

FIRST REGULAR SESSION

SENATE BILL NO. 228

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SCOTT, BARNITZ, SHOEMYER, VOGEL, GRIESHEIMER, GREEN AND ENGLER.

Read 1st time January 22, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1109S.03I

AN ACT

To repeal section 393.135, RSMo, and to enact in lieu thereof sixteen new sections relating to clean energy generation.

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

Section A. Section 393.135, RSMo, is repealed and sixteen new sections
2 enacted in lieu thereof, to be known as sections 393.135, 393.1160, 393.1163,
3 393.1166, 393.1172, 393.1175, 393.1178, 393.1181, 393.1184, 393.1187, 393.1190,
4 393.1193, 393.1196, 393.1199, 393.1202, and 393.1205, to read as follows:

393.135. 1. **Except as provided for in subsection 2 of this section,**
2 any charge made or demanded by an electrical corporation for service, or in
3 connection therewith, which is based on the costs of construction in progress upon
4 any existing or new facility of the electrical corporation, or any other cost
5 associated with owning, operating, maintaining, or financing any property before
6 it is fully operational and used for service, is unjust and unreasonable, and is
7 prohibited.

8 2. **The provisions of subsection 1 of this section shall not apply**
9 **to a clean baseload generating plant or a low-carbon producing**
10 **generating facility, as defined in 393.1163. In addition, the commission**
11 **may authorize an electrical corporation to make or demand charges for**
12 **service based in whole or in part on additional amortizations to**
13 **maintain the electrical corporation's financial ratios that will, in the**
14 **commission's judgment, better enable the electrical corporation to cost-**
15 **effectively construct a clean baseload generating plant or a low-carbon**
16 **producing generating facility.**

393.1160. 1. **The provisions of sections 393.1160 to 393.1205 shall**
2 **be known and may be cited as the "Missouri Clean and Renewable**

3 Energy Construction Act". The purpose of the act is to encourage the
4 construction of clean baseload generating plants within this state and
5 provide incentives for electrical corporations to construct low-carbon
6 producing generating facilities that utilize renewable sources to
7 produce energy. Sections 393.1160 to 393.1205 shall only apply to
8 qualifying generating plants or facilities that are placed into
9 commercial operation after August 28, 2009.

10 2. Where an electrical corporation forms a subsidiary
11 corporation, limited liability company, partnership or other entity to
12 acquire, finance, license, construct, own, operate, maintain or
13 decommission a clean baseload generating plant to be used as a
14 generating resource in whole or in part for the electrical corporation's
15 ratepayers, the commission shall treat, for ratemaking purposes, for the
16 purpose of obtaining any required regulatory approvals, and for all
17 other purposes of sections 393.1160 to 393.1205, all capital costs and
18 expenses incurred by the subsidiary in connection with the clean
19 baseload generating plant as if the costs and expenses were incurred
20 directly by the electrical corporation and as if the plant itself was
21 owned directly by the electrical corporation. It is the intent of the
22 general assembly that regulatory approvals under sections 393.1160 to
23 393.1205 related to a clean baseload generating plant and recovery of
24 the costs through rates for such a plant shall be the same whether the
25 clean baseload generating plant is owned directly by the electrical
26 corporation or by a subsidiary of the electrical corporation, and that
27 the electrical corporation shall be entitled to obtain a commission
28 determination of any regulatory and ratemaking issues arising from
29 ownership of the plant by such a subsidiary as part of the electrical
30 corporation's request for a project development order relating to the
31 plant under sections 393.1160 to 393.1205. Moreover, for all purposes
32 of the assessment and levy of property taxes under Missouri law,
33 including chapters 137, 138, 151, and 153, RSMo, the property of a
34 subsidiary of an electrical corporation owning a clean baseload
35 generating plant as described above shall be treated as if it were owned
36 by the electrical corporation. Nothing in this subsection is intended to
37 alter the ownership of the project between the electrical corporation
38 and any such subsidiary or other entity for any other purpose,
39 including but not limited to, the granting of any interest in such

40 subsidiary or other entity or the assets thereof in connection with any
41 financing or otherwise.

393.1163. As used in sections 393.1160 to 393.1205, the following
2 words and phrases shall mean:

3 (1) "AFUDC", the allowance for funds used during construction
4 of a facility calculated according to regulatory accounting principles;

5 (2) "Capital costs" or "facility capital costs", all capital costs,
6 including applicable taxes, associated with the design, siting, selection,
7 acquisition, licensing, construction, testing, and placing into service of
8 a clean baseload generating plant or low-carbon producing generating
9 facility, and ancillary facilities, as well as capital costs incurred to
10 expand or upgrade the transmission grid in order to connect the clean
11 baseload generating plant or low-carbon producing generating facility
12 to the transmission grid, under generally accepted principles of
13 regulatory or financial accounting. This includes all costs described in
14 the Federal Energy Regulatory Commission's Uniform System of
15 Accounts--Electric Plant Instructions, par. 3, "Components of
16 Construction Cost" 18 CFR Part 101, AFUDC and capital costs
17 associated with facilities or investments for the transportation,
18 delivery, storage, handling, and disposal of fuel;

19 (3) "Clean baseload generating plant", a new coal or nuclear
20 fueled electrical generating facility located in the state of Missouri that
21 is designed to be operated at a capacity factor exceeding seventy
22 percent annually, has a gross initial generation capacity rating of five
23 hundred megawatts or more, and is intended in whole or in part to
24 serve retail customers of an electrical corporation in Missouri, and for
25 a coal plant, is designed to utilize both carbon sequestration or similar
26 technology and the best available control technology as of the date of
27 the filing of the application for a project development order, as defined
28 by the United States Environmental Protection Agency, for the control
29 of air emissions;

