

FIRST REGULAR SESSION

# SENATE BILL NO. 499

91ST GENERAL ASSEMBLY

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INTRODUCED BY SENATORS MATHEWSON, GOODE, CHILDERS, STAPLES AND STOLL.

Read 1st time February 15, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0821S.031

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## AN ACT

To repeal sections 394.020, 394.080, 394.120, 394.130, 394.200, 394.312 and 394.315, RSMo 2000, relating to retail electric choice, and to enact in lieu thereof twenty-three new sections relating to the same subject.

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

Section A. Sections 394.020, 394.080, 394.120, 394.130, 394.200, 394.312 and 394.315, RSMo 2000, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 393.1100, 393.1103, 393.1106, 393.1109, 393.1112, 393.1115, 393.1118, 393.1121, 393.1124, 393.1127, 393.1130, 393.1133, 393.1136, 393.1139, 393.1142, 393.1145, 394.020, 394.080, 394.120, 394.130, 394.200, 394.312 and 394.315, to read as follows:

**393.1100. Whereas it is the belief of the general assembly that there may be benefits to the citizens of this state to purchase electric power and energy on a competitive market basis, the citizens shall be allowed to choose their supplier of electric power and energy in accordance with the sections of this chapter and any rules and regulations promulgated by the Missouri public service commission. Therefore Sections 393.1100 to 393.1145 shall be known as "The Electric Utility Restructuring Act".**

**393.1103. As used in sections 393.1100 to 393.1145, the following terms mean:**

- (1) "Affiliated with", ownership of a controlling interest in or by another entity;**
- (2) "Aggregate", to combine the loads of retail customers for the purpose of purchasing electric power and energy;**
- (3) "Aggregator", any entity that, as an intermediary, puts together customers**

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

**into a buying group for the purchase of electric power and energy;**

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

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

**(6) "Competitive electric provider", a municipal electric utility which has elected to participate in the sale of electric power and energy on a competitive market basis, an electrical corporation, an electric cooperative or a person, partnership, limited liability company, corporation, or any other entity authorized pursuant to this chapter to sell electric power and energy to retail consumers on a competitive market basis;**

**(7) "Competitive market basis", the purchase of local electric service from a local electric service utility and the retail purchase of electric power and energy by:**

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

**(b) Taking service directly under the terms of a bilateral contract with an competitive electric provider; or**

**(c) Taking service through an aggregator or broker who will negotiate directly with one or more electric power and energy suppliers on behalf of the retail consumer;**

**(8) "Competitive transition charge", a charge established pursuant to section 393.1124;**

**(9) "Electric cooperative", any cooperative formed pursuant to the provisions of chapter 394, RSMo;**

**(10) "Electric distribution system", the poles, wires, transformers, controls and all other operating equipment used by an electric service provider to deliver electric power and energy to end use customers which are operated at voltages below 35,000 volts;**

**(11) "Electric service provider", an electric corporation, municipal electric utility or electric cooperative;**

**(12) "Electrical corporation", includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;**

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

**(14) "High-level radioactive waste":**

**(a) Irradiated reactor fuel;**

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

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

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

**(16) "Local electric service", the transmission and distribution of electric power and energy and all ancillary services such as metering, emergency back-up supply of electric power and energy and all other services related to the transmission, distribution and sale of electric power and energy which are not directly related to the generation of electric power and energy or its transmission and delivery to the distribution system of the local electric service utility;**

**(17) "Local electric service utility", an electrical corporation engaged in the furnishing of local electric service to consumers under a certificate of convenience and necessity issued by the commission, any municipal electric distribution system or any electric cooperative;**

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

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

**(20) "Market power", the ability to impose on customers a significant price increase on a product or service in a market above the price level which would prevail in a competitive market or exclude competition in the relevant market;**

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

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

**(23) "Power and energy charge", shall be the total charge by a competitive electric provider for electric power and energy as delivered to the distribution system of the local electric service utility for the retail consumer including all generation and**

**transmission charges and other charges to be paid to the competitive electric provider;**

**(24) "Recoverable competitive transition costs", competitive transition costs that an electric service supplier is allowed to recover pursuant to section 393.818;**

**(25) "Regional transmission organization" or "RTO", an organization which plans and operates a transmission system over which it has jurisdiction and which has been approved by the FERC as an RTO that complies with FERC criteria;**

**(26) "Regulated basis", the retail purchase of electric service for both the electric power and energy and local electric service from an electrical corporation, electric cooperative or municipal utility under the rates, terms and conditions set by the regulatory body of the electrical corporation, municipal utility or electric cooperative;**

**(27) "Regulatory body", for an electrical corporation, the public service commission, for an electric cooperative, its board of directors, and for a municipal electric utility, its governing body;**

**(28) "Retail consumer", the ultimate consumer of electric power and energy, irrespective of the quantity purchased;**

**(29) "Standard offer", an open offer for service by a competitive electric provider to all retail consumers who qualify for service under the terms and conditions of that offer;**

**(30) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure;**

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

**(32) "Transmission utility", any electric service provider engaged in the furnishing of transmission services.**

**393.1106. 1. Beginning on July 1, 2004, all retail consumers of electric service receiving service from municipal electric utilities which have elected to participate in the sale of electric power and energy on a competitive market basis, from an electric cooperative or from an electrical corporation shall be permitted to choose the supplier or suppliers of their choice for electric power and energy, under one or more of the following means:**

**(1) Taking electric power and energy directly from a competitive electric provider, including the incumbent electric service provider, on a competitive market basis; or**

