

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 387

91ST GENERAL ASSEMBLY
2001

1122S.08T

AN ACT

To amend chapter 393, RSMo, by adding thereto two new sections relating to allowing certain electrical corporations to recover certain costs, with an emergency clause.

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

Section A. Chapter 393, RSMo, is amended by adding thereto two new sections, to be known as sections 393.158 and 393.159, to read as follows:

393.158. 1. Notwithstanding any other provision of law to the contrary, each eligible electrical corporation shall be allowed an opportunity, pursuant to this section, to timely recover all of its reasonably and prudently incurred costs of natural gas associated with the production of electricity for its retail customers in eligible plants, and, until one year following the effective date of this section, one hundred percent of and, thereafter, fifty percent of costs associated with the acquisition of electricity for its retail customers as an alternative to producing energy in an eligible plant. The costs subject to recovery shall include the natural gas and the transportation thereof used by the corporation to generate electricity in eligible plants, and the percentage established in this subsection of the costs of electric energy purchased as an alternative to producing energy in an eligible plant and impacted by the cost of natural gas. The cost recovery shall be pursuant to rate schedules designed to specifically recover such costs. Cost recovery for the costs of electric energy purchased as an alternative to producing energy in an eligible plant shall only be permitted if the electrical corporation provides documentation which clearly identifies, in a manner acceptable to the commission, the impact of the cost of natural gas on the purchase price of the electric energy. The commission shall have the authority to approve a recovery

mechanism which shall be set forth in such rate schedules, and shall employ a method similar to the method the commission uses for purchased gas cost recovery by gas corporations, except as provided in this section.

2. Except as otherwise provided in subsection 7 of this section, the rate schedules to implement this recovery mechanism shall be initially established in a general rate proceeding for each individual electrical corporation, except in the case where the commission determines that it would not be in the long-term best interests of ratepayers to implement such a recovery mechanism.

3. After the initial establishment of recovery rate schedules pursuant to subsection 2 of this section, each eligible electrical corporation with natural gas cost recovery rate schedules established pursuant to this section shall file replacement schedules with the commission every six months, regardless of whether it seeks a change, unless it has had such schedules replaced in a general rate case within the most recent six months. Each such filing shall include detailed accounting records sufficient for the commission to determine whether to establish, continue, reduce, or increase the level of such adjustment. Copies of all such filings and accounting records shall also be delivered on the same calendar day to the office of public counsel. The forty-five day period for a ruling under this section shall not begin until such documentation has been delivered by the electrical corporation to both the commission and the public counsel.

4. Filings pursuant to subsection 3 of this section shall not be subject to suspension by the commission. Any filing submitted pursuant to subsection 3 of this section shall be considered on an expedited basis and a ruling shall be made by the commission within forty-five days of the date of filing. The public counsel and any customer shall have standing to intervene in any proceeding pursuant to this section, but such intervention shall not extend the forty-five day period for making a ruling unless the commission determines that an additional period of time, not to exceed thirty days, is required. The revised rate schedules shall become effective immediately upon such ruling, but such rate schedules shall be interim in nature and subject to refund as provided in this section. Applications for rehearing of any order approving such rate schedules for these purposes may be filed within ten days of such ruling, but applications for writs of review shall not be permitted from the denial of an application for rehearing.

5. If the commission finds, upon review of a filing required pursuant to subsection 3 of this section, evidence of the substantial possibility of overearnings on the part of the electrical corporation, the commission shall initiate a general rate proceeding for the electrical corporation in order to implement any rate decreases that

are supported by competent and substantial evidence. The commission shall issue a final ruling in this general rate proceeding within eleven months from the date that the electrical corporation makes a filing permitted by subsection 3 of this section. Any portion of such rate decrease not in excess of the amount of the interim natural gas cost recovery rate ordered as a result of this general rate proceeding shall be retroactive with interest calculated from the date that the interim natural gas cost recovery rate schedules become effective pursuant to subsection 4 of this section. The commission shall determine the manner in which any refunds with interest shall be made to consumers as a result of this general rate proceeding.

6. The commission shall establish and implement a "true-up" mechanism similar to the purchased gas cost recovery by gas corporations, which shall accurately and appropriately remedy any over-collections from previous adjustment periods through a refund procedure which includes interest at the electrical corporation's short-term debt rate. Any such refunds shall be processed during the next available monthly billing cycle. An electrical corporation shall not be entitled pursuant to this section to collect any additional under-collections from previous adjustment periods. The commission shall establish a case for the review of each adjustment period. Such refund case shall be considered on an expedited basis and a ruling shall be made by the commission within thirty days of the date such case is established. The public counsel and any customer shall have standing to intervene in such case, but such intervention shall not extend the thirty day period for making a ruling. The commission's final order in such case shall be subject to judicial review pursuant to section 386.510, RSMo.

7. Provisions of subsection 2 of this section to the contrary notwithstanding, any electrical corporation filing for establishment of rate schedules pursuant to subsection 2 of this section no later than ninety days following the effective date of this section may request, at the time of such filing, emergency establishment of interim schedules pursuant to subsections 3 to 6 of this section. Such schedules shall be interim in nature and subject to true-up pursuant to subsection 6 of this section upon issue of the general rate order required pursuant to subsection 2 of this section. Emergency schedules shall be established pursuant to this subsection only in the case that, at the time of the filing, the electrical corporation is experiencing a twenty-five percent or greater increase in the price of natural gas as compared to the price used to establish its then currently effective rate schedules.

8. Nothing in this section shall be construed as limiting the authority of the commission to continue to further review natural gas costs, other fuel costs, purchased energy costs, purchased capacity costs, or any other related issues along with other

nonrelated costs or issues during any general rate proceeding of any electrical corporation under its jurisdiction.

9. As used in this section, the term "eligible electrical corporation" means any electrical corporation that is not also a gas corporation and which serves fewer than one hundred seventy-five thousand retail electric customers in this state and which owns, directly or through an affiliate, one or more eligible plants. As used in this section, the term "eligible plant" shall mean a plant which has an accredited capacity of no less than three hundred megawatts and which is no less than sixty percent owned by the electrical corporation or its affiliate and which was under construction on January 1, 2001, and for which construction was at least thirty percent complete, as determined by the commission, on January 1, 2001.

10. The provisions of this section shall terminate on December 31, 2004.

393.159. Notwithstanding any other provision of law to the contrary, each electrical corporation which is required by its bylaws to operate on a nonprofit basis shall be allowed, pursuant to this section, to timely recover and pass through to its retail customers its reasonably and prudently incurred costs associated with the purchase of electric energy and the transportation thereof for its retail customers under an automatic adjustment provision.

Section B. Because of the immediate need to allow electrical corporations to timely recover rapidly increasing costs incurred to produce additional electricity, the enactment of sections 393.158 and 393.159 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the enactment of sections 393.158 and 393.159 of this act shall be in full force and effect upon its passage and approval.