30 (4) "Commission", the Missouri public service commission;

31 (5) "Construction work in progress", the electrical corporation's
32 share of all capital costs associated with a clean baseload generating
33 plant or low-carbon generating facility, which have been incurred but
34 have not been included in the electrical corporation's plant-in-service,
35 and are recorded in Account No. 107 of the Federal Energy Regulatory

36 Commission's Uniform System of Accounts, 18 CFR Part 101, or any
37 other account established in the Uniform System of Accounts for the
38 recording of construction work in progress;

39 (6) "Cost of tax capitalized interest", for any period, the sum of
40 all federal and state income tax for such period attributable to the
41 disallowance of interest deductions due to tax capitalized interest,
42 which amount shall include a gross-up for income taxes. The cost of tax
43 capitalized interest shall be computed using the following formula:
44 $(\{\text{tax capitalized interest minus the debt component of AFUDC}\} \text{ times}$
45 $\{\text{the composite federal and state income tax rate used in the electrical}$
46 $\text{corporation's most recent ratemaking proceeding, as adjusted to reflect}$
47 $\text{changes, if any, to statutory tax rates applicable to the period}\}) \text{ divided}$
48 $\text{by } (1 \text{ minus the electrical corporation's composite federal and state}$
49 $\text{income tax rate});$

50 (7) "Facility review application", an application for a facility
51 review order;

52 (8) "Facility review order", an order issued by the commission
53 under section 393.1172;

54 (9) "General rate proceeding", a proceeding before the
55 commission under section 393.150 or 386.390, RSMo, and other
56 applicable provisions for the establishment of new electric rates and
57 charges, and where orders in general rate proceedings are referenced
58 in sections 393.1160 to 393.1205, these orders include revised rate
59 orders issued in proceedings under sections 393.1172 to 393.1193;

60 (10) "In-service expenses", all reasonably projected expenses of
61 the type recognized under generally accepted principles of regulatory
62 or financial accounting as a result of a clean baseload generating plant
63 or low-carbon producing generating facility commencing commercial
64 operation, including:

65 (a) Expenses associated with operating and maintaining the
66 facility, as well as taxes and governmental charges, including taxes
67 other than income taxes, applicable to the facility;

68 (b) Depreciation and amortization expenses related to the
69 facility;

70 (c) The weighted average cost of capital applied to the electrical
71 corporation's investment in supplies, inventories, and working capital
72 associated with the facility; and

73 (d) Other costs determined by the commission to be appropriate
74 for ratemaking purposes. In-service expenses include, but are not
75 limited to, labor, supplies, insurance, general and administrative
76 expenses, and the cost of outside services;

77 (11) "Low-carbon producing generating facility", any electric
78 generating facility powered by wind, hydropower, solar power, landfill
79 methane, biomass or any other renewable source of power that does not
80 produce significant carbon emissions;

81 (12) "Person", any individual, group, firm, partnership, company,
82 or corporation;

83 (13) "Political subdivision", any county or municipality within
84 this state;

85 (14) "Preconstruction costs", all costs associated with a potential
86 clean baseload generating plant or low-carbon producing generating
87 facility incurred before issuance of a facility review order, including,
88 without limitation, the costs of contracting, evaluation, design,
89 engineering, forging materials, environmental and geotechnical
90 analysis and permitting, including early site permitting and combined
91 operating license permitting, initial site preparation costs and related
92 consulting and professional costs, and costs associated with any other
93 activities on the site permitted under applicable federal, state, or local
94 laws or regulations prior to receipt of any final authorization to
95 construct the clean baseload generating plant or low-carbon producing
96 generating facility from applicable federal, state, or local agencies, and
97 shall include AFUDC associated with all of the foregoing
98 costs. Preconstruction costs may be incurred prior to applying for a
99 project development order. Preconstruction costs may also be incurred
100 prior to the effective date of sections 393.1160 to 393.1205;

101 (15) "Project development application", an application for a
102 project development order;

103 (16) "Project development order", an order issued under section
104 393.1166;

105 (17) "Return on equity", the return on common equity established
106 in the facility review order for a clean baseload generating plant or
107 low-carbon producing generating facility. If a return on common
108 equity was established by the commission in an order in the electrical
109 corporation's most recent general rate proceeding issued no more than

110 five years before the date an application for a facility review order is
111 filed, that return on common equity shall be used for computing future
112 rate revisions under sections 393.1172 to 393.1193. If a return on
113 common equity was not established by the commission in an order in
114 a general rate proceeding for the electrical corporation issued no more
115 than five years before the date an application for a facility review
116 order is filed, a project-specific return on common equity shall be
117 established in the facility review order application proceeding and
118 shall apply exclusively to the establishment of the weighted average
119 cost of capital under sections 393.1160 to 393.1205 and shall not be used
120 for any other purpose. The return on common equity as set forth in
121 this section shall apply to the establishment of the weighted average
122 cost of capital under sections 393.1160 to 393.1205 until a different
123 return on equity is established in a general rate proceeding;

124 (18) "Revised rates", a revised schedule of electric rates and
125 charges reflecting a change to the electrical corporation's then current
126 non-fuel and purchased power rates and charges to add incremental
127 revenue requirements related to a clean baseload generating plant or
128 low-carbon producing generating facility as authorized in sections
129 393.1160 to 393.1205;

130 (19) "Revised rates order", an order issued by the commission
131 under sections 393.1172 to 393.1193 approving, modifying, or denying
132 the electrical corporation's request to charge revised rates under
133 sections 393.1160 to 393.1205;

134 (20) "Revised rates proceedings", all proceedings to consider an
135 application for revised rates or review of a revised rates order;