**(2) Taking electric power and energy from the incumbent electric service provider on a regulated basis.**

**2. All retail consumers receiving service at a structure on July 1, 2004, and the initial customer for any new structure to which power and energy is first supplied after July 1, 2004, shall have the choice to receive electric power and energy on either a competitive market basis or on a regulated basis. Should the retail consumer choose to purchase electric power and energy on a competitive market basis, the retail consumer's purchase shall be made in writing in a standardized form approved by the commission applicable to all sales of electric power and energy on a competitive market basis. Upon completing a sale of electric power and energy to an eligible retail consumer, the competitive electric provider shall furnish the local electric service utility providing service to the structure to which the electric power and energy is to be delivered, a copy of the written purchase form as required in this section and shall provide the local electric service utility with all information needed to properly bill and invoice the retail consumer for the retail consumer's power and energy charge. The local electric service utility shall be given thirty-one days notice of any change in the supplier of electric power and energy at any structure including changes from one competitive electric supplier to another.**

**3. Those retail consumers who do not elect to purchase electric power and energy on a competitive market basis at a given structure shall continue to purchase their electric power and energy for that structure from their existing electric provider on a regulated basis.**

**4. Once a retail consumer has elected to buy electric power and energy for any structure on a competitive market basis, that retail consumer may not at anytime thereafter buy electric power and energy for that structure on a regulated basis except under rules or tariffs approved by the regulatory body of the electric service provider serving the structure. Subsequent retail consumers at that structure may purchase electric power and energy on either a competitive market basis or a regulated basis as they may elect. If the retail consumer's initial choice is service on a regulated basis, the retail consumer may subsequently choose to purchase electric power and energy on a competitive market basis.**

**5. Local electric service for an existing structure for which the retail consumer has elected to purchase electric power and energy on a competitive market basis shall be provided by the current electric service provider. New structures will be served as provided in section 393.1115. The local electric service provided to such structure shall be on a nondiscriminatory basis with regard to whether the retail consumer purchases power and energy from the local electric service provider or not and at such price and**

**under such terms and conditions, as the local electric service utility provides to its retail consumers to whom it is providing service on a regulated basis.**

**6. The competitive electric provider shall cause the contracted amounts of power and energy to be delivered to the local electric service utility. The electric power and energy shall be delivered to the same locations, on the same basis including quality of service, quantity, allowing for line loss and power pool requirements, and system operating parameters as is all other electricity provided to the local electric service utility's system. The system requirements shall be set by the local electric service utility on a nondiscriminatory basis. Each local electric service utility shall become a member of a control area and shall at a minimum operate its system and require system parameters as required by the control area operator to permit efficient and reliable operation of the integrated electric transmission grid. Local electric service utilities shall as much as reasonably possible operate their distribution systems at or near a unity power factor. All contracts for the purchase and sale of electric power and energy on a competitive market basis shall quote the cost of the electric power and energy charge as delivered to the local electric service utility's distribution system.**

**7. The local electric service utility shall be paid a fee by retail consumers receiving electric power and energy on a competitive basis for each retail consumer's share of the local electric service utility's costs in maintaining necessary backup, peaking and emergency power availability for retail consumers. This availability fee shall be in addition to charges for any power actually delivered under backup, peaking or emergency conditions. The price to be charged for backup, peaking or emergency power actually delivered shall be the higher of the wholesale market price for electric power and energy at the time of delivery plus ten percent or the rates then in effect by the local electric service utility to its retail consumers receiving service on a regulated basis plus any penalty allowed by commission rule or other law or statute. In the event that the local electric service utility is unable to supply backup, peaking or emergency power, the local electric service utility shall not as a result of this chapter have any liability to any retail consumer, greater than the local electric service utility's liability to its retail consumers receiving service on a regulated basis unless the local electric service utility and the retail consumer agree in writing to some alternate arrangement. If the balance of supply and demand of the local electric service utility's system requires the curtailment or interruption of service to any retail consumers, the local electric service utility may curtail or interrupt service to competitive retail consumers on the same basis as it does to its regulated retail consumers without any liability or responsibility as a result of this chapter.**

**8. All existing contracts for the wholesale or retail supply of electric power,**

energy or service shall remain in full force and effect without regard to this chapter for the full term of the agreement. All existing agreements entered into by competing electric suppliers pursuant to section 394.315, RSMo, and approved by the commission shall unless their terms specifically provide otherwise, be deemed to apply only to the provision of local electric service.

9. The sale of electric power and energy on a competitive market basis shall not be subject to rate regulation by the commission.

393.1109. 1. Upon application at any time after August 28, 2001, by any interested person alleging the existence of market power affecting the development or operation of the retail market for power and energy or on its own motion, the commission shall investigate whether there is probable cause to believe that such market power exists. Within ninety days of the application or motion, after notice to the competitive electric provider alleged to have market power, the commission shall issue its report and order stating whether there is probable cause to believe such market power exists.

2. If the commission finds probable cause to believe such market power exists, the competitive electric provider alleged to have such market power shall within ninety days of the effective date of the order submit to the commission a market power analysis consistent with the guidelines, standards and methods issued or used by the United States Department of Justice or the Federal Trade Commission including but not limited to methods for defining the relevant market, measuring market concentration, identifying barriers to entry and assessing the existence of market power. Such analysis shall address the availability of transmission import capability, contractual or other mechanisms that would affect market concentration and such other factors as the commission specifies in its order.

3. After the submission of the market analysis, the commission shall hold a hearing to determine if in fact market power exists and is adversely affecting the development or operation of the retail market for power and energy. If the commission finds that market power exists and the retail market for power and energy is being adversely affected it shall issue its report and order so finding. The affected competitive electric provider shall then within sixty days, unless the commission grants an extension of time, file with the commission a proposed market power mitigation plan. Such plan may include without limitation, price caps, refunds, prohibition against selling in the affected market, transitional standard offers, the auction of generation to be sold under power contracts or the auction of transmission or other services to remove or curtail the market power. After notice and hearing considering such plan, along with any alternative plans proposed by other parties to the proceeding, the commission shall order such competitive electric provider to implement

those measures determined by the commission to be in the public interest necessary to mitigate the market power. Such mitigation measures shall be implemented by such date as may be ordered by the commission. If the commission determines that no mitigation plan proposed or considered pursuant to this section will adequately mitigate market power, the commission may refer its findings and recommendations to appropriate state or federal authorities, file actions under applicable laws in any court of competent jurisdiction or take such other actions as are authorized by law.

