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SENATE BILL NO. 501

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS GOODE AND MATHEWSON.

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TERRY L. SPIELER, Secretary.

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AN ACT

To repeal sections 153.030 and 153.034, RSMo 2000, and to enact in lieu thereof ten new sections relating to the transfer of generation assets by electric utilities to affiliated entities and the development of new utility rate options for retail customers.

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

Section A. Sections 153.030 and 153.034, RSMo 2000, are repealed and ten new sections enacted in lieu thereof, to be known as sections 153.030, 153.034, 393.960, 393.963, 393.966, 393.969, 393.972, 393.975, 393.978 and 393.981, to read as follows:

153.030. 1. All bridges over streams dividing this state from any other state owned, used, leased or otherwise controlled by any person, corporation, railroad company or joint stock company, and all bridges across or over navigable streams within this state, where the charge is made for crossing the same, which are now constructed, which are in the course of construction, or which shall hereafter be constructed, and all property, real and tangible personal, owned, used, leased or otherwise controlled by telegraph, telephone, electric power and light companies, electric transmission lines, pipeline companies and express companies shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons.

2. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county commissions, county boards of equalization and the state tax commission are hereby required to perform the same duties and are given the same powers, including punitive powers, in assessing, equalizing and adjusting the taxes on the property set forth in this section as the county commissions and boards of equalization and state tax commission have or may hereafter be empowered with, in assessing, equalizing, and adjusting the taxes on railroad property; and an authorized officer of any such bridge, telegraph, telephone, electric power and light companies,

electric transmission lines, pipeline companies, or express company or the owner of any such toll bridge, is hereby required to render reports of the property of such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, pipeline companies, or express companies in like manner as the authorized officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property.

3. On or before the fifteenth day of April in the year 1946 and each year thereafter an authorized officer of each such company shall furnish the state tax commission and county clerks a report, duly subscribed and sworn to by such authorized officer, which is like in nature and purpose to the reports required of railroads under chapter 151, RSMo, showing the full amount of all real and tangible personal property owned, used, leased or otherwise controlled by each such company on January first of the year in which the report is due.

4. If any telephone company assessed pursuant to chapter 153 has a microwave relay station or stations in a county in which it has no wire mileage but has wire mileage in another county, then, for purposes of apportioning the assessed value of the distributable property of such companies, the straight line distance between such microwave relay stations shall constitute miles of wire. In the event that any public utility company assessed pursuant to this chapter has no distributable property which physically traverses the counties in which it operates, then the assessed value of the distributable property of such company shall be apportioned to the physical location of the distributable property.

5. All distributable property of electric power and light companies shall continue to be assessed, and the values distributed, by the method used during the 2000 assessment year. If any distributable property of an electric power and light company is sold or otherwise transferred to an affiliate of such electric power or light company pursuant to section 393.966 of this act, such sold or transferred property shall be treated as if it were owned by the electric power and light company seller or transferor for purposes of this subsection. Within ninety days after enactment of this provision, the state tax commission shall begin a rulemaking proceeding to adopt rules governing the methodologies to be used in identifying and assessing the distributable property described under this subsection. Such rules shall be consistent with the following criteria:

(1) The distributable property described in this subsection shall be valued in a manner similar to that used under the laws and regulations in effect immediately prior to the enactment of this subsection;

(2) The value of the property described in this subsection shall be allocated in a manner similar to that used under the laws and regulations in effect immediately prior to the enactment of this subsection; and

(3) The valuation and allocation methodologies embodied in such rules shall not

unduly discourage the construction and operation of electric generation capacity in Missouri or unduly increase the electric rates paid by Missouri consumers.

153.034. 1. The term "distributable property" of an electric company shall, **except as otherwise provided in subsection 2 of this section**, include all the real or tangible personal property which is used directly in the generation and distribution of electric power, but not property used as a collateral facility nor property held for purposes other than generation and distribution of electricity. Such distributable property includes, but is not limited to:

- (1) Boiler plant equipment, turbogenerator units and generators;
- (2) Station equipment;
- (3) Towers, fixtures, poles, conductors, conduit transformers, services and meters;
- (4) Substation equipment and fences;
- (5) Rights-of-way;
- (6) Reactor, reactor plant equipment, and cooling towers;
- (7) Communication equipment used for control of generation and distribution of power;
- (8) Land associated with such distributable property.

