

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 246
92ND GENERAL ASSEMBLY

Reported from the Committee on Communications, Energy and Technology, April 24, 2003, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 246 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0728L.09C

AN ACT

To repeal sections 386.120 and 386.210, RSMo, and to enact in lieu thereof fifteen new sections relating to the regulation of electric, gas, and water utilities, with penalty provisions.

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

Section A. Sections 386.120 and 386.210, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 386.120, 386.135, 386.210, 386.374, 386.900, 393.156, 393.158, 393.1000, 393.1003, 393.1006, 393.1009, 393.1012, 393.1015, 393.1018, and 1, to read as follows:

386.120. 1. The principal office of the commission shall be at the state capital at the city of Jefferson City. The commissioners shall reside within [a forty-mile radius of the city of Jefferson City] **the state of Missouri** during their respective terms of office. The office required by this subsection shall be provided and assigned by the board of public buildings.

2. The commission shall at all times, except Saturdays, Sundays and legal holidays, be open and in session for the transaction of business and the commissioners shall devote their entire time to the duties of their office.

3. The commission shall have an official seal bearing the following inscription: "Public Service Commission of the State of Missouri". The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of such seal.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

4. The commission may sue and be sued in its official name. The offices of said commission shall be supplied with all necessary books, maps, charts, stationery, office furniture, telephone and telegraph connections, and all other necessary appliances and incidentals, to be paid for in the same manner as other expenses authorized by this chapter.

5. The offices of the commission shall be open during business hours on all days except Saturdays, Sundays and legal holidays, and one or more responsible persons, designated by the commission or by the secretary, under the direction of the commission, shall be on duty at all times, in immediate charge thereof.

6. Any summons or other writ issued by any court of this state or of the federal government shall be served upon the secretary of the commission or on any commissioner at the principal office of the commission in Jefferson City. Service of any summons or other writ upon the secretary of the commission, or upon any single commissioner, shall constitute service upon the entire commission.

386.135. 1. The commission shall have an independent technical advisory staff of six full time employees. The advisory staff shall have expertise in one or more of the following fields: accounting, economics, finance, engineering, utility operations, law or public policy.

2. In addition, each commissioner shall also have the authority to retain one personal advisor, who shall be deemed a member of the technical advisory staff. The personal advisors will serve at the pleasure of the individual commissioner whom they serve and shall possess expertise in one or more of the following fields: accounting, economics, finance, engineering, utility operations, law or public policy.

3. The commission may only hire technical advisory staff pursuant to subsections 1 and 2 if there is a corresponding elimination in comparable staff positions for commission staff to offset the hiring of such technical advisory staff on a cost neutral basis. Such technical advisory staff shall be hired on or before July 1, 2004.

4. It shall be the duty of the technical advisory staff to render advice and assistance to the commissioners and the commission's hearing officers on technical matters within their respective areas of expertise that may arise during the course of proceedings before the commission.

5. The technical advisory staff shall also update the commission and the commission's hearing officers periodically on developments and trends in public utility regulation, including updates comparing the use, nature, and effect of various regulatory practices and procedures as employed by the commission and public utility commissions in other jurisdictions.

6. Each member of the technical advisory staff shall be subject to any applicable ex parte or conflict of interest requirements in the same manner and to the same degree as any commissioner, provided that neither any person regulated by, appearing before, or employed by the commission shall be permitted to offer such member a different appointment or position during that member's tenure on the technical advisory staff.

7. No employee of a company or corporation regulated by the public service commission,

no employee of the office of public counsel or the public counsel, and no staff members of either the utility operations division or utility services division, who, were employees or staff members on, during the two years immediately preceding, or anytime after August 28, 2003, may be a member of the commission's technical advisory staff for two years following the termination of their employment with the corporation, office of public counsel, or commission staff member.

8. The technical advisory staff shall never be a party to any case before the commission.

386.210. 1. The commission may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of **the public**, any public utility or similar commission of **this and** other states and the United States of America, or any official, agency or instrumentality thereof, on any matter relating to the performance of its duties.