136 (21) "Staff", the executive director or the executive director and
137 the employees of the commission;

138 (22) "Tax capitalized interest", all interest that is capitalized for
139 income tax purposes under Section 263A(f) of the Internal Revenue
140 Code of 1986, as amended, or other provision of federal or state income
141 tax law;

142 (23) "Weighted average cost of capital" or "cost of capital", the
143 electrical corporation's average cost of debt and equity capital:

144 (a) Incorporating the:

145 a. Return on equity;

146 b. Electrical corporation's current weighted average cost of debt;

147 **and**

148 **c. Electrical corporation's weighted average cost of preferred**
149 **stock;**

150 **(b) Adjusting subparagraph a. and subparagraph c. of paragraph**
151 **(a) of this subdivision for the effect of current income taxes by dividing**
152 **them by (1 minus the composite federal and state income tax rate used**
153 **in the electrical corporation's most recent ratemaking proceeding, as**
154 **adjusted to reflect changes, if any, to statutory tax rates applicable to**
155 **the period); and**

156 **(c) Weighting the items described in paragraph (a) and adjusted**
157 **in paragraph (b) of this subdivision according to the electrical**
158 **corporation's current capital structure for ratemaking purposes.**

393.1166. 1. The provisions of this section apply to the
2 **preconstruction costs of a clean baseload generating plant or low-**
3 **carbon producing generating facility.**

4 **2. An electrical corporation may file a project development**
5 **application with the commission. The electrical corporation may**
6 **combine the project development application with an application for**
7 **a certificate of public convenience and necessity under subsection 1 of**
8 **section 393.170, a facility review order application, a revised rate order**
9 **application, a general rate proceeding, or any combination**
10 **thereof. Where the same information is required in different sections**
11 **of the combined application, it may be set forth once and cross-**
12 **referenced as appropriate.**

13 **3. In a project development application, the electrical**
14 **corporation shall:**

15 **(1) Describe the facility being considered and shall designate:**

16 **(a) The anticipated generation capacity or range of capacity of**
17 **the facility; and**

18 **(b) The projected annual capacity factors or range of capacity**
19 **factors of the facility;**

20 **(2) Provide information establishing the need for the generation**
21 **capacity represented by the potential facility;**

22 **(3) Provide information establishing the availability,**
23 **reasonableness and prudence of the potential fuel sources and potential**
24 **generation types that the electrical corporation is considering for the**
25 **facility; and**

26 **(4) Provide such other information as may be required to**
27 **establish that the decision to incur preconstruction costs related to the**
28 **potential facility is prudent considering the information known to the**
29 **electrical corporation at the time and considering the other**
30 **alternatives available to the electrical corporation for supplying its**
31 **generation needs.**

32 **4. The commission shall issue a project development order**
33 **affirming the prudence of the electrical corporation's decision to incur**
34 **preconstruction costs for the facility specified in the application if the**
35 **electrical corporation demonstrates by a preponderance of the evidence**
36 **that the decision to incur preconstruction costs for the facility is**
37 **prudent. In issuing its project development order, the commission may**
38 **not rule on the prudence or recoverability of specific items of cost, but**
39 **shall rule instead on the prudence of the decision to incur**
40 **preconstruction costs for the facility described in subdivision (1) of**
41 **subsection 3 of this section.**

42 **5. Unless during the course of the revised rates proceeding or**
43 **general rates proceeding where the preconstruction costs related to the**
44 **facility are first being included in rates, a party proves by a**
45 **preponderance of the evidence that individual items of preconstruction**
46 **costs were imprudently incurred, or that other decisions respecting the**
47 **preconstruction costs subsequent to the issuance of a project**
48 **development order were imprudently made considering the information**
49 **available to the electrical corporation at the time they were made, then**
50 **all the preconstruction costs incurred for the potential facility shall be**
51 **properly included in the electrical corporation's plant-in-service and**
52 **shall be fully recoverable through rates in future general rate**
53 **proceedings or revised rates proceedings under sections 393.1172 to**
54 **393.1193.**

55 **6. To the extent that a party in a general rates proceeding or**
56 **revised rates proceeding establishes the imprudence of specific items**
57 **of preconstruction costs or of specific decisions made subsequent to the**
58 **issuance of a project development order as set forth in subsection 5 of**
59 **this section, then the commission may disallow the resulting costs, but**
60 **only to the extent that a prudent electrical corporation would have**
61 **avoided those costs considering the information available to the**
62 **electrical corporation at the time when they were incurred.**

63 7. If the electrical corporation decides to abandon the project
64 after issuance of a prudency determination under this section, then the
65 preconstruction costs, whether incurred before or after the effective
66 date of sections 393.1160 to 393.1205, related to that project may be
67 deferred, with AFUDC being calculated on the balance, and may be
68 included in rates in the electrical corporation's next general rate
69 proceeding, provided that as to the decision to abandon the plant, the
70 electrical corporation shall bear the burden of proving by a
71 preponderance of the evidence that the decision was prudent. Without
72 in any way limiting the effect of subsection 4 of this section as to a
73 project that is not abandoned, recovery of capital costs and the
74 electrical corporation's cost of capital associated with them may be
75 disallowed only to the extent that the failure by the electrical
76 corporation to anticipate or avoid the allegedly imprudent costs, or to
77 minimize the magnitude of the costs, was imprudent considering the
78 information available at the time that the electrical corporation could
79 have acted to avoid or minimize the costs. This subsection shall not
80 apply to projects abandoned under the provisions of subsection 4 of
81 section 393.1181.

82 8. Prudency determinations under subsection 4 of this section
83 shall be final and not subject to further review in any future
84 proceedings.

