

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 142
97TH GENERAL ASSEMBLY

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

0843S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 393.320 and 393.1075, RSMo, and to enact in lieu thereof two new sections relating to utilities, with a penalty provision.

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

Section A. Sections 393.320 and 393.1075, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 393.320 and
3 393.1075, to read as follows:

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

2 (1) "Large water public utility", a public utility that regularly provides
3 water service or sewer service to more than eight thousand customer connections
4 and that provides safe and adequate service but shall not include a sewer district
5 established under Section 30(a), Article VI of the Missouri Constitution, sewer
6 districts established under the provisions of chapter 204, 249, or 250, public
7 water supply districts established under the provisions of chapter 247, or
8 municipalities that own water or sewer systems;

9 (2) "Small water utility", a public utility that regularly provides water
10 service or sewer service to eight thousand or fewer customer connections; a water
11 district established under the provisions of chapter 247 that regularly provides
12 water or sewer service to eight thousand or fewer customer connections; a sewer
13 district established under the provisions of chapter 204, 249, or 250 that regularly
14 provides sewer service to eight thousand or fewer customer connections; or a
15 water system or sewer system owned by a municipality that regularly provides
16 water service or sewer service to eight thousand or fewer customer connections;
17 and all other entities that regularly provide water service or sewer service to

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

18 eight thousand or fewer customer connections.

19 2. The procedures contained in this section may be chosen by a large
20 water public utility, and if so chosen shall be used by the public service
21 commission to establish the ratemaking rate base of a small water utility during
22 an acquisition.

23 3. (1) An appraisal shall be performed by three appraisers. One
24 appraiser shall be appointed by the small water utility, one appraiser shall be
25 appointed by the large water public utility, and the third appraiser shall be
26 appointed by the two appraisers so appointed. Each of the appraisers shall be a
27 disinterested person who is a certified general appraiser under chapter 339.

28 (2) The appraisers shall:

29 (a) Jointly prepare an appraisal of the fair market value of the water
30 system and/or sewer system. The determination of fair market value shall be in
31 accordance with Missouri law and with the Uniform Standards of Professional
32 Appraisal Practice; and

33 (b) Return their appraisal, in writing, to the small water utility and large
34 water public utility in a reasonable and timely manner.

35 (3) If all three appraisers cannot agree as to the appraised value, the
36 appraisal, when signed by two of the appraisers, constitutes a good and valid
37 appraisal.

38 4. Nothing in this section shall prohibit a party from declining to proceed
39 with an acquisition or be deemed as establishing the final purchase price of an
40 acquisition.

41 5. (1) The lesser of the purchase price or the appraised value, together
42 with the reasonable and prudent transaction, closing, and transition costs
43 incurred by the large water public utility, shall constitute the ratemaking rate
44 base for the small water utility as acquired by the acquiring large water public
45 utility; provided, however, that if the small water utility is a public utility subject
46 to chapter 386 and the small water utility completed a rate case prior to the
47 acquisition, the public service commission may select as the ratemaking rate base
48 for the small water utility as acquired by the acquiring large water public utility
49 a ratemaking rate base in between:

50 (a) The lesser of the purchase price or the appraised value, together with
51 the reasonable and prudent transaction, closing, and transition costs incurred by
52 the large water public utility unless such transaction, closing, and transition
53 costs are elsewhere recoverable in rates; and

54 (b) The ratemaking rate base of the small water utility as ordered by the
55 public service commission in the small water utility's last previous rate case as
56 adjusted by improvements and depreciation reserve since the previous rate case
57 together with the transaction, closing, and transition costs incurred by the large
58 water public utility unless such transaction, closing, and transition costs are
59 elsewhere recoverable in rates. If the small water utility and large water public
60 utility proceed with the sale, any past-due fees due to the state from the small
61 water utility or its customers under chapter 640 or 644 shall be resolved prior to
62 the transfer of ownership or the liability for such past-due fees becomes the
63 responsibility of the large water public utility. Such fees shall not be included in
64 the large water public utility's rate base.

65 (2) The public service commission shall issue its decision establishing the
66 ratemaking rate base of the small water utility in its order approving the
67 acquisition.