4. Nothing in this section shall in any way limit the obligations or liability under state or federal antitrust or consumer protection laws or regulations of a competitive electric provider for conduct arising after August 28, 2001. A proceeding pursuant to this section shall not be a condition precedent to the bringing of an action under state or federal antitrust or consumer protection laws or regulations.

5. Upon application filed by any interested person or on its own motion, the commission may order after notice and hearing, that one or more markets for which it has issued an order pursuant to this section are subject to effective competition. After such finding, the commission may revoke or revise any market power mitigation measures previously ordered to the extent such revocation or modification is consistent with the maintenance of effective competition.

6. Before January 1, 2005, and thereafter before January fifteenth of each year, the commission shall report to the general assembly on the progress of the development of competition in electric markets and the impact, if any, of competition and electric industry restructuring on retail customers in Missouri. The report shall include:

- (1) An assessment of the impact of competition on the rates and availability of electric service for each class of retail customers;
- (2) A summary of commission actions over the preceding year that reflect changes in the scope of competition in regulated electric markets;
- (3) An analysis of the effect, if any, of competition on the reliability of the electric system and on the quality of service provided to customers; and
- (4) Recommendations to the general assembly for further legislation that the commission finds appropriate to promote the public interest in a competitive electric market.

393.1112. The following entities are authorized to engage in the business of selling electric power and energy, at retail within the state of Missouri, on a competitive market basis:

- (1) Electrical corporations which are holders of certificates of convenience and necessity issued by the commission;
- (2) Electric cooperatives;



**(3) Municipal electric systems; and**

**(4) Any person, partnership, limited liability company, corporation or other entity who complies with the requirements of this act to become a competitive electric provider.**

**393.1115. 1. On or before one hundred twenty days after August 28, 2001, all local electric service utilities shall file with the commission maps of their electric distribution systems as they existed in service on August 28, 2001. After July 1, 2004, except for agreements as provided in subsection 2 of this section or as provided in agreements approved by the commission pursuant to section 394.312, RSMo, each local electric service utility shall only provide local electric service to new structures which are closer to its electric distribution system than to the distribution system of any other local electric service utility as shown on the collected maps of the various distribution systems as filed with the commission. Any facilities placed in service after August 28, 2001, shall not be used to determine which local electric service utility is closest. Provided however any local electric service utility may provide local electric service to any new structure located within one thousand three hundred twenty feet of the utility's distribution facilities as they existed on August 28, 2001. Once local electric service is commenced to a structure, local electric service shall be governed by the provisions of section 91.393, RSMo, section 393.106 and section 394.315, RSMo. The local electric service utility closest to any new structure shall be required to make local electric service and the sale of electric power and energy on a regulated basis available to the new structure. The local electric service utility shall be entitled to a reasonable fee to extend service to the structure and shall be entitled to reasonable assurances that the local electric service utility's charges will be paid by the consumer. The developer of a platted subdivision, industrial park or commercial development may contract for service to the entire platted subdivision, industrial park or commercial development with any local electric service utility that would otherwise be eligible to serve any structure in the platted subdivision, industrial park or commercial development. Once the local electric service utility has contracted with the developer to provide such service it may serve the entire platted subdivision, industrial park or commercial development even though absent such contract the local electric service utility would otherwise not be authorized to serve all the structures in the platted subdivision, industrial park or commercial development.**

**2. If the retail consumer, the local electric service utility closest to a structure and an alternate local electric service utility agree, service to a structure may be provided by the alternate local electric service utility notwithstanding the fact that it is not the closest local electric service utility.**

**3. There shall be no restriction on the ownership of transmission facilities.**

**4. The regulatory body for each local electric service utility shall establish the appropriate rates for local electric service. In setting rates for electrical corporations, the commission shall consider all actual costs and investments made to provide local electric service plus a reasonable return on investment in setting rates designed to meet the revenue requirements of the electrical corporation without regard to revenue received by the electrical corporation from other sources or current rate levels or rate design.**

**393.1118. 1. All billing and metering of retail sales of electric power and energy shall be done by the local electric service utility providing local electric service to the structure. If any special metering is required to properly determine the retail consumer's power and energy charge from a competitive electric provider, such metering equipment shall be installed, operated, maintained, and owned by the local electric service utility. The cost of such metering shall be paid by the retail consumer as a separate additional charge for the retail consumer's local electric service. The local electric service utility may contract with other entities including competitive electric providers to provide metering and billing services.**

**2. Invoices, statements of account or bills issued by local electric service utilities to retail consumers shall include billing for the electric power and energy delivered by the local electric service provider on behalf of a competitive electric provider. The retail consumers shall pay the local electric service utility which shall then forward payment for the power and energy charge to the competitive electric provider. The local electric service utility shall be entitled to a reasonable handling fee from the competitive electric provider for performing this service.**

**3. On or before July 1, 2004, all invoices, statements of account, or bills for electric service whether on a regulated or a competitive market basis shall list as separate components, the charges for the following services:**

**(1) Electric power and energy;**

**(2) Local electric service;**

**(3) Taxes; and**

**(4) Such other breakdown of costs as the local electric service utility believes will aid in informing retail consumers.**

**4. In the event of the failure of a retail consumer to pay the retail consumer's electric bill in full when due, the local electric service utility shall be authorized to terminate service to the retail consumer. The local electric service utility shall immediately notify the competitive electric provider of the discontinuance of service to the retail consumer. Partial payments shall be applied on a pro rata basis to the**

amounts owed for electric power and energy and for local electric service.

5. The competitive electric provider and retail consumer shall be jointly and severally liable to the local electric service utility for all costs directly incurred as a result of the failure of the competitive electric provider to deliver sufficient quantities of electric power and energy to meet the terms of the contract between the retail consumer and the competitive electric provider.