85 9. At any time after an initial project development order has
86 been issued, an electrical corporation may file an amended project
87 development application seeking a determination of the prudency of
88 the electrical corporation's decision to continue to incur
89 preconstruction costs considering changed circumstances or changes
90 in the type or location of the facility that the electrical corporation is
91 pursuing or considering other characteristics or decisions related to
92 the facility. The amended project development application shall be
93 considered in a separate docket; however, the testimony and other
94 evidence of the prior project development application docket shall be
95 considered to be part of the new docket.

96 10. The commission shall enter an order granting or denying an
97 application for a project development order or an application for an
98 amended project development order, collectively, a "project
99 development order application", within three months of the filing of the

100 project development order application. If the project development
101 order application is combined with an application for a facility review
102 order or with a general rate proceeding, the deadline for granting or
103 denying the project development order application shall be the later of
104 the deadline for issuing the facility review order or the effective date
105 of the commission's report and order in the general rate proceeding. If
106 an application for a certificate of public convenience and necessity
107 under subsection 1 of section 393.170 is combined with a project
108 development order application, the commission shall also enter an
109 order granting or denying the certificate by the deadline established
110 under this section for granting or denying the project development
111 order application. If the commission fails to issue an order respecting
112 the project development order application, and certificate application,
113 if applicable, by the deadline established under this section, a party
114 may move that the commission issue an order granting or denying the
115 project development order application, and certificate application, if
116 applicable. If the commission fails to issue such an order within ten
117 days after the motion to issue an order is filed, the relief requested in
118 the project development order application, and certificate application,
119 if applicable, shall be considered granted.

393.1172. The application for a facility review order under
2 sections 393.1172 to 393.1193 shall include:

- 3 (1) Information showing the anticipated construction schedule
4 for the facility;
- 5 (2) Information showing the anticipated components of capital
6 costs and the anticipated schedule for incurring them;
- 7 (3) Information showing the projected effect of investment in the
8 facility on the electrical corporation's overall revenue requirement for
9 each year during the construction period;
- 10 (4) Information identifying:
 - 11 (a) The specific type of units selected for the facility;
 - 12 (b) The suppliers of the major components of the facility; and
 - 13 (c) The basis for selecting the type of units, major components,
14 and suppliers;
- 15 (5) Information detailing the qualification and selection of
16 principal contractors and suppliers, other than those listed in
17 paragraph (c) of subdivision (4) of this section, for construction of the

18 facility;

19 (6) Information showing the anticipated in-service expenses
20 associated with the facility for the twelve months following
21 commencement of commercial operation adjusted to normalize any
22 atypical or abnormal expense levels anticipated during that period;

23 (7) Information required by section 393.1178;

24 (8) Information identifying risk factors related to the
25 construction and operation of the facility;

26 (9) Information identifying the proposed rate design and class
27 allocation factors to be used in formulating revised rates;

28 (10) Information identifying the return on equity proposed by
29 the electrical corporation under subdivision (17) of section 393.1163;
30 and

31 (11) The revised rates, if any are requested, that the electrical
32 corporation intends to put in place concurrently with the issuance of
33 the resulting facility review order, as provided for in subsection 3 of
34 section 393.1178.

393.1175. 1. An electrical corporation may file a facility review
2 order application with the commission. The electrical corporation may
3 combine the facility review order application with an application for
4 a certificate of public convenience and necessity under subsection 1 of
5 section 393.170, a project development order application, a revised rate
6 order application as provided for in subdivision (11) of section 393.1172,
7 a general rate proceeding, or any combination thereof. An application
8 or combined application shall contain an introduction and all material
9 required by law or regulation to be contained in an application filed
10 under sections 393.1160 to 393.1205.

11 2. Where the same information is required in different sections
12 of the combined application, it may be set forth once and cross-
13 referenced as appropriate.

393.1178. 1. After hearing, the commission shall issue a facility
2 review order approving rate recovery for facility capital costs if it
3 determines that the electrical corporation's decision to proceed with
4 construction of the facility is prudent and reasonable considering the
5 information available to the electrical corporation at the time.

6 2. The facility review order shall establish:

7 (1) The anticipated construction schedule for the facility

8 including contingencies;

9 (2) The anticipated components of capital costs and the
10 anticipated schedule for incurring them, including specified
11 contingencies;

12 (3) The return on equity established in conformity with
13 subdivision (17) of section 393.1163;

14 (4) The choice of the specific type of unit or units and major
15 components of the facility;

16 (5) The qualification and selection of principal contractors and
17 suppliers for construction of the facility; and

18 (6) The inflation indices to be used by the electrical corporation
19 for costs of facility construction, covering major cost components or
20 groups of related cost components. Each electrical corporation shall
21 provide its own indices, including: the source of the data for each
22 index if the source is external to the electrical corporation, or the
23 methodology for each index which is compiled from internal electrical
24 corporation data, the method of computation of inflation from each
25 index, a calculated overall weighted index for capital costs, and a five-
26 year history of each index on an annual basis.

27 3. If revised rates are requested, the facility review order shall
28 specify initial revised rates reflecting the electrical corporation's
29 current investment in the facility, which shall be determined using the
30 standards set forth in subsection 2 of section 393.1187 and implemented
31 according to section 393.1187.

32 4. The facility review order shall establish the rate design and
33 class allocation factors to be used in calculating revised rates related
34 to the facility. In establishing revised rates, all factors, allocations, and
35 rate designs shall be as determined in the electrical corporation's last
36 rate order or as otherwise previously established by the commission.

