.

8. The commission shall identify certain of its employees that have the ability and knowledge to respond to consumer inquiries about electric supply matters and make them available to the public for such inquiries in the same manner as the commission makes other employees available to respond to other customer inquiries or complaints.

9. Each year the general assembly shall appropriate money in an amount not to exceed three hundred thousand dollars to the commission from the general revenue fund for its expenses associated with this section. The cost of printing and distributing the consumer education materials contemplated by this section shall not exceed the amount of such appropriation. In no event shall any electric supplier or retail customer be liable for the costs of printing or distributing consumer education program material in accordance with this section.

393.990. The commission shall monitor and analyze patterns of entry and exit, applications for entry and exit, and patterns of customer choice, and on or before December 31, 2005, and once every two years thereafter until 2014, shall file a report with the general assembly identifying any barriers to entry or participation that may exist for electric supply services, and any impediments to the establishment of a fully competitive market for electric supply, and shall include a summary of the data supporting its findings together with appropriate recommendations for legislative action, if any. However, proprietary or confidential information shall not be disclosed in the report.

393.993. 1. The commission, in determining that an applicant meets the standards for certification as an electric supplier set forth in section 393.984, shall require the applicant to demonstrate that the applicant is licensed to do business, and bonded, in the state of Missouri and that the employees of the applicant that will be installing, operating, and maintaining facilities used for the provision of electric supply service within this state, or any entity with which the applicant has contracted to perform those functions within this state, have the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service, in accordance with the criteria stated above. The knowledge, skill, and competence levels to be demonstrated shall be consistent with those generally required of or by the electric utilities in this state with respect to their

employees. Adequate demonstration of requisite knowledge, skill and competence, shall include such factors as completion by the employee of an accredited or otherwise recognized apprenticeship program for the particular craft, trade or skill, or specified years of employment with an electric utility performing a particular work function.

2. Because the introduction of competition into the state's electric utility industry may result in workforce reductions by electric utilities that may adversely affect persons who have been employed by this state's electric utilities in functions important to the public convenience and welfare, the impacts on employees and their communities of any necessary reductions in the utility workforce by an electric utility serving more than five hundred thousand customers in this state that are directly caused by this restructuring of the electric industry shall be mitigated to the extent practicable through such means as offers of voluntary severance, retraining, early retirement, outplacement and related benefits. Before any such reduction in the workforce prior to December 31, 2007, such an electric utility shall present to its employees or their representatives a workforce reduction plan outlining the means by which the electric utility intends to mitigate the impact of such workforce reduction on its employees.

3. In the event of a sale, purchase, or any other transfer of ownership during the period ending December 31, 2007, of one or more Missouri divisions or business units, or generating stations or generating units, of an electric utility serving more than five hundred thousand customers in this state, the electric utility's contract or agreements with the acquiring entity or persons shall require that the entity or persons hire a sufficient number of non-supervisory employees to operate and maintain the stations, division or unit by initially making offers of employment to the non-supervisory employees of the electric utility's division, business unit, generating station or generating unit at no less than the wage rates, and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of said division, business unit, generating station, or generating units; and such wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least thirty months from the time of such transfer of ownership unless the parties mutually agree to different terms and conditions of employment within that thirty-month period. The utility shall offer a transition plan to those nonsupervisory employees who are not offered jobs by the acquiring entity because that entity has a need for fewer workers. If there is litigation concerning the sale, or other transfer of ownership of the electric utility's divisions, business units, generating station, or generating units, the thirty-month period will begin on the date the acquiring entity or persons take control or management of the divisions, business units, generating station or generating units of the electric utility.

4. In the event an electric utility serving less than five hundred thousand customers in the state sells, conveys, transfers, assigns, consolidates or merges all or substantially all of the operations covered by its collective bargaining agreement to any person, partnership, corporation or other entity (the "purchaser") as a going concern the electric utility shall secure the written agreement of the purchaser to recognize the union as the exclusive bargaining representative of employees covered by the electric utility's collective bargaining agreement, or, assume all of the electric utility's rights and obligations under the electric utility's collective bargaining agreement.

