

FIRST REGULAR SESSION

SENATE BILL NO. 423

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREEN.

Read 1st time February 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1861S.021

AN ACT

To repeal sections 386.266 and 393.140, RSMo, and to enact in lieu thereof four new sections relating to electrical corporations, with penalty provisions.

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

Section A. Sections 386.266 and 393.140, RSMo, are repealed and four
2 new sections enacted in lieu thereof, to be known as sections 386.266, 393.140,
3 393.141, and 393.144, to read as follows:

386.266. 1. Subject to the requirements of this section, any electrical
2 corporation may make an application to the commission to approve rate schedules
3 authorizing an interim energy charge, or periodic rate adjustments outside of
4 general rate proceedings to reflect increases and decreases in its prudently
5 incurred fuel and purchased-power costs, including transportation. The
6 commission may, in accordance with existing law, include in such rate schedules
7 features designed to provide the electrical corporation with incentives to improve
8 the efficiency and cost-effectiveness of its fuel and purchased-power procurement
9 activities.

10 2. Subject to the requirements of this section, any electrical, gas, or water
11 corporation may make an application to the commission to approve rate schedules
12 authorizing periodic rate adjustments outside of general rate proceedings to
13 reflect increases and decreases in its prudently incurred costs, whether capital
14 or expense, to comply with any federal, state, or local environmental law,
15 regulation, or rule. Any rate adjustment made under such rate schedules shall
16 not exceed an annual amount equal to two and one-half percent of the electrical,
17 gas, or water corporation's Missouri gross jurisdictional revenues, excluding gross
18 receipts tax, sales tax and other similar pass-through taxes not included in

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

19 tariffed rates, for regulated services as established in the utility's most recent
20 general rate case or complaint proceeding. In addition to the rate adjustment, the
21 electrical, gas, or water corporation shall be permitted to collect any applicable
22 gross receipts tax, sales tax, or other similar pass-through taxes, and such taxes
23 shall not be counted against the two and one-half percent rate adjustment
24 cap. Any costs not recovered as a result of the annual two and one-half percent
25 limitation on rate adjustments may be deferred, at a carrying cost each month
26 equal to the utilities net of tax cost of capital, for recovery in a subsequent year
27 or in the corporation's next general rate case or complaint proceeding.

28 3. Subject to the requirements of this section, any gas corporation may
29 make an application to the commission to approve rate schedules authorizing
30 periodic rate adjustments outside of general rate proceedings to reflect the nongas
31 revenue effects of increases or decreases in residential and commercial customer
32 usage due to variations in either weather, conservation, or both.

33 4. The commission shall have the power to approve, modify, or reject
34 adjustment mechanisms submitted under subsections 1 to 3 of this section only
35 after providing the opportunity for a full hearing in a general rate proceeding,
36 including a general rate proceeding initiated by complaint. The commission may
37 approve such rate schedules after considering all relevant factors which may
38 affect the costs or overall rates and charges of the corporation, provided that it
39 finds that the adjustment mechanism set forth in the schedules:

40 (1) Is reasonably designed to provide the utility with a sufficient
41 opportunity to earn a fair return on equity;

42 (2) Includes provisions for an annual true-up which shall accurately and
43 appropriately remedy any over- or under-collections, including interest at the
44 utility's short-term borrowing rate, through subsequent rate adjustments or
45 refunds;

46 (3) In the case of an adjustment mechanism submitted under subsections
47 1 and 2 of this section, includes provisions requiring that the utility file a general
48 rate case with the effective date of new rates to be no later than four years after
49 the effective date of the commission order implementing the adjustment
50 mechanism. However, with respect to each mechanism, the four-year period shall
51 not include any periods in which the utility is prohibited from collecting any
52 charges under the adjustment mechanism, or any period for which charges
53 collected under the adjustment mechanism must be fully refunded. In the event
54 a court determines that the adjustment mechanism is unlawful and all moneys

55 collected thereunder are fully refunded, the utility shall be relieved of any
56 obligation under that adjustment mechanism to file a rate case;

57 (4) In the case of an adjustment mechanism submitted under subsection
58 1 or 2 of this section, includes provisions for prudence reviews of the costs subject
59 to the adjustment mechanism no less frequently than at eighteen-month
60 intervals, and shall require refund of any imprudently incurred costs plus
61 interest at the utility's short-term borrowing rate.

