

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 202
101ST GENERAL ASSEMBLY

0822H.12C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 91.025, 386.370, 386.800, 393.106, 394.020, 394.120, 394.315, and 400.9-109, RSMo, and to enact in lieu thereof twelve new sections relating to the provision of electrical services.

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

Section A. Sections 91.025, 386.370, 386.800, 393.106, 394.020, 394.120, 394.315, and 400.9-109, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 91.025, 386.370, 386.800, 393.106, 393.1620, 393.1700, 393.1705, 393.1715, 394.020, 394.120, 394.315, and 400.9-109, to read as follows:

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 (3) "Structure" or "structures", an agricultural, residential, commercial, industrial or other
13 building or a mechanical installation, machinery or apparatus at which retail electric energy is
14 being delivered through a metering device which is located on or adjacent to the structure and
15 connected to the lines of an electrical corporation, rural electric cooperative, municipally owned
16 or operated electric power system, or joint municipal utility commission. Such terms shall
17 include any contiguous or adjacent additions to or expansions of a particular structure. Nothing
18 in this section shall be construed to confer any right on an electric supplier to serve new
19 structures on a particular tract of land because it was serving an existing structure on that tract.

20 2. Once a municipally owned or operated electrical system, or its predecessor in interest,
21 lawfully commences supplying retail electric energy to a structure through permanent service
22 facilities, it shall have the right to continue serving such structure, and other suppliers of
23 electrical energy shall not have the right to provide service to the structure except as might be
24 otherwise permitted in the context of municipal annexation, pursuant to section 386.800 or
25 pursuant to a territorial agreement approved under section 394.312. The public service
26 commission, upon application made by a customer, may order a change of suppliers on the basis
27 that it is in the public interest for a reason other than a rate differential, and the commission is
28 hereby given jurisdiction over municipally owned or operated electric systems to accomplish the
29 purpose of this section. The commission's jurisdiction under this section is limited to public
30 interest determinations and excludes questions as to the lawfulness of the provision of service,
31 such questions being reserved to courts of competent jurisdiction. Except as provided in this
32 section, nothing in this section shall be construed as otherwise conferring upon the commission
33 jurisdiction over the service, rates, financing, accounting or management of any such municipally
34 owned or operated electrical system, and nothing in this section, section 393.106, and section
35 394.315 shall affect the rights, privileges or duties of any municipality to form or operate
36 municipally owned or operated electrical systems. Nothing in this section shall be construed to
37 make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this
38 section shall be construed to make unlawful the continued lawful provision of service to any
39 structure which may have had a different supplier in the past, if such a change in supplier was
40 lawful at the time it occurred.

41 **3. Notwithstanding the provisions of this section and sections 393.106, 394.080, and**
42 **394.315 to the contrary, in the event that a retail electric supplier is providing service to**
43 **a structure located within a city, town, or village that has ceased to be a rural area, and**
44 **such structure is demolished and replaced by a new structure, such retail electric service**
45 **supplier may provide permanent service to the new structure upon the request of the**
46 **owner of the new structure.**

386.370. 1. The commission shall, prior to the beginning of each fiscal year beginning
2 with the fiscal year commencing on July 1, 1947, make an estimate of the expenses to be
3 incurred by it during such fiscal year reasonably attributable to the regulation of public utilities
4 as provided in chapters 386, 392 and 393 and shall also separately estimate the amount of such
5 expenses directly attributable to such regulation of each of the following groups of public
6 utilities: Electrical corporations, gas corporations, water corporations, heating companies and
7 telephone corporations, telegraph corporations, sewer corporations, and any other public utility
8 as defined in section 386.020, as well as the amount of such expenses not directly attributable
9 to any such group. For purposes of this section, water corporations and sewer corporations will
10 be combined and considered one group of public utilities.

11 2. The commission shall allocate to each such group of public utilities the estimated
12 expenses directly attributable to the regulation of such group and an amount equal to such
13 proportion of the estimated expenses not directly attributable to any group as the gross intrastate
14 operating revenues of such group during the preceding calendar year bears to the total gross
15 intrastate operating revenues of all public utilities subject to the jurisdiction of the commission,
16 as aforesaid, during such calendar year. The commission shall then assess the amount so
17 allocated to each group of public utilities, subject to reduction as herein provided, to the public
18 utilities in such group in proportion to their respective gross intrastate operating revenues during
19 the preceding calendar year, except that the total amount so assessed to all such public utilities
20 shall not exceed [~~one-fourth~~] **three hundred fifteen thousandths** of one percent of the total
21 gross intrastate operating revenues of all utilities subject to the jurisdiction of the commission.

22 3. The commission shall render a statement of such assessment to each such public
23 utility on or before July first and the amount so assessed to each such public utility shall be paid
24 by it to the director of revenue in full on or before July fifteenth next following the rendition of
25 such statement, except that any such public utility may at its election pay such assessment in four
26 equal installments not later than the following dates next following the rendition of said
27 statement, to wit: July fifteenth, October fifteenth, January fifteenth and April fifteenth. The
28 director of revenue shall remit such payments to the state treasurer.

29 4. The state treasurer shall credit such payments to a special fund, which is hereby
30 created, to be known as "The Public Service Commission Fund", which fund, or its successor
31 fund created pursuant to section 33.571, shall be devoted solely to the payment of expenditures
32 actually incurred by the commission and attributable to the regulation of such public utilities
33 subject to the jurisdiction of the commission, as aforesaid. Any amount remaining in such
34 special fund or its successor fund at the end of any fiscal year shall not revert to the general
35 revenue fund, but shall be applicable by appropriation of the general assembly to the payment
36 of such expenditures of the commission in the succeeding fiscal year and shall be applied by the

37 commission to the reduction of the amount to be assessed to such public utilities in such
38 succeeding fiscal year, such reduction to be allocated to each group of public utilities in
39 proportion to the respective gross intrastate operating revenues of the respective groups during
40 the preceding calendar year.

41 5. In order to enable the commission to make the allocations and assessments herein
42 provided for, each public utility subject to the jurisdiction of the commission as aforesaid shall
43 file with the commission, within ten days after August 28, 1996, and thereafter on or before
44 March thirty-first of each year, a statement under oath showing its gross intrastate operating
45 revenues for the preceding calendar year, and if any public utility shall fail to file such statement
46 within the time aforesaid the commission shall estimate such revenue which estimate shall be
47 binding on such public utility for the purpose of this section.