5. Prior to the effective date of any transaction covered in subsection 4 of this section, the electric utility shall notify the union and provide a copy of the written agreement between the electric utility and the purchaser.

6. An electric utility that provides the required notices and secures from the purchaser its agreement as required by subsections 4 and 5 of this section shall not be a guarantor or be held liable for any subsequent breach by the purchaser of its obligations.

7. If an electric utility serving more than five hundred thousand customers in this state transfers ownership prior to December 31, 2007, of one or more Missouri divisions, business units, generating stations or generating units to a majority-owned subsidiary, that subsidiary shall continue to employ the electric utility's employees who were employed by the electric utility at such division, business unit or generating station at the time of the transfer under the same terms and conditions of employment as those employees enjoyed at the time of the transfer. If ownership of the subsidiary is subsequently sold or transferred to a third party prior to December 31, 2007, the provisions outlined in subsection 3 of this section shall apply.

8. The plant transfer provisions set forth above shall not apply to any generating station which was the subject of a sales or transfer agreement entered into before August 28, 2000.

393.996. 1. The general assembly authorizes electric utilities to use securitization, a common financing technique which has been used in other states to mitigate the costs of the transition to a competitive environment and to manage costs without increasing rates paid by retail customers and without creating obligations of the state or any of its political subdivisions, as set forth in this section.

2. The procedures for issuance of transitional funding orders are as follows:

(1) Upon application of an electric utility, the commission is authorized to issue transitional funding orders to create, establish, and grant rights in, to, and under intangible transition property in and to any electric utility, issuer, or assignee in accordance with the terms of such application;

(2) After August 28, 2000, an electric utility may file any number of applications

for transitional funding orders. An application for a transitional funding order shall contain the electric utility's detailed proposal for all of the following:

(a) The assignment, sale, pledge, or other transfer of, or the establishment, creation, and granting of rights in, to, or under intangible transition property;

(b) The issuance of transition bonds;

(c) The method for calculating the amount of instrument funding charges to be collected and for periodically adjusting the amount of instrument funding charges in accordance with subdivision (5) of subsection 3 of this section;

(d) The method for allocating such instrument funding charges among classes of retail customers;

(e) The expected time to maturity for the transition bonds;

(f) The electric utility's planned use of the proceeds from the issuance;

(3) After notice, the commission shall hold a hearing to determine whether the application and requested transitional funding order are in compliance with this section. The commission shall complete its review of the application and issue its final transitional funding order no later than ninety days after the filing of such application. The order shall create and establish the proposed intangible transition property and approve the proposed sale, pledge, assignment, or other transfer of, or the establishment, creation, and granting of rights in, to, or under intangible transition property; the proposed issuance of transition bonds; and the proposed imposition and collection of the corresponding instrument funding charges. Such transitional funding order shall be issued if the commission finds that each of the following conditions are met:

(a) The expected maturity date for the transition bonds, and the final date on which the electric utility or assignee is entitled to charge and collect instrument funding charges, shall each be set to occur no later than fifteen years after the issuance of the relevant series of transition bonds, subject to subdivision (12) of subsection 3 of this section;

(b) The instrument funding charges authorized in such order will be deducted and stated separately from eligible rates, all as provided in subdivision (4) of subsection 3 of this section, and in a manner conforming to the allocation of the instrument funding charges implemented pursuant to subdivision (4) of this section;

(c) The proposed instrument funding charges will be allocated among all classes of retail customers (as such classes are defined in the electric utility's application for a transitional funding order) in a manner consistent with the methodology used to allocate revenues or costs in the electric utility's last rate proceeding before August 28, 2000, or, if the electric utility proposed a different allocation method in its application, the proposed allocation method is just and reasonable;

(d) The issuance of the transition bonds will not cause eligible rates to increase over the rates which would otherwise be chargeable from time to time in the absence of such issuance;

