

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/HCS/House Bill No. 271, Page 7, Section 59.100, Line 15,

2 by inserting after all of said line the following:

3 "91.025. 1. As used in this section, the following
4 terms mean:

5 (1) "Municipally owned or operated electric power
6 system", a system for the distribution of electrical power
7 and energy to the inhabitants of a municipality which is
8 owned and operated by the municipality itself, whether
9 operated under authority pursuant to this chapter or under a
10 charter form of government;

11 (2) "Permanent service", electrical service provided
12 through facilities which have been permanently installed on
13 a structure and which are designed to provide electric
14 service for the structure's anticipated needs for the
15 indefinite future, as contrasted with facilities installed
16 temporarily to provide electrical service during
17 construction. Service provided temporarily shall be at the
18 risk of the electrical supplier and shall not be
19 determinative of the rights of the provider or recipient of
20 permanent service;

21 (3) "Structure" or "structures", an agricultural,
22 residential, commercial, industrial or other building or a
23 mechanical installation, machinery or apparatus at which
24 retail electric energy is being delivered through a metering
25 device which is located on or adjacent to the structure and
26 connected to the lines of an electrical corporation, rural

27 electric cooperative, municipally owned or operated electric
28 power system, or joint municipal utility commission. Such
29 terms shall include any contiguous or adjacent additions to
30 or expansions of a particular structure. Nothing in this
31 section shall be construed to confer any right on an
32 electric supplier to serve new structures on a particular
33 tract of land because it was serving an existing structure
34 on that tract.

35 2. Once a municipally owned or operated electrical
36 system, or its predecessor in interest, lawfully commences
37 supplying retail electric energy to a structure through
38 permanent service facilities, it shall have the right to
39 continue serving such structure, and other suppliers of
40 electrical energy shall not have the right to provide
41 service to the structure except as might be otherwise
42 permitted in the context of municipal annexation, pursuant
43 to section 386.800 or pursuant to a territorial agreement
44 approved under section 394.312. The public service
45 commission, upon application made by a customer, may order a
46 change of suppliers on the basis that it is in the public
47 interest for a reason other than a rate differential, and
48 the commission is hereby given jurisdiction over municipally
49 owned or operated electric systems to accomplish the purpose
50 of this section. The commission's jurisdiction under this
51 section is limited to public interest determinations and
52 excludes questions as to the lawfulness of the provision of
53 service, such questions being reserved to courts of
54 competent jurisdiction. Except as provided in this section,
55 nothing in this section shall be construed as otherwise
56 conferring upon the commission jurisdiction over the
57 service, rates, financing, accounting or management of any
58 such municipally owned or operated electrical system, and
59 nothing in this section, section 393.106, and section

394.315 shall affect the rights, privileges or duties of any municipality to form or operate municipally owned or operated electrical systems. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred.

3. Notwithstanding the provisions of this section, section 393.106, section 394.080, and section 394.315 to the contrary, in the event that a retail electric supplier is providing service to a structure located within a city, town, or village that has ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure.

386.800. 1. No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991, unless:

(1) The structure was lawfully receiving permanent service from the municipally owned electric utility prior to July 11, 1991; or

(2) The service is provided pursuant to an approved territorial agreement under section 394.312; or

(3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or

(4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386, and chapter 393, and the electrical

corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. In the event that a municipally owned electric utility in a city with a population of more than one hundred twenty-five thousand located in a county of the first class not having a charter form of government and not adjacent to any other county of the first class desires to serve customers beyond the authorized service territory in an area which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as provided in this subdivision, in the absence of an approved territorial agreement under section 394.312 the municipally owned utility shall apply to the public service commission for an order assigning nonexclusive service territories and concurrently shall provide written notice of the application to other electric service suppliers with electric facilities located in or within one mile outside of the boundaries of the proposed expanded service territory. The proposed service area shall be contiguous to the authorized service territory which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as a condition precedent to the granting of the application. The commission shall have one hundred twenty days from the date of application to grant or deny the requested order. The commission after hearing may grant the order upon a finding that granting of the applicant's request is not detrimental to the public interest. In granting the applicant's request the commission shall give due regard to territories previously

granted to or served by other electric service suppliers and
the wasteful duplication of electric service facilities.