62 5. Once such an adjustment mechanism is approved by the commission
63 under this section, it shall remain in effect until such time as the commission
64 authorizes the modification, extension, or discontinuance of the mechanism in a
65 general rate case or complaint proceeding.

66 6. Any amounts charged under any adjustment mechanism approved by
67 the commission under this section shall be separately disclosed on each customer
68 bill.

69 7. The commission may take into account any change in business risk to
70 the corporation resulting from implementation of the adjustment mechanism in
71 setting the corporation's allowed return in any rate proceeding, in addition to any
72 other changes in business risk experienced by the corporation.

73 8. In the event the commission lawfully approves an incentive- or
74 performance-based plan, such plan shall be binding on the commission for the
75 entire term of the plan. This subsection shall not be construed to authorize or
76 prohibit any incentive- or performance-based plan.

77 9. Prior to August 28, 2005, the commission shall have the authority to
78 promulgate rules under the provisions of chapter 536, RSMo, as it deems
79 necessary, to govern the structure, content and operation of such rate
80 adjustments, and the procedure for the submission, frequency, examination,
81 hearing and approval of such rate adjustments. Such rules shall be promulgated
82 no later than one hundred fifty days after the initiation of such rulemaking
83 proceeding. Any electrical, gas, or water corporation may apply for any
84 adjustment mechanism under this section whether or not the commission has
85 promulgated any such rules.

86 10. Nothing contained in this section shall be construed as affecting any
87 existing adjustment mechanism, rate schedule, tariff, incentive plan, or other
88 ratemaking mechanism currently approved and in effect.

89 11. Each of the provisions of this section is severable. In the event any
90 provision or subsection of this section is deemed unlawful, all remaining

91 provisions shall remain in effect.

92 12. The provisions of this section shall take effect on January 1, 2006, and
93 the commission shall have previously promulgated rules to implement the
94 application process for any rate adjustment mechanism under this section prior
95 to the commission issuing an order for any rate adjustment.

96 13. The public service commission shall appoint a task force, consisting
97 of all interested parties, to study and make recommendations on the cost recovery
98 and implementation of conservation and weatherization programs for electrical
99 and gas corporations.

100 **14. The commission shall not accept an application submitted to**
101 **the commission under this section by any electrical corporation in**
102 **violation of any regulation promulgated under subdivision (4) of**
103 **section 393.140, RSMo, until such corporation is in compliance with all**
104 **such regulations.**

393.140. The commission shall:

2 (1) Have general supervision of all gas corporations, electrical
3 corporations, water corporations and sewer corporations having authority under
4 any special or general law or under any charter or franchise to lay down, erect or
5 maintain wires, pipes, conduits, ducts or other fixtures in, over or under the
6 streets, highways and public places of any municipality, for the purpose of
7 furnishing or distributing water or gas or of furnishing or transmitting electricity
8 for light, heat or power, or maintaining underground conduits or ducts for
9 electrical conductors, or for the purpose of collecting, carrying, treating, or
10 disposing of sewage, and all gas plants, electric plants, water systems and sewer
11 systems owned, leased or operated by any gas corporation, electrical corporation,
12 water corporation, or sewer corporation.

13 (2) Investigate and ascertain, from time to time, the quality of gas or
14 water supplied and sewer service furnished by persons and corporations, examine
15 or investigate the methods employed by such persons and corporations in
16 manufacturing, distributing and supplying gas or electricity for light, heat or
17 power and in transmitting the same, and in supplying and distributing water for
18 any purpose whatsoever, and in furnishing a sewer system, and have power to
19 order such reasonable improvements as will best promote the public interest,
20 preserve the public health and protect those using such gas, electricity, water, or
21 sewer system, and those employed in the manufacture and distribution thereof,
22 and have power to order reasonable improvements and extensions of the works,

23 wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus
24 and property of gas corporations, electrical corporations, water corporations, and
25 sewer corporations.