(e) The electric utility will use the net proceeds of the sale and issuance of the transition bonds to repay or refinance debt and equity, or to replenish cash used for such purposes, or to pay transition costs, implementation costs, or other costs of providing service;

(f) The electric utility will not use more than fifty percent of the net proceeds to repay or refinance equity;

(4) A transitional funding order issued by the commission shall become effective in accordance with its terms only after the electric utility files with the commission its written consent to all terms and conditions of such order. After the issuance of a transitional funding order, the electric utility or assignee shall retain sole discretion regarding whether to cause transition bonds to be issued, including the right to defer or postpone such issuance or to change the terms of such bonds as allowed by such order;

(5) The procedures set forth in this section shall constitute the sole procedures by which rights in, to, or under intangible transition property may be created, established, and granted, and no other approvals shall be required under other law for such creation, establishment, grant, or for the issuance of transition bonds. The rights of electric utilities, assignees, and holders in and to any such intangible transition property shall be interpreted in accordance with this section, which shall supersede any other law, rule, or regulation to the contrary.

3. Transitional funding orders shall include the following terms and provisions:

(1) A transitional funding order shall create intangible transition property in favor of an electric utility including the right to impose and collect instrument funding charges necessary to pay principal and interest on the transition bonds authorized in the order together with premium, servicing fees and other fees, costs, and charges related to such bonds, and to fund or maintain any required reserves, after giving effect to delays in bill collections and uncollectables. The party in whose favor such rights are granted and any assignee of such rights shall be granted the power to levy general tariffs on retail customers of an electric utility or any other person required to pay an instrument funding charge in order to collect the instrument funding charges authorized in such order and in order to facilitate the issuance of transition bonds authorized in such order;

(2) The transitional funding order shall authorize the establishment, creation, and granting of rights in and to intangible transition property; any requested sale, pledge, assignment, or other transfer of such rights; the issuance of a specific dollar

amount of transition bonds by or on behalf of an electric utility, assignee or issuer, as the case may be; and the imposition and collection of instrument funding charges projected to be sufficient to pay when due the principal of and interest on the corresponding transition bonds, in each case, together with premium, servicing fees and other fees, costs, and charges related to such bonds, and to fund or maintain any required reserves. The transitional funding order shall require that the proceeds from the issuance of transition bonds be used for the purposes set forth in subdivision (3) of subsection 2 of this section. Except where this section specifically requires otherwise, the collection of instrument funding charges and the allocation of any such collections as among holders, assignees, issuers, and any other parties entitled to receive portions of such collections, may be accomplished according to the applicable transitional funding order, or, if the order is silent on any such matters, according to the documents relating to the pertinent transition bonds;

(3) The commission, in a transitional funding order, shall afford flexibility in establishing the terms and conditions of the transition bonds including repayment schedules, collateral, required debt service and other reserves, interest rates and other financing costs, and the ability of the electric utility, at its option, to effect a series of issuances of transition bonds and correlated assignments, sales, pledges, or other transfers of intangible transition property. At the request of an electric utility, the commission in its transitional funding order may establish such terms with respect to credit and collection policies to be followed by persons collecting instrument funding charges as the electric utility may reasonably demonstrate are likely to be required for at least two national statistical ratings service organizations to rate the transition bonds in the highest rating category assigned by such organizations to securities of comparable maturities;

(4) Concurrently with the issuance of transition bonds, an electric utility, issuer, or an assignee shall begin to impose and collect the specified instrument funding charges from retail customers, classes of retail customers, and any other persons or groups of persons as set forth in the relevant transitional funding order. As a precondition to the imposition of any instrument funding charges, an electric utility shall file tariffs directing that the amount of such instrument funding charges be deducted and stated separately from the amounts otherwise billed by such electric utility for eligible rates as set forth in the transitional funding order. Upon such tariffs taking effect, the amounts of instrument funding charges thereby deducted and to be deducted shall become intangible transition property as specified in the transitional funding order and the rights to such intangible transition property shall constitute a current property right. The commission shall not review such tariffs except to confirm that the instrument funding charges authorized in the transitional funding order have

been deducted and stated separately from eligible rates in effect at such time, and the filing of any such tariff shall not be suspended for any other reason. Deductions referred to in this subdivision shall not be construed as a change in or otherwise require a recalculation of the authorized amounts of eligible rates;