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

4 (1) The structure was lawfully receiving permanent service from the municipally owned
5 electric utility prior to July 11, 1991; [ø]

6 (2) The service is provided pursuant to an approved territorial agreement under section
7 394.312;

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

10 (4) The structure is located in an area which was previously served by an electrical
11 corporation regulated under chapter 386, and chapter 393, and the electrical corporation's
12 authorized service territory was contiguous to or inclusive of the municipality's previous
13 corporate boundaries, and the electrical corporation's ownership or operating rights within the
14 area were acquired in total by the municipally owned electrical system prior to July 11, 1991.
15 In the event that a municipally owned electric utility in a city with a population of more than one
16 hundred twenty-five thousand located in a county of the first class not having a charter form of
17 government and not adjacent to any other county of the first class desires to serve customers
18 beyond the authorized service territory in an area which was previously served by an electrical
19 corporation regulated under the provisions of chapter 386, and chapter 393, as provided in this
20 subdivision, **in the absence of an approved territorial agreement under section 394.312**, the
21 municipally owned utility shall apply to the public service commission for an order assigning
22 nonexclusive service territories **and concurrently shall provide written notice of the**
23 **application to other electric service suppliers with electric facilities located in or within one**
24 **mile outside of the boundaries of the proposed expanded service territory.** The proposed
25 service area shall be contiguous to the authorized service territory which was previously served

26 by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as
27 a condition precedent to the granting of the application. The commission shall have one hundred
28 twenty days from the date of application to grant or deny the requested order. The commission,
29 **after a hearing**, may grant the order upon a finding that granting of the applicant's request is not
30 detrimental to the public interest. In granting the applicant's request the commission shall give
31 due regard to territories previously granted to **or served by** other electric **service** suppliers **and**
32 **the wasteful duplication of electric service facilities.**

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

- 46 (1) **The preference of landowners and prospective electric customers;**
- 47 (2) **The rates, terms and conditions of service of the electric service suppliers;**
- 48 (3) **The economic impact on the electric service suppliers;**
- 49 (4) **Each electric service supplier's operational ability to serve all or portions of the**
50 **annexed area within three years of the date the annexation becomes effective;**
- 51 (5) **Avoiding the wasteful duplication of electric facilities;**
- 52 (6) **Minimizing unnecessary encumbrances on the property and landscape within**
53 **the area to be annexed; and**
- 54 (7) **Preventing the waste of materials and natural resources.**

55

56 **If the municipally owned electric utility and rural electric cooperative are unable to**
57 **negotiate a territorial agreement pursuant to section 394.312 within forty-five days, then**
58 **they may submit proposals to those submitting the original written request, whose**
59 **preference shall control, section 394.080 to the contrary notwithstanding, and the**
60 **governing body of the annexing municipality shall not reject the petition requesting**

61 **annexation based on such preference. This subsection shall not apply to municipally-**
62 **owned property in any newly annexed area.**

63 **3. In the event an electrical corporation rather than a municipally owned electric**
64 **utility lawfully is providing electric service in the municipality, all the provisions of**
65 **subsection 2 shall apply equally as if the electrical corporation were a municipally owned**
66 **electric utility, except that if the electrical corporation and the rural electric cooperative**
67 **are unable to negotiate a territorial agreement pursuant to section 394.312 within forty-five**
68 **days, then either electric supplier may file an application with the commission for an order**
69 **determining which electric supplier should serve, in whole or in part, the area to be**
70 **annexed. The application shall be made pursuant to the rules and regulations of the**
71 **commission governing applications for certificates of public convenience and necessity.**
72 **The commission after the opportunity for hearing shall make its determination after**
73 **consideration of the factors set forth in subdivisions (1) through (7) of subsection 2 of this**
74 **section, and section 394.080 to the contrary notwithstanding, may grant its order upon a**
75 **finding that granting of the applicant's request is not detrimental to the public interest.**
76 **The commission shall issue its decision by report and order no later than one hundred**
77 **twenty days from the date of the application unless otherwise ordered by the commission**
78 **for good cause shown. Review of such commission decisions shall be governed by sections**
79 **386.500 to 386.550. If the applicant is a rural electric cooperative, the commission shall**
80 **charge to the rural electric cooperative the appropriate fees as set forth in subsection 9 of**
81 **this section.**

82 ~~[3-]~~ **4.** When a municipally owned electric utility desires to extend its service territory
83 to include any structure located within a newly annexed area which has received permanent
84 service from another **electric service** supplier within ninety days prior to the effective date of the
85 annexation, it shall:

86 (1) Notify by publication in a newspaper of general circulation the record owner of said
87 structure, and notify in writing any affected electric **service** supplier and the public service
88 commission, within sixty days after the effective date of the annexation its desire to extend its
89 service territory to include said structure; and

90 (2) Within six months after the effective date of the annexation receive the approval of
91 the municipality's governing body to begin negotiations pursuant to section 394.312 with ~~[any]~~
92 **the** affected electric **service** supplier.

93 ~~[4-]~~ **5.** Upon receiving approval from the municipality's governing body pursuant to
94 subsection 3 of this section, the municipally owned electric utility and the affected electric
95 **service** supplier shall meet and negotiate in good faith the terms of the territorial agreement and
96 any transfers or acquisitions, including, as an alternative, granting the affected electric **service**

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

111 [~~5-~~] **6.** For purposes of this section, the term "fair and reasonable compensation" shall
112 mean the following:

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

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

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

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

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

128 [~~6-~~] **7.** In the event the parties are unable to reach an agreement under subsection [~~4~~] **5**
129 of this section, within sixty days after the expiration of the time specified for negotiations, the
130 municipally owned electric utility **or the affected electric service supplier** may apply to the
131 commission for an order assigning exclusive service territories within the annexed area and a
132 determination of the fair and reasonable compensation amount to be paid to the affected electric

133 **service** supplier under subsection ~~[5]~~ **6** of this section. Applications shall be made and notice
134 of such filing shall be given to all affected parties pursuant to the rules and regulations of the
135 commission governing applications for certificates of public convenience and necessity. Unless
136 otherwise ordered by the commission for good cause shown, the commission shall rule on such
137 applications not later than one hundred twenty days after the application is properly filed with
138 the secretary of the commission. The commission shall hold evidentiary hearings to assign
139 service territory between **the** affected electric **service** suppliers inside the annexed area and to
140 determine the amount of compensation due any affected electric **service** supplier for the transfer
141 of plant, facilities or associated lost revenues between electric **service** suppliers in the annexed
142 area. The commission shall make such determinations based on findings of what best serves the
143 public interest and shall issue its decision by report and order. Review of such commission
144 decisions shall be governed by sections 386.500 to 386.550. The payment of compensation and
145 transfer of title and operation of the facilities shall occur within ninety days after the order and
146 any appeal therefrom becomes final unless the order provides otherwise.

