

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 207
97TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, March 7, 2013, with recommendation that the Senate Committee Substitute do pass.

0991S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 393, RSMo, by adding thereto four new sections relating to ratemaking for public utilities.

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

Section A. Chapter 393, RSMo, is amended by adding thereto four new sections, to be known as sections 393.1200, 393.1205, 393.1210, and 393.1215, to read as follows:

393.1200. As used in sections 393.1200 to 393.1215, the following terms mean:

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

(a) The electrical corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements and additions less associated plant-related accumulated deferred income taxes in compliance with normalization requirements of federal tax law;

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

(c) All other ISRS costs;

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

(3) "Electric corporation", shall have the same meaning as in subdivision (15) of section 386.020;

(4) "Electric utility plant projects", consist of the following:

(a) Electric plant, as defined in subdivision (14) of section 386.020, excluding newly constructed or newly acquired electric generating plants and administrative office buildings and their

20 furnishings;

21 (b) If not being recovered in a rate schedule authorized by
22 subsection 2 of section 386.266, the costs of capital projects undertaken
23 to comply with federal, state, or local environmental or safety statutes,
24 ordinances, or regulations; and

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

31 (5) "Eligible infrastructure system replacements and additions",
32 electric utility plant projects that:

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

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

36 (c) Were not included in the electrical corporation's rate base in
37 its most recently concluded general rate case; and

38 (d) Replace or extend the useful life of existing infrastructure or
39 are for additional infrastructure;

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

41 (7) "ISRS costs", depreciation expense for all eligible
42 infrastructure system replacements and additions that are placed in
43 service and became used and useful since the date through which rate
44 base additions were accounted for in developing the revenue
45 requirement in the electrical corporation's most recently concluded
46 general rate case or its last ISRS filing, offset by retirements and
47 depreciation expense accrued since the effective date of rates in the
48 electrical corporation's most recently concluded general rate
49 proceeding or its last ISRS filing on plant included in rate base in that
50 general rate proceeding or included in that ISRS filing, and return on
51 said eligible infrastructure system replacements and additions at the
52 electrical corporation's weighted cost of capital used to determine the
53 appropriate pretax revenues, with both the depreciation and return to
54 be deferred on the electrical corporation's books between the time the
55 eligible infrastructure system replacements and additions were placed
56 in service and the effective date of an ISRS rate schedule reflecting the

57 deferred depreciation and return;

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

60 (9) "Net original cost of eligible infrastructure system
61 replacements and additions", the original cost of the eligible
62 infrastructure replacements and additions net of accumulated
63 depreciation on the eligible infrastructure replacements and additions,
64 offset by (i) depreciation expense accrued on plant included in rate
65 base in the electrical corporation's most recently concluded general
66 rate proceeding since the effective date of rates developed in that
67 proceeding, and (ii) the original cost of plant retirements and accrued
68 depreciation expense associated with such retirements for retirements
69 recorded after the date through which rate base additions were
70 accounted for in developing the commission-approved revenue
71 requirement in that general rate proceeding.

393.1205. 1. Notwithstanding any provisions of chapter 386 or
2 this chapter to the contrary, beginning August 28, 2013, an electrical
3 corporation providing electric service may file a petition and proposed
4 rate schedules with the commission to establish or change ISRS rate
5 schedules that will allow for the adjustment of the electrical
6 corporation's rates and charges to provide for the recovery of costs for
7 eligible infrastructure system replacements and additions. The
8 commission may not approve an ISRS to the extent it would produce
9 total annualized ISRS revenues below the lesser of one million dollars
10 or one-half of one percent of the electrical corporation's base revenue
11 level approved by the commission in the electrical corporation's most
12 recent general rate proceeding. The commission may not approve an
13 ISRS to the extent it would produce total annualized ISRS revenues
14 exceeding ten percent of the electrical corporation's base revenue level
15 approved by the commission in the electrical corporation's most recent
16 general rate proceeding. An ISRS and any future changes thereto shall
17 be calculated and implemented in accordance with the provisions of
18 sections 393.1200 to 393.1215. ISRS revenues shall be subject to a
19 refund based upon a finding and order of the commission to the extent
20 provided in subsections 5 and 8 of section 393.1210.

21 2. The commission shall not approve an ISRS for any electrical
22 corporation that has not had a general rate proceeding decided or

23 dismissed by issuance of a commission order within the past three
24 years, unless the electrical corporation has filed for or is the subject of
25 a new general rate proceeding.

26 3. In no event shall an electrical corporation collect an ISRS for
27 a period exceeding three years unless the electrical corporation has
28 filed for or is the subject of a new general rate proceeding; provided
29 that the ISRS may be collected until the effective date of new rate
30 schedules established as a result of the new general rate proceeding, or
31 until the subject general rate proceeding is otherwise decided or
32 dismissed by issuance of a commission order without new rates being
33 established. An electrical corporation shall be permitted to establish
34 or change ISRS rate schedules during the pendency of a general rate
35 proceeding so long as the establishment or change in the ISRS rate
36 schedules takes effect on or before the date through which rate base
37 additions were accounted for in developing the commission-approved
38 revenue requirement in that general rate proceeding.

