

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 432

AN ACT

To repeal section 386.210, RSMo, and to enact in lieu thereof four new sections relating to public utilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Section 386.210, RSMo, is repealed and four new
2 sections enacted in lieu thereof, to be known as sections
3 386.210, 393.1200, 393.1205, and 393.1210, to read as follows:

4 386.210. 1. The commission may confer in person, or by
5 correspondence, by attending conventions, or in any other way,
6 with the members of the public, any public utility or similar
7 commission of this and other states and the United States of
8 America, or any official, agency or instrumentality thereof, on
9 any matter relating to the performance of its duties.

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

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

17 (1) Is made at a public agenda meeting of the commission

1 where such matter has been posted in advance as an item for
2 discussion or decision;

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

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

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

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

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

1 such communications comply with the provisions of subsection 3 of
2 this section.

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

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

28 7. The commission may make joint investigations, hold joint

1 hearings within or without the state, and issue joint or
2 concurrent orders in conjunction or concurrence with any
3 railroad, public utility or similar commission, of other states
4 or the United States of America, or any official, agency or any
5 instrumentality thereof, except that in the holding of such
6 investigations or hearings, or in the making of such orders, the
7 commission shall function under agreements or contracts between
8 states or under the concurrent power of states to regulate
9 interstate commerce, or as an agent of the United States of
10 America, or any official, agency or instrumentality thereof, or
11 otherwise.

12 8. The commission may appear, participate, and intervene in
13 any federal, state, or other administrative, regulatory, or
14 judicial proceeding in which the commission has standing. This
15 subsection applies to all proceedings now pending or commenced
16 after the effective date of this section.

17 393.1200. As used in sections 393.1200 to 393.1210, the
18 following terms mean:

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

21 (a) The electrical corporation's weighted cost of capital
22 multiplied by the net original cost of eligible infrastructure
23 system replacements, including recognition of accumulated
24 deferred income taxes and accumulated depreciation associated
25 with eligible infrastructure system replacements which are
26 included in a currently effective ISRS; and

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

1 (c) Recover all other ISRS costs;

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

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

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

7 (b) Are in service and used and useful;

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

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

12 (4) "Electrical corporation", shall have the same meaning
13 as in subdivision (15) of section 386.020;

14 (5) "Electric utility plant projects" may consist only of
15 the following:

16 (a) Electric plant, as defined in subdivision (14) of
17 section 386.020, installed to comply with state or federal safety
18 requirements or installed as replacements for existing facilities
19 that have become aged, obsolete, are worn out or are in
20 deteriorated condition; and

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

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

28 (7) "ISRS costs", depreciation expense and property taxes

1 that will be due within twelve months of the ISRS filing;

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

4 393.1205. 1. Notwithstanding any provisions of chapter 386
5 and this chapter to the contrary, beginning August 28, 2013, an
6 electrical corporation providing electric service may file a
7 petition and proposed rate schedules with the commission to
8 establish or change ISRS rate schedules that will allow for the
9 adjustment of the electrical corporation's rates and charges to
10 provide for the recovery of costs for eligible infrastructure
11 system replacements. The commission may not approve an ISRS to
12 the extent it would produce total annualized ISRS revenues below
13 the lesser of one million dollars or one-half of one percent of
14 the electrical corporation's base revenue level approved by the
15 commission in the electrical corporation's most recent general
16 rate proceeding. The commission may not approve an ISRS to the
17 extent it would produce total annualized ISRS revenues exceeding
18 ten percent of the electrical corporation's base revenue level
19 approved by the commission in the electrical corporation's most
20 recent general rate proceeding. An ISRS and any future changes
21 thereto shall be calculated and implemented in accordance with
22 the provisions of sections 393.1200 to 393.1210. ISRS revenues
23 shall be subject to a refund based upon a finding and order of
24 the commission to the extent provided in subsections 5 and 8 of
25 section 393.1210.

26 2. The commission shall not approve an ISRS for any
27 electrical corporation that has not had a general rate proceeding
28 decided or dismissed by issuance of a commission order within the

1 past three years, unless the electrical corporation has filed for
2 or is the subject of a new general rate proceeding.

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

11 393.1210. 1. (1) At the time that an electrical
12 corporation files a petition with the commission seeking to
13 establish or change an ISRS, it shall submit proposed ISRS rate
14 schedules and its supporting documentation regarding the
15 calculation of the proposed ISRS with the petition, and shall
16 serve the office of the public counsel with a copy of its
17 petition, its proposed rate schedules, and its supporting
18 documentation.

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

22 2. (1) When a petition, along with any associated proposed
23 rate schedules, is filed pursuant to the provisions of sections
24 393.1200 to 393.1210, the commission shall conduct an examination
25 of the proposed ISRS.

26 (2) The staff of the commission may examine information of
27 the electrical corporation to confirm that the underlying costs
28 are in accordance with the provisions of sections 393.1200 to

1 393.1210, and to confirm proper calculation of the proposed
2 charge, and may submit a report regarding its examination to the
3 commission not later than sixty days after the petition is filed.
4 No other revenue requirement or ratemaking issues may be examined
5 in consideration of the petition or associated proposed rate
6 schedules filed pursuant to the provisions of sections 393.1200
7 to 393.1210.

