

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILLS NOS. 125 & 290**  
92ND GENERAL ASSEMBLY

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Reported from the Committee on Commerce and the Environment, March 6, 2003, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0304S.09C

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**AN ACT**

To amend chapter 393, RSMo, by adding thereto seven new sections relating to recovery of certain costs by utilities.

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

Section A. Chapter 393, RSMo, is amended by adding thereto seven new sections, to be known as sections 393.1000, 393.1003, 393.1006, 393.1009, 393.1012, 393.1015, and 393.1018, to read as follows:

**393.1000. As used in sections 393.1000 to 393.1006, the following terms mean:**

(1) "Appropriate pretax revenues", the revenues necessary to produce net operating income equal to:

(a) The water corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS; and

(b) Recover state, federal, and local income or excise taxes applicable to such income; and

(c) Recover all other ISRS costs;

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

(3) "Eligible infrastructure system replacements", water utility plant projects that:

(a) Replace or extend the useful life of existing infrastructure;

(b) Are in service and used and useful;

(c) Do not increase revenues by directly connecting the infrastructure replacement to new customers; and

(d) Were not included in the water corporation's rate base in its most recent

general rate case;

(4) "ISRS", infrastructure system replacement surcharge;

(5) "ISRS costs", depreciation expenses, and property taxes that will be due within twelve months of the ISRS filing;

(6) "ISRS revenues", revenues produced through an ISRS, exclusive of revenues from all other rates and charges;

(7) "Water corporation", every corporation, company, association, joint stock company or association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water to more than ten thousand customers;

(8) "Water utility plant projects", may consist only of the following:

(a) Mains, and associated valves and hydrants, installed as replacements for existing facilities that have worn out or are in deteriorated condition;

(b) Main cleaning and relining projects; and

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the water corporation.

393.1003. 1. Notwithstanding any provisions of chapter 386, RSMo, and this chapter to the contrary, as of August 28, 2003, a water corporation providing water service may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the water corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements; provided that an ISRS, on an annualized basis, must produce ISRS revenues of at least one million dollars but not in excess of ten percent of the water corporation's base revenue level approved by the commission in the water corporation's most recent general rate proceeding. An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1000 to 393.1006. ISRS revenues shall be subject to refund based upon a finding and order of the commission, to the extent provided in subsections 5 and 8 of section 393.1006.

2. The commission shall not approve an ISRS for a water corporation that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless the water corporation has filed for or is the

subject of a new general rate proceeding.

3. In no event shall a water corporation collect an ISRS for a period exceeding three years unless the water corporation has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

393.1006. 1. (1) At the time that a water corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation.

(2) Upon the filing of a petition, and any associated rate schedules, seeking to establish or change an ISRS, the commission shall publish notice of the filing.

2. (1) When a petition, along with any associated proposed rate schedules, is filed pursuant to the provisions of sections 393.1000 to 393.1006, the commission shall conduct an examination of the proposed ISRS.

(2) The staff of the commission may examine information of the water corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1000 to 393.1006, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues shall be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1000 to 393.1006.

(3) The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.

(4) If the commission finds that a petition complies with the requirements of sections 393.1000 to 393.1006, the commission shall enter an order authorizing the water corporation to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission pursuant to the provisions of sections 393.1000 to 393.1006.

3. A water corporation may effectuate a change in its rate pursuant to this section no more often than two times every twelve months.

4. In determining the appropriate pretax revenues, the commission shall consider only the following factors:

- (1) The current state, federal, and local income or excise tax rates;
- (2) The water corporation's actual regulatory capital structure as determined during the most recent general rate proceeding of the water corporation;
- (3) The actual cost rates for the water corporation's debt and preferred stock as determined during the most recent general rate proceeding of the water corporation;
- (4) The water corporation's cost of common equity as determined during the most recent general rate proceeding of the water corporation;
- (5) The current property tax rate or rates applicable to the eligible infrastructure system replacements;
- (6) The current depreciation rates applicable to the eligible infrastructure system replacements;
- (7) In the event information called for in subdivisions (2), (3), and (4) is unavailable and the commission is not provided with such information on an agreed-upon basis, the commission shall refer to the testimony submitted during the most recent general rate proceeding of the water corporation and use, in lieu of any such unavailable information, the recommended capital structure, recommended cost rates for debt and preferred stock, and recommended cost of common equity that would produce the least amount of pretax revenue among the various recommendations contained in such testimony.