393.1210. 1. (1) At the time that an electrical corporation files
2 a petition with the commission seeking to establish or change an ISRS,
3 it shall submit proposed ISRS rate schedules and its supporting
4 documentation regarding the calculation of the proposed ISRS with the
5 petition, and shall serve the office of the public counsel with a copy of
6 its petition, its proposed rate schedules, and its supporting
7 documentation.

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

11 2. (1) When a petition, along with any associated proposed rate
12 schedules, is filed pursuant to the provisions of sections 393.1200 to
13 393.1215, the commission shall conduct an examination of the proposed
14 ISRS.

15 (2) The staff of the commission may examine information of the
16 electrical corporation to confirm that the underlying costs are in
17 accordance with the provisions of sections 393.1200 to 393.1215, and to
18 confirm proper calculation of the proposed charge, and may submit a
19 report regarding its examination to the commission not later than
20 ninety days after the petition is filed. No other revenue requirement
21 or ratemaking issues may be examined in consideration of the petition

22 or associated proposed rate schedules filed pursuant to the provisions
23 of sections 393.1200 to 393.1215.

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

27 (4) If the commission finds that a petition complies with the
28 requirements of sections 393.1200 to 393.1215, the commission shall
29 enter an order authorizing the corporation to impose an ISRS that is
30 sufficient to recover appropriate pretax revenue, as determined by the
31 commission pursuant to the provisions of sections 393.1200 to 393.1215.

32 3. An electrical corporation may effectuate a change in its rate
33 pursuant to the provisions of this section no more often than two times
34 every twelve months.

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

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

39 (2) The electrical corporation's actual regulatory capital
40 structure as determined during the most recent general rate
41 proceeding of the electrical corporation;

42 (3) The actual cost rates for the electrical corporation's debt and
43 preferred stock as determined during the most recent general rate
44 proceeding of the electrical corporation;

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

48 (5) The current property tax rate or rates applicable to the
49 eligible infrastructure system replacements and additions;

50 (6) The current depreciation rates applicable to the eligible
51 infrastructure system replacements and additions; and

52 (7) In the event information pursuant to subdivisions (2), (3), and
53 (4) of this subsection is unavailable and the commission is not provided
54 with such information on an agreed-upon basis, the commission shall
55 refer to the testimony submitted during the most recent general rate
56 proceeding of the electrical corporation and use, in lieu of any such
57 unavailable information, the recommended capital structure,
58 recommended cost rates for debt and preferred stock, and

59 recommended cost of common equity that would produce the average
60 weighted cost of capital based upon the various recommendations
61 contained in such testimony.

62 5. (1) The monthly ISRS charge may be calculated based on a
63 reasonable estimate of billing units in the period in which the charge
64 will be in effect, which shall be conclusively established by dividing the
65 appropriate pretax revenues by the customer numbers reported by the
66 electrical corporation in the annual report it most recently filed with
67 the commission pursuant to subdivision (6) of section 393.140, and then
68 further dividing this quotient by twelve. Provided, however, that the
69 monthly ISRS may vary according to customer class and may be
70 calculated based on customer numbers as determined during the most
71 recent general rate proceeding of the electrical corporation so long as
72 the monthly ISRS for each customer class maintains a proportional
73 relationship equivalent to the proportional relationship of the monthly
74 customer charge for each customer class.

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

82 6. (1) An electrical corporation that has implemented an ISRS
83 pursuant to the provisions of sections 393.1200 to 393.1215 shall file
84 revised rate schedules to reset the ISRS to zero when new base rates
85 and charges become effective for the electrical corporation following
86 a commission order establishing customer rates in a general rate
87 proceeding that incorporates in the utility's base rates subject to
88 subsections 8 and 9 of this section eligible costs previously reflected in
89 an ISRS.

90 (2) Upon the inclusion in an electrical corporation's base rates
91 subject to subsections 8 and 9 of this section of eligible costs previously
92 reflected in an ISRS, the electrical corporation shall immediately
93 thereafter reconcile any previously unreconciled ISRS revenues as
94 necessary to ensure that revenues resulting from the ISRS match as
95 closely as possible the appropriate pretax revenues as found by the

96 **commission for that period.**

97 **7. An electrical corporation's filing of a petition or change to an**
98 **ISRS pursuant to the provisions of sections 393.1200 to 393.1215 shall**
99 **not be considered a request for a general increase in the electrical**
100 **corporation's base rates and charges.**

101 **8. Commission approval of a petition, and any associated rate**
102 **schedules, to establish or change an ISRS pursuant to the provisions of**
103 **sections 393.1200 to 393.1215 shall in no way be binding upon the**
104 **commission in determining the ratemaking treatment to be applied to**
105 **eligible infrastructure system replacements and additions during a**
106 **subsequent general rate proceeding when the commission may**
107 **undertake to review the prudence of such costs. In the event the**
108 **commission disallows, during a subsequent general rate proceeding,**
109 **recovery of costs associated with eligible infrastructure system**
110 **replacements and additions previously included in an ISRS, the**
111 **electrical corporation shall offset its ISRS in the future as necessary to**
112 **recognize and account for any such overcollections, with interest at the**
113 **electrical corporation's short-term borrowing rate.**