(5) The commission shall provide in any transitional funding order for a procedure for periodic adjustments to the instrument funding charges to ensure adequate revenues from such instrument funding charges for repaying principal of the transition bonds in accordance with their expected amortization schedule, for paying interest and related fees and expenses, and for funding and maintaining required reserves on a timely basis. If so requested by an electric utility in an application for a transitional funding order, the transitional funding order may specify a dollar or percentage amount of variation from the projected revenues within which no such adjustment will be required, set forth a maximum adjustment amount for the instrument funding charges, or both. If an adjustment described in this subdivision is required, such adjustment shall be implemented by the electric utility, assignee, or issuer, as applicable, with prior written notice to the commission. Any such adjustment shall be calculated to include amounts necessary for recovery of any additional costs incurred by the electric utility, assignee, or issuer as a result of the relevant delay in collections of instrument funding charges. If any such adjustment would cause the amount of any instrument funding charge for any retail customer or class of retail customers to exceed the eligible rates from which such instrument funding charge is to be deducted, the relevant electric utility may ratably allocate the deficiency to other retail customers or classes of retail customers as part of the adjustment mechanism set forth in this subdivision and in the relevant transitional funding order;

(6) Except as otherwise specifically set forth in the transitional funding order, the transition bonds issued pursuant to such order shall be nonrecourse to the credit or to any assets of the electric utility other than any assets comprising intangible transition property. The obligation of retail customers and other persons to pay instrument funding charges shall be contingent upon the receipt by such retail customers and other persons of distribution service or other services related to the provision of electric power for which eligible rates may be assessed but will not be subject to any defense, counterclaim, or right of set-off arising as a result of the electric utility's actions including failure by the electric utility, upon whose application the intangible transition property was created, to perform or provide past, present, or future services. The obligation of retail customers and other persons shall be nonbypassable. In the event that an electric utility upon whose application intangible transition property was created ceases to provide services, the obligation of the utility to deduct instrument funding charges shall be binding on the successors to that utility

described in the relevant transitional funding order;

(7) On such conditions as the commission may approve in the relevant transitional funding order, the interest of any party in intangible transition property may be assigned, sold or otherwise transferred, in whole or in part, and may, in whole or in part, be pledged or assigned as security to or for the benefit of a holder or holders. To the extent that any such interest or portion of such interest is assigned, sold, pledged, or otherwise transferred or is established, created, and granted to a party other than the electric utility, the commission, in the relevant transitional funding order, shall authorize the electric utility or any affiliate of the electric utility to contract with any owner or pledges of such intangible transition property and any holders of the relevant transition bonds to collect the applicable instrument funding charges for the benefit and account of such persons, and such electric utility or affiliate shall, except as otherwise specified in the transitional funding order, account for and remit the applicable instrument funding charges, without the obligation to remit any investment earnings on such charges, to or for the account of the relevant persons. The obligation of such electric utility or affiliate to collect and remit the applicable instrument funding charges shall continue irrespective of whether such electric utility is providing the services to which such instrument funding charges relate. If the documents creating the transition bonds so provide, such obligations, in the event of a default by the electric utility or affiliate in performing such obligations, shall be undertaken and performed by any other entity selected by the assignee or any holder, group of holders or trustee or agent on behalf of such holder or holders, as the case may be. However, a failure by the designated party to perform such obligations shall not affect the existence of the intangible transition property or the instrument funding charges or the validity or enforceability of the instrument funding charges in accordance with their terms;

(8) An electric utility shall file a statement of the final terms of the issuance of any series of transition bonds with the commission within ninety days of the receipt of proceeds from such issuance. In addition, the commission may require an electric utility to file periodic reports on its use of the proceeds at intervals of not less than one year;

(9) Any adjustment to instrument funding charges that is necessary due to subsequent refinancing of transition bonds shall be authorized by the commission in a supplemental order;