2. The term "local property" of an electric company shall include all real and tangible personal property owned, used, leased or otherwise controlled by the electric company **and except as provided in this subsection**, not used directly in the generation and distribution of power and not defined in subsection 1 of this section as distributable property. Such local property includes, but is not limited to:

- (1) Motor vehicles;
- (2) Construction work in progress;
- (3) Materials and supplies;
- (4) Office furniture, office equipment, and office fixtures;
- (5) Coal piles and nuclear fuel;
- (6) Land held for future use;
- (7) Workshops, warehouses, office buildings and generating plant structures;
- (8) Communication equipment not used for control of generation and distribution of power;
- (9) Roads, railroads, and bridges;
- (10) Reservoirs, dams, and waterways;
- (11) Land associated with other locally assessed property and all generating plant land;
- (12) Any real or tangible personal property which is used directly in the generation of electric power and which is placed in service after January 1, 2001.**

393.960. Sections 393.960 to 393.981 shall be known as "The Electric Reliability and Economy Act of 2001".

393.963. As used in sections 393.960 to 393.981, the following terms mean:

- (1) "Aggregate", to combine the loads of eligible retail customers for the purpose**

of purchasing electric service;

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

(3) "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, and those services designated as ancillary services by the Federal Energy Regulatory Commission including, but not limited to, reactive supply and voltage control, regulation and frequency response, energy imbalance, and the provision of spinning and supplemental operating reserves;

(4) "Decommissioning costs", all reasonable costs and expenses, as approved by the commission, that are expected to be incurred or are actually incurred in connection with the final disposition of a nuclear power plant and of the structures, systems and components of that plant, or any radioactive or nonradioactive materials associated with the plant, including all costs and expenses expected to be incurred or actually incurred in connection with the preparation for decommissioning and to be incurred prior to or after the actual decommissioning occurs 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;

(5) "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;

(6) "Distribution system", the physical plant used to distribute electricity from a transmission system or other point at which it enters the distribution system to the point or points of delivery, as defined in the electric utility's tariffs, on a retail customer's premises, 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;

(7) "Electric utility", an investor-owned electrical corporation that is a public utility providing utility services as of the effective date of this section, or a successor corporation providing distribution service following such effective date;

(8) "Existing regulatory asset", those assets that were reported, consistent with applicable accounting regulations, by an electric utility as regulatory assets or deferred debits prior to the effective date of this section and are approved by the commission;

(9) "Retail customer", a single person or entity using electric power or energy for

end use purposes at a single premises and does not include aggregated loads of individual retail customers; provided that each person or 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;

(10) "Transmission service", the transportation of electricity over the transmission system;

(11) "Transmission system", those facilities that are subject to the jurisdiction of the Federal Energy Regulatory Commission and used to transmit electricity from the point where the electricity is generated to the points 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.

393.966. 1. An electric utility may, with approval of the commission as provided in this section: implement a reorganization; sell, assign, lease or otherwise transfer all or substantially all of its generation plant and generation-related assets to an affiliated entity at historical net book value and, as part of such transaction, enter into service agreements, power purchase agreements or other agreements with the transferee or other affiliate, 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:

(1) An electric utility that transfers all or substantially all of its generation plant and generation-related assets to an affiliate pursuant to this section shall enter into a power purchase agreement with its affiliate for an initial five-year term sufficient to cover its actual retail load, not including the load associated with those customers served under the tariff required by subsection 2 of section 393.969, plus no more than the maximum reserve margin required by the regional reliability organization to which the electric utility belongs or a successor organization. Such agreement shall provide for successive renewals for minimum three-year terms at rates that are cost-of-service regulated by the Federal Energy Regulatory Commission. If the Federal Energy Regulatory Commission or its successor organization no longer regulates the rates established under the power purchase agreement required by this section on a cost-of-service basis, then the commission shall have the authority to review the cost-of-service rates established by the power purchase agreement required by this section to the extent such agreement remains in effect;