393.1121. 1. In a municipality served by a municipal utility, competition in retail sales of generation service shall continue in any territory annexed by a municipality if such competition exists in such territory at the time of annexation. The municipal electric utility shall be required to provide all competitive electricity providers open access to the municipal utility's distribution facilities in the annexed territory on a nondiscriminatory basis at fair and reasonable rates. Any competitive electricity provider denied such access shall have a cause of action in the circuit court of the county where the municipality is located or, if the municipality is located in more than one county, the county where the greatest portion of the population of the municipality resides. If the court finds that the municipal electric utility denied the competitive electric provider access to the utility's distribution facilities in the annexed territory on a nondiscriminatory basis at fair and reasonable rates, the court may enjoin the municipality from further denial of such access and may order the municipality to pay the competitive electric provider any damages arising from the denial including court cost and reasonable attorney fees.

2. A municipal electric utility shall not participate in competition in retail sales of electric power and energy unless the governing body of the municipality owning or operating the utility elects to participate fully in competition for the sale of electric power and energy. If the governing body chooses to fully participate, the municipal electric utility shall be subject to all of the provisions of sections 393.1100 to 393.1145 in the same manner as any other local electric service provider and may sell electric power and energy to any retail consumer eligible to receive service from a competitive electric provider, regardless of the retail consumer's location; and any other competitive electric provider may sell electric power and energy to any resident of the municipality. Upon the election to participate in the sale of electric power and energy on a competitive market basis, the municipal utility shall notify the commission of the election to participate in the sale of electric power and energy on a competitive basis and begin participating in the competitive market on July 1, 2004, or ten days from the date the municipality notifies the commission, which ever is later.

3. If a municipal electric utility has elected to participate in competition in retail sales of electric power and energy as provided by subsection 2 of this section, the

**municipal utility shall not subsequently elect to discontinue participation in competition in retail sales of electric power and energy.**

**4. If a municipal utility does not elect to participate fully in competition in retail sales of electric power and energy as provided by subsection 2 of this section, the utility shall not sell electric power and energy on a competitive market basis to retail consumers outside the municipal's territorial limits.**

**393.1124. 1. Following the process established in this section, local electric service providers competing in the retail sale of electric power and energy may remove assets from their regulated rate base and recover a reasonable amount of prudently incurred, net, verifiable competitive transition costs. The amount of recovery shall be determined pursuant to this section.**

**2. Each local electric service provider, and any successor, shall have the duty to serve the electric power and energy needs of its regulated basis consumers. Each local electric service provider shall also have the duty to mitigate competitive transition costs.**

**3. Each local electric service provider, excluding municipal electric systems whose governing bodies have not elected to participate in the competitive market for electric power and energy, shall file with the commission a resource plan within six months of the passage of this act defining the electric generating resources it will use to satisfy its obligations to its regulated consumers. The plan shall specify which assets are to be dedicated to the regulated basis retail consumers and which are free to be used in the competitive market. The plan shall be so constructed that the cost of the generation included in the resource plan as a whole shall be equal to the average cost of all of the local electric service provider's generating resources, including contracted resources, as existed prior to adoption of or modification to the resource plan.**

**4. If and as required by retail consumers electing to receive service on a competitive basis, an electrical corporation may request permission from the commission to delete assets from the electrical corporation's rate base for service to regulated basis retail consumers. If approved by the commission, assets may be deleted from the regulated rate base on a percentage or partial basis. The electrical corporation may, if appropriate, file with the request for such permission a plan for recovery of anticipated competitive transition costs. The recovery plan shall document anticipated competitive transition costs, mitigation proposals and offsetting increases in the value of other generating assets. Local electric service providers which are not electrical corporations may at the direction of their regulatory body also designate assets as being removed from dedication to serve regulated basis retail consumers and adopt a plan for recovery of anticipated competitive transition costs. Any such plan**

shall be filed as a public record with the commission but shall not be subject to commission approval.

5. After evidentiary hearing, the commission shall determine and publish a recovery plan for any electrical corporation submitting a plan. Commission determination shall occur within nine months after the electrical corporation files its proposed recovery plan. If the commission fails to determine a recovery plan within the nine months, the plan as filed by the electrical corporation shall be deemed approved. Electric service providers which are not electrical corporations shall have their transition plans determined by their regulatory bodies and shall file the approved plans with the commission within thirty days after the plan is approved by the electric service provider's regulatory body.

6. (1) A recovery plan may incorporate a competitive transition charge, which shall be allocated to competitive basis retail consumers of the electric service provider as provided in subdivision (2) of this subsection. A competitive transition charge shall be imposed on all retail consumers receiving services under a special contract that is entered into or renewed after August 28, 2001.

(2) The recovery plan shall establish net, nonmitigatable competitive transition costs and a recovery period designed to recover such costs expeditiously, provided that the recovery period and the amount of qualified transition costs shall yield a competitive transition charge which shall not cause the total price for electric service, including electric power and energy, transmission service and local electric services, for any retail consumer class receiving electric power and energy from the electric service provider to exceed the cost per kilowatt-hour paid on July 1, 2004. The transition charge shall be identical for all retail consumers of the same consumer class, whether the consumer is receiving electric power and energy on a competitive market basis from the electric service provider or from another competitive electric provider.