68 **6. Upon the date of the acquisition of a small water utility by a**
69 **large water public utility, whether or not the procedures for**
70 **establishing ratemaking rate base provided by this section have been**
71 **utilized, the small water utility shall, for ratemaking purposes, become**
72 **part of an existing service area, as defined by the public service**
73 **commission, of the acquiring large water public utility that is either**
74 **contiguous to the small water utility, the closest geographically to the**
75 **small water utility, or best suited due to operational or other**
76 **factors. This consolidation shall be approved by the public service**
77 **commission in its order approving the acquisition.**

78 **7.** Any new permit issued pursuant to chapters 640 and 644, when a small
79 water utility is acquired by a large water public utility, shall include a plan to
80 resolve all outstanding permit compliance issues. After the transfer of ownership,
81 the acquiring large public water utility shall continue providing service to all
82 customers that were served by the small water utility at the time of sale.

83 **[7.] 8.** This section is intended for the specific and unique purpose of
84 determining the ratemaking rate base of small water utilities and shall be
85 exclusively applied to large water public utilities in the acquisition of a small
86 water utility. This section is not intended to apply beyond its specific purpose
87 and shall not be construed in any manner to apply to electric corporations,
88 natural gas corporations, or any other utility regulated by the public service
89 commission.

393.1075. 1. This section shall be known as the "Missouri Energy
2 Efficiency Investment Act".

3 2. As used in this section, the following terms shall mean:

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

5 (2) "Demand response", measures that decrease peak demand or shift
6 demand to off-peak periods;

7 (3) "Demand-side program", any program conducted by the utility to
8 modify the net consumption of electricity on the retail customer's side of the
9 electric meter, including but not limited to energy efficiency measures, load
10 management, demand response, and interruptible or curtailable load;

11 (4) "Energy efficiency", measures that reduce the amount of electricity
12 required to achieve a given end use;

13 (5) "Interruptible or curtailable rate", a rate under which a customer
14 receives a reduced charge in exchange for agreeing to allow the utility to
15 withdraw the supply of electricity under certain specified conditions;

16 (6) "Total resource cost test", a test that compares the sum of avoided
17 utility costs and avoided probable environmental compliance costs to the sum of
18 all incremental costs of end-use measures that are implemented due to the
19 program, as defined by the commission in rules.

20 3. It shall be the policy of the state to value demand-side investments
21 equal to traditional investments in supply and delivery infrastructure and allow
22 recovery of all reasonable and prudent costs of delivering cost-effective
23 demand-side programs. In support of this policy, the commission shall:

24 (1) Provide timely cost recovery for utilities;

25 (2) Ensure that utility financial incentives are aligned with helping
26 customers use energy more efficiently and in a manner that sustains or enhances
27 utility customers' incentives to use energy more efficiently; and

28 (3) Provide timely earnings opportunities associated with cost-effective
29 measurable and verifiable efficiency savings.

30 4. The commission shall permit electric corporations to implement
31 commission-approved demand-side programs proposed pursuant to this section
32 with a goal of achieving all cost-effective demand-side savings. Recovery for such
33 programs shall not be permitted unless the programs are approved by the
34 commission, result in energy or demand savings and are beneficial to all
35 customers in the customer class in which the programs are proposed, regardless
36 of whether the programs are utilized by all customers. The commission shall

37 consider the total resource cost test a preferred cost-effectiveness test. Programs
38 targeted to low-income customers or general education campaigns do not need to
39 meet a cost-effectiveness test, so long as the commission determines that the
40 program or campaign is in the public interest. Nothing herein shall preclude the
41 approval of demand-side programs that do not meet the test if the costs of the
42 program above the level determined to be cost-effective are funded by the
43 customers participating in the program or through tax or other governmental
44 credits or incentives specifically designed for that purpose.

45 5. To comply with this section the commission may develop cost recovery
46 mechanisms to further encourage investments in demand-side programs
47 including, in combination and without limitation: capitalization of investments
48 in and expenditures for demand-side programs, rate design modifications,
49 accelerated depreciation on demand-side investments, and allowing the utility to
50 retain a portion of the net benefits of a demand-side program for its shareholders.
51 In setting rates the commission shall fairly apportion the costs and benefits of
52 demand-side programs to each customer class except as provided for in subsection
53 6 of this section. Prior to approving a rate design modification associated with
54 demand-side cost recovery, the commission shall conclude a docket studying the
55 effects thereof and promulgate an appropriate rule.