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

12 (4) If the commission finds that a petition complies with
13 the requirements of sections 393.1200 to 393.1210, the commission
14 shall enter an order authorizing the corporation to impose an
15 ISRS that is sufficient to recover appropriate pretax revenue, as
16 determined by the commission pursuant to the provisions of
17 sections 393.1200 to 393.1210.

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

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

23 (1) The current state, federal, and local income tax or
24 excise rates;

25 (2) The electrical corporation's actual regulatory capital
26 structure as determined during the most recent general rate
27 proceeding of the electrical corporation;

28 (3) The actual cost rates for the electrical corporation's

1 debt and preferred stock as determined during the most recent
2 general rate proceeding of the electrical corporation;

3 (4) The electrical corporation's cost of common equity as
4 determined during the most recent general rate proceeding of the
5 electrical corporation;

6 (5) The current property tax rate or rates applicable to
7 the eligible infrastructure system replacements;

8 (6) The current depreciation rates applicable to the
9 eligible infrastructure system replacements; and

10 (7) In the event information pursuant to subdivisions (2),
11 (3), and (4) of this subsection is unavailable and the commission
12 is not provided with such information on an agreed-upon basis,
13 the commission shall refer to the testimony submitted during the
14 most recent general rate proceeding of the electrical corporation
15 and use, in lieu of any such unavailable information, the
16 recommended capital structure, recommended cost rates for debt
17 and preferred stock, and recommended cost of common equity that
18 would produce the average weighted cost of capital based upon the
19 various recommendations contained in such testimony.

20 5. (1) The monthly ISRS charge may be calculated based on
21 a reasonable estimate of billing units in the period in which the
22 charge will be in effect, which shall be conclusively established
23 by dividing the appropriate pretax revenues by the customer
24 numbers reported by the electrical corporation in the annual
25 report it most recently filed with the commission pursuant to
26 subdivision (6) of section 393.140, and then further dividing
27 this quotient by twelve. Provided, however, that the monthly
28 ISRS may vary according to customer class and may be calculated

1 based on customer numbers as determined during the most recent
2 general rate proceeding of the electrical corporation so long as
3 the monthly ISRS for each customer class maintains a proportional
4 relationship equivalent to the proportional relationship of the
5 monthly customer charge for each customer class.

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

14 6. (1) A electrical corporation that has implemented an
15 ISRS pursuant to the provisions of sections 393.1200 to 393.1210
16 shall file revised rate schedules to reset the ISRS to zero when
17 new base rates and charges become effective for the electrical
18 corporation following a commission order establishing customer
19 rates in a general rate proceeding that incorporates in the
20 utility's base rates subject to subsections 8 and 9 of this
21 section eligible costs previously reflected in an ISRS.

22 (2) Upon the inclusion in a electrical corporation's base
23 rates subject to subsections 8 and 9 of this section of eligible
24 costs previously reflected in an ISRS, the electrical corporation
25 shall immediately thereafter reconcile any previously
26 unreconciled ISRS revenues as necessary to ensure that revenues
27 resulting from the ISRS match as closely as possible the
28 appropriate pretax revenues as found by the commission for that

1 period.

2 7. An electrical corporation's filing of a petition or
3 change to an ISRS pursuant to the provisions of sections 393.1200
4 to 393.1210 shall not be considered a request for a general
5 increase in the electrical corporation's base rates and charges.

6 8. Commission approval of a petition, and any associated
7 rate schedules, to establish or change an ISRS pursuant to the
8 provisions of sections 393.1200 to 393.1210 shall in no way be
9 binding upon the commission in determining the ratemaking
10 treatment to be applied to eligible infrastructure system
11 replacements during a subsequent general rate proceeding when the
12 commission may undertake to review the prudence of such costs.
13 In the event the commission disallows, during a subsequent
14 general rate proceeding, recovery of costs associated with
15 eligible infrastructure system replacements previously included
16 in an ISRS, the electrical corporation shall offset its ISRS in
17 the future as necessary to recognize and account for any such
18 overcollections.

19 9. Nothing in this section shall be construed as limiting
20 the authority of the commission to review and consider
21 infrastructure system replacement costs along with other costs
22 during any general rate proceeding of any electrical corporation.

23 10. Nothing contained in sections 393.1200 to 393.1210
24 shall be construed to impair in any way the authority of the
25 commission to review the reasonableness of the rates or charges
26 of an electrical corporation, including review of the prudence of
27 eligible infrastructure system replacements made by an electrical
28 corporation, pursuant to the provisions of section 386.390.

1 11. The commission shall have authority to promulgate rules
2 for the implementation of sections 393.1200 to 393.1210, but only
3 to the extent such rules are consistent with, and do not delay
4 the implementation of, the provisions of sections 393.1200 to
5 393.1210. Any rule or portion of a rule, as that term is defined
6 in section 536.010, that is created under the authority delegated
7 in this section shall become effective only if it complies with
8 and is subject to all of the provisions of chapter 536 and, if
9 applicable, section 536.028. This section and chapter 536 are
10 nonseverable and if any of the powers vested with the general
11 assembly pursuant to chapter 536 to review, to delay the
12 effective date, or to disapprove and annul a rule are
13 subsequently held unconstitutional, then the grant of rulemaking
14 authority and any rule proposed or adopted after August 28, 2013,
15 shall be invalid and void.