37 5. As circumstances warrant, the electrical corporation may
38 petition the commission for an order modifying any of the schedules,
39 estimates, findings, class allocation factors, rate designs, or conditions
40 that form part of any facility review order issued under this
41 section. The commission shall grant the relief requested if, after a
42 hearing, the commission finds:

43 (1) As to the changes in the schedules, estimates, findings, or
44 conditions, that the evidence of record justifies a finding that the

45 changes are not the result of imprudence on the part of the electrical
46 corporation; and

47 (2) As to the changes in the class allocation factors or rate
48 designs, that the evidence of record indicates the proposed class
49 allocation factors or rate designs are just and reasonable.

50 The commission shall consider a request under this subsection in a new
51 docket with the resulting order to be an amended facility review order,
52 which docket shall be subject to the provisions of subsection 6 of this
53 section.

54 6. The commission shall enter an order granting or denying an
55 application for a facility review order or for an amended facility review
56 order, collectively, a facility review order application, within six
57 months of the filing of the facility review order application. If the
58 facility review order application is combined with a general rate
59 proceeding, the deadline for granting or denying the facility review
60 order application shall become the effective date of the commission's
61 report and order in the general rate proceeding. If an application for
62 a certificate of public convenience and necessity under subsection 1 of
63 section 393.170 is combined with a facility review order application, the
64 commission shall enter an order granting or denying the certificate by
65 the deadline established under this section for granting or denying the
66 facility review order application. If the commission fails to issue an
67 order respecting the facility review order application, and certificate
68 application, if applicable, by the deadline established under this
69 section, a party may move that the commission issue an order granting
70 or denying the facility review order application, and certificate
71 application, if applicable. If the commission fails to issue such an order
72 within ten days after the motion to issue an order is filed, the relief
73 requested in the facility review order application, and certificate
74 application, if applicable, shall be considered granted.

393.1181. 1. A facility review order shall constitute a final and
2 binding determination that the costs of the facility are properly
3 includable in rates as and when they are incurred, and are prudently
4 incurred so long as the facility is constructed or is being constructed
5 within the parameters of:

6 (1) The approved construction schedule including contingencies;
7 and

8 **(2) The approved capital cost estimates including contingencies.**
9 **2. So long as the facility is constructed or being constructed in**
10 **accordance with the approved schedules, estimates, and projections set**
11 **forth in the facility review order, as adjusted by the inflation indices**
12 **adopted by the facility review order, the electrical corporation shall be**
13 **allowed to recover its capital costs related to the facility through**
14 **revised rate filings or general rate proceedings.**

15 **3. If, during the course of the revised rates proceeding or general**
16 **rate proceeding where the capital costs related to the facility are first**
17 **being included in rates, a party proves by a preponderance of the**
18 **evidence that there has been a material and adverse deviation from the**
19 **approved schedules, estimates, and projections set forth in the facility**
20 **review order, as adjusted by the inflation indices adopted therein, the**
21 **commission may disallow the additional capital costs that result from**
22 **the deviation, but only to the extent that the failure by the electrical**
23 **corporation to avoid the deviation, or to minimize the resulting**
24 **expense, was imprudent considering the information available at the**
25 **time that the electrical corporation could have acted to avoid the**
26 **deviation or minimize its effect. Deviations due to significant weather**
27 **delays, natural disasters, changes in supplier costs, unavailability of**
28 **supply of equipment, labor or materials, regulatory changes or other**
29 **factors beyond the electrical corporation's control shall not result in**
30 **any disallowance of costs.**

31 **4. If any provision of section 393.135 or sections 393.1160 to**
32 **393.1205 that affects an electrical corporation's ability to recover**
33 **capital costs and any AFUDC thereon for a project involving a clean**
34 **baseload generating plant or a low-carbon producing generating**
35 **facility is abrogated, repealed, materially amended, or materially**
36 **limited by subsequent action of the general assembly, by initiative**
37 **petition, by constitutional amendment, or by judicial decision, the**
38 **capital costs incurred by the electrical corporation and any AFUDC**
39 **thereon prior to such date of abrogation, repeal, material amendment,**
40 **or material limitation and in reliance on the provisions of section**
41 **393.135 or sections 393.1160 to 393.1205, shall be permitted to be**
42 **recovered through such electrical corporation's rates, with such**
43 **recovery to extend over a period that shall not exceed the period**
44 **during which such capital costs were incurred. Moreover, if a facility**

45 review order for a project involving a clean baseload generating plant
46 or a low-carbon producing generating facility has been issued prior to
47 the time any such provision of sections 393.1160 to 393.1205 is
48 abrogated, repealed, materially amended, or materially limited by
49 subsequent action of the general assembly, by initiative petition, by
50 constitutional amendment, or by judicial decision, the capital costs
51 incurred by the electrical corporation in order to complete such a
52 project and any AFUDC thereon shall be permitted to be recovered
53 through such electrical corporation's rates as if no abrogation, repeal,
54 material amendment or material limitation had occurred.

393.1184. 1. After issuance of a facility review order approving
2 rate recovery for capital costs related to the facility, the electrical
3 corporation shall file reports with the commission staff semi-annually
4 until the facility begins commercial operation. These reports shall be
5 filed no later than forty-five days after the close of the period covered
6 by the report, shall not be combined with any other filing, and shall
7 contain the following information:

- 8 (1) The progress of construction of the facility;
- 9 (2) Updated construction schedules;
- 10 (3) Schedules of the capital costs incurred; and
- 11 (4) Updated schedules of the anticipated capital costs.

12 2. The commission staff shall conduct on-going monitoring of the
13 construction of the facility and expenditure of capital through review
14 and audit of the semi-annual reports under sections 393.1172 to
15 393.1193, and shall have the right to inspect the books and records
16 regarding the facility and the physical progress of construction.