(3) An electric service provider may make an exception to the limitations set forth in subdivision (2) of this subsection only in the following circumstances:

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

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

(c) The electric service provider seeks to increase its allowance for nuclear decommissioning costs, spent fuel costs, or the Department of Energy enrichment

**service costs to reflect new information not available at the time the electric service provider's existing rates were determined, and such costs are not recoverable in the competitive electric power and energy market and are not covered in the competitive transition charge, and such costs would not allow the electric service provider to earn a fair rate of return.**

**(4) No exception shall be applied by any electrical corporation except after commission approval following an evidentiary hearing.**

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

**8. In determining a competitive transition cost recovery plan the regulatory body shall take into account:**

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

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

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

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

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

**(6) The effects on the costs of regulated rate customers;**

**(7) For an electrical corporation, if the electrical corporation had the discretion to determine whether to incur or mitigate the costs, the conduct of the electrical corporation with respect to the costs of the assets and obligations when compared to other utilities with similar obligations to serve the public; and**

**(8) The effects on the development of a competitive market for electric power and energy.**

**9. Competitive transition costs shall be determined on a net basis, be verifiable, be reconciled to actual electricity market conditions from time to time and shall include transmission and distribution assets and may include assets of another entity committed by all requirements contracts to the electric service provider. In the instance where an**

**electrical corporation acquires another electric utility, competitive transition costs shall be allocated to each utility participating in such acquisition by the same methodology as each participating utility's generating plant in service was allocated to each participating utility prior to the acquisition.**

**10. Costs arising pursuant to prudently incurred purchase power contracts or associated with any buy-out, buy-down or renegotiation of the contracts shall be eligible for recovery in competitive transition recovery charges.**

**11. Any recovery of competitive transition costs shall be through a nonby-passable, nondiscriminatory, appropriately structured charge that is fair to all consumer classes, lawful, constitutional, limited in duration, and consistent with the promotion of fully competitive markets and, unless the regulatory body determines another charge is more appropriate, shall be through per kilowatt and/or kilowatt hour charge on all sales to competitive basis retail consumers. The charges shall not apply to the exercise of any competitive alternative that existed prior to August 28, 2001, including, but not limited to, the installation of new self-generation or co-generation equipment, or the expansion of existing self-generation or co-generation equipment.**

**12. Any competitive transition cost recovered through an electrical corporation's competitive transition charges shall be used solely for the purpose of reducing such electrical corporation's related competitive transition costs.**

**13. In the instance where an electrical corporation provides electric power and energy service in Missouri and another state or states, competitive transition costs shall be allocated to the Missouri jurisdiction by the same methodology as the recipient utility's generating plant in service was allocated to the Missouri jurisdiction in the electrical corporation's last rate proceeding before the commission, or other method approved by the commission.**

**14. The commission, upon its own motion when evidence of need is apparent, or upon application by an electrical corporation or an electrical corporation's successor, may, after hearings, review and determine the remaining, if any, recoverable competitive transition costs for any electrical corporation under commission jurisdiction. Such review may reconcile the difference between actual and expected competitive prices for electricity. Any over-recovery or under-recovery may be incorporated into a revised competitive transition charge to be applied prospectively.**

**15. Transition cost recovery rates by municipal electric systems and electric cooperatives shall be set by the regulatory body for such entities. In the event that a retail consumer disputes the amount of the transition cost recovery charge of a municipal electric utility or rural electric cooperative, the retail consumer may seek judicial review and determination of the reasonableness of the transition cost recovery**

charge by the municipal electric system or electric cooperative.

**16. In all events the transition cost recovery charges by retail consumers class shall be nondiscriminatory as between retail consumers of the same class and similar usage.**

**393.1127. 1. Before January 1, 2004, the commission shall adopt rules and regulations to ensure that every customer who receives a proposal to purchase power and energy on a competitive market basis is given meaningful information with respect to the cost of that power and energy by being provided a required disclosure form. The components of such disclosure form shall be set by the commission to adequately inform consumers. Separate components of the disclosure form shall include, but not be limited to:**

- (1) The name of the seller;**
- (2) The location where the power and energy will be generated and the nature of the technology used to generate the power and energy;**
- (3) The nature of the service provided such as firm, interruptible, time of day or limited time period for delivery;**
- (4) The electric power and energy charge;**
- (5) The term of the agreement;**
- (6) The means by which the customer can cancel or terminate the contract;**
- (7) Any special metering or ancillary services that will need to be provided by local electric service providers or others in order to complete the transaction;**
- (8) Local electric service charges;**
- (9) Competitive transition charges;**
- (10) Taxes; and**
- (11) Such other information as the public service commission concludes is necessary to adequately inform retail consumers of the nature and character of the proposed transaction and to permit retail consumers to easily compare differing proposals.**

**2. The language in the required disclosure form shall be simple and straight forward and designed to be easily understood by retail consumers of ordinary education and experience. The disclosure form must be signed by the retail consumer before any contract for power and energy will be deemed valid and enforceable. Any power and energy delivered by a competitive electric provider without a signed disclosure form shall be considered a gift to the retail consumer who shall have no obligation to pay for such power and energy. Any competitive electric provider who attempts to collect any fee from a retail consumer who has not executed a disclosure form as to that transaction, shall be liable to the retail consumer for all cost incurred by the retail**



**consumer in defending such action, including reasonable attorney fees.**

**3. Before January 1, 2004, the commission shall adopt rules and regulations establishing procedures:**

**(1) To ensure that retail consumers are not switched from receiving service from one competitive electric provider to another competitive electric provider without written confirmation of the customer's intent to make the change;**

**(2) To ensure merchandising and marketing practices are not unreasonably invasive of a retail consumer's privacy including limitations as to the time of day when residential retail consumers can be contacted by telephone;**

**(3) To ensure that retail consumers, local electric service utilities and other competitive electric providers are not harmed by the failure of a competitive electric provider to fully perform its statutory and contractual obligations;**

**(4) For handling of complaints of unauthorized switching of a retail consumer's service from one competitive electric provider to another;**

**(5) For retail consumer billing practices;**

**(6) For investigating disputes between retail consumers and competitive electric providers, marketers, brokers, or aggregators;**

**(7) To institute a complaint mechanism for resolution of such disputes; and**

**(8) To permit consumers and competitive electric providers to meet the documentation requirements of the electric utility restructuring act through the use of facsimile and internet methods.**

**4. Before January 1, 2004, the regulatory body of each electric service provider shall adopt rules and regulations establishing procedures and standards to discontinue a retail consumer's receipt of electric power and energy for the retail consumer's nonpayment and to reconnect the retail consumer's service.**