147 ~~[7.]~~ **8.** In reaching its decision under subsection ~~[6]~~ **7** of this section, the commission
148 shall consider the following factors:

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

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

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

160 (4) Any other issues upon which the municipally owned electric utility and the affected
161 electric **service** supplier might otherwise agree, including, but not limited to, the valuation
162 formulas and factors contained in subsections ~~[4,]~~ **5, 6,** and ~~[6]~~ **7,** of this section, even if the
163 parties could not voluntarily reach an agreement thereon under those subsections.

164 ~~[8.]~~ **9.** The commission is hereby given all necessary jurisdiction over municipally owned
165 electric utilities and rural electric cooperatives to carry out the purposes of this section consistent
166 with other applicable law; provided, however, the commission shall not have jurisdiction to
167 compel the transfer of customers or structures with a connected load greater than one thousand
168 kilowatts. The commission shall by rule set appropriate fees to be charged on a case-by-case

169 basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary
170 costs incurred by the commission in carrying out its duties under this section. **Nothing in this**
171 **section shall be construed as otherwise conferring upon the public service commission**
172 **jurisdiction over the service, rates, financing, accounting, or management of any rural**
173 **electric cooperative or municipally-owned electric utility, except as provided in this section.**

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

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

178 **(2) Such service is conditioned upon the execution of the appropriate territorial and**
179 **municipal franchise agreements, which may include a nondiscriminatory requirement,**
180 **consistent with other applicable law, that the rural electric cooperative collect and remit**
181 **a sales tax based on the amount of electricity sold by the rural electric cooperative within**
182 **the municipality.**

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

2 **(1) "Auxiliary power", the energy used to operate equipment and other load that**
3 **is directly related to the production of energy by an independent power producer or**
4 **electrical corporation, obtained through generation at the site or through adjacent**
5 **transformation and transmission interconnect, but does not include energy used for space**
6 **heating, lighting, air conditioning, office needs of buildings, and other non-generating uses**
7 **at the generation site;**

8 **(2) "Independent power producer", an entity that is also considered a non-utility**
9 **power producer in the United States. Independent power producers are wholesale**
10 **electricity producers that operate within the franchised service territories of host utilities**
11 **and are usually authorized to sell at market-based rates. Unlike traditional electric**
12 **utilities, independent power producers do not possess transmission facilities or sell**
13 **electricity in the retail market;**

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

20 ~~(2)~~ **(4) "Structure" or "structures", an agricultural, residential, commercial, industrial**
21 **or other building or a mechanical installation, machinery or apparatus at which retail electric**
22 **energy is being delivered through a metering device which is located on or adjacent to the**

23 structure and connected to the lines of an electrical supplier. Such terms shall include any
24 contiguous or adjacent additions to or expansions of a particular structure. Nothing in this
25 section shall be construed to confer any right on an electric supplier to serve new structures on
26 a particular tract of land because it was serving an existing structure on that tract.

27 2. Once an electrical corporation or joint municipal utility commission, or its predecessor
28 in interest, lawfully commences supplying retail electric energy to a structure through permanent
29 service facilities, it shall have the right to continue serving such structure, and other suppliers
30 of electrical energy shall not have the right to provide service to the structure except as might be
31 otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and
32 section 394.080, or pursuant to a territorial agreement approved under section 394.312. The
33 public service commission, upon application made by an affected party, may order a change of
34 suppliers on the basis that it is in the public interest for a reason other than a rate differential.
35 The commission's jurisdiction under this section is limited to public interest determinations and
36 excludes questions as to the lawfulness of the provision of service, such questions being reserved
37 to courts of competent jurisdiction. Except as provided in this section, nothing contained herein
38 shall affect the rights, privileges or duties of existing corporations pursuant to this chapter.
39 Nothing in this section shall be construed to make lawful any provision of service which was
40 unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the
41 continued lawful provision of service to any structure which may have had a different supplier
42 in the past, if such a change in supplier was lawful at the time it occurred. However, those
43 customers who had cancelled service with their previous supplier or had requested cancellation
44 by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer
45 shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and
46 July 11, 1991.

47 **3. Notwithstanding the provisions of subsection 2 of this section or any other**
48 **provision of chapters 386 and 394 to the contrary, auxiliary power may be purchased on**
49 **a wholesale basis, under the applicable federal tariffs of a regional transmission**
50 **organization instead of under retail service tariffs filed with the public service commission**
51 **by an electrical corporation, for use at an electric generation facility located in any county**
52 **of the first classification with more than ninety-two thousand but fewer than one hundred**
53 **one thousand inhabitants which commenced commercial operations prior to August 28,**
54 **2021, and which is operated as an independent power producer.**

55 **4. Notwithstanding the provisions of this section and sections 91.025, 394.080, and**
56 **394.315 to the contrary, in the event that a retail electric supplier is providing service to**
57 **a structure located within a city, town, or village that has ceased to be a rural area, and**
58 **such structure is demolished and replaced by a new structure, such retail electric service**

59 supplier may provide permanent service to the new structure upon the request of the
60 owner of the new structure.

393.1620. 1. For the purposes of this section, the following terms shall mean:

2 (1) "Average and excess method", a method for allocation of production plant costs
3 using factors that consider the classes' average demands and excess demands, determined
4 by subtracting the average demands from the non-coincident peak demands, for the four
5 months with the highest system peak loads. The production plant costs are allocated using
6 the class average and excess demands proportionally based on the system load factor,
7 where the system load factor determines the percentage of production plant costs allocated
8 using the average demands, and the remainder of production plant costs are allocated
9 using the excess demands;

10 (2) "Class cost of service study", a study designed to allocate a utility's costs to each
11 customer class on the basis of which customer class causes the costs;

12 (3) "Commission", the Missouri public service commission;

13 (4) "Electrical corporation", the same as defined in section 386.020, but shall not
14 include an electrical corporation as described in subsection 2 of section 393.110;

15 (5) "Production plant costs", fixed costs reflected on the electrical corporation's
16 accounting books for the applicable test period, as updated or trued-up, associated with
17 the production or purchase of electricity.