2. Any municipally owned electric utility may extend,
pursuant to lawful annexation, its electric service
territory to include [any structure located within a newly
annexed area which has not received permanent service from
another supplier within ninety days prior to the effective
date of the annexation] areas where another electric
supplier currently is not providing permanent service to a
structure. If a rural electric cooperative has existing
electric service facilities with adequate and necessary
service capability located in or within one mile outside the
boundaries of the area proposed to be annexed, a majority of
the existing developers, landowners, or prospective electric
customers in the area proposed to be annexed may, anytime
within forty-five days prior to the effective date of the
annexation, submit a written request to the governing body
of the annexing municipality to invoke mandatory good faith
negotiations under section 394.312 to determine which
electric service supplier is best suited to serve all or
portions of the newly annexed area. In such negotiations
the following factors shall be considered, at a minimum:

(1) The preference of landowners and prospective
electric customers;

(2) The rates, terms, and conditions of service of the
electric service suppliers;

(3) The economic impact on the electric service
suppliers;

(4) Each electric service supplier's operational
ability to serve all or portions of the annexed area within
three years of the date the annexation becomes effective;

(5) Avoiding the wasteful duplication of electric
facilities;

- 158 (6) Minimizing unnecessary encumbrances on the
159 property and landscape within the area to be annexed; and
160 (7) Preventing the waste of materials and natural
161 resources.

162 If the municipally owned electric utility and rural electric
163 cooperative are unable to negotiate a territorial agreement
164 pursuant to section 394.312 within forty-five days, then
165 they may submit proposals to those submitting the original
166 written request, whose preference shall control, section
167 394.080 to the contrary notwithstanding, and the governing
168 body of the annexing municipality shall not reject the
169 petition requesting annexation based on such preference.
170 This subsection shall not apply to municipally-owned
171 property in any newly annexed area.

172 3. In the event an electrical corporation rather than
173 a municipally owned electric utility lawfully is providing
174 electric service in the municipality, all the provisions of
175 subsection 2 shall apply equally as if the electrical
176 corporation were a municipally owned electric utility,
177 except that if the electrical corporation and the rural
178 electric cooperative are unable to negotiate a territorial
179 agreement pursuant to section 394.312 within forty-five
180 days, then either electric service supplier may file an
181 application with the commission for an order determining
182 which electric service supplier should serve, in whole or in
183 part, the area to be annexed. The application shall be made
184 pursuant to the rules and regulations of the commission
185 governing applications for certificates of public
186 convenience and necessity. The commission after the
187 opportunity for hearing shall make its determination after
188 consideration of the factors set forth in subdivisions (1)
189 through (7) of subsection 2 of this section, and section
190 394.080 to the contrary notwithstanding, may grant its order

191 upon a finding that granting of the applicant's request is
192 not detrimental to the public interest. The commission
193 shall issue its decision by report and order no later than
194 one hundred twenty days from the date of the application
195 unless otherwise ordered by the commission for good cause
196 shown. Review of such commission decisions shall be
197 governed by sections 386.500 to 386.550. If the applicant
198 is a rural electric cooperative, the commission shall charge
199 to the rural electric cooperative the appropriate fees as
200 set forth in subsection 9 of this section.

201 [3.] 4. When a municipally owned electric utility
202 desires to extend its service territory to include any
203 structure located within a newly annexed area which has
204 received permanent service from another electric service
205 supplier within ninety days prior to the effective date of
206 the annexation, it shall:

207 (1) Notify by publication in a newspaper of general
208 circulation the record owner of said structure, and notify
209 in writing any affected electric service supplier and the
210 public service commission, within sixty days after the
211 effective date of the annexation its desire to extend its
212 service territory to include said structure; and

213 (2) Within six months after the effective date of the
214 annexation receive the approval of the municipality's
215 governing body to begin negotiations pursuant to section
216 394.312 with [any] the affected electric service supplier.