26 (3) Have power, by order, to fix from time to time standards for the
27 measurement of the purity or illuminating power of gas to be manufactured,
28 distributed or sold by persons or corporations for lighting, heating or power
29 purposes, to prescribe from time to time the efficiency of the electric supply
30 system, of the current supplied and of the lamps furnished by the persons or
31 corporations generating and selling electric current, and to fix from time to time
32 standards for the measurement of the purity or pressure of water to be
33 distributed or sold by persons or corporations for any purpose whatsoever, and
34 to fix from time to time the standards for designing, constructing, operating and
35 maintaining sewer systems of sewer corporations, including sewers, sewage
36 pumping stations, sewage treatment works, primary treatment facilities, sludge
37 digestion and disposal facilities, secondary treatment facilities, disinfection
38 facilities, and any and all facilities related thereto; provided, however, that such
39 standards shall be supplemental to and in no way set standards lesser than the
40 minimum standards adopted by the state water pollution board, and by order to
41 require gas so manufactured, distributed or sold to equal the standards so fixed
42 by it, and to prescribe from time to time the reasonable minimum and maximum
43 pressure at which gas shall be delivered by said persons or corporations. For the
44 purpose of determining whether the gas manufactured, distributed or sold by
45 such persons or corporations for lighting, heating or power purposes conforms to
46 the standards of illuminating power, purity and pressure, and for the purpose of
47 determining whether the efficiency of the electric supply system, of the current
48 supplied and of the lamps furnished, and for the purpose of determining whether
49 the water furnished or sold conforms to the standard of purity and pressure, and
50 for the purpose of determining whether the sewer system conforms to the
51 standards for designing, constructing, operating and maintaining sewer systems,
52 and conforms to the orders issued by the commission, the commission shall have
53 power, of its own motion, to examine and investigate the plants and methods
54 employed in manufacturing, delivering and supplying gas, electricity or water,
55 and the collecting, carrying, treating and disposing of sewage, and shall have
56 access, through its members or persons employed and authorized by it, to make
57 such examinations and investigations to all parts of the manufacturing plants
58 owned, used or operated for the manufacture, transmission or distribution of gas

59 or electricity by any such person or corporation, and to all parts of the systems
60 owned, used or operated for the supplying and distribution of water and the
61 collecting, carrying, treating and disposing of sewage by any such person or
62 corporation. Any employee or agent of the commission who divulges any fact or
63 information which may come to his knowledge during the course of any such
64 inspection or examination, except insofar as he may be directed by the
65 commission, or by a court or judge thereof, or authorized by law, shall be guilty
66 of a misdemeanor.

67 **(4) Promulgate rules by January 1, 2008, under the authority of**
68 **section 386.125, RSMo, that establish:**

69 **(a) Minimum standards for the management of vegetation in, and**
70 **adjacent to, the utility system easement or right-of-way of electrical**
71 **corporations. Such standards may be prescriptive standards,**
72 **performance standards, or both;**

73 **(b) Minimum standards for the inspection, maintenance, repair,**
74 **and replacement of utility infrastructure used by electrical**
75 **corporations for the provision of electrical service. Such standards**
76 **may be prescriptive standards, performance standards, or both;**

77 **(c) Minimum reliability standards for the provision of utility**
78 **service by electrical corporations. Such standards shall include**
79 **conditions under which electrical corporations shall reimburse any**
80 **customer who sustains economic loss or damage valued over two**
81 **hundred dollars that results from electric service outages in violation**
82 **of the standards developed under this paragraph;**

83 **(d) Reporting requirements for electrical corporations under the**
84 **requirements of paragraphs (a), (b), and (c) of this subdivision. Any**
85 **reports issued by an electrical corporation under this subdivision shall**
86 **be made available to the public; and**

87 **(e) A schedule of penalties to be assessed against any electrical**
88 **corporation in violation of any provision of this subdivision, with no**
89 **single penalty to exceed two hundred fifty thousand dollars per day per**
90 **violation.**

91 **(5) Conduct inspection and monitoring activities as necessary to**
92 **ensure and enforce compliance by electrical corporations with the**
93 **standards developed under subdivision 4 of this section.**