18 2. In determining the allocation of an electrical corporation's total revenue
19 requirement in a general rate case, the commission shall only consider class cost of service
20 study results that allocate the electrical corporation's production plant costs from nuclear
21 and fossil generating units using the average and excess method or one of the methods of
22 assignment or allocation contained within the National Association of Regulatory Utility
23 Commissioners 1992 manual or subsequent manual.

24 3. This section shall expire on August 28, 2031.

393.1700. 1. For purposes of sections 393.1700 to 393.1715, the following terms
2 shall mean:

3 (1) "Ancillary agreement", a bond, insurance policy, letter of credit, reserve
4 account, surety bond, interest rate lock or swap arrangement, hedging arrangement,
5 liquidity or credit support arrangement, or other financial arrangement entered into in
6 connection with securitized utility tariff bonds;

7 (2) "Assignee", a legally recognized entity to which an electrical corporation
8 assigns, sells, or transfers, other than as security, all or a portion of its interest in or right
9 to securitized utility tariff property. The term includes a corporation, limited liability
10 company, general partnership or limited partnership, public authority, trust, financing

11 entity, or any entity to which an assignee assigns, sells, or transfers, other than as security,
12 its interest in or right to securitized utility tariff property;

13 (3) "Bondholder", a person who holds a securitized utility tariff bond;

14 (4) "Code", the uniform commercial code, chapter 400;

15 (5) "Commission", the Missouri public service commission;

16 (6) "Electrical corporation", the same as defined in section 386.020, but shall not
17 include an electrical corporation as described in subsection 2 of section 393.110;

18 (7) "Energy transition costs", include all of the following:

19 (a) Pretax costs with respect to a retired or abandoned or to be retired or
20 abandoned electric generating facility that is the subject of a petition for a financing order
21 filed under this section where such early retirement or abandonment is deemed reasonable
22 and prudent by the commission through a final order issued by the commission, include,
23 but are not limited to, the undepreciated investment in the retired or abandoned or to be
24 retired or abandoned electric generating facility and any facilities ancillary thereto or used
25 in conjunction therewith, costs of decommissioning and restoring the site of the electric
26 generating facility, other applicable capital and operating costs, accrued carrying charges,
27 and deferred expenses, with the foregoing to be reduced by applicable tax benefits of
28 accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and
29 may include the cost of retiring any existing indebtedness, fees, costs, and expenses to
30 modify existing debt agreements or for waivers or consents related to existing debt
31 agreements;

32 (b) Pretax costs that an electrical corporation has previously incurred related to the
33 retirement or abandonment of such an electric generating facility occurring before August
34 28, 2021;

35 (8) "Financing costs", includes all of the following:

36 (a) Interest and acquisition, defeasance, or redemption premiums payable on
37 securitized utility tariff bonds;

38 (b) Any payment required under an ancillary agreement and any amount required
39 to fund or replenish a reserve account or other accounts established under the terms of any
40 indenture, ancillary agreement, or other financing documents pertaining to securitized
41 utility tariff bonds;

42 (c) Any other cost related to issuing, supporting, repaying, refunding, and servicing
43 securitized utility tariff bonds, including servicing fees, accounting and auditing fees,
44 trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees,
45 placement and underwriting fees, independent director and manager fees, capitalized
46 interest, rating agency fees, stock exchange listing and compliance fees, security

47 registration fees, filing fees, information technology programming costs, and any other
48 costs necessary to otherwise ensure the timely payment of securitized utility tariff bonds
49 or other amounts or charges payable in connection with the bonds, including costs related
50 to obtaining the financing order;

51 (d) Any taxes and license fees or other fees imposed on the revenues generated from
52 the collection of the securitized utility tariff charge or otherwise resulting from the
53 collection of securitized utility tariff charges, in any such case whether paid, payable, or
54 accrued;

55 (e) Any state and local taxes, franchise, gross receipts, and other taxes or similar
56 charges, including commission assessment fees, whether paid, payable, or accrued;

57 (f) Any costs associated with performance of the commission's responsibilities
58 under this section in connection with approving, approving subject to conditions, or
59 rejecting a petition for a financing order, and in performing its duties in connection with
60 the issuance advice letter process, including costs to retain counsel, one or more financial
61 advisors, or other consultants as deemed appropriate by the commission and paid pursuant
62 to this section;

63 (9) "Financing order", an order from the commission that authorizes the issuance
64 of securitized utility tariff bonds; the imposition, collection, and periodic adjustments of
65 a securitized utility tariff charge; the creation of securitized utility tariff property; and the
66 sale, assignment, or transfer of securitized utility tariff property to an assignee;

67 (10) "Financing party", bondholders and trustees, collateral agents, any party
68 under an ancillary agreement, or any other person acting for the benefit of bondholders;

69 (11) "Financing statement", the same as defined in article 9 of the code;

70 (12) "Pledgee", a financing party to which an electrical corporation or its
71 successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien
72 on all or any portion of its interest in or right to securitized utility tariff property;

73 (13) "Qualified extraordinary costs", costs incurred prudently before, on, or after
74 August 28, 2021, of an extraordinary nature which would cause extreme customer rate
75 impacts if reflected in retail customer rates recovered through customary ratemaking, such
76 as but not limited to those related to purchases of fuel or power, inclusive of carrying
77 charges, during anomalous weather events;

78 (14) "Rate base cutoff date", the same as defined in subdivision (4) of subsection
79 1 of section 393.1400 as such term existed on August 28, 2021;

80 (15) "Securitized utility tariff bonds", bonds, debentures, notes, certificates of
81 participation, certificates of beneficial interest, certificates of ownership, or other evidences
82 of indebtedness or ownership that are issued by an electrical corporation or an assignee

83 pursuant to a financing order, the proceeds of which are used directly or indirectly to
84 recover, finance, or refinance commission-approved securitized utility tariff costs and
85 financing costs, and that are secured by or payable from securitized utility tariff property.
86 If certificates of participation or ownership are issued, references in this section to
87 principal, interest, or premium shall be construed to refer to comparable amounts under
88 those certificates;

89 (16) "Securitized utility tariff charge", the amounts authorized by the commission
90 to repay, finance, or refinance securitized utility tariff costs and financing costs and that
91 are, except as otherwise provided for in this section, nonbypassable charges imposed on
92 and part of all retail customer bills, collected by an electrical corporation or its successors
93 or assignees, or a collection agent, in full, separate and apart from the electrical
94 corporation's base rates, and paid by all existing or future retail customers receiving
95 electrical service from the electrical corporation or its successors or assignees under
96 commission-approved rate schedules, except for customers receiving electrical service
97 under special contracts as of August 28, 2021, even if a retail customer elects to purchase
98 electricity from an alternative electricity supplier following a fundamental change in
99 regulation of public utilities in this state;