217 [4.] 5. Upon receiving approval from the
218 municipality's governing body pursuant to subsection [3] 4
219 of this section, the municipally owned electric utility and
220 the affected electric service supplier shall meet and
221 negotiate in good faith the terms of the territorial
222 agreement and any transfers or acquisitions, including, as
223 an alternative, granting the affected electric service

supplier a franchise or authority to continue providing service in the annexed area. In the event that the affected electric service supplier does not provide wholesale electric power to the municipality, if the affected electric service supplier so desires, the parties [shall] may also negotiate, consistent with applicable law, regulations and existing power supply agreements, for power contracts which would provide for the purchase of power by the municipality from the affected electric service supplier for an amount of power equivalent to the loss of any sales to customers receiving permanent service at structures within the annexed areas which are being sought by the municipally owned electric utility. The parties shall have no more than one hundred eighty days from the date of receiving approval from the municipality's governing body within which to conclude their negotiations and file their territorial agreement with the commission for approval under the provisions of section 394.312. The time period for negotiations allowed under this subsection may be extended for a period not to exceed one hundred eighty days by a mutual agreement of the parties and a written request with the public service commission.

[5.] 6. For purposes of this section, the term "fair and reasonable compensation" shall mean the following:

(1) The present-day reproduction cost, new, of the properties and facilities serving the annexed areas, less depreciation computed on a straight-line basis; and

(2) An amount equal to the reasonable and prudent cost of detaching the facilities in the annexed areas and the reasonable and prudent cost of constructing any necessary facilities to reintegrate the system of the affected electric service supplier outside the annexed area after detaching the portion to be transferred to the municipally owned electric utility; and

(3) ~~Four~~ Two hundred percent of gross revenues less gross receipts taxes received by the affected electric service supplier from the twelve-month period preceding the approval of the municipality's governing body under the provisions of subdivision (2) of subsection ~~3~~ 4 of this section, normalized to produce a representative usage from customers at the subject structures in the annexed area; and

(4) Any federal, state and local taxes which may be incurred as a result of the transaction, including the recapture of any deduction or credit; and

(5) Any other costs reasonably incurred by the affected electric supplier in connection with the transaction.

~~6.~~ 7. In the event the parties are unable to reach an agreement under subsection ~~4~~ 5 of this section, within sixty days after the expiration of the time specified for negotiations, the municipally owned electric utility or the affected electric service supplier may apply to the commission for an order assigning exclusive service territories within the annexed area and a determination of the fair and reasonable compensation amount to be paid to the affected electric service supplier under subsection ~~5~~ 6 of this section. Applications shall be made and notice of such filing shall be given to all affected parties pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission. The commission shall hold evidentiary hearings to assign service territory between the affected electric service suppliers inside the annexed area and to determine

the amount of compensation due any affected electric service supplier for the transfer of plant, facilities or associated lost revenues between electric service suppliers in the annexed area. The commission shall make such determinations based on findings of what best serves the public interest and shall issue its decision by report and order. Review of such commission decisions shall be governed by sections 386.500 to 386.550. The payment of compensation and transfer of title and operation of the facilities shall occur within ninety days after the order and any appeal therefrom becomes final unless the order provides otherwise.

[7.] 8. In reaching its decision under subsection 6 of this section, the commission shall consider the following factors:

(1) Whether the acquisition or transfers sought by the municipally owned electric utility within the annexed area from the affected electric service supplier are, in total, in the public interest, including the preference of the owner of any affected structure, consideration of rate disparities between the competing electric service suppliers, and issues of unjust rate discrimination among customers of a single electric service supplier if the rates to be charged in the annexed areas are lower than those charged to other system customers; and

(2) The fair and reasonable compensation to be paid by the municipally owned electric utility, to the affected electric service supplier with existing system operations within the annexed area, for any proposed acquisitions or transfers; and

(3) Any effect on system operation, including, but not limited to, loss of load and loss of revenue; and

(4) Any other issues upon which the municipally owned electric utility and the affected electric service supplier

might otherwise agree, including, but not limited to, the valuation formulas and factors contained in subsections [4, 5 and 6] 5, 6, and 7, of this section, even if the parties could not voluntarily reach an agreement thereon under those subsections.

[8.] 9. The commission is hereby given all necessary jurisdiction over municipally owned electric utilities and rural electric cooperatives to carry out the purposes of this section consistent with other applicable law; provided, however, the commission shall not have jurisdiction to compel the transfer of customers or structures with a connected load greater than one thousand kilowatts. The commission shall by rule set appropriate fees to be charged on a case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary costs incurred by the commission in carrying out its duties under this section. Nothing in this section shall be construed as otherwise conferring upon the public service commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally owned electric utility, except as provided in this section.

