

SECOND REGULAR SESSION

SENATE BILL NO. 1013

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS STEELMAN AND STOLL.

Read 1st time January 24, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4268S.011

AN ACT

To amend chapter 393, RSMo, by adding thereto six new sections relating to transfers of electrical corporations.

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

Section A. Chapter 393, RSMo, is amended by adding thereto six new sections, to be known as sections 393.966, 393.967, 393.969, 393.972, 393.975, and 393.977, to read as follows:

393.966. 1. An electrical corporation may, upon obtaining approval of the commission pursuant to section 393.967, implement a reorganization, sell, assign, lease, or otherwise transfer all or substantially all of its generation plant and generation-related assets, or an allocated portion of such plant as provided in subsection 2 of this section, 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. No other approval by the commission shall be required, notwithstanding the provisions of sections 393.190, 393.200, 393.210, 393.240, and 393.250 or any other provision of chapter 386, RSMo, or this chapter, or any rule, regulation, or order of the commission.

2. An electrical corporation that is subject to the commission's jurisdiction and serving retail customers in more than one state may, upon obtaining approval of the commission pursuant to section 393.967, transfer to an affiliated entity an allocated portion of the utility's generation and generation-related assets using a jurisdictional

allocation methodology that the commission finds to be just and reasonable. No approvals of the commission thereafter shall be required for a transfer of the remaining portions of the electrical corporation's generation or generation-related assets.

3. An electrical corporation that transfers all, substantially all, or an allocated portion of its generation plant and generation-related assets to an affiliate pursuant to this section shall enter into a legally enforceable power purchase agreement with its affiliate. Such agreement shall:

(1) Dedicate the generation plant and generation-related assets, or the allocated portion thereof, transferred pursuant to this section to providing power and energy to the extent necessary to serve the retail load of the electrical corporation in this state at rates that are cost-of-service regulated by the Federal Energy Regulatory Commission. This commitment shall remain in effect for the operational life of the transferred generation plant and generation-related assets, or the allocated portion thereof;

(2) Provide for the operation and maintenance of the transferred facilities in accordance with good utility practice and the requirements of any governmental agency with jurisdiction;

(3) Contain such other provisions as are commonly used in the industry to ensure that the affiliate meets its obligations under the contract.

4. Nothing in this section shall be construed as affecting the right of either party to the purchase power agreement to make an application to the Federal Energy Regulatory Commission for a change in the cost-of-service based rates and charges pursuant to 16 U.S.C. Section 824d, and the rules and regulations promulgated thereunder, or the right of any other entity to file a complaint with respect to such rates.

5. 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, the commission shall have the authority to review and establish the cost-of-service rates in the power purchase agreement required by this section. An electrical corporation that transfers generation assets pursuant to this section shall comply with the rate provisions set forth in section 393.969.

393.967. 1. To implement a reorganization, sell, assign, lease, or otherwise transfer assets pursuant to section 393.966, an electrical corporation shall apply to the commission for approval. The electrical corporation's application shall include the following information:

(1) A detailed description of the proposed transaction including a description of the assets and liabilities that will be transferred, the legal form of the transfer, any related agreements that will be entered into, the projected capital structure and costs of capital for both the electrical corporation that is transferring assets and the affiliate that will receive the assets, and an organizational chart illustrating the relationship between these entities and other affiliated companies following such transfer;

(2) A pro forma draft of the purchase power agreement required by section 393.966 and a statement of how the affiliate's costs and revenues will be allocated in establishing the prices to be charged under the power purchase agreement;

(3) A description of how the electrical corporation will meet the requirements of sections 393.972 and 393.975;

(4) A complete statement of the entries that the electrical corporation will make on its books and records of account to implement the proposed reorganization or transaction, which shall include the projected impacts of the proposed reorganization or transaction on deferred income taxes and balance sheet effects, together with a certification from an independent certified public accountant that such entries are in accord with generally accepted accounting principles;

(5) Written testimony addressing each of the criteria identified in subdivisions (2) to (4) of subsection 2 of this section; and

(6) A list of all federal approvals or approvals required from departments and agencies of this state, other than the commission, that the electrical corporation has or will obtain before implementing the reorganization or transaction.

2. The commission shall, after notice and hearing, approve the proposed reorganization or transaction if it finds that:

(1) It has sufficient regulatory authority, resources, and access to the books and records of the electrical corporation and any relevant affiliate to review the application and exercise its duties pursuant to this section;

(2) The application as filed or amended and the proposed transaction comply with the requirements stated in section 393.966 and subsection 1 of this section;

(3) The rate design of the proposed power purchase agreement and the proposed method of allocating costs and revenues of the affiliate to the proposed power purchase agreement are just and reasonable;

(4) The proposed transaction will not impede the ability of the electrical corporation to provide its tariffed services in a safe and reliable manner.

3. Any hearing initiated by the commission into a transaction allowed pursuant to section 393.966 shall be completed and the commission's final order

approving or prohibiting the proposed transaction shall be entered within one hundred-twenty days after the date the electrical corporation's application was filed if the commission staff received a draft of the application at least thirty days prior to such filing or within one hundred-fifty days if no such draft was provided to the commission staff. Notwithstanding such time limits, if the electrical corporation has a general rate proceeding pending at the time the application is filed, the commission's final order approving or prohibiting the proposed transaction may be entered on the date that an order is entered in that general rate proceeding. In any proceeding conducted by the commission pursuant to this section, intervention shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and the office of public counsel. The commission shall not review a reorganization or other transaction approved pursuant to this section in any subsequent proceeding.