100 (17) "Securitized utility tariff costs", either energy transition costs or qualified
101 extraordinary costs as the case may be;

102 (18) "Securitized utility tariff property", all of the following:

103 (a) All rights and interests of an electrical corporation or successor or assignee of
104 the electrical corporation under a financing order, including the right to impose, bill,
105 charge, collect, and receive securitized utility tariff charges authorized under the financing
106 order and to obtain periodic adjustments to such charges as provided in the financing
107 order;

108 (b) All revenues, collections, claims, rights to payments, payments, money, or
109 proceeds arising from the rights and interests specified in the financing order, regardless
110 of whether such revenues, collections, claims, rights to payment, payments, money, or
111 proceeds are imposed, billed, received, collected, or maintained together with or
112 commingled with other revenues, collections, rights to payment, payments, money, or
113 proceeds;

114 (19) "Special contract", electrical service provided under the terms of a special
115 incremental load rate schedule at a fixed price rate approved by the commission.

116 2. (1) An electrical corporation may petition the commission for a financing order
117 to finance energy transition costs through an issuance of securitized utility tariff bonds.
118 The petition shall include all of the following:

119 **(a) A description of the electric generating facility or facilities that the electrical**
120 **corporation has retired or abandoned, or proposes to retire or abandon, prior to the date**
121 **that all undepreciated investment relating thereto has been recovered through rates and**
122 **the reasons for undertaking such early retirement or abandonment, or if the electrical**
123 **corporation is subject to a separate commission order or proceeding relating to such**
124 **retirement or abandonment as contemplated by subdivision (2) of this subsection, and a**
125 **description of the order or other proceeding;**

126 **(b) The energy transition costs;**

127 **(c) An indicator of whether the electrical corporation proposes to finance all or a**
128 **portion of the energy transition costs using securitized utility tariff bonds. If the electrical**
129 **corporation proposes to finance a portion of the costs, the electrical corporation shall**
130 **identify the specific portion in the petition. By electing not to finance all or any portion of**
131 **such energy transition costs using securitized utility tariff bonds, an electrical corporation**
132 **shall not be deemed to waive its right to recover such costs pursuant to a separate**
133 **proceeding with the commission;**

134 **(d) An estimate of the financing costs related to the securitized utility tariff bonds;**

135 **(e) An estimate of the securitized utility tariff charges necessary to recover the**
136 **securitized utility tariff costs and financing costs and the period for recovery of such costs;**

137 **(f) A comparison between the net present value of the costs to customers that are**
138 **estimated to result from the issuance of securitized utility tariff bonds and the costs that**
139 **would result from the application of the traditional method of financing and recovering the**
140 **undepreciated investment of facilities that may become securitized utility tariff costs from**
141 **customers. The comparison should demonstrate that the issuance of securitized utility**
142 **tariff bonds and the imposition of securitized utility tariff charges are expected to provide**
143 **quantifiable net present value benefits to customers;**

144 **(g) A proposed future ratemaking process to reconcile any differences between**
145 **securitized utility tariff costs financed by securitized utility tariff bonds and the final**
146 **securitized costs incurred by the electrical corporation or assignee provided that any such**
147 **reconciliation shall not affect the amount of securitized utility tariff bonds or the associated**
148 **securitized utility tariff charges paid by customers; and**

149 **(h) Direct testimony supporting the petition.**

150 **(2) An electrical corporation may petition the commission for a financing order to**
151 **finance qualified extraordinary costs. The petition shall include all of the following:**

152 **(a) A description of the qualified extraordinary costs, including their magnitude,**
153 **the reasons those costs were incurred by the electrical corporation and the retail customer**
154 **rate impact that would result from customary ratemaking treatment of such costs;**

155 **(b) An indicator of whether the electrical corporation proposes to finance all or a**
156 **portion of the qualified extraordinary costs using securitized utility tariff bonds. If the**
157 **electrical corporation proposes to finance a portion of the costs, the electrical corporation**
158 **shall identify the specific portion in the petition. By electing not to finance all or any**
159 **portion of such qualified extraordinary costs using securitized utility tariff bonds, an**
160 **electrical corporation shall not be deemed to waive its right to reflect such costs in its retail**
161 **rates pursuant to a separate proceeding with the commission;**

162 **(c) An estimate of the financing costs related to the securitized utility tariff bonds;**

163 **(d) An estimate of the securitized utility tariff charges necessary to recover the**
164 **qualified extraordinary costs and financing costs and the period for recovery of such costs;**

165 **(e) A comparison between the net present value of the costs to customers that are**
166 **estimated to result from the issuance of securitized utility tariff bonds and the costs that**
167 **would result from the application of the customary method of financing and reflecting the**
168 **qualified extraordinary costs in retail customer rates. The comparison should demonstrate**
169 **that the issuance of securitized utility tariff bonds and the imposition of securitized utility**
170 **tariff charges are expected to provide quantifiable net present value benefits to retail**
171 **customers;**

172 **(f) A proposed future ratemaking process to reconcile any differences between**
173 **securitized utility tariff costs financed by securitized utility tariff bonds and the final**
174 **securitized costs incurred by the electrical corporation or assignee provided that any such**
175 **reconciliation shall not affect the amount of securitized utility tariff bonds or the associated**
176 **securitized utility tariff charges paid by customers; and**

177 **(g) Direct testimony supporting the petition.**

178 **(3) (a) Proceedings on a petition submitted pursuant to this subsection begin with**
179 **the petition by an electrical corporation and shall be disposed of in accordance with the**
180 **requirements of this section and the rules of the commission, except as follows:**

181 **a. The commission shall establish a procedural schedule that permits a commission**
182 **decision no later than two hundred fifteen days after the date the petition is filed;**

183 **b. No later than two hundred fifteen days after the date the petition is filed, the**
184 **commission shall issue a financing order approving the petition, an order approving the**
185 **petition subject to conditions, or an order rejecting the petition; provided, however, that**
186 **the electrical corporation shall provide notice of intent to file a petition for a financing**
187 **order to the commission no less than sixty days in advance of such filing;**

188 **c. Judicial review of a financing order may be had only in accordance with sections**
189 **386.500 and 386.510.**