5. (1) An ISRS shall be calculated based upon the amount of ISRS costs that are eligible for recovery during the period in which the surcharge will be in effect and upon the applicable customer class billing determinants utilized in designing the water corporation's customer rates in its most recent general rate proceeding. The commission shall, however, only allow such surcharges to apply to classes of customers receiving a benefit from the subject water utility plant projects or shall prorate the surcharge according to the benefit received by each class of customers; provided that the ISRS shall be applied in a manner consistent with the customer class cost-of-service study recognized by the commission in the water corporation's most recent general rate proceeding, if applicable, and with the rate design methodology utilized to develop the water corporation's rates resulting from its most recent general rate proceeding.

(2) At the end of each twelve-month calendar period that an ISRS is in effect, the water corporation shall reconcile the differences between the revenues resulting from an ISRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed ISRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through

adjustment of an ISRS.

6. (1) A water corporation that has implemented an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall file revised rate schedules to reset the ISRS to zero when new base rates and charges become effective for the water corporation following a commission order establishing customer rates in a general rate proceeding that incorporates in the utility's base rates eligible costs previously reflected in an ISRS.

(2) Upon the inclusion in a water corporation's base rates of eligible costs previously reflected in an ISRS, the water corporation shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax revenues as found by the commission for that period.

7. A water corporation's filing of a petition to establish or change an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall not be considered a request for a general increase in the water corporation's base rates and charges.

8. Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an ISRS, the water corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections.

9. Nothing contained in sections 393.1000 to 393.1006 shall be construed to impair in any way the authority of the commission to review the reasonableness of the rates or charges of a water corporation, including review of the prudence of eligible infrastructure system replacements made by a water corporation, pursuant to the provisions of section 386.390 RSMo.

10. The commission shall have authority to promulgate rules for the implementation of sections 393.1000 to 393.1006, but only to the extent such rules are consistent with, and do not delay the implementation of, the provisions of sections 393.1000 to 393.1006. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter

536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

393.1009. As used in sections 393.1009 to 393.1015, the following terms mean:

(1) "Appropriate pretax revenues", the revenues necessary to produce net operating income equal to:

(a) The gas corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS; and

(b) Recover state, federal, and local income or excise taxes applicable to such income; and

(c) Recover all other ISRS costs;

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

(3) "Eligible infrastructure system replacements", gas utility plant projects that:

(a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;

(b) Are in service and used and useful;

(c) Were not included in the gas corporation's rate base in its most recent general rate case; and

(d) Replace, or extend the useful life of an existing infrastructure;

(4) "Gas corporation", every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any gas plant operating for public use under privilege, license, or franchise now or hereafter granted by the state or any political subdivision, county, or municipality thereof as defined in section 386.020, RSMo;

(5) "Gas utility plant projects", may consist only of the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life, or enhancing the integrity of pipeline system components undertaken to comply with state or federal

safety requirements; and

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation;

(6) "ISRS", infrastructure system replacement surcharge;

(7) "ISRS costs", depreciation expense and property taxes that will be due within twelve months of the ISRS filing;

(8) "ISRS revenues", revenues produced through an ISRS exclusive of revenues from all other rates and charges.

393.1012. 1. Notwithstanding any provisions of chapter 386, RSMo, and this chapter to the contrary, beginning August 28, 2003, a gas corporation providing gas service may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the gas corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. The commission may not approve an ISRS to the extent it would produce total annualized ISRS revenues exceeding ten percent of the gas corporation's base revenue level approved by the commission in the gas corporation's most recent general rate proceeding. An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1009 to 393.1015. ISRS revenues shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections 5 and 8 of section 393.1009.

2. The commission shall not approve an ISRS for any gas corporation that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless the gas corporation has filed for or is the subject of a new general rate proceeding.

3. In no event shall a gas corporation collect an ISRS for a period exceeding three years unless the gas corporation has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

393.1015. 1. (1) At the time that a gas corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the

proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation.

(2) Upon the filing of a petition, and any associated rate schedules, seeking to establish or change an ISRS, the commission shall publish notice of the filing.

2. (1) When a petition, along with any associated proposed rate schedules, is filed pursuant to the provisions of sections 393.1009 to 393.1015, the commission shall conduct an examination of the proposed ISRS.

(2) The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015.

(3) The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.

(4) If the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015.

3. A gas corporation may effectuate a change in its rate pursuant to the provisions of this section no more often than two times every twelve months.