393.1187. 1. No earlier than three months after issuance of a
2 facility review order, which, if requested by the electrical corporation,
3 shall include an order approving revised rates as provided for in
4 subsection 3 of section 393.1178, and every three months thereafter, the
5 electrical corporation may file with the commission requests for the
6 approval of revised rates that will include the electrical corporation's
7 additional investment in the facility reflected on the accounting books
8 and records of the electrical corporation that were not previously
9 included in rates.

10 2. For revised rates implemented as part of the facility review
11 order under subsection 3 of section 393.1178, or for additional revised

12 rates implemented under a request made under subsection 1 of this
13 section, an electrical corporation shall be allowed to recover through
14 the revised rates:

15 (1) Its weighted average cost of capital applied to the
16 outstanding balance of construction work in progress, including
17 construction work in progress arising from preconstruction costs; and

18 (2) Its cost of tax capitalized interest associated with the
19 outstanding balance of construction work in progress, including
20 construction work in progress arising from preconstruction
21 costs. Items in this subdivision and subdivision (1) of this subsection
22 shall be calculated as of a date specified in the filing and shall be
23 recovered through a separately stated charge to appear on customers'
24 bills. No phase-in of revised rates shall be permitted. The electrical
25 corporation shall not be permitted to include in its rate base in any
26 general rate proceeding a deferred tax asset computed by reference to
27 tax capitalized interest with respect to the construction, including
28 preconstruction, of the clean baseload generating plant or low-carbon
29 producing generating facility. The electrical corporation shall be
30 required to reduce its revenue requirement in any general rate
31 proceeding to reflect the reduction in tax liability the electrical
32 corporation receives from tax depreciation deductions attributable to
33 the tax capitalized interest with respect to the construction, including
34 preconstruction, of the clean baseload generating plant or low-carbon
35 producing generating facility. The recovery of tax capitalized interest
36 with an income tax gross-up is intended to require ratepayers to pay no
37 more and no less than necessary to make the electrical corporation
38 whole on an after-tax cash basis.

39 3. Initial revised rates approved under subsection 3 of section
40 393.1178 as part of the issuance of the facility review order, and revised
41 rates filed under subsection 1 of this section, shall become effective ten
42 days after the filing of rate schedules reflecting the new rates to be
43 charged to each rate class. Such rates shall be collected by the
44 electrical corporation on an interim basis subject to refund as provided
45 for in subsection 6 of this section. Any construction work in progress
46 for which the weighted average cost of capital is not being recovered
47 through revised rates shall continue to earn AFUDC and may be
48 included in rates through future filings. Revised rates filings under

49 subsection 1 of this section shall include the most recent monitoring
50 report filed under subsection 1 of section 393.1184 updated to reflect
51 information current as of the date specified in the filing. For revised
52 rates filings under subsection 1 of this section, the commission shall
53 provide notice of the revised rates filing to all parties to the electrical
54 corporation's facility review application proceeding and permit the
55 intervention of any party filing an application for intervention within
56 two weeks of the filing if such a party meets the standard for
57 intervention contained in the commission's rules. Late interventions
58 may be approved in appropriate circumstances, but shall not result in
59 the extension of any other dates contained in this section.

60 4. The commission staff shall review and audit the revised rates,
61 filed under subsection 3 of section 393.1178 or subsection 1 of this
62 section and the information supporting them to determine if the
63 revised rates were calculated in accordance with the facility review
64 order. No later than two months after the date of the revised rates
65 filing, the commission staff shall file with the commission and serve on
66 all parties of record a verified report indicating the results of its
67 review and audit, and proposing any changes to the revised rates or the
68 information supporting them that the commission staff determines to
69 be necessary to comply with the terms of the facility review order.

70 5. Written comments related to the report may be filed with the
71 commission by parties to the docket within one month from the date of
72 the filing of the report. Comments shall be served on the commission
73 staff and simultaneously mailed or electronically transmitted to the
74 electrical corporation and to all parties of record. The commission
75 staff may revise its report considering comments filed.

76 6. The commission shall enter an order affirming that the revised
77 rates are in accordance with the facility review order, or specifying any
78 variance between the revised rates and the facility review order, within
79 four months of the revised rates filing. If revised rates are requested
80 in connection with the issuance of the facility review order, the
81 commission shall enter an order respecting revised rates within the
82 deadline established under subsection 6 of section 393.1178 for granting
83 or denying the facility review order application. If the commission
84 fails to issue an order within the periods prescribed in this section, a
85 party may move that the commission issue an order affirming that the

86 revised rates are in accordance with the facility review order, or
87 specifying any variance between the revised rates and the facility
88 review order. If the commission fails to issue such an order within ten
89 days after the motion to issue an order is filed, the revised rates shall
90 be deemed final, and no longer subject to refund, subject, however, to
91 the final audit provisions of subsection 12 of this section. If the
92 commission determines that the revised rates put into effect by the
93 electrical corporation resulted in a recovery of revenues above those
94 authorized by the facility review order, the electrical corporation shall
95 credit customer bills for the excess recovery over the following four
96 monthly billing cycles, with interest at the electrical corporation's
97 short-term borrowing rate. If the commission determines that the
98 revised rates put into effect by the electrical corporation resulted in a
99 recovery of revenues less than those authorized by the facility review
100 order, the electrical corporation will add the under-recovery to
101 customer bills over the following four monthly billing cycles, with
102 interest at the electrical corporation's short-term borrowing rate.

103 7. Where both the commission staff and the electrical corporation
104 agree in writing on the revised rates to be implemented, the
105 commission shall give substantial weight to the agreement in issuing
106 its revised rates order.

107 8. If the electrical corporation is granted a rate increase in the
108 revised rates order, the electrical corporation shall promptly provide
109 notice of the increase to its customers.