190 **(b) In performing its responsibilities under this section in approving, approving**
191 **subject to conditions, or rejecting a petition for a financing order, the commission may**
192 **retain counsel, one or more financial advisors, or other consultants as it deems**
193 **appropriate. Such outside counsel, advisor or advisors, or consultants shall owe a duty of**
194 **loyalty solely to the commission and shall have no interest in the proposed securitized**
195 **utility tariff bonds. The costs associated with any such engagements shall be paid by the**
196 **petitioning corporation and shall be included as financed costs in the securitized utility**
197 **tariff charge and shall not be an obligation of the state and shall be assigned solely to the**
198 **subject transaction.**

199 **(c) A financing order issued by the commission, after a hearing, to an electrical**
200 **corporation shall include all of the following elements:**

201 **a. The amount of securitized utility tariff costs to be financed using securitized**
202 **utility tariff bonds and a finding that recovery of such costs is just and reasonable and in**
203 **the public interest. The commission shall describe and estimate the amount of financing**
204 **costs that may be recovered through securitized utility tariff charges and specify the period**
205 **over which securitized utility tariff costs and financing costs may be recovered;**

206 **b. A finding that the proposed issuance of securitized utility tariff bonds and the**
207 **imposition and collection of a securitized utility tariff charge are just and reasonable and**
208 **in the public interest and are expected to provide quantifiable net present value benefits**
209 **to customers as compared to recovery of the components of securitized utility tariff costs**
210 **that would have been incurred absent the issuance of securitized utility tariff bonds.**
211 **Notwithstanding any provisions of this section to the contrary, in considering whether to**
212 **find the proposed issuance of securitized utility tariff bonds and the imposition and**
213 **collection of a securitized utility tariff charge are just and reasonable and in the public**
214 **interest, the commission may consider previous instances where it has issued financing**
215 **orders to the petitioning electrical corporation and such electrical corporation has**
216 **previously issued securitized utility tariff bonds;**

217 **c. A finding that the proposed structuring and pricing of the securitized utility**
218 **tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges**
219 **consistent with market conditions at the time the securitized utility tariff bonds are priced**
220 **and the terms of the financing order;**

221 **d. A requirement that, for so long as the securitized utility tariff bonds are**
222 **outstanding and until all financing costs have been paid in full, the imposition and**
223 **collection of securitized utility tariff charges authorized under a financing order shall be**
224 **nonbypassable and paid by all existing and future retail customers receiving electrical**
225 **service from the electrical corporation or its successors or assignees under commission-**

226 approved rate schedules except for customers receiving electrical service under special
227 contracts on August 28, 2021, even if a retail customer elects to purchase electricity from
228 an alternative electric supplier following a fundamental change in regulation of public
229 utilities in this state;

230 e. A formula-based true-up mechanism for making, at least annually, expeditious
231 periodic adjustments in the securitized utility tariff charges that customers are required
232 to pay pursuant to the financing order and for making any adjustments that are necessary
233 to correct for any overcollection or undercollection of the charges or to otherwise ensure
234 the timely payment of securitized utility tariff bonds and financing costs and other
235 required amounts and charges payable under the securitized utility tariff bonds;

236 f. The securitized utility tariff property that is, or shall be, created in favor of an
237 electrical corporation or its successors or assignees and that shall be used to pay or secure
238 securitized utility tariff bonds and approved financing costs;

239 g. The degree of flexibility to be afforded to the electrical corporation in
240 establishing the terms and conditions of the securitized utility tariff bonds, including, but
241 not limited to, repayment schedules, expected interest rates, and other financing costs;

242 h. How securitized utility tariff charges will be allocated among retail customer
243 classes. The initial allocation shall remain in effect until the electrical corporation
244 completes a general rate proceeding, and once the commission's order from that general
245 rate proceeding becomes final, all subsequent applications of an adjustment mechanism
246 regarding securitized utility tariff charges shall incorporate changes in the allocation of
247 costs to customers as detailed in the commission's order from the electrical corporation's
248 most recent general rate proceeding;

249 i. A requirement that, after the final terms of an issuance of securitized utility tariff
250 bonds have been established and before the issuance of securitized utility tariff bonds, the
251 electrical corporation determines the resulting initial securitized utility tariff charge in
252 accordance with the financing order, and that such initial securitized utility tariff charge
253 be final and effective upon the issuance of such securitized utility tariff bonds with such
254 charge to be reflected on a compliance tariff sheet bearing such charge;

255 j. A method of tracing funds collected as securitized utility tariff charges, or other
256 proceeds of securitized utility tariff property, determining that such method shall be
257 deemed the method of tracing such funds and determining the identifiable cash proceeds
258 of any securitized utility tariff property subject to a financing order under applicable law;

259 k. A statement specifying a future ratemaking process to reconcile any differences
260 between the actual securitized utility tariff costs financed by securitized utility tariff bonds
261 and the final securitized utility tariff costs incurred by the electrical corporation or

262 assignee provided that any such reconciliation shall not affect the amount of securitized
263 utility tariff bonds or the associated securitized utility tariff charges paid by customers;

264 l. A procedure that shall allow the electrical corporation to earn a return, at the
265 cost of capital authorized from time to time by the commission in the electrical
266 corporation's rate proceedings, on any moneys advanced by the electrical corporation to
267 fund reserves, if any, or capital accounts established under the terms of any indenture,
268 ancillary agreement, or other financing documents pertaining to the securitized utility
269 tariff bonds;

270 m. In a financing order granting authorization to securitize energy transition costs
271 or in a financing order granting authorization to securitize qualified extraordinary costs
272 that include retired or abandoned facility costs, a procedure for the treatment of
273 accumulated deferred income taxes and excess deferred income taxes in connection with
274 the retired or abandoned or to be retired or abandoned electric generating facility, or in
275 connection with retired or abandoned facilities included in qualified extraordinary costs.
276 The accumulated deferred income taxes, including excess deferred income taxes, shall be
277 excluded from rate base in future general rate cases and the net tax benefits relating to
278 amounts that will be recovered through the issuance of securitized utility tariff bonds shall
279 be credited to retail customers by reducing the amount of such securitized utility tariff
280 bonds that would otherwise be issued. The customer credit shall include the net present
281 value of the tax benefits, calculated using a discount rate equal to the expected interest rate
282 of the securitized utility tariff bonds, for the estimated accumulated and excess deferred
283 income taxes at the time of securitization including timing differences created by the
284 issuance of securitized utility tariff bonds amortized over the period of the bonds
285 multiplied by the expected interest rate on such securitized utility tariff bonds;

286 n. An outside date, which shall not be earlier than one year after the date the
287 financing order is no longer subject to appeal, when the authority to issue securitized
288 utility tariff bonds granted in such financing order shall expire; and

289 o. Include any other conditions that the commission considers appropriate and that
290 are not inconsistent with this section.