(10) A transitional funding order, the intangible transition property created and established by such order, or the instrument funding charges authorized to be imposed and collected under such order, shall not be subject to reduction, postponement, impairment, or termination by any subsequent action of the commission;

(11) A transitional funding order shall remain valid notwithstanding the invalidation of any portion of this chapter. A transition bond, instrument funding charge, intangible transition property, lien, or other right established pursuant to a transitional funding order shall be valid and binding in accordance with its terms and the terms of the related order, notwithstanding that such order or any portion of this chapter is later vacated, modified, or otherwise held to be wholly or partly invalid;

(12) The intangible transition property created under a transitional funding order and the authority of the assignee, issuer, electric utility, or other person authorized under such order to impose and collect instrument funding charges and to exercise its rights under a transitional funding order, including the right to make periodic adjustments pursuant to subdivision (5) of this subsection, shall continue beyond the final date set forth in the applicable transitional funding order until such time as all transition bonds authorized in such order have been paid in full. Upon the later of the final date set forth in the applicable transitional funding order for the imposition and collection of instrument funding charges or the repayment in full of any transition bonds, as applicable, authorized in such order, the authority to impose and collect the related instrument funding charges shall cease and any instrument funding charges collected in excess of the amount required for the repayment of the transition bonds shall be paid to the owner of such intangible transition property, and the relevant electric utilities shall be entitled to file tariffs revoking any deductions from eligible rates which were granted in connection with such instrument funding charges pursuant to subdivision (4) of this subsection. The commission shall not review such tariffs except to determine that the rates and charges resulting from such revocation do not exceed the applicable eligible rates which would otherwise have been in effect at the time of such revocation had no instrument funding charges ever been deducted from such rates;

(13) At the request of an electric utility, the transitional funding order shall include authorization to bill instrument funding charges separately from other charges in the event of a default and, consistent with applicable restrictions imposed on electric utilities by law, to disconnect electric service for failure to pay instrument funding charges.

4. The state pledges to, and agrees with, the holders of any transition bonds who may enter into contracts with an electric utility, assignee, or issuer pursuant to this section that the state will not in any way limit, alter, impair, or reduce the value of intangible transition property created by, or instrument funding charges approved by, a transitional funding order so as to impair the terms of any contract made by such electric utility, assignee, or issuer with such holders or in any way impair the rights and remedies of such holders until the pertinent transition bonds and interest,

premium and other fees, costs, and charges related to such bonds, are fully paid and discharged. An electric utility or issuer is authorized to include these pledges and agreements of the state in any contract with the holders of transition bonds or with any assignees pursuant to this section, and any assignees are similarly authorized to include these pledges and agreements of the state in any contract with any issuer, holder, or any other assignee. This section shall not preclude the state from requiring adjustments as may otherwise be allowed by law to eligible rates, so long as any such adjustment does not directly affect or impair any instrument funding charges previously authorized by a transitional funding order issued by the commission.

5. A transition bond issued pursuant to this section does not constitute debt or liability of the state or of any political subdivision, and transitional funding orders authorizing such issuance do not constitute a pledge of the full faith and credit of the state or of any political subdivision. The issuance of transition bonds shall not directly, indirectly, or contingently obligate the state or any political subdivision to levy or to pledge any form of taxation or to make any appropriation for the payment of such bonds. A transition bond shall be payable solely from the intangible transition property or from such other proceeds or property as may be pledged for such bond. This section shall not be construed to prevent the state or any political subdivision from owning any interest in an assignee or issuer or to prevent any electric utility, issuer, or assignee from selling, pledging, or assigning intangible transition property or from providing recourse or guarantees or any other third-party credit enhancement in connection with such sale, pledge, or assignment.