2. Such communications may address any issue that at the time of such communication is not the subject of a case that has been filed with the commission.

3. Such communications may also address substantive or procedural matters that are the subject of a pending filing or case in which no evidentiary hearing has been scheduled, provided that the communication:

(1) Is made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision;

(2) Is made at a forum where representatives of the public utility affected thereby, the office of public counsel, and any other party to the case are present; or

(3) If made outside such agenda meeting or forum, is subsequently disclosed to the public utility, the office of the public counsel, and any other party to the case in accordance with the following procedure:

(a) If the communication is written, the person or party making the communication shall no later than the next business day following the communication, file a copy of the written communication in the official case file of the pending filing or case and serve it upon all parties of record;

(b) If the communication is oral, the party making the oral communication shall, no later than the next business day following the communication, file a memorandum in the official case file of the pending case disclosing the communication and serve such memorandum on all parties of record. The memorandum shall contain a summary of the substance of the communication and not merely a listing of the subjects covered.

4. Nothing in this section or any other provision of law shall be construed as imposing any limitation on the free exchange of ideas, views, and information between any person and the commission or any commissioner, provided that such communications relate to matters of general regulatory policy and do not address the merits of the specific facts, evidence, claims, or positions presented or taken in a pending case unless such communications comply with the provisions of

subsection 3 of this section.

5. The commission and any commissioner may also advise any member of the general assembly or other governmental official of the issues or factual allegations that are the subject of a pending case, provided that the commission or commissioner does not express an opinion as to the merits of such issues or allegations, and may discuss in a public agenda meeting with parties to a case in which an evidentiary hearing has been scheduled, any procedural matter in such case or any matter relating to a unanimous stipulation or agreement resolving all of the issues in such case.

[2.] **6.** The commission may enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof, or any public utility or similar commission of other states, that are proper, expedient, fair, and equitable and in the interest of the state of Missouri and the citizens thereof, for the purpose of carrying out its duties[under] **pursuant to** section 386.250 as limited and supplemented by section 386.030 and to that end the commission may receive and disburse any contributions, grants or other financial assistance as a result of or pursuant to such agreements or contracts. Any contributions, grants or other financial assistance so received shall be deposited in the public service commission utility fund or the state highway commission fund depending upon the purposes for which they are received.

[3.] **7.** The commission may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any railroad, public utility or similar commission, of other states or the United States of America, or any official, agency or any instrumentality thereof, except that in the holding of such investigations or hearings, or in the making of such orders, the commission shall function under agreements or contracts between states or under the concurrent power of states to regulate interstate commerce, or as an agent of the United States of America, or any official, agency or instrumentality thereof, or otherwise.

386.374. Notwithstanding any other provisions of this chapter or any law to the contrary, the public service commission may approve, upon the terms and conditions in an application, tariff or settlement agreement proposed or recommended by an electric or gas corporation, programs for assisting low-income residential ratepayers in obtaining or maintaining access to reliable, continuous utility service to such low-income utility customers. The commission may also approve energy efficiency, weatherization, and evaluation components as part of such programs. All programs, tariffs, agreements, or rule provisions that provide for such assistance shall include terms for adjusting rates as necessary to ensure that the program, tariff, agreement, or rule provision will not have any negative financial impact on the electric or gas corporation. Nothing in this section shall be construed as diminishing the commission's existing authority to approve on an experimental basis low-income assistance programs proposed by an electric or gas corporation.

386.900. 1. Any person or other entity that has or acquires a legal or equitable interest

of five percent ownership or greater of both:

- (1) A public utility subject to regulation by the commission; and
- (2) Any corporation or other entity that supplies products, including but not limited to energy, gas, electricity, coal, and nuclear fuel, or services to such public utility of more than one million dollars per year;

shall give notice, in writing, to the commission within thirty days of acquiring such a double interest. Any individual or entity holding such an interest as of August 28, 2003, shall provide notice to the commission pursuant to this section within thirty days of August 28, 2003.

2. Violation of subsection 1 of this section shall be a class A misdemeanor. In the event that the commission or any other agency of this state becomes aware of a violation of subsection 1 of this section, such violation shall immediately be reported to the attorney general for prosecution.