291 (d) A financing order issued to an electrical corporation may provide that creation
292 of the electrical corporation's securitized utility tariff property is conditioned upon, and
293 simultaneous with, the sale or other transfer of the securitized utility tariff property to an
294 assignee and the pledge of the securitized utility tariff property to secure securitized utility
295 tariff bonds.

296 (e) If the commission issues a financing order, the electrical corporation shall file
297 with the commission at least annually a petition or a letter applying the formula-based

298 true-up mechanism and, based on estimates of consumption for each rate class and other
299 mathematical factors, requesting administrative approval to make the applicable
300 adjustments. The review of the filing shall be limited to determining whether there are any
301 mathematical or clerical errors in the application of the formula-based true-up mechanism
302 relating to the appropriate amount of any overcollection or undercollection of securitized
303 utility tariff charges and the amount of an adjustment. The adjustments shall ensure the
304 recovery of revenues sufficient to provide for the payment of principal, interest,
305 acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and
306 charges in respect of securitized utility tariff bonds approved under the financing order.
307 Within thirty days after receiving an electrical corporation's request pursuant to this
308 paragraph, the commission shall either approve the request or inform the electrical
309 corporation of any mathematical or clerical errors in its calculation. If the commission
310 informs the electrical corporation of mathematical or clerical errors in its calculation, the
311 electrical corporation shall correct its error and refile its request. The time frames
312 previously described in this paragraph shall apply to a refiled request.

313 (f) At the time of any transfer of securitized utility tariff property to an assignee or
314 the issuance of securitized utility tariff bonds authorized thereby, whichever is earlier, a
315 financing order is irrevocable and, except for changes made pursuant to the formula-based
316 true-up mechanism authorized in this section, the commission may not amend, modify, or
317 terminate the financing order by any subsequent action or reduce, impair, postpone,
318 terminate, or otherwise adjust securitized utility tariff charges approved in the financing
319 order. After the issuance of a financing order, the electrical corporation retains sole
320 discretion regarding whether to assign, sell, or otherwise transfer securitized utility tariff
321 property or to cause securitized utility tariff bonds to be issued, including the right to defer
322 or postpone such assignment, sale, transfer, or issuance.

323 (g) The commission, in a financing order and subject to the issuance advice letter
324 process under paragraph (h) of this subdivision, shall specify the degree of flexibility to be
325 afforded the electrical corporation in establishing the terms and conditions for the
326 securitized utility tariff bonds to accommodate changes in market conditions, including
327 repayment schedules, interest rates, financing costs, collateral requirements, required debt
328 service and other reserves and the ability of the electrical corporation, at its option, to
329 effect a series of issuances of securitized utility tariff bonds and correlated assignments,
330 sales, pledges, or other transfers of securitized utility tariff property. Any changes made
331 under this paragraph to terms and conditions for the securitized utility tariff bonds shall
332 be in conformance with the financing order.

333 **(h) As the actual structure and pricing of the securitized utility tariff bonds will be**
334 **unknown at the time the financing order is issued, prior to the issuance of each series of**
335 **bonds, an issuance advice letter shall be provided to the commission by the electrical**
336 **corporation following the determination of the final terms of such series of bonds no later**
337 **than one day after the pricing of the securitized utility tariff bonds. The commission shall**
338 **have the authority to designate a representative or representatives from commission staff,**
339 **who may be advised by a financial advisor or advisors contracted with the commission, to**
340 **provide input to the electrical corporation and collaborate with the electrical corporation**
341 **in all facets of the process undertaken by the electrical corporation to place the securitized**
342 **utility tariff bonds to market so the commission's representative or representatives can**
343 **provide the commission with an opinion on the reasonableness of the pricing, terms, and**
344 **conditions of the securitized utility tariff bonds on an expedited basis. Neither the**
345 **designated representative or representatives from the commission staff nor one or more**
346 **financial advisors advising commission staff shall have authority to direct how the**
347 **electrical corporation places the bonds to market although they shall be permitted to**
348 **attend all meetings convened by the electrical corporation to address placement of the**
349 **bonds to market. The form of such issuance advice letter shall be included in the financing**
350 **order and shall indicate the final structure of the securitized utility tariff bonds and**
351 **provide the best available estimate of total ongoing financing costs. The issuance advice**
352 **letter shall report the initial securitized utility tariff charges and other information specific**
353 **to the securitized utility tariff bonds to be issued, as the commission may require. Unless**
354 **an earlier date is specified in the financing order, the electrical corporation may proceed**
355 **with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth**
356 **business day after the commission receives the issuance advice letter, the commission issues**
357 **a disapproval letter directing that the bonds as proposed shall not be issued and the basis**
358 **for that disapproval. The financing order may provide such additional provisions relating**
359 **to the issuance advice letter process as the commission considers appropriate and as are**
360 **not inconsistent with this section.**

361 **(4) (a) In performing the responsibilities of this section in connection with the**
362 **issuance of a financing order, approving the petition, an order approving the petition**
363 **subject to conditions, or an order rejecting the petition, the commission shall undertake**
364 **due diligence as it deems appropriate prior to the issuance of the order regarding the**
365 **petition pursuant to which the commission may request additional information from the**
366 **electrical corporation and may engage one or more financial advisors, one or more**
367 **consultants, and counsel as the commission deems necessary. Any financial advisor or**
368 **advisors, counsel, and consultants engaged by the commission shall have a fiduciary duty**

369 with respect to the proposed issuance of securitized utility bonds solely to the commission.
370 All expenses associated with such services shall be included as part of the financing costs
371 of the securitized utility tariff bonds and shall be included in the securitized utility tariff
372 charge.

373 (b) If an electrical corporation's petition for a financing order is denied or
374 withdrawn, or for any reason securitized utility tariff bonds are not issued, any costs of
375 retaining one or more financial advisors, one or more consultants, and counsel on behalf
376 of the commission shall be paid by the petitioning electrical corporation and shall be
377 eligible for full recovery, including carrying costs, if approved by the commission in the
378 electrical corporation's future rates.