6. The following shall govern security interests in intangible transition property:

(1) Intangible transition property or any right, title, or interest, in such intangible transition property shall not constitute property in which a security interest may be created under the uniform commercial code. Additionally, such property, or any such right, title, or interest in such property shall not be deemed proceeds of any property which is not intangible transition property;

(2) The granting, perfection, and enforcement of security interests in intangible transition property shall be governed by this section and not by the uniform commercial code;

(3) A valid and enforceable security interest in intangible transition property shall attach and be perfected only as follows:

(a) To the extent a transition bond is purported to be secured by intangible transition property as specified in the applicable transitional funding order, the lien of the transition bond shall attach automatically to such intangible transition property from the time of issuance of the transition bond. Such lien shall be a valid and enforceable security interest in the intangible transition property securing the

transition bond and shall be continuously perfected if, before the date of issuance of the transition bond or within no more than ten days after such issuance, a filing has been made by or on behalf of the holder with the secretary of the commission stating that such transition bond has been or is to be issued. Any such filing made with the commission shall take precedence over any subsequent filing except as may otherwise be provided in the applicable transitional funding order;

(b) A lien pursuant to this subsection is enforceable against the electric utility, any issuer, or assignee, and any third party, including a judicial lien creditor, subject only to the rights of a third party holding a security interest in the intangible transition property previously perfected in the manner described in this subsection if value has been given by the purchaser of transition bonds. A perfected lien in intangible transitional property is a continuously perfected security interest in all then existing or future revenues and proceeds arising with respect to the associated intangible transition property whether or not the electric power and related services included in the calculation of such revenues and proceeds have been provided. A lien created pursuant to this subsection is perfected, and ranks prior to any other lien, including a judicial lien, which subsequently attaches to the intangible transition property and to any other rights created by the transitional funding order or any revenues or proceeds of the foregoing. The relative priority of a lien created pursuant to this subsection is not defeated or adversely affected by changes to the transitional funding order or to the instrument funding charges payable by a retail customer, class of retail customers, or other person or group of persons obligated to pay such charges;

(c) The relative priority of a lien created pursuant to this subsection is not defeated or adversely affected by the commingling of revenues arising with respect to intangible transition property with funds of the electric utility or other funds of the assignee or issuer;

(d) If a default occurs under a transition bond, the holders of such bond or their authorized representative, as secured parties, may foreclose or otherwise enforce the lien in the intangible transition property securing the transition bond, subject to the rights of any third parties holding prior security interests in the intangible transition property previously perfected as provided in this subsection. Upon application by a holder or such holder's authorized representative, without limiting any other remedies, the commission shall order the sequestration and payment to such holder or authorized representative of revenues arising with respect to the intangible transition property pledged to the holder. An order pursuant to this subsection shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceeding with respect to the electric utility, assignee, or issuer;

(e) The commission shall maintain segregated records which reflect the date and

time of receipt of all filings made pursuant to this subsection. The commission may provide that transfers of intangible transition property be filed in accordance with the same system.

7. A sale, assignment or other transfer of intangible transition property in a transaction approved in a transitional funding order, unless otherwise provided in the documents governing such transaction, shall be irrevocable as against the electric utility requesting such transitional funding order and shall be treated as an absolute transfer of all of the transferor's rights, title, and interest in, to, and under such intangible transition property. Any such sale, assignment or other transfer is perfected as against third persons, including judicial lien creditors, when the sale, assignment, grant, or other transfer has become effective as between the parties, and shall place such intangible transition property beyond the reach of the transferor or electric utility and their respective creditors, as in a true sale, and not as a pledge or other financing, of such intangible transition property. The characterization of a sale, assignment, grant, or other transfer as an absolute transfer or vesting and the corresponding characterization of the transferee's property interest shall not be defeated or adversely affected by, among other things, any of the following: the commingling of revenues arising with respect to intangible transition property with funds of the electric utility or other persons, including the assignee or issuer; the granting to holders of transition bonds a preferred right to the intangible transition property, whether direct or indirect; the provision by the electric utility, assignee, or issuer of any recourse, collateral, or credit enhancement with respect to transition bonds; the retention by the assigning party of a partial interest in any intangible transition property, whether direct or indirect, or whether subordinate or otherwise; or the electric utility's responsibilities for collecting instrument funding charges and any retention of bare legal title for the purpose of such collection activities. The treatment of any such sale, assignment, grant, or other transfer for federal tax purposes shall be governed by applicable law without regard to this section.