94 **(6) Have power, in its discretion, to prescribe uniform methods of keeping**
95 **accounts, records and books, to be observed by gas corporations, electrical**

96 corporations, water corporations and sewer corporations engaged in the
97 manufacture, sale or distribution of gas and electricity for light, heat or power,
98 or in the distribution and sale of water for any purpose whatsoever, or in the
99 collection, carriage, treatment and disposal of sewage for municipal, domestic or
100 other necessary beneficial purpose. It may also, in its discretion, prescribe, by
101 order, forms of accounts, records and memoranda to be kept by such persons and
102 corporations. Notice of alterations by the commission in the required method or
103 form of keeping a system of accounts shall be given to such persons or
104 corporations by the commission at least six months before the same shall take
105 effect. Any other and additional forms of accounts, records and memoranda kept
106 by such corporation shall be subject to examination by the commission.

107 **[(5)] (7)** Examine all persons and corporations under its supervision and
108 keep informed as to the methods, practices, regulations and property employed
109 by them in the transaction of their business. Whenever the commission shall be
110 of the opinion, after a hearing had upon its own motion or upon complaint, that
111 the rates or charges or the acts or regulations of any such persons or corporations
112 are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any
113 wise in violation of any provision of law, the commission shall determine and
114 prescribe the just and reasonable rates and charges thereafter to be in force for
115 the service to be furnished, notwithstanding that a higher rate or charge has
116 heretofore been authorized by statute, and the just and reasonable acts and
117 regulations to be done and observed; and whenever the commission shall be of the
118 opinion, after a hearing had upon its own motion or upon complaints, that the
119 property, equipment or appliances of any such person or corporation are unsafe,
120 insufficient or inadequate, the commission shall determine and prescribe the safe,
121 efficient and adequate property, equipment and appliances thereafter to be used,
122 maintained and operated for the security and accommodation of the public and
123 in compliance with the provisions of law and of their franchises and charters.

124 **[(6)] (8)** Require every person and corporation under its supervision and
125 it shall be the duty of every person and corporation to file with the commission
126 an annual report, verified by the oath of the president, treasurer, general
127 manager or receiver, if any, thereof. The verification shall be made by said
128 official holding office at the time of the filing of said report, and if not made upon
129 the knowledge of the person verifying the same, shall set forth the sources of his
130 information and the grounds of his belief as to any matters not stated to be
131 verified upon his knowledge. The report shall show in detail the amount of its

132 authorized capital stock and the amount thereof issued and outstanding; the
133 amount of its authorized bonded indebtedness and the amount of its bonds and
134 other forms of evidence of indebtedness issued and outstanding; its receipts and
135 expenditures during the preceding year; the amount paid as dividends upon its
136 stock and as interest upon its bonds; the names of its officers and the aggregate
137 amount paid as salaries to them and the amount paid as wages to its employees;
138 the location of its plant or plants and system, with a full description of its
139 property and franchises, stating in detail how each franchise stated to be owned
140 was acquired; and such other facts pertaining to the operation and maintenance
141 of the plant and system, and the affairs of such person or corporation as may be
142 required by the commission. Such reports shall be in the form, cover the period
143 and be filed at the time prescribed by the commission. The commission may, from
144 time to time, make changes and additions in such forms. When any such report
145 is defective or believed to be erroneous, the commission shall notify the person or
146 corporation making such report to amend the same within a time prescribed by
147 the commission. Any such person or corporation which shall neglect to make any
148 such report or which shall fail to correct any such report within the time
149 prescribed by the commission shall be liable to a penalty of one hundred dollars
150 and an additional penalty of one hundred dollars for each day after the prescribed
151 time for which it shall neglect to file or correct the same, to be sued for in the
152 name of the state of Missouri. The amount recovered in any such action shall be
153 paid to the public school fund of the state. The commission may extend the time
154 prescribed for cause shown.

155 [(7)] **(9)** Have power, either through its members or inspectors or
156 employees duly authorized by it, to enter in or upon and to inspect the property,
157 buildings, plants, factories, powerhouses, ducts, conduits and offices of any such
158 corporations or persons.

159 [(8)] **(10)** Have power to examine the accounts, books, contracts, records,
160 documents and papers of any such corporation or person, and have power, after
161 hearing, to prescribe by order the accounts in which particular outlays and
162 receipts shall be entered, charged or credited.