10. Notwithstanding sections 394.020 and 394.080 to the contrary, a rural electric cooperative may provide electric service within the corporate boundaries of a municipality if such service is provided:

(1) Pursuant to subsections 2 through 9 of this section; and

(2) Such service is conditioned upon the execution of the appropriate territorial and municipal franchise agreements, which may include a nondiscriminatory requirement, consistent with other applicable law, that the rural electric cooperative collect and remit a sales tax

356 based on the amount of electricity sold by the rural
357 electric cooperative within the municipality.

358 393.106. 1. As used in this section, the following
359 terms mean:

360 (1) "Permanent service", electrical service provided
361 through facilities which have been permanently installed on
362 a structure and which are designed to provide electric
363 service for the structure's anticipated needs for the
364 indefinite future, as contrasted with facilities installed
365 temporarily to provide electrical service during
366 construction. Service provided temporarily shall be at the
367 risk of the electrical supplier and shall not be
368 determinative of the rights of the provider or recipient of
369 permanent service;

370 (2) "Structure" or "structures", an agricultural,
371 residential, commercial, industrial or other building or a
372 mechanical installation, machinery or apparatus at which
373 retail electric energy is being delivered through a metering
374 device which is located on or adjacent to the structure and
375 connected to the lines of an electrical supplier. Such
376 terms shall include any contiguous or adjacent additions to
377 or expansions of a particular structure. Nothing in this
378 section shall be construed to confer any right on an
379 electric supplier to serve new structures on a particular
380 tract of land because it was serving an existing structure
381 on that tract.

382 2. Once an electrical corporation or joint municipal
383 utility commission, or its predecessor in interest, lawfully
384 commences supplying retail electric energy to a structure
385 through permanent service facilities, it shall have the
386 right to continue serving such structure, and other
387 suppliers of electrical energy shall not have the right to
388 provide service to the structure except as might be

otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred. However, those customers who had cancelled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.

3. Notwithstanding the provisions of this section, section 91.025, section 394.080, and section 394.315 to the contrary, in the event that a retail electric supplier is providing service to a structure located within a city, town, or village that ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent

421 service to the new structure upon the request of the owner
422 of the new structure.

423 394.020. In this chapter, unless the context otherwise
424 requires,

425 (1) "Member" means each incorporator of a cooperative
426 and each person admitted to and retaining membership
427 therein, and shall include a husband and wife admitted to
428 joint membership;

429 (2) "Person" includes any natural person, firm,
430 association, corporation, business trust, partnership,
431 federal agency, state or political subdivision or agency
432 thereof, or any body politic; and

433 (3) "Rural area" shall be deemed to mean any area of
434 the United States not included within the boundaries of any
435 city, town or village having a population in excess of
436 fifteen hundred inhabitants, and such term shall be deemed
437 to include both the farm and nonfarm population thereof.____

438 The number of inhabitants specified in this subsection shall
439 be increased by six percent every ten years after each
440 decennial census beginning in 2030.

441 394.315. 1. As used in this section, the following
442 terms mean:

443 (1) "Permanent service", electrical service provided
444 through facilities which have been permanently installed on
445 a structure and which are designed to provide electric
446 service for the structure's anticipated needs for the
447 indefinite future, as contrasted with facilities installed
448 temporarily to provide electrical service during
449 construction. Service provided temporarily shall be at the
450 risk of the electrical supplier and shall not be
451 determinative of the rights of the provider or recipient of
452 permanent service;

(2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on [a rural electric cooperative] an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract.

2. Once a rural electric cooperative, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided herein, nothing in this section shall be construed as otherwise conferring upon the

commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative, and except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing cooperatives pursuant to this chapter. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred. However, those customers who had cancelled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.

3. Notwithstanding the provisions of this section, section 91.025, section 393.106, and section 394.080 to the contrary, in the event that a retail electric supplier is providing service to a structure located within a city, town, or village that has ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure."; and

Further amend the title and enacting clause accordingly.