8. The commission shall have exclusive jurisdiction over any dispute arising out of the obligations to impose and collect instrument funding charges. This section does not prevent a holder from bringing an action in any court or from exercising any other legal or equitable remedy against an electric utility for failure to distribute collections of instrument funding charges or for any other failure by the electric utility to perform the contractual obligations agreed to by the electric utility under any documents pertaining to, or executed in connection with, a transition bond issued by or on behalf of the electric utility. An electric utility, issuer, assignee or holder is expressly permitted to bring an action against a retail customer or other person for nonpayment of any instrument funding charges constituting a part of the intangible transition

property then held by the electric utility, issuer, assignee or holder. Any such action shall be subject to any and all applicable consumer credit protection laws and other laws relating to origination, collection, and reporting of consumer credit obligations.

9. A sale, grant, pledge, assignment, or other transfer of intangible transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes. A transfer of intangible transition property shall be treated as a pledge or other financing for state tax purposes, including state and local income and franchise taxes, unless the documents governing such transfer specifically state that the transfer is intended to be treated otherwise.

393.999. 1. In a municipality served by a municipal utility, electric competition in electric supply service shall continue to those customers in any territory annexed by a municipality if such competition exists to those customers in such territory on the date of annexation. In the case where the municipal utility has not elected to participate fully in competition in electric supply service, the municipal utility shall not be subject to the provisions of sections 393.960 to 393.1002 other than the provisions of this section and subsections 1, 2 and 3 of section 393.978 and shall not sell electric supply services to retail customers outside the municipal utility's service area. The municipal utility shall be required to provide all certified electric suppliers open access, for the purpose of serving the customers eligible to receive competitive service on the date of annexation, to the municipal utility's distribution and transmission services in the annexed territory on a nondiscriminatory basis at fair and reasonable rates equal to the unbundled portion of its rates which the municipal utility charges to its retail customers that do not have a choice of electric supplier. Any electric supplier 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 utility denied the electric supplier access to the municipal utility's distribution services in the annexed territory on a nondiscriminatory basis at fair and reasonable rates, for the purpose of serving customers eligible to receive competitive service on the date of annexation, the court may enjoin the municipal utility from further denial of such access and may order the municipal utility to pay the competitive electricity provider any damages arising from the denial.

2. The governing body of a municipal utility may, by appropriate official action and at its sole discretion, decide when, or if, such municipal utility shall offer retail customer choice to one or more of its customers. The governing body of a municipal utility may choose, after deciding to offer retail customer choice to all customers of all customer classes, to offer electric supply service at retail outside its service area to

customers eligible to receive such service.

3. A municipal utility that decides to offer retail customer choice to its customers shall develop a plan. The plan shall promote the development of an efficient and effective competitive market for electric supply services. The municipal utility shall provide open access to its distribution system on a nondiscriminatory basis at fair and reasonable rates to all entities eligible to be an electric supplier. The plan shall at a minimum contain the following:

(1) Unbundled rates for distribution and for electric supply service to customers taking distribution service;

(2) Transition charges, if any, for any customer that chooses to take retail electric service from another entity. Transition charges shall only recover those costs that were incurred to provide generation service which were being recovered under traditional bundled rates and which are unlikely to be recovered through competitive market rates for generation service. The transition charges shall be allocated among the customer classes in the same proportion as revenue generated by each such customer class;

(3) The code of conduct shall contain provisions to prevent anti-competitive activities that may result from the municipal utility providing both competitive and noncompetitive services, including provisions that address the following:

(a) Prevention of undue preference, advantage or discrimination in the provision of distribution service;

(b) Nondiscriminatory processing of same or similar requests by a nonaffiliated electric supplier for a service or for information;

(c) The prevention of cross subsidization between the competitive or noncompetitive services offered by the municipal utility; and

(d) Notice to consumers;

(4) A statement on the scope of retail electric supply activities that the municipal utility intends to undertake.