(2) An electric utility that is subject to the commission's jurisdiction and serving retail customers in more than one state, may transfer to an affiliated entity pursuant to this section an allocated portion of the utility's generation and generation-related

assets, provided that such allocation shall be based upon the electric utility's Missouri monthly coincident peak load averaged over the most recent twelve-month period for which data is available, and no approvals of the commission thereafter shall be required for a transfer of the remaining portions of the electric utility's generation or generation-related assets;

(3) An electric utility that transfers generation assets pursuant to this section shall comply with the rate provisions set forth in section 393.969.

2. In order to implement a reorganization and sell, assign, lease or otherwise transfer assets pursuant to this section, an electric utility shall apply to the commission for approval of the proposed reorganization or transaction. The notice shall include all necessary data required by the commission by rule, and shall, at a minimum, include the following information:

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

(2) A description of how the electric utility will meet the requirements of sections 393.969, 393.972 and 393.975;

(3) 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

(4) 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.

3. Upon receipt of an application pursuant to subsection 2 of this section, the commission shall institute and conduct a general rate proceeding for the applying utility. As a part of the proceeding, the commission shall investigate and determine the stranded costs created by the proposed transaction and retail choice for certain customers. Consistent with the requirements of the National Energy Policy Act of 1992, the commission shall allow the transfer of generation plant and generation-related assets pursuant to and under the circumstances described in this section and allow such generation assets to be eligible facilities as defined in 15 U.S.C. 79z-5a only if it determines:

(1) That such transfer will benefit consumers in this state, is in the public interest and does not violate any provision of state law; and

(2) That the power purchase agreement required by this section will benefit consumers and is in the public interest because it will help secure reliable sources of supply for retail consumers now and in the future at a reasonable cost, does not violate

any state law and does not provide the affiliate that is acquiring the generation plant and generation-related facilities with any unfair competitive advantage by virtue of its affiliation or association with the electric utility. In order to make such determination, the commission must also find that it has sufficient regulatory authority, resources and access to the books and records of the electric utility and its affiliates to make the above findings.

4. An affiliate of an electric utility that acquires generation plant and generation-related assets pursuant to this section shall not subsequently transfer such generation assets to an unaffiliated entity without first seeking and obtaining the approval of the commission as provided in this subsection. Such affiliate shall file a notice of the proposed sale or transfer with the commission. The notice shall contain such necessary information as is required by the commission which shall include, at a minimum, an analysis of the effects of such transfer on the availability of power and any charges to be paid by the electric utility under any purchase power agreement that is still in effect and a list of all federal approvals or approvals required from departments and agencies of this state, other than the commission, that the affiliate has or will obtain before implementing the transfer. The commission shall, after notice and hearing, allow the proposed transaction only if it finds that such sale is in the public interest and is likely to provide benefit to the retail customers of the utility.

393.969. 1. An electric utility that files a notice to implement a reorganization and sell, assign, lease or otherwise transfer generation assets pursuant to section 393.966 shall not increase its rates for tariffed services above those that were in effect on January 1, 2001, prior to the end of the fifth year after such notice was given, unless the electric utility also terminates the transaction that was the subject of the notice. Nothing in this section shall preclude the commission from approving the implementation of an alternative to rate-of-return regulation for one or more of the electric utility's tariffed services that has been proposed by the electric utility and found by the commission to be likely to result in identifiable benefits to retail customers.