4. In determining the appropriate pretax revenue, the commission shall consider only the following factors:

- (1) The current state, federal, and local income tax or excise rates;
- (2) The gas corporation's actual regulatory capital structure as determined during the most recent general rate proceeding of the gas corporation;
- (3) The actual cost rates for the gas corporation's debt and preferred stock as determined during the most recent general rate proceeding of the gas corporation;
- (4) The gas corporation's cost of common equity as determined during the most recent general rate proceeding of the gas corporation;
- (5) The current property tax rate or rates applicable to the eligible infrastructure system replacements;
- (6) The current depreciation rates applicable to the eligible infrastructure



system replacements; and

(7) In the event information pursuant to subdivisions (2), (3), and (4) of this subsection is unavailable and the commission is not provided with such information on an agreed upon basis, the commission shall refer to the testimony submitted during the most recent general rate proceeding of the gas corporation and use, in lieu of any such unavailable information, the recommended capital structure, recommended cost rates for debt and preferred stock, and recommended cost of common equity that would produce the least amount of pretax revenue among the various recommendations contained in such testimony.

5. (1) The monthly ISRS charge may be calculated based on a reasonable estimate of billing units in the period in which the charge will be in effect, which shall be conclusively established by dividing the appropriate pretax revenues by the customer numbers reported by the gas corporation in the annual report it most recently filed with the commission pursuant to subdivision (6) of section 393.140, and then further dividing this quotient by twelve. Provided, however, that the monthly ISRS may vary according to customer class and may be calculated based on customer numbers as determined during the most recent general rate proceeding of the gas corporation so long as the monthly ISRS for each customer class maintains a proportional relationship equivalent to the proportional relationship of the monthly customer charge for each customer class.

(2) At the end of each twelve month calendar period the ISRS is in effect, the gas corporation shall reconcile the differences between the revenues resulting from an ISRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed ISRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of an ISRS charge.

6. (1) A gas corporation that has implemented an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall file revised rate schedules to reset the ISRS to zero when new base rates and charges become effective for the gas corporation following a commission order establishing customer rates in a general rate proceeding that incorporates in the utility's base rates eligible costs previously reflected in an ISRS.

(2) Upon the inclusion in a gas corporation's base rates of eligible costs previously reflected in an ISRS, the gas corporation shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax revenues as found by the commission for that period.

7. A gas corporation's filing of a petition or change an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall not be considered a request for a general increase in the gas corporation's base rates and charges.

8. Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an ISRS, the gas corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections.

9. Nothing contained in sections 393.1009 to 393.1015 shall be construed to impair in any way the authority of the commission to review the reasonableness of the rates or charges of a gas corporation, including review of the prudence of eligible infrastructure system replacements made by a gas corporation, pursuant to the provisions of section 386.390, RSMo.

10. The commission shall have authority to promulgate rules for the implementation of sections 393.1009 to 393.1015, but only to the extent such rules are consistent with, and do not delay the implementation of, the provisions of sections 393.1009 to 393.1015. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

393.1018. 1. The public service commission, upon application, shall authorize an electric corporation, gas corporation, or water corporation to recover the utility's incremental costs of prudent expenditures for security measures incurred after August 28, 2003, and reasonably required to comply with requirements or guidelines of the United States Department of Energy, the United States Environmental Protection Agency, the Federal Bureau of Investigation, the United States Department of Homeland Security, the Nuclear Regulatory Commission, the Federal Energy

Regulatory Commission, the North American Reliability Council, the Office of Pipeline Safety within the United States Department of Transportation, the state office of homeland security, the state emergency management agency, and the state public service commission to protect the utility's generation, distribution, and transmission assets by periodic adjustment to the utility's customers bills. Recovery would include security measures for computer systems used in the generation, transmission, and distribution of utilities and other operations and control systems. The application shall be subject to such procedures and conditions, including review, in an expedited manner, of the prudence of the expenditures and the reasonableness of the measures, as the commission deems appropriate. Upon filing a petition pursuant to this section, the commission shall publish a notice of the filing. The contents of such application and request shall be protected from public disclosure as determined by the commission.

2. The public service commission, upon application, shall authorize an electric corporation to recover unreimbursed costs for capital projects for required relocation of company facilities due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, or any political subdivision of this state, or any entity having the power of eminent domain by periodic adjustment to the utility's customers bills. The application shall be subject to such procedures and conditions, including review, in an expedited manner, of the prudence of the reasonableness of the expenditures and as the commission deems appropriate.

3. The commission shall not approve recovery for any electric, gas, or water corporation that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless the electric, gas, or water corporation has filed for or is the subject of a new general rate proceeding, or if the electric, gas, or water corporation has been subject of an earnings review with no further action taken.

4. In no event shall a utility recover costs pursuant to this section for a period exceeding three years unless the utility has filed for or is the subject of a new general rate proceeding; provided that cost recovery may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established. This subsection shall not prevent the commission from approving an agreement that a rate case filing is not necessary.

5. In no event shall the provisions of this section excuse an electric, gas, or

water corporation from honoring all rate freeze conditions of settlements or other agreements or commitments made by such corporations at hearings held for the purpose of considering whether such settlements shall be approved.

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