163 [(9)] **(11)** Have power to compel, by subpoena duces tecum, the
164 production of any accounts, books, contracts, records, documents, memoranda and
165 papers. In lieu of requiring production of originals by subpoena duces tecum the
166 commission or any commissioner may require sworn copies of any such books,
167 records, contracts, documents and papers, or parts thereof, to be filed with

168 it. The commission may require of all such corporations or persons specific
169 answers to questions upon which the commission may need information, and may
170 also require such corporations or persons to file periodic reports in the form,
171 covering the period and filed at the time prescribed by the commission. If such
172 corporation or person shall fail to make specific answer to any question or shall
173 fail to make a periodic report when required by the commission as herein
174 provided within the time and in the form prescribed by the commission for the
175 making and filing of any such report or answer, such corporation or person shall
176 forfeit to the state the sum of one hundred dollars for each and every day it shall
177 continue to be in default with respect to such report or answer. Such forfeiture
178 shall be recovered in an action brought by the commission in the name of the
179 state of Missouri. The amount recovered in any such action shall be paid to the
180 public school fund of the state.

181 [(10)] **(12)** Have power in all parts of the state, either as a commission
182 or through its members, to subpoena witnesses, take testimony and administer
183 oaths to witnesses in any proceeding or examination instituted before it, or
184 conducted by it, in reference to any matter under sections 393.110 to 393.285.

185 [(11)] **(13)** Have power to require every gas corporation, electrical
186 corporation, water corporation, and sewer corporation to file with the commission
187 and to print and keep open to public inspection schedules showing all rates and
188 charges made, established or enforced or to be charged or enforced, all forms of
189 contract or agreement and all rules and regulations relating to rates, charges or
190 service used or to be used, and all general privileges and facilities granted or
191 allowed by such gas corporation, electrical corporation, water corporation, or
192 sewer corporation; but this subdivision shall not apply to state, municipal or
193 federal contracts. Unless the commission otherwise orders, no change shall be
194 made in any rate or charge, or in any form of contract or agreement, or any rule
195 or regulation relating to any rate, charge or service, or in any general privilege
196 or facility, which shall have been filed and published by a gas corporation,
197 electrical corporation, water corporation, or sewer corporation in compliance with
198 an order or decision of the commission, except after thirty days' notice to the
199 commission and publication for thirty days as required by order of the
200 commission, which shall plainly state the changes proposed to be made in the
201 schedule then in force and the time when the change will go into effect. The
202 commission for good cause shown may allow changes without requiring the thirty
203 days' notice under such conditions as it may prescribe. No corporation shall

204 charge, demand, collect or receive a greater or less or different compensation for
205 any service rendered or to be rendered than the rates and charges applicable to
206 such services as specified in its schedule filed and in effect at the time; nor shall
207 any corporation refund or remit in any manner or by any device any portion of
208 the rates or charges so specified, nor to extend to any person or corporation any
209 form of contract or agreement, or any rule or regulation, or any privilege or
210 facility, except such as are regularly and uniformly extended to all persons and
211 corporations under like circumstances. The commission shall have power to
212 prescribe the form of every such schedule, and from time to time prescribe by
213 order such changes in the form thereof as may be deemed wise. The commission
214 shall also have power to establish such rules and regulations, to carry into effect
215 the provisions of this subdivision, as it may deem necessary, and to modify and
216 amend such rules or regulations from time to time.