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

- (1) "Company", an electrical corporation or a gas corporation;
- (2) "Contract", a company's contract for the purchase of electrical power and energy in the amount of five million dollars or more;
- (3) "Cost", the total actual installed cost of a facility, including allowance for funds used during construction, found by the commission to be prudent and used and useful in the provision of retail service to customers or the cost of a contract found by the commission to be prudent;
- (4) "Facility", any electric plant or gas plant with an estimated total investment or leased cost of five million dollars or more for companies serving one hundred thousand to one million customers in this state, and twenty-five million dollars or more for those companies serving more than one million customers in this state;
- (5) "In-service date", the date upon which the facility meets commission approved in-service criteria consistent with section 393.135;
- (6) "In-service criteria", those operation and performance criteria utilized by the commission, consistent with section 393.135, to determine that the facility will be fully operational and used for service;
- (7) "Ratemaking principles", may include authorized return on common equity, minimum equity levels and maximum long term debt levels to finance the facility, estimated service life except that gas-fired generation built after January 2003, shall have twenty year service life and coal-fired generation built after January 2003, shall have thirty-five year service life, depreciation rate for cost of service purposes except that gas-fired generation built after January 2003, shall have a depreciation rate of five percent and coal-fired generation built after January 2003, shall have a depreciation rate of two and eighty-sixth hundredths percent, jurisdictional allocation

method to be applied to the facility cost and facility in-service criteria;

(8) "Stake", a company's whole or fractional ownership share or leasehold, or other proprietary interest in a facility.

2. Prior to undertaking the construction of, or participation in, a facility or prior to entering into a contract, a company may file with the commission an application requesting a determination of the ratemaking principles that will apply to the cost to be incurred by the company to acquire its stake in the facility during the expected useful life of the facility, or to the cost of the contract during the term thereof.

3. Prepared direct testimony and exhibits supporting the company's application shall be filed at the same time as the application. A minimum of two copies of said documents shall be served on the office of the public counsel on the same date. If the facility is not to be located within the state of Missouri or the contract is not with an entity owning generation facilities within the state of Missouri, the company shall establish that the location for the facility or the contract is in the best interest of Missouri ratepayers and shall give preference to facilities to be located within the state of Missouri.

4. Public notice and intervention shall be allowed.

5. The commission shall thereafter issue an order setting forth the ratemaking principles that will be applicable to the cost of the company's stake in the facility or to the cost of the contract in all ratemaking proceedings before the commission on and after such time as the facility is fully operational and used for service or the effective date of the contract. The ratemaking principles applicable to the cost of the facility or cost of the contract shall be utilized by the commission in all proceedings before it in which the cost of the company's stake in the facility or the cost of the contract is considered. If the commission fails to issue a determination within one hundred eighty days of the date an application for a determination of ratemaking principles is filed, the ratemaking principles proposed by the company in its application will be deemed to have been approved by the commission and shall be binding for ratemaking purposes during the useful life of the facility or during the term of the contract. An application pursuant to this section may, at the option of the company, be joined with and made a part of an application for a certificate of convenience and necessity under section 393.170, if necessary, in which case the application for a certificate of convenience and necessity will be deemed to have been approved by the commission if not otherwise decided within one hundred eighty days after the application is filed.

6. The company shall have twelve months from the effective date of the determination to notify the commission whether it will construct, or participate in the construction of, the facility or whether it will enter into the contract. If the company notifies the commission within the twelve-month period that the company will not construct, or participate in the construction of, the facility or that it will not enter into the contract, then the determination of ratemaking principles pursuant

to subsection 5 of this section shall be of no further force or effect, and shall have no precedential value in any subsequent proceeding before the commission, and there shall be no adverse presumption applied to the company in any future proceeding before the commission as a result of such notification.

7. Nothing herein shall excuse a company from complying with its public service obligation to provide safe and adequate service at just and reasonable rates.