4. At least one hundred-eighty days prior to the effective date of any change to the purchase power agreement, the electrical corporation shall file with the commission a pro forma draft of the proposed changes to the purchase power agreement and a statement of how the affiliate's costs and revenues are to be allocated in establishing the prices to be charged under the proposed changes to the power purchase agreement.

5. An affiliate of an electrical corporation that acquires generation plant and generation-related assets pursuant to this section shall not subsequently transfer any such generation assets that were acquired pursuant to this section to any other entity without first seeking and obtaining the approval of the commission as provided in this subsection. Such approval may be obtained by filing a notice of the proposed sale or transfer with the commission. The notice shall contain an analysis of the effects of such transfer on the availability of power and any charges that will be paid by the electrical corporation 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 may, after notice and hearing, prohibit the proposed transaction only if it finds that the proposed transaction is likely to result in higher costs for the electrical corporation than it would incur in the absence of the proposed transaction, or that the proposed transaction is likely to result in a significant change in the quality or reliability of service that is expected to be detrimental to the electrical corporation's retail customers. If the commission has not issued an order initiating a hearing on the proposed transaction within thirty days after the date the affiliate's notice is filed, the transaction shall be deemed approved. In any proceeding conducted by the commission pursuant to this section, intervention

shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and the office of public counsel. Any hearing initiated by the commission into the proposed transaction shall be completed, and the commission's final order approving or prohibiting the proposed transaction shall be entered within one hundred-eighty days after the date the electrical corporation's notice was filed.

6. Generation plants and generation-related assets transferred pursuant to this section, may be eligible facilities as defined by 15 U.S.C. Section 79z-5a, if requested by the applicant. In any order approving a transfer of generating plant and generation related assets pursuant to this section that contains all of the findings required by subsection 2 of this section, the commission shall, if requested by the applicant, also include the findings required by 15 U.S.C. Section 79z-5a both to allow the transferred facilities to be eligible facilities and for entry into the purchase power agreement required by this section. The commission and office of public counsel may intervene and present testimony in rate cases or other proceedings before the Federal Energy Regulatory Commission that involve the electrical corporation, the affiliate, or any power purchase agreement entered into pursuant to this section, as may be necessary to carry out the provisions of this subsection. With respect to any such proceeding, the commission may petition the Federal Energy Regulatory Commission to hold public hearings in Missouri and hold such public hearings to determine public viewpoints on issues presented at the hearings.

7. The provisions of section 386.370, RSMo, sections 393.130, 393.135, 393.140, 393.150, 393.155, 393.170, 393.180, 393.190, 393.200, 393.210, 393.220, 393.230, 393.240, 393.250, 393.275 and 393.280, and subsections 2 to 5 of section 393.270 shall not apply to transferred generation plant and generation-related assets except to the extent necessary for the commission to exercise its authority pursuant to subsection 5 of section 393.966 to set cost-of-service rates in the event that the Federal Energy Regulatory Commission or its successor organization no longer regulates the rates established in the power purchase agreement required by this section on a cost-of-service basis.

393.969. In any ratemaking proceeding before the commission where the cost of service is based in part on a purchase power agreement that has been entered into by the electrical corporation pursuant to section 393.966 and allowed into effect but not approved by a final order of the Federal Energy Regulatory Commission, the commission may, in a special proceeding held for that purpose or in a rate proceeding under section 393.150, provide for an equitable adjustment to be made in the electrical corporation's rates, which may include a prospective adjustment in rates or a refund or both, if a refund of the amounts paid by the electrical corporation under the

purchase power agreement that was allowed into effect and that served as the basis for a rate order entered by the commission is ultimately ordered by the Federal Energy Regulatory Commission.

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, business units, generating stations, or generating units, the electrical corporation's contract or agreements with the affiliated generation company 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 those nonsupervisory employees of the electrical corporation's division, business unit, generating station, or generating unit as are needed to fill the positions 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 the division, business unit, generating station, or generating units. Such wage rates, fringe benefits, and terms and conditions of employment shall continue for at least thirty months from the time of the transfer of ownership unless the parties to the applicable labor agreement 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 affiliated generation company. If there is litigation concerning the sale or other transfer of ownership of the electrical corporation'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 electrical corporation.

393.975. Each electrical corporation 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 that is transferring or has transferred its interest in such plants pursuant to section 393.966 shall recover such costs through unbundled charges or through the electrical corporation's bundled rates and shall deposit all amounts collected for decommissioning in its nuclear power plant decommissioning trust fund.

393.977. Any generation plant and generation-related assets transferred by an electrical corporation pursuant to sections 396.966 to 396.977, RSMo, shall continue to be treated as property of the electrical corporation for purposes of assessment and taxation pursuant to chapter 153, RSMo. The state tax commission shall adopt rules to ensure that property transferred pursuant to sections 396.966 to 396.977, RSMo, are valued and allocated in a manner similar to that used for distributable property on

the effective date of sections 396.966 to 396.977, RSMo.

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