4. The municipal utility shall notify the commission of its intent to offer retail customer choice to its customers and shall file a copy of its initial plan, for informational purposes only, after the plan has been approved by the governing body of the municipal utility. If the municipal utility intends to provide retail electric service to customers outside its service area, it shall file with the commission a statement that it agrees to pay, in-lieu of taxes, an amount equivalent to the state and local taxes paid by other electric suppliers on electric supply service sold outside its service area.

5. The municipal utility shall amend the plan when conditions warrant and provide a copy of the amended plan, for informational purposes only, to the

commission.

6. If a municipal utility has elected to participate in competition in retail sales of electric supply service for any customer or customer class, the municipal utility shall not subsequently elect to discontinue participation in competition in retail sales of electric supply service.

7. If a municipal utility offers electric supply service to a retail customer outside its service area before offering retail choice to all of its customers, it shall be required to forfeit all revenues obtained from such retail customer to the electric utility or rural electric cooperative in whose service area such retail customer resides, absorb any costs it has incurred to serve the retail customer, and cease providing such service to the retail customer. An electric utility or rural electric cooperative shall have a cause of action in the circuit court of any county in which the municipality is located to enforce the provisions of this subsection, and shall also be entitled to recover its attorneys fees and costs incurred in enforcing the provisions of this subsection.

393.1002. 1. Terms used in sections 393.960 to 393.1002 that are not defined in section 393.902 but are defined in section 386.020, RSMo, shall have the meanings set forth in section 386.020, RSMo.

2. The commission shall have jurisdiction in accordance with the provisions of section 386.390, RSMo, to entertain and dispose of any complaint against any electric supplier alleging that:

(1) The electric supplier has violated or is in nonconformance with sections 393.960 to 393.1002, except that matters arising between electric suppliers, electric utilities, rural electric cooperatives or municipal utilities involving the lawfulness of the provision of service, or compliance with the requirements of subsection 11 of section 393.972, and this section, shall be within the exclusive jurisdiction of the courts in this state;

(2) That the electric supplier has failed to provide service in accordance with the terms of its contract or contracts with such customer or customers;

(3) That the electric supplier has violated or is in nonconformance with tariffs for distribution, transmission or control area services, or agreements with any electric utility, municipal utility or rural electric cooperative, from whom it is taking such service.

Upon complaint by a retail customer, the commission may also investigate any abandonment of service and require the electric supplier that was serving the retail customer prior to such abandonment to reimburse the retail customer for any charges it incurred as a result of receiving temporary electric supply service from the electric utility.

3. Except to the extent modified or supplemented by the provisions of sections

393.960 to 393.1002, or where the context clearly renders such provisions inapplicable, the other chapters and sections of chapters 386, RSMo, and this chapter pertaining to public utilities, public utility rates and services and the regulation thereof, are applicable to the tariffed services electric utilities provide prior to December 31, 2004, and to distribution services.

4. The provisions of sections 386.300, 386.310, 386.370, 386.390, 386.410, 386.560 to 386.600 and 393.297 to 393.302 shall apply to electric suppliers and electric supply services, but sections 393.130, 393.140, 393.150, 393.155, 393.170, 393.180, 393.190, 393.200, 393.210, 393.220, 393.230, 393.240, 393.250, 393.275, 393.280, and subsections 2 to 5 of section 393.270 shall not apply to electric supply services.

5. Review of commission decisions made pursuant to sections 393.960 to 393.1002 shall be governed by the provisions of sections 386.500 to 386.550, RSMo, except as provided in subdivision (4) of subsection 6 of section 393.981.

6. Despite the provision of section 1.140, RSMo, the provisions of sections 393.903, 393.904, 393.907, subdivision (8) of subsection 5 of section 393.984, and sections 393.993 and 393.999 shall be nonseverable, and if any of these provisions is for any reason held invalid, such decision shall invalidate all of the remaining provisions of all such sections.

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