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

(1) "Base cost", the average cost of fuel and purchased power energy costs per kilowatt hour included in base rates at the time of the last general retail rate proceeding;

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

(3) "Correction amount", the dollar cost, positive or negative, needed to adjust the second prior month's energy cost estimate to the actual cost incurred during the second prior month. The correction amount shall be calculated as follows: the sum of the actual cost of fuel burned during the correction month, the actual cost of purchased power incurred during the correction month, the actual net cost of interchange during the correction month, and the correction amount used originally in the correction month; minus the sum of the estimated cost of fuel burned during the correction month, estimated cost of purchased power during the correction month, the estimated net cost of interchange during the correction month and the correction amount used originally in energy cost adjustment clause calculation for the second prior month. The net result is multiplied by the ratio of actual kilowatt hour sales in the correction month over the estimated kilowatt hour sales in the correction month;

(4) "FERC", the Federal Energy Regulatory Commission;

(5) "Fuel", the amount paid by an electrical corporation for natural gas, oil, or coal, including the transportation thereof, used by said corporation or another entity to generate for or to supply electrical energy to said corporation;

(6) "Net interchange", the net dollar cost, positive or negative, of interchange received less interchange sales;

(7) "Purchased power", the amount paid by an electrical corporation for electrical energy, including the transmission thereof, generated by another entity, but used by said electrical corporation, and the delivered cost of natural gas burned in tolling purchased power contracts;

(8) "Sales", the estimated kilowatt hours delivered to customers during the current month, which equals the sum of the estimated kilowatt hours generated, purchased and net interchanged during the month multiplied by one minus the line loss percentage.

2. Notwithstanding any other provision of the law to the contrary, any electrical corporation, as defined in section 386.020, RSMo, shall be allowed to recover all of its reasonably and prudently incurred costs for fuel and all of its reasonably and prudently incurred costs for

purchased electrical energy for its retail customers through energy adjustment rate schedules designed to specifically recover such costs. The energy adjustment rate schedules to recover these costs shall be filed with the commission, and may, at the option of the electrical corporation, be established and implemented either within or without the context of a general rate increase request proceeding. However, in the event the electrical corporation seeks to establish and implement energy adjustment rate schedules outside the context of a general rate increase proceeding, the commission shall determine the level of fuel costs contained in the electrical corporation's existing filed and approved base rates based on detailed records, work papers, calculations, or other information and materials provided to the commission.

3. The commission shall allow the modification of the energy adjustment rate schedules authorized by this section to take place on a timely basis to reflect increases or decreases in fuel costs and purchased energy costs above or below the costs of said items reflected in the permanent base rates of the electrical corporation on file with and approved by the commission. Changes in such energy adjustment rate schedules may be made as frequently as every ninety days. In exercising its authority pursuant to this section, the commission shall consider only whether the calculations of said fuel costs and purchased energy costs by the electrical corporation are accurate and reflect the costs being incurred or reasonably expected to be incurred by the electrical corporation and the commission shall not, at the same time, consider other factors which may affect the other costs or the overall rates or other charges of such electrical corporation.

4. In connection with implementing the energy adjustment rate schedules authorized pursuant to this section, the commission shall establish a "true-up" procedure similar to the procedure that the commission utilizes for purchased gas cost recovery for gas corporations. The "true-up" procedure shall accurately and appropriately remedy any over or under collections of the involved costs from previous periods, including any over or under collection of the fuel costs and electrical energy costs embedded in the corporation's rates that were not reflected in the commission's initial determination of these costs pursuant to subsection 9 of this section with customer credits or refunds including interest payable at the electrical corporation's short-term debt rate. The "true-up" procedure shall also be used to evaluate whether, and to what extent, the involved costs were prudently incurred and to make any rate adjustments necessary to exclude costs that were not prudently incurred to the financial detriment of the electric corporation's customers.

5. Fuel costs recoverable pursuant to this section shall include only those costs properly recorded as fuel costs, including pipeline delivery charges, prior to or in the burning cycle in FERC Account Numbers 501, 547, or 555, except that said costs shall be reduced by the amount of supplier or pipeline refunds normally credited to said accounts. Purchased electrical energy costs recoverable pursuant to this section shall include those properly recorded as purchased energy

costs, including related transmission charges incurred for delivery of the purchased energy, in FERC Account Numbers 555 or 565, exclusive of capacity, demand or other fixed charges.