217 [(12)] (14) In case any electrical corporation, gas corporation, water
218 corporation or sewer corporation engaged in carrying on any other business than
219 owning, operating or managing a gas plant, electric plant, water system or sewer
220 system which other business is not otherwise subject to the jurisdiction of the
221 commission, and is so conducted that its operations are to be substantially kept
222 separate and apart from the owning, operating, managing or controlling of such
223 gas plant, electric plant, water system or sewer system, said corporation in
224 respect to such other business shall not be subject to any of the provisions of this
225 chapter and shall not be required to procure the consent or authorization of the
226 commission to any act in such other business or to make any report in respect
227 thereof. But this subdivision shall not restrict or limit the powers of the
228 commission in respect to the owning, operating, managing or controlling by such
229 corporation of such gas plant, electric plant, water system or sewer system, and
230 said powers shall include also the right to inquire as to, and prescribe the
231 apportionment of, capitalization, earnings, debts and expenses fairly and justly
232 to be awarded to or borne by the ownership, operation, management or control of
233 such gas plant, electric plant, water system or sewer system as distinguished
234 from such other business. In any such case if the owning, operating, managing
235 or controlling of such gas plant, electric plant, water system or sewer system by
236 any such corporation is wholly subsidiary and incidental to the other business
237 carried on by it and is inconsiderable in amount and not general in its character,
238 the commission may by general rules exempt such corporation from making full
239 reports and from the keeping of accounts as to such subsidiary and incidental

240 business.

393.141. The costs associated with any penalties paid by an
2 electrical corporation under section 393.144 or with any
3 reimbursements paid to customers under paragraph (c) of subdivision
4 (4) of section 393.140 shall be borne solely by such corporation's
5 shareholders, and shall not be passed on to the corporation's customers
6 in any form.

393.144. 1. In addition to any other remedy provided by law,
2 upon a determination by the commission that any standard, rule, or
3 regulation promulgated pursuant to subdivision 4 of section 393.140 has
4 been violated by any electrical corporation, the commission may issue
5 an order assessing an administrative penalty upon the violator under
6 this section. An administrative penalty shall not be imposed until the
7 commission has sought to resolve the violations through conference,
8 conciliation and persuasion. If the violation is resolved through
9 conference, conciliation and persuasion, no administrative penalty
10 shall be assessed unless the violation was knowingly committed.

11 2. The maximum amount of administrative penalties assessed
12 pursuant to this section shall be no more than two hundred fifty
13 thousand per day, or part thereof, for each violation. In determining
14 the amount of the administrative penalty, the commission shall take
15 into consideration all relevant circumstances, including, but not limited
16 to, the harm which the violation causes or may cause, the violator's
17 previous compliance record with the standards in subdivision (4) of
18 section 393.140, the nature and persistence of the violation, any
19 corrective actions taken, and any other factors which the commission
20 may reasonably deem relevant.

21 3. Any order assessing an administrative penalty shall state that
22 an administrative penalty is being assessed under this section and that
23 the corporation subject to the penalty may appeal as provided by this
24 section. Any such order which fails to state the law or regulation under
25 which the penalty is being sought, the manner of collection or rights of
26 appeal shall result in the state's waiving any right to collection of the
27 penalty. An administrative penalty shall be paid within sixty days from
28 the date of issuance of the order assessing the penalty. Any
29 corporation subject to an administrative penalty may appeal to the
30 commission. Any appeal shall stay the due date of such administrative

31 penalty until the appeal is resolved. Any corporation that fails to pay
32 an administrative penalty by the final due date shall be liable to the
33 state for a surcharge of fifteen percent of the penalty plus ten percent
34 per annum on any amounts owed. Any administrative penalty paid
35 pursuant to this section shall be handled in accordance with section 7
36 of article IX of the Missouri Constitution. An action may be brought in
37 the appropriate circuit court to collect any unpaid administrative
38 penalty, and for attorney's fees and costs incurred directly in the
39 collection thereof.

40 4. An administrative penalty assessed under this section shall
41 not be increased in those instances where commission action, or failure
42 to act, has caused a continuation of the violation that was a basis for
43 the penalty. Any administrative penalty shall be assessed within two
44 years following the commission's initial discovery of such alleged
45 violation, or from the date the commission in the exercise of ordinary
46 diligence should have discovered such alleged violation.

47 5. Any final order imposing an administrative penalty under this
48 section is subject to judicial review upon the filing of a petition
49 pursuant to section 536.100, RSMo, by any corporation subject to the
50 administrative penalty. No judicial review shall be available, however,
51 until all administrative remedies are exhausted.

52 6. The state may elect to assess an administrative penalty under
53 this section, or, in lieu thereof, to request that the attorney general or
54 prosecutor file an appropriate legal action seeking a civil penalty in
55 the appropriate circuit court.

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