**393.1130. 1. On or before January 1, 2004, the commission shall adopt rules and regulations establishing standards of conduct for local electric service utilities that are competitive electric providers or that are affiliated with a competitive electric provider, for the purpose of ensuring that:**

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

**(2) All distribution and transmission services offered by the local electric service utility, including any discount, rebate or fee waiver, shall be available to all similarly**

situated retail consumers and competitive electric providers simultaneously and on the same basis, to the extent technically possible, and without undue or unreasonable discrimination;

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

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

(5) The local electric service utility shall process all similar requests for information in the same manner and within the same period of time. The local electric service utility shall not provide information to an affiliated competitive electric provider without a request when information is made available to nonaffiliated competitive electric providers only upon request. The local electric service utility shall not allow an affiliated competitive electric provider preferential access to any nonpublic information regarding the distribution or transmission system or customers taking service from the local electric service utility that is not made available to nonaffiliated competitive electric providers upon request. The local electric service utility shall instruct all of its employees not to provide affiliated competitive electric providers or nonaffiliated competitive electric providers any preferential access to nonpublic information;

(6) The local electric service utility and competitive electric provider affiliated with the local electric service utility shall keep separate books of accounts and records. An electric service provider may elect to operate as both a local electric service utility and a competitive electric provider within the same legal entity, however the local electric service utility and its competitive electric provider functions shall keep separate books of accounts and records and the electric service provider must maintain operational separation between its local electric service utility and competitive electric provider functions.

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

393.1133. 1. A competitive electric provider shall when requested provide proof to the local electric service utility of the ability of the competitive electric provider to

**fulfill its contractual obligations under the conditions established by the local electric service utility.**

**2. A local electric service utility shall not be liable for damages to any current or future retail consumer if a competitive electric provider fails to deliver service in accordance with its contracts with retail consumers.**

**393.1136. 1. In areas of the state served by competitive electric providers, retail consumers shall be entitled to aggregate their electrical loads on a voluntary basis if each retail consumer agrees to do so by a written declaration. Aggregation may be accomplished by private entities, by political subdivisions or on any other basis made available by market opportunities.**

**2. If a political subdivision seeks to serve as an aggregator on behalf of its residential customers, the political subdivision shall offer the opportunity to purchase electric power and energy to all residential customers within the subdivision's jurisdiction. However, if a political subdivision serves as an aggregator, the political subdivision shall not require any retail consumer within the political subdivision's jurisdiction to purchase electric power and energy from the political subdivision.**

**393.1139. 1. On and after July 1, 2004, no competitive electric provider, aggregator or broker shall sell any electric power and energy to a retail consumer for consumption within this state without having first obtained from the commission a license, subject to rules and regulations established by the commission, to engage in business as a competitive electric provider, aggregator or broker. The commission may establish a fee requirement for such license.**

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

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

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

**(a) A requirement that the applicant file with the commission evidence**

satisfactory to the commission that the applicant has financial capacity sufficient to refund deposits to retail consumers in the case of bankruptcy, nonperformance or any other reason; and

(b) A requirement that, when the commission determines necessary, the applicant shall file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing electric power and energy or to provide for uninterrupted delivery of the electric power and energy to the applicants retail consumers;

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

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

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

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

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

4. After notice and an opportunity for hearing in accordance with chapter 536, RSMo, the commission may deny an application for a license to engage in business as a competitive electric provider or may limit, suspend or revoke a license if the action is necessary to protect the interests of the public or to enforce the provisions of sections 393.1100 to 393.1145 or a rule and regulation of the commission.

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

6. A license to engage in business as a competitive electric provider shall be valid

for a term of five years and shall be renewable under the terms and conditions established by the commission and in effect at the time of renewal.

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

**8. Any interested party, including the commission staff, and the office of public counsel, may file a complaint before the commission against any competitive electric provider alleging a violation of statute, rule, regulation or improper business practice. After notice and opportunity for hearing, the commission shall issue its report and order determining whether or not to suspend or revoke the competitive electric provider's license to sell electric power and energy at retail for consumption at structures in this state.**

**9. The commission may adopt rules and regulations prohibiting merchandising and marketing practices which the commission determines after hearing are misleading, confusing, or fraudulent when targeted at consumers of ordinary education and experience.**

**10. Should the commission determine after hearing that any competitive electric provider is engaging in prohibited merchandising or marketing conduct, the commission may seek injunctive relief in the circuit court of Cole County enjoining such prohibited conduct by the competitive electric provider. In addition, any person or entity injured by the conduct of a competitive electric provider as set forth above shall be entitled to such remedies at law or in equity obtainable through a legal proceeding. The venue for such actions may be the circuit court of Cole County or the circuit court of the county where the affected structure is located.**

**11. The provisions of subsections 1 to 8 of this section shall not apply to any competitive electric provider which is also a local electric service utility serving structures located in this state.**

**12. Rules and regulations adopted pursuant to this section:**

**(1) Shall not be unduly burdensome;**

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

**(3) May establish, when appropriate to carry out the provisions of sections 393.1100 to 393.1145, different requirements for licensing competitive electric providers of:**

**(a) Different services; or**

**(b) Similar services to different classes of customers.**

**393.1142. 1. Each electric service provider may join a regional transmission organization, or functional equivalent.**

**2. Each transmission utility that owns and operates a transmission system of 34kv or higher and chooses not to join a regional transmission organization or a functional equivalent, shall:**

**(1) Independently manage and control its transmission facilities;**

**(2) Provide nondiscriminatory access to and use of the transmission system to any other competitive electric provider, provided that said transmission utility has excess capacity. Such access shall be on a first come first served basis;**

**(3) Calculate import capabilities, transmission line loading limits, and other such measures and post or make available such information to all competitive electric providers that request said information;**