110 9. Upon implementation of revised rates under this section, the
111 electrical corporation shall cease to accrue AFUDC on that component
112 of its construction work in progress on which it is recovering its
113 weighted average cost of capital through revised rates.

114 10. Other provisions of sections 393.1172 to 393.1193
115 notwithstanding:

116 (1) The electrical corporation may file a final set of revised rates
117 for the facility to go into effect upon commercial operation of the
118 facility, the filing to be made no sooner than seven months before the
119 projected date that the facility is to commence commercial operations.
120 In the final revised rates the electrical corporation may include
121 recovery of the weighted average cost of capital applied to the actual
122 capital costs associated with the facility and projected capital costs

123 through the end of the period of construction of the facility that have
124 not previously been included in rates. Rate adjustments to reflect the
125 revenue requirements related to in-service expenses shall be included
126 in the final revised rates and shall be based on the electrical
127 corporation's most current budget estimates of those expenses for the
128 succeeding twelve-month period at the time the final revised rates are
129 filed or actual expenses, if available. The final revised rates filing shall
130 be processed in the same manner and fashion as other revised rates
131 filings made under subsection 1 of this section.

132 (2) If the commission rejects a revised rate filing on grounds that
133 may be corrected in a subsequent filing, or if the electrical corporation
134 withdraws a revised rate filing before a revised rates order is issued,
135 the electrical corporation may file a subsequent request for revised
136 rates at any time thereafter.

137 (3) The electrical corporation may seek to recover any capital
138 costs, in-service expenses, or other costs not included in revised rates,
139 if any, through future general rate proceedings.

140 11. If the electrical corporation decides to abandon the project
141 after a facility review order approving rate recovery for the project has
142 been issued, then the capital costs and AFUDC related to the project,
143 whether incurred before or after the effective date of sections 393.1160
144 to 393.1205, shall nonetheless be recoverable in a general rate
145 proceeding or under sections 393.1172 to 393.1193, provided that as to
146 the decision to abandon the project, the electrical corporation shall
147 bear the burden of proving by a preponderance of the evidence that the
148 decision was prudent. Without limiting the effect of subsection 1 of
149 section 393.1181 as to a facility that is not abandoned, recovery of
150 capital costs and the electrical corporation's cost of capital associated
151 with them may be disallowed as a result of abandoning a facility only
152 to the extent that the failure by the electrical corporation to avoid the
153 allegedly imprudent costs, or to minimize the magnitude of the costs,
154 was imprudent considering the information available at the time that
155 the electrical corporation could have acted to avoid or minimize the
156 costs. The commission shall order the amortization and recovery
157 through rates of the investment in the abandoned facility as part of an
158 order adjusting rates under sections 393.1172 to 393.1193 or in a general
159 rate proceeding. Unamortized costs shall bear interest at the electrical

160 corporation's AFUDC rate, and the amortization period shall not exceed
161 the period during which the costs that are the subject of the
162 amortization were incurred. This subsection shall not apply to projects
163 abandoned under the provisions of subsection 4 of section 393.1181.

164 12. After completion of a facility that is subject to a facility
165 review order, the commission staff shall conduct an audit of the
166 electrical corporation's revenues, expenses, and rates. The audit shall
167 be based on a twelve-month test period ending no later than December
168 thirty-first of the calendar year following the year in which the facility
169 entered commercial operation and shall be filed within four months of
170 the conclusion of the test period. The sole purpose of the audit will be
171 to determine if the costs actually recovered through all revised rates
172 orders equal the actual capital costs for the new facility and the in-
173 service expenses. Any over- or under-recovery determined by the
174 commission to have existed shall be credited to or recovered from
175 ratepayers, as the case may be, through subsequent bill credits or
176 surcharges, with interest at the utility's short-term borrowing rate.

393.1190. 1. The provisions of sections 393.1190 and 393.1193
2 shall supplement the provisions of section 386.500, RSMo, and shall
3 control to the extent inconsistent with section 386.500, RSMo. Within
4 the time allowed for seeking rehearing of a commission order under
5 section 386.500, RSMo, after issuance of a revised rates order under
6 sections 393.1178 or 393.1187, or within thirty days of the failure by the
7 commission to issue a revised rates order as required under subsection
8 6 of section 393.1187, any aggrieved party may apply to the commission
9 for rehearing of the revised rates order or for the failure to issue a
10 revised rates order.

11 2. In seeking rehearing under this section, a party seeking
12 rehearing shall identify with particularity the specific issues it intends
13 to raise with regard to the revised rates order.

393.1193. 1. The commission shall issue its order ruling upon an
2 application for rehearing of a revised rates order within six months of
3 the filing of the application. If the application for rehearing has been
4 resolved among the parties by settlement agreement, the commission
5 shall consider and accept or reject any settlement agreement entered
6 into by some or all of the parties within forty-five days.

7 2. Proceedings under this section are limited to issues related to

8 whether the revised rates filed by the electrical corporation comply
9 with the terms of the commission order issued under section 393.1178
10 and with the specific requirements of section 393.1187. Matters
11 determined in orders issued under sections 393.1160 to 393.1205 or in
12 a general rate proceeding are not subject to review in proceedings
13 under sections 393.1190 and 393.1193.

14 3. In proceedings under sections 393.1190 and 393.1193, the
15 commission shall allow limited discovery, and restrict the issues for
16 discovery and hearing to whether the revised rates comply with the
17 terms of the commission order issued under section 393.1178 and
18 compliance with the specific requirements of section 393.1187.

19 4. The commission shall issue such motions to strike, protective
20 orders, motions to quash, motions for costs and sanctions, and other
21 rulings as are necessary to enforce the terms of this limitation.

22 5. The commission shall dismiss any party who, after notice, fails
23 to abide by the limitations contained in this section.