2. An electric utility that has filed a notice to transfer all or substantially all of its generation plant and generation-related assets pursuant to section 393.966 shall file with the commission, within thirty days of the filing of such notice, a tariff that enables retail customers that meet the criteria stated in subsection 3 of this section to arrange for dedicated power supplies to be acquired and delivered by the utility to the retail customer as set forth in subsection 4 of this section. The tariff shall include the provisions identified in subsection 4 of this section and such other provisions as are deemed necessary for the safe and reliable operation of the interconnected electric transmission system. The tariff shall provide for an effective date of the later of

January 1, 2002, or such date as the electric utility's reorganization or transfer of assets pursuant to section 393.966 is completed. An affiliate of the electric utility shall be allowed to contract for the provision of such dedicated power supplies under the same terms and conditions applicable to other participating suppliers. The commission may review the tariff required by this subsection and may, following notice and hearing, modify such tariff to ensure conformance with this section before or following its effective date, and may allow such tariff to take effect on the effective date if the commission's investigation is not complete.

3. The tariff required by subsection 2 of this section shall apply to those retail customers that are served by the electric utility and that have a maximum hourly electric demand of two megawatts or more as measured over the most recent twelve month calendar period for which data is available and that have a megawatt demand interval meter or will install a megawatt demand interval meter prior to taking service under such tariff. Eligible retail customers may aggregate loads with other eligible customers for the purpose of procuring such dedicated power supplies. Retail customers taking service under the tariff required by subsection 2 of this section must take service under such tariff for all of their electric load served by the electric utility.

4. A tariff filed pursuant to subsection 2 of this section shall include:

(1) A requirement that any participating supplier of electric power and energy be registered with the commission as provided in section 393.981;

(2) A requirement that the participating supplier enter into a power supply agreement, which shall include commercially-reasonable terms for credit and collection with respect to such participating supplier's obligations under such agreement, with the electric utility for the power and energy that will be purchased by the electric utility and then delivered to the retail customer under the tariff and arrange for all applicable transmission and control area services;

(3) A requirement that the participating supplier provide to the electric utility, in electronic form, the data necessary for billing customers taking service under the tariff required by subsection 2 of this section in the format specified by the utility;

(4) The circumstances under which retail customers taking service under the tariff required by subsection 2 of this section may take service under the utility's other tariffs, which may at the utility's option include a notice period of up to thirty days prior to any change, a term of service of at least one year or more for any return to the utility's other tariffed services and a provision that a retail customer may elect service under the tariff required by subsection 2 of this section and return to the electric utility's other tariffed services only one time prior to December 31, 2006, and may not return to the electric utility's other tariffed services after December 31, 2006; and

(5) A provision that allows a retail customer taking service under the tariff required by subsection 2 of this section to procure power and energy directly from the electric utility on a temporary basis in the event that the customer's dedicated source of supply under the tariff required by subsection 2 of this section fails, the electric utility is able to procure a temporary source of supply and the customer is not yet eligible to, or chooses not to, return to the utility's other tariffed services; and requires the retail customer to pay to the electric utility all of the costs it incurs in providing the temporary supply service to the retail customer, including a reasonable broker's fee to compensate the utility for the service of arranging such supply;

(6) Charges for distribution service and, where applicable, transmission services provided to such retail customers, and decommissioning charges. The charges 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; implementation costs; existing regulatory assets, without regard to whether or not such regulatory assets are distribution-related; and billing and metering costs associated with service under the tariff required by subsection 2 of this section and shall also include decommissioning costs where such costs are not recovered through a separate, unbundled charge. Transmission and control area services shall be provided at the same prices, terms and conditions set forth in the electric utility's applicable tariff as approved or allowed into effect by the Federal Energy Regulatory Commission.

5. Retail customers receiving service under the tariff required by subsection 2 of this section shall pay to the electric utility a basic rate consisting of the applicable distribution service charges, transmission service or control area service charges, decommissioning charges, contract rates for power provided by the retail customer's dedicated supplier or where such power is not provided, the costs for temporary supply as set forth in subdivision (4) of subsection 4 of this section and applicable taxes, franchise fees or similar charges. The electric utility shall apply any partial payments received on bills sent to retail customers receiving service under the tariff required by subsection 2 of this section first to the charges for distribution service and decommissioning and next to transmission service. In all other respects, the electric utility's other procedures for credit, collection and disconnection shall apply to such retail customers.