**(4) Direct transmission line loading relief and generation redispatch for reliability purposes;**

**(5) Coordinate, and plan the installation of new transmission facilities with the other transmission utilities; and**

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

**393.1145. 1. The commission, in determining that an applicant meets the standards for licensing as a competitive electric supplier set forth in section 393.1139, 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 service providers 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, equivalent education and training or specified years of employment performing a particular work function.**

**2. Because the introduction of competition into the state's electric industry may result in workforce reductions by electric service providers that may adversely affect persons who have been employed by this state's electric service providers in functions**

**important to the public convenience and welfare, the impacts on employees and their communities of any necessary reductions in the electric industry workforce by an electric service provider 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 service provider shall present to its employees or their representatives a workforce reduction plan outlining the means by which the electric service provider 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 service provider serving more than five hundred thousand customers in this state, the electric service provider's contract or agreements with the acquiring entity or persons shall require that the entity or persons hire a sufficient number of nonsupervisory employees to operate and maintain the stations, division or unit by initially making offers of employment to the nonsupervisory employees of the electric service provider'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 electric service provider 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 service provider'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 service provider.**

**4. If an electric service provider 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 service provider's employees who were employed by the electric service provider 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.**

**5. 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, 2001.**

394.020. **As used** in this chapter, unless the context otherwise requires[.];

**(1) "Local electric service", includes the transmission and distribution of electric power and energy and all ancillary services such as metering, back-up supply of electric power and energy and all other services related to the transmission, distribution, and sale of electric power and energy which are not directly related to the generation of electric power and energy and the delivery of that power to the local electric service utility service provider's facilities;**

[1)] **(2)** "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership;

[2)] **(3)** "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic; and

[3)] **(4)** "Rural area" shall be deemed to mean any area of the United States not included within the boundaries of any city, town or village having a population in excess of fifteen hundred inhabitants, and such term shall be deemed to include both the farm and nonfarm population thereof.

394.080. [1.] A cooperative shall have power:

(1) To sue and be sued, in its corporate name;

(2) To have succession by its corporate name for the period stated in its articles of incorporation or, if no period is stated in its articles of incorporation, to have such succession perpetually;

(3) To adopt a corporate seal and alter the same at pleasure;

(4) Except as provided in section 386.800, RSMo, to generate, manufacture, purchase, acquire, accumulate and transmit electric energy, [and] to distribute, sell, supply, and dispose of electric energy [in rural areas to] **and to provide local electric service to** its members, to governmental agencies and political subdivisions, and to other persons [not in excess of ten percent of the number of its members; provided, however, that where a cooperative has been transmitting, distributing, selling, supplying or disposing of electric energy in a rural area which, by reason of increase in its population, its inclusion in a city, town or village, or by reason of any other



circumstance ceases to be a rural area, such cooperative shall have the power to continue to transmit, distribute, sell, supply or dispose of electric energy therein until such time as the municipality, or the holder of a franchise to furnish electric energy in such municipality, may purchase the physical property of such cooperative located within the boundaries of the municipality, pursuant to law, or until such time as the municipality may grant a franchise in the manner provided by law to a privately owned public utility to distribute electric power within the municipality and such privately owned public utility shall purchase the physical property of such cooperative located within the boundaries of the municipality. In case any of the parties to such purchase, as herein provided, cannot agree upon the fair and reasonable price to be paid for the physical property of such cooperative within the municipality, or if either party refuses to negotiate for the sale of such property upon the request of the other, the fair and reasonable value of such property for such purchase shall be fixed by the public service commission upon application of any one or more of the interested parties];

(5) To make loans to persons to whom electric **power and energy or local electric service** is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electric and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and equipment, and to accept or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(6) To make loans to persons to whom electric **power and energy or local electric service** is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

(7) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(8) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights-of-way and easements;

(9) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then-owned or after-acquired real

or personal property, assets, franchises, revenues or income;

(10) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly owned lands, subject, however, to the requirements in respect of the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems;

(11) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

**(12) To own any and all kind of property real, personal, tangible and intangible or otherwise including controlling interest in other entities engaged in businesses the cooperative could not operate directly in its own right;**

[(12)] **(13)** To conduct its business and exercise any or all of its powers within or without this state;

[(13)] **(14)** To adopt, amend and repeal bylaws; and

[(14)] **(15)** To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

[2. In addition to all other powers granted in this section, rural electric cooperatives shall have the power to supply electric energy at retail after August 28, 1989, in cities, towns and villages having a population in excess of fifteen hundred inhabitants under the following conditions:

(1) The cooperative was the predominant supplier of retail electric energy within the city, town or village at the time any official United States Census Bureau "decennial census report" declares the population of such city, town or village to be in excess of fifteen hundred inhabitants;

(2) The city, town or village has granted to the cooperative a franchise to supply electric energy within the city, town or village.

3. In addition, the cooperative shall provide, concurrent with its application to the city, town or village for its initial franchise, written notice of its franchise application to all other providers of electric energy at retail operating within such city, town or village.

4. The provisions of subsections 2 and 3 of this section shall in no way affect or diminish the rights and duties of any city, town or village to grant franchises to electric suppliers in the manner provided by law or of any electrical corporation authorized by law to provide electric service at retail within such city, town or village.

5. Notwithstanding the provisions of subsection 2 of this section, after a public hearing upon a complaint, the public service commission may order that service be provided by another

supplier if it finds that service from another supplier of electricity is in the public interest for a reason other than rate differential. Nothing in this section shall be construed as conferring upon the public service commission jurisdiction over the rates, financing, accounting or management of any electric cooperative.】

394.120. 1. No person shall become a member of a cooperative unless such person shall agree to use electric **power and energy or local electric service** furnished by the cooperative when such electric **power and energy or local electric service** shall be available through its facilities. The bylaws of a cooperative may provide that any person, including an incorporator, shall cease to be a member thereof if he or she shall fail or refuse to use electric **power and energy** made available by the cooperative [or if electric energy shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof]. Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

2. An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

3. Special meetings of the members may be called by the board of directors, by any three directors, by not less than ten percent of the members, or by the president.

4. Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provisions, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

5. Except as herein otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten nor more than twenty-five days before the date of the meeting.

6. Two percent of the first two thousand members and one percent of the remaining members, present in person shall constitute a quorum for the transaction of business at all meetings of the members, unless the bylaws prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

7. Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting shall be exercised. In any event, no person shall vote as proxy for more than two members at any meeting of the members.

394.130. Notwithstanding any other provision of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy to its members may be divided into two

or more voting districts for the purpose of properly distributing its directors over the area in which its members reside **or of properly distributing directors among members receiving different types of services from the cooperative.** In such case the bylaws shall prescribe the manner in which such voting districts shall function in the election of directors at annual meetings.

394.200. 1. Any corporation organized on a nonprofit or a cooperative basis for the purpose of supplying electric **power and energy or local electric service** in rural areas and owning and operating electric transmission or distribution lines in a state adjacent to this state shall be permitted to extend its lines into and to transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state. Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf.

2. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered mail to such corporation at the address thereof specified in such instrument.

3. Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts.

4. Any such foreign corporation may secure its notes, bonds or other evidences of indebtedness by mortgage, pledge, deed of trust or other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, or franchises, located or to be located in this state, and also upon the revenues and income thereof.

394.312. 1. Competition to provide retail **sale of electric power and energy or local electric service, or both,** as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.

2. Such territorial agreements shall specifically designate the boundaries of the electric **power and energy retail sales service area or local electric** service area, **or both,** of each electric service supplier subject to the agreement, any and all powers granted to a rural electric cooperative [by a municipality,] pursuant to the agreement, to operate within the corporate boundaries of [that] **any** municipality, notwithstanding the provisions of section 394.020 and of section 394.080 to the contrary, and any and all powers granted to a municipally owned utility, pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its municipality. Where the parties cannot agree, they may, by mutual consent of all parties involved, petition the public service commission to designate the boundaries of the electric **power and energy retail sales service areas or local electric** service areas, **or both,** to be served by each party and such designations by the commission shall be binding on all such parties. Petitions shall

be made pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity and the commission shall be required to hold evidentiary hearings on all petitions so received. The commission shall base its final determination upon a finding that the commission's designation of electric service areas is in the public interest.

3. The provisions of sections 386.310, RSMo, and 393.106, RSMo, and sections 394.160 and 394.315 to the contrary notwithstanding, before becoming effective, all territorial agreements entered into **[under] pursuant to** the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement, shall receive the approval of the public service commission by report and order. Applications for commission approval shall be made and notice of such filing shall be given to other electrical suppliers pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission.

4. The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved. The commission may approve the application if it shall after hearing determine that approval of the territorial agreement in total is not detrimental to the public interest. Review of commission decisions **[under] pursuant to** this section shall be governed by the provisions of sections 386.500 to 386.550, RSMo.

5. Commission approval of any territorial agreement entered into **[under] pursuant to** the provisions of this section shall in no way affect or diminish the rights and duties of any supplier not a party to the agreement or of any electrical corporation authorized by law to provide service within the boundaries designated in such territorial agreement. In the event any electrical corporation which is not a party to the territorial agreement and which is subject to the jurisdiction, control and regulation of the commission **[under] pursuant to** chapters 386, RSMo, and 393, RSMo, has heretofore sought or hereafter seeks authorization from the commission to render electric service or construct, operate and maintain electric facilities within the boundaries designated in any such territorial agreement, the commission, in making its determination regarding such requested authority, shall give no consideration or weight to the existence of any such territorial agreement and any actual rendition of retail electric service by any of the parties to such territorial agreement will not preclude the commission from granting the requested authority.

6. The commission shall have jurisdiction to entertain and hear complaints involving any commission-approved territorial agreement. Such complaints shall be brought and prosecuted in the same manner as other complaints before the commission. After hearing, if the commission determines that the territorial agreement is not in the public interest, it shall have the authority to suspend or revoke the territorial agreement. If the commission determines that the territorial

agreement is still in the public interest, such territorial agreement shall remain in full force and effect. Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally owned utility, or to amend, modify, or otherwise limit the rights of electrical suppliers to provide service as otherwise provided by law.

7. Notwithstanding the provisions of section 386.410, RSMo, the commission shall by rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements for approval or disapproval. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case. The fees shall be paid to the director of revenue who shall remit such payments to the state treasurer. The state treasurer shall credit such payments to the public service commission fund, or its successor fund, as established in section 33.571, RSMo. Nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any rural electric cooperative or municipally owned utility and except as provided in this section nothing shall affect the rights, privileges or duties of rural electric cooperatives, electrical corporations or municipally owned utilities.

394.315. 1. As used in this section, the following terms mean:

(1) "Permanent service", [electrical] **local electric** service provided through facilities which have been permanently installed on a structure and which are designed to provide **local** electric service for the structure's anticipated needs for the indefinite future, as contrasted with facilities installed temporarily to provide [electrical] **local electric** service during construction. Service provided temporarily shall be at the risk of the [electrical supplier] **local electric service provider** and shall not be determinative of the rights of the provider or recipient of permanent service;

(2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an [electrical supplier] **local electric service provider**. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on a rural electric cooperative to serve new structures on a particular tract of land because it was serving an existing structure on that tract **or to deny the authority of a cooperative to provide local electric service to a structure if the cooperative is otherwise authorized to do so.**

2. Once a rural electric cooperative, or its predecessor in interest, lawfully commences supplying [retail electric energy] **permanent service** to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of [electrical energy] **local electric service** shall not have the right to provide service to the structure [except

as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800, RSMo, and section 394.080, or pursuant to a territorial agreement approved under section 394.312]. The public service commission, upon application made by an affected party, may order a change of suppliers **of local electric service** on the basis that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. The commission's jurisdiction [under] **pursuant to** this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided herein, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative, and except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing cooperatives pursuant to this chapter. [Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred. However, those customers who had canceled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.]

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