24 6. The failure of the commission to enforce the terms of this
25 section may be remedied by petition for writ of mandamus or
26 prohibition in the circuit court, which petition the court shall advance
27 over all other matters on its docket and be heard on an emergency
28 basis, without the requirement of a formal answer or other return, with
29 such hearing to be held as soon as practicable upon twenty-four hours
30 notice to the party against whom relief is sought. Proceedings related
31 to the petitions may not serve to stay or delay proceedings before the
32 commission.

33 7. The commission shall issue a final order that:

34 (1) Sets forth any changes that are required to the rates
35 approved in the revised rates order;

36 (2) Determines the amount of any over-collection or under-
37 collection of the revenues by the electrical corporation that resulted
38 from application of the rates authorized in the revised rates order as
39 compared to the rates authorized in the final order issued under this
40 section; and

41 (3) Establishes a credit to refund the amount of an over-
42 collection or a surcharge to collect the amount of an under-collection
43 of revenues that arose during the time that the rates approved in the
44 revised rates order, or imposed due to a failure of the commission to

45 issue a revised rates order, were applicable and requires the electrical
46 corporation to apply the credit or surcharge until such time as the
47 over-collection or under-collection is exhausted.

48 8. If the final order increases the amount of capital costs which
49 the electrical corporation may recover through revised rates, the
50 AFUDC booked on those capital costs between the issuance of the
51 revised rates order and the final order shall remain on the books of the
52 electrical corporation and shall not be reversed or
53 adjusted. Surcharges related to under-collection of costs shall be
54 calculated without consideration of AFUDC amounts recognized on the
55 capital costs during this period.

56 9. If the final order reduces the amount of capital cost which the
57 electrical corporation may recover through revised rates for reasons
58 other than the conclusive finding that the capital costs were
59 imprudently incurred, then the electrical corporation may resume
60 accrual of AFUDC on any capital costs that were not included in rate
61 recovery and may book an amount of AFUDC equal to the AFUDC not
62 recognized during the time the rates approved in the revised rates
63 order were in effect.

393.1196. The denial of a project development application or a
2 facility review application, or a combination thereof, shall not preclude
3 the electrical corporation from filing a new or amended application or
4 combined application at any time. An electrical corporation may
5 proceed to construct a facility even if assurance of prudence or cost
6 recovery under sections 393.1160 to 393.1205 is not sought or is denied,
7 and the failure to seek or obtain such an assurance may not be used as
8 evidence or precedent in any future proceeding.

393.1199. 1. Except as otherwise specified in sections 393.1160 to
2 393.1205, all procedural requirements that apply to general rate
3 proceedings by law or regulation shall apply to proceedings under
4 sections 393.1160 to 393.1205, and to the judicial review of orders issued
5 under sections 393.1160 to 393.1205. The requirements related to the
6 form and content of filings to initiate general rate proceedings,
7 however, only shall apply to proceedings that are combined with a
8 general rate proceeding.

9 2. As to proceedings under sections 393.1160 to 393.1205 that are
10 combined with a general rate proceeding, the procedural requirements

11 related to general rate proceedings shall apply.

12 3. In proceedings to review revised rates orders under sections
13 393.1190 and 393.1193, no further notice to the public, customers, and
14 others is required additional to that provided upon filing of the
15 application for revised rates. In proceedings to review revised rates
16 orders under sections 393.1190 and 393.1193, the electrical corporation's
17 revised rates filing shall serve as the application and the electrical
18 corporation shall be considered to be the applicant.

19 4. In proceedings under sections 393.1160 to 393.1205, the
20 electrical corporation shall have the burden of proving the prudence
21 of its decision to incur preconstruction costs under section 393.1166
22 and to establish the appropriateness of a facility review order under
23 section 393.1181. Without in any way limiting the conclusive effect of
24 determinations under section 393.1166 and section 393.1181, in cases
25 where sections 393.1160 to 393.1205 allows a party to challenge the
26 prudence of any transaction, cost, or decision of the electrical
27 corporation, that party shall be required to make a prima facie case
28 establishing a serious doubt about the prudence, and thereafter the
29 burden of proof shall shift to the electrical corporation to demonstrate
30 the prudence of the transaction, cost, or decision by a preponderance
31 of the evidence.

32 5. Determinations under sections 393.1166 and 393.1181 may not
33 be challenged, reopened or reviewed in any subsequent commission
34 proceeding, except under an application for rehearing under section
35 386.500, RSMo, including in any general rate
36 proceeding. Determinations under 393.1187 may be reviewed only
37 under sections 393.1190 and 393.1193.

 393.1202. Except as expressly set forth in sections 386.510 and
2 386.540, RSMo, no court of this state shall have jurisdiction to hear or
3 determine any issue, case, or controversy concerning any matter which
4 was or could have been determined in a proceeding before the
5 commission under sections 393.1160 to 393.1205 or to stop or delay the
6 construction, operation, or maintenance of a clean baseload generating
7 plant or low-carbon producing generating facility, except to require
8 compliance with any unmet requirements of subsection 1 of section
9 393.170.

 393.1205. Notwithstanding any other provision of law, no state

2 or regional agency, political subdivision, or other local government
3 may require any approval, consent, permit, certificate or other
4 condition for the construction, operation or maintenance of a clean
5 baseload generating plant or other low-carbon producing generating
6 facility authorized by a certificate issued under the provisions of
7 sections 393.1160 to 393.1205; provided that nothing herein shall
8 prevent the application of state laws for the protection of employees
9 engaged in the construction, operation or maintenance of such facility;
10 provided further that agencies of the state of Missouri shall continue
11 to have authority to enforce compliance with applicable state statutes,
12 rules, regulations or standards promulgated within their authority.

✓

Bill

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