56 6. The commission may reduce or exempt allocation of demand-side
57 expenditures to low-income classes, as defined in an appropriate rate proceeding,
58 as a subclass of residential service.

59 7. Provided that the customer has notified the electric corporation that the
60 customer elects not to participate in demand-side measures offered by an
61 electrical corporation, none of the costs of demand-side measures of an electric
62 corporation offered under this section or by any other authority, and no other
63 charges implemented in accordance with this section, shall be assigned to any
64 account of any customer, including its affiliates and subsidiaries, meeting one or
65 more of the following criteria:

66 (1) The customer has one or more accounts within the service territory of
67 the electrical corporation that has a demand of five thousand kilowatts or more;

68 (2) The customer operates an interstate pipeline pumping station,
69 regardless of size; or

70 (3) The customer has accounts within the service territory of the electrical
71 corporation that have, in aggregate, a demand of two thousand five hundred
72 kilowatts or more, and the customer has a comprehensive demand-side or energy

73 efficiency program and can demonstrate an achievement of savings at least equal
74 to those expected from utility-provided programs.

75 8. Customers that have notified the electrical corporation that they do not
76 wish to participate in demand-side programs under this section shall not
77 subsequently be eligible to participate in demand-side programs except under
78 guidelines established by the commission in rulemaking.

79 9. Customers who participate in demand-side programs initiated after
80 August 1, 2009, shall be required to participate in program funding for a period
81 of time to be established by the commission in rulemaking.

82 10. Customers electing not to participate in an electric corporation's
83 demand-side programs under this section shall still be allowed to participate in
84 interruptible or curtailable rate schedules or tariffs offered by the electric
85 corporation.

86 11. The commission shall provide oversight and may adopt rules and
87 procedures and approve corporation-specific settlements and tariff provisions,
88 independent evaluation of demand-side programs, as necessary, to ensure that
89 electric corporations can achieve the goals of this section. Any rule or portion of
90 a rule, as that term is defined in section 536.010, that is created under the
91 authority delegated in this section shall become effective only if it complies with
92 and is subject to all of the provisions of chapter 536 and, if applicable, section
93 536.028. This section and chapter 536 are nonseverable and if any of the powers
94 vested with the general assembly pursuant to chapter 536 to review, to delay the
95 effective date, or to disapprove and annul a rule are subsequently held
96 unconstitutional, then the grant of rulemaking authority and any rule proposed
97 or adopted after August 28, 2009, shall be invalid and void.

98 12. Each electric corporation shall submit an annual report to the
99 commission describing the demand-side programs implemented by the utility in
100 the previous year. The report shall document program expenditures, including
101 incentive payments, peak demand and energy savings impacts and the techniques
102 used to estimate those impacts, avoided costs and the techniques used to estimate
103 those costs, the estimated cost-effectiveness of the demand-side programs, and the
104 net economic benefits of the demand-side programs.

105 13. Charges attributable to demand-side programs under this section shall
106 be clearly shown as a separate line item on bills to the electrical corporation's
107 customers.

108 14. (1) Any customer of an electrical corporation who has received a state

109 tax credit under sections 135.350 to 135.362 or under sections 253.545 to 253.561
110 shall not be eligible for participation in any demand-side program offered by an
111 electrical corporation under this section if such program offers a monetary
112 incentive to the customer, **however, this exclusion from eligibility shall not**
113 **apply to low-income programs and participants in such programs.**

114 (2) As a condition of participation in any demand-side program offered by
115 an electrical corporation under this section when such program offers a monetary
116 incentive to the customer, the commission shall develop rules that require
117 documentation to be provided by the customer to the electrical corporation to
118 show that the customer has not received a tax credit listed in subdivision (1) of
119 this subsection.

120 (3) The penalty for a customer who provides false documentation under
121 subdivision (2) of this subsection shall be a class A misdemeanor.

122 15. The commission shall develop rules that provide for disclosure of
123 participants in all demand-side programs offered by electrical corporations under
124 this section when such programs provide monetary incentives to the
125 customer. The disclosure required by this subsection may include, but not be
126 limited to, the following: the name of the participant, or the names of the
127 principles if for a company, the property address, and the amount of the monetary
128 incentive received.

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