6. The electric utility may, with the consent of a retail customer, issue bills and receive payment in electronic format and shall not in such instance be required to issue a duplicate paper bill. The commission may adopt rules and regulations governing electronic billing and payment, but its failure to do so shall not preclude any customer

from requesting, and the electric utility from providing, electronic billing and payment.

7. The commission shall, prior to December 31, 2001, adopt rules to protect the confidentiality of the data provided by participating suppliers to the utility pursuant to this section.

8. An electric utility may file tariffs with the commission to authorize 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 for experimental programs offered to groups of retail customers possessing common attributes, as specified in the tariff, 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. The establishment of such tariffs 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. Such tariffs shall not go into effect until reviewed and approved by the commission. The commission shall review such tariffs and regulate the rates, terms or conditions of such tariffs and may require that the utility file annual reports detailing the costs and effects of such experiments.

393.972. In the event of a sale, purchase, or any other transfer of ownership pursuant to section 393.966 of one or more Missouri divisions or business units or generating stations or generating units, the electric utility's contract or agreements with the acquiring entity 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 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.

393.975. Each electric utility owning an interest in, or retaining responsibility as a matter of contract or statute for, the decommissioning costs of one or more nuclear power plants and which is transferring or has transferred its interest in such plants pursuant to section 393.966 shall recover such costs through charges approved by the commission for that purpose and shall deposit all amounts collected in its nuclear power plant decommissioning trust fund.

393.978. 1. An electric utility that enters into a power purchase agreement with an affiliated entity pursuant to section 393.966 may file a plan with the commission proposing to attempt to competitively procure power for any portion of its retail load in this state at a cost less than that available under the power purchase agreement and at equivalent levels of reliability, provided that the proposed competitive procurement of power shall not limit the utility's future acquisition of power under, or renewals of, the power purchase agreement entered into pursuant to section 393.966. The commission shall review the plan and enter a final order approving or rejecting the plan. The commission shall approve the plan if it finds that the plan is consistent with all applicable provisions of law and that its implementation is likely to result in identifiable benefits to all classes of retail customers in the state. An electric utility that competitively procures power for the benefit of its customers is entitled to receive reasonable compensation for its efforts, including a reasonable broker's fee.

2. In evaluating competitive alternatives for power supply, the electric utility shall consider all relevant factors, which shall include, at a minimum, price, including rewards or penalties and other direct or indirect costs to the utility; dispatchability; availability; reliability; fuel diversity; flexibility; financial ability of the providing entity and other factors to the extent relevant and applicable. An affiliate of the electric utility may participate in the competitive procurement processes authorized by this section on the same terms and conditions that apply to others participating in that process.

393.981. 1. Any supplier that will be delivering electricity to an electric utility pursuant to the tariff described in section 393.969 shall first register with the commission by filing a written statement of its intent to deliver such electricity and must maintain such registration in order to continue delivering electricity to the electric utility pursuant to such tariff.

2. A supplier that is registering with the commission shall provide such information as required by the commission, which shall include, at a minimum, the following information when and as requested by the commission:

(1) Corporate name, address and most recent annual report;

(2) The name and address of 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;

(3) 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 participation;

(4) A description of the applicant's technical, financial and managerial resources and abilities to comply with all applicable federal, state, regional and industry statutes, rules, policies, practices and procedures for the provision of supply and for the use, operation and maintenance of the safety, integrity and reliability of the interconnected electric transmission system; and

(5) Evidence that the applicant has an office in this state and an agent for service of process.

3. The commission may require periodic updates to the information required by this section and may revoke the registration of any supplier that fails to provide such updates or is found by the commission, after notice and hearing, to not possess the financial, technical or managerial abilities to meet its contractual commitments or 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 or is found to be pricing below cost or market so as to avoid any license tax, franchise fee, sales tax or similar tax or charge that would otherwise apply to charges billed by the electric utility.

4. On or before January 1, 2002, the commission shall adopt rules setting forth in detail the form and required contents for the written statement of intent required for registration and may as part of such rule assess a fee for registration sufficient to cover its administrative costs, expenses and equipment associated with implementing this section.