114 **9. Nothing in this section shall be construed as limiting the**
115 **authority of the commission to review and consider infrastructure**
116 **system replacement and addition costs along with other costs during**
117 **any general rate proceeding of any electrical corporation.**

118 **10. Nothing contained in sections 393.1200 to 393.1215 shall be**
119 **construed to impair in any way the authority of the commission to**
120 **review the reasonableness of the rates or charges of an electrical**
121 **corporation, including review of the prudence of eligible infrastructure**
122 **system replacements and additions made by an electrical corporation,**
123 **pursuant to the provisions of section 386.390.**

124 **11. The commission shall have the authority to promulgate rules**
125 **for the implementation of this section, but only to the extent such rules**
126 **are consistent with, and do not delay the implementation of, the**
127 **provisions of this section. Any rule or portion of a rule, as that term is**
128 **defined in section 536.010 that is created under the authority delegated**
129 **in this section shall become effective only if it complies with and is**
130 **subject to all of the provisions of chapter 536, and, if applicable, section**
131 **536.028. This section and chapter 536 are nonseverable and if any of**
132 **the powers vested with the general assembly pursuant to chapter 536**

133 to review, to delay the effective date, or to disapprove and annul a rule
134 are subsequently held unconstitutional, then the grant of rulemaking
135 authority and any rule proposed or adopted after August 28, 2013, shall
136 be invalid and void.

393.1215. 1. Notwithstanding any provision of chapter 386 or this
2 chapter to the contrary, any electrical corporation that has had a
3 general rate proceeding decided or dismissed by issuance of a
4 commission order within the past three years shall, commencing with
5 the first day of the month following the month in which this section
6 becomes effective, implement a mechanism to track the differences
7 between the following:

8 (1) The noncapitalized costs used to set the revenue requirement
9 in that rate case for the electrical corporation's or its affiliate's labor,
10 training, benefits, including but not limited to workers' compensation
11 insurance, payroll taxes, transmission charges or expenses, property
12 taxes, property insurance, and for external contractors contracted by
13 the electrical corporation for the operation or maintenance of the
14 electrical corporation's transmission, distribution, or generation
15 systems; and

16 (2) The sum of those costs that are actually incurred by, or
17 allocated to, the electrical corporation as reflected on its books and
18 records in subsequent periods.

19 2. The electrical corporation shall defer any amounts tracked
20 under subsection 1 of this section on its books and records as a
21 regulatory asset or regulatory liability. In its next general rate
22 proceeding, the regulatory asset or regulatory liability will be included
23 in the determination of the electrical corporation's revenue
24 requirement through an amortization over a period of three years,
25 without any offset, reduction, or adjustment based upon consideration
26 of any other factor or otherwise, except for a review of the prudence of
27 the costs included in any regulatory asset as part of the general rate
28 proceeding. Notwithstanding the foregoing, the following costs shall
29 not be included in the electrical corporation's or its affiliate's labor or
30 benefits components of the foregoing calculation:

31 (1) Any costs in a separate deferred accounting mechanism,
32 tracker, or rate adjustment mechanism;

33 (2) Labor costs for the electrical corporation's or the electrical

34 corporation parent company's officers;

35 (3) That portion of the electrical corporation's labor costs that
36 consist of incentive compensation that is dependent on the electrical
37 corporation's or the electrical corporation's parent company's earnings;
38 and

39 (4) Administrative and general labor costs recorded in Account
40 920 of the Uniform System of Accounts, or any successor account,
41 applicable to electrical corporations.

42 3. In subsequent general rate proceedings occurring after a
43 general rate proceeding where an amortization through rates of a
44 regulatory asset or regulatory liability began, any unamortized balance
45 shall be included in the electrical corporation's revenue requirement
46 through a reamortization of said balance over a period of three years,
47 also without any offset, reduction, or adjustment based upon
48 consideration of any other factor or otherwise.

49 4. The commission shall have the authority to promulgate rules
50 for the implementation of this section, but only to the extent such rules
51 are consistent with, and do not delay the implementation of, the
52 provisions of this section. Any rule or portion of a rule, as that term is
53 defined in section 536.010 that is created under the authority delegated
54 in this section shall become effective only if it complies with and is
55 subject to all of the provisions of chapter 536, and, if applicable, section
56 536.028. This section and chapter 536 are nonseverable and if any of
57 the powers vested with the general assembly pursuant to chapter 536
58 to review, to delay the effective date, or to disapprove and annul a rule
59 are subsequently held unconstitutional, then the grant of rulemaking
60 authority and any rule proposed or adopted after August 28, 2013, shall
61 be invalid and void.

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