6. Each electrical corporation, which has on file with the commission approved energy adjustment rate schedules pursuant to this section, shall submit to the commission on or before the fifteenth day of each month an energy adjustment report, in a format prescribed by the commission, showing the calculations for the next month's energy adjustment rate.

7. The energy adjustment rates authorized by this section when modified shall be increased or decreased by one-tenth of one cent per kilowatt hour for each one-tenth of one cent, or major fraction thereof, increase or decrease in the aggregate cost of energy per kilowatt hour computed by the following formula: The sum of the estimated cost of fuel burned during the current month, the estimated total cost of purchased power incurred during the current month, the estimated net cost of interchange incurred during the current month, and the correction amount divided by estimated sales during the current month, minus the base cost of energy.

8. Each energy adjustment rate schedule filing made pursuant to this section shall include detailed records, work papers, and calculations sufficient for the commission to determine whether to establish, continue, reduce, or increase the level of the energy adjustment rate. Copies of all such filings shall be provided on the same calendar day to the office of the public counsel.

9. Energy adjustment rate schedule filings pursuant to this section shall be designed to become effective thirty days after filing and not be subject to suspension by the commission. Any such filing shall be considered on an expedited basis and a decision, including an initial determination, if necessary, of the fuel costs and purchased electrical energy costs embedded in the corporation's base rates, shall be made by the commission within thirty days of the filing. Interested parties may intervene in any such proceedings, but any such intervention shall not extend the thirty-day period for making a decision. The energy adjustment rate schedules shall become effective the date of said commission decision or thirty days after filing, whichever first occurs, but shall be subject to the "true-up" mechanism described in subsection 4 of this section.

10. Nothing in this section shall allow an electrical corporation to avoid any rate freeze conditions or other commitments made in connection with settlements of any prior general rate proceeding.

11. Nothing in this section shall be construed as limiting the authority of the commission to review and consider fuel costs, purchased electrical energy costs, or any other fuel or fuel-related costs along with other costs during any general rate proceeding of any electrical corporation.

12. Nothing in this section shall be construed as limiting the authority of the commission to continue the practice of using the purchased gas adjustment clause mechanism for the recovery of natural gas commodity, transportation, storage, and related costs for gas corporations whereby

changes in such costs are recognized in rates without the filing of a general rate proceeding.

13. In the event that the estimate total energy costs per kWh for any quarter exceeds by more than 5 percent the actual cost per kWh for that quarter, the utility shall submit an explanation. If the utility cannot show that the estimate was realistic and the actual costs was the lowest overall cost that could be been incurred, the commission may, at its discretion, assess the utility for the purpose of recovering administrative costs of handling the adjustment, in an amount not to exceed the difference between the amount billed to customers under the estimated rate and the actual increase in energy costs for those billing periods.

14. The provisions of this section shall expire on August 28, 2008.

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 and deferred income taxes 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 which the public service commission has

jurisdictional authority pursuant to chapter 386, RSMo;

(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, shall 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 average weighted cost of capital based upon 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. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

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 and deferred income taxes 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 average weighted cost of capital based upon 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 to 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. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

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 September 11, 2001, 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, local emergency planning commissions, county offices of emergency management, the department of natural resources, and the state public service commission to protect the utility's generation, distribution, transmission assets, and incremental increases in costs for insuring such assets but only to the extent such insurance cost increases are related to terrorist activities of September 11, 2001, or similar terrorist threats or activities occurring thereafter, 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 cost recovery pursuant to this section 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.

Section 1. A steam heating company having fewer than one hundred customers in this state may file under the small company rate procedure established by the public service commission in 4 CSR 240-2.200 by giving notice to the secretary of the commission, the public counsel, each customer, and each gas corporation or electric corporation providing utility service in the area. Any customer, gas corporation, or electric corporation responding within thirty days of the date of notice shall be entitled to copies of all filings subsequently made in the case and may participate in any conferences or hearings therein.