379 (5) At the request of an electrical corporation, the commission may commence a
380 proceeding and issue a subsequent financing order that provides for refinancing, retiring,
381 or refunding securitized utility tariff bonds issued pursuant to the original financing order
382 if the commission finds that the subsequent financing order satisfies all of the criteria
383 specified in this section for a financing order. Effective upon retirement of the refunded
384 securitized utility tariff bonds and the issuance of new securitized utility tariff bonds, the
385 commission shall adjust the related securitized utility tariff charges accordingly.

386 (6) (a) A financing order remains in effect and securitized utility tariff property
387 under the financing order continues to exist until securitized utility tariff bonds issued
388 pursuant to the financing order have been paid in full or defeased and, in each case, all
389 commission-approved financing costs of such securitized utility tariff bonds have been
390 recovered in full.

391 (b) A financing order issued to an electrical corporation remains in effect and
392 unabated notwithstanding the reorganization, bankruptcy, or other insolvency
393 proceedings, merger, or sale of the electrical corporation or its successors or assignees.

394 3. (1) The commission may not, in exercising its powers and carrying out its duties
395 regarding any matter within its authority, consider the securitized utility tariff bonds
396 issued pursuant to a financing order to be the debt of the electrical corporation other than
397 for federal and state income tax purposes, consider the securitized utility tariff charges
398 paid under the financing order to be the revenue of the electrical corporation for any
399 purpose, consider the securitized utility tariff costs or financing costs specified in the
400 financing order to be the costs of the electrical corporation, nor may the commission
401 determine any action taken by an electrical corporation which is consistent with the
402 financing order to be unjust or unreasonable, and section 386.300 shall not apply to the
403 issuance of securitized utility tariff bonds.

404 **(2) Securitized utility tariff charges shall not be utilized or accounted for in**
405 **determining the electrical corporation's average overall rate, as defined in section 393.1655**
406 **and as used to determine the maximum retail rate impact limitations provided for by**
407 **subsections 3 and 4 of section 393.1655.**

408 **(3) No electrical corporation is required to file a petition for a financing order**
409 **under this section or otherwise utilize this section. An electrical corporation's decision not**
410 **to file a petition for a financing order under this section shall not be admissible in any**
411 **commission proceeding nor shall it be otherwise utilized or relied on by the commission in**
412 **any proceeding respecting the electrical corporation's rates or its accounting, including,**
413 **without limitation, any general rate proceeding, fuel adjustment clause docket, or**
414 **proceedings relating to accounting authority, whether initiated by the electrical**
415 **corporation or otherwise. The commission may not order or otherwise directly or**
416 **indirectly require an electrical corporation to use securitized utility tariff bonds to recover**
417 **securitized utility tariff costs or to finance any project, addition, plant, facility, extension,**
418 **capital improvement, equipment, or any other expenditure.**

419 **(4) The commission may not refuse to allow an electrical corporation to recover**
420 **securitized utility tariff costs in an otherwise permissible fashion, or refuse or condition**
421 **authorization or approval of the issuance and sale by an electrical corporation of securities**
422 **or the assumption by the electrical corporation of liabilities or obligations, because of the**
423 **potential availability of securitized utility tariff bond financing.**

424 **(5) After the issuance of a financing order with or without conditions, the electrical**
425 **corporation retains sole discretion regarding whether to cause the securitized utility tariff**
426 **bonds to be issued, including the right to defer or postpone such sale, assignment, transfer,**
427 **or issuance. Nothing shall prevent the electrical corporation from abandoning the issuance**
428 **of securitized utility tariff bonds under the financing order by filing with the commission**
429 **a statement of abandonment and the reasons therefor; provided, that the electrical**
430 **corporation's abandonment decision shall not be deemed imprudent because of the**
431 **potential availability of securitized utility tariff bond financing; and provided further, that**
432 **an electrical corporation's decision to abandon issuance of such bonds may be raised by**
433 **any party, including the commission, as a reason the commission should not authorize, or**
434 **should modify, the rate-making treatment proposed by the electrical corporation of the**
435 **costs associated with the electric generating facility that was the subject of a petition under**
436 **this section that would have been securitized as energy transition costs had such**
437 **abandonment decision not been made, but only if the electrical corporation requests non-**
438 **standard plant retirement treatment of such costs for rate-making purposes.**

439 **(6) The commission may not, directly or indirectly, utilize or consider the debt**
440 **reflected by the securitized utility tariff bonds in establishing the electrical corporation's**
441 **capital structure used to determine any regulatory matter, including but not limited to the**
442 **electrical corporation's revenue requirement used to set its rates.**

443 **(7) The commission may not, directly or indirectly, consider the existence of**
444 **securitized utility tariff bonds or the potential use of securitized utility tariff bond**
445 **financing proceeds in determining the electrical corporation's authorized rate of return**
446 **used to determine the electrical corporation's revenue requirement used to set its rates.**

447 **4. The electric bills of an electrical corporation that has obtained a financing order**
448 **and caused securitized utility tariff bonds to be issued shall comply with the provisions of**
449 **this subsection; however, the failure of an electrical corporation to comply with this**
450 **subsection does not invalidate, impair, or affect any financing order, securitized utility**
451 **tariff property, securitized utility tariff charge, or securitized utility tariff bonds. The**
452 **electrical corporation shall do the following:**

453 **(1) Explicitly reflect that a portion of the charges on such bill represents securitized**
454 **utility tariff charges approved in a financing order issued to the electrical corporation and,**
455 **if the securitized utility tariff property has been transferred to an assignee, shall include**
456 **a statement to the effect that the assignee is the owner of the rights to securitized utility**
457 **tariff charges and that the electrical corporation or other entity, if applicable, is acting as**
458 **a collection agent or servicer for the assignee. The tariff applicable to customers shall**
459 **indicate the securitized utility tariff charge and the ownership of the charge;**

460 **(2) Include the securitized utility tariff charge on each customer's bill as a separate**
461 **line item and include both the rate and the amount of the charge on each bill.**

462 **5. (1) (a) All securitized utility tariff property that is specified in a financing order**
463 **constitutes an existing, present intangible property right or interest therein,**
464 **notwithstanding that the imposition and collection of securitized utility tariff charges**
465 **depends on the electrical corporation, to which the financing order is issued, performing**
466 **its servicing functions relating to the collection of securitized utility tariff charges and on**
467 **future electricity consumption. The property exists:**

468 **a. Regardless of whether or not the revenues or proceeds arising from the property**
469 **have been billed, have accrued, or have been collected; and**

470 **b. Notwithstanding the fact that the value or amount of the property is dependent**
471 **on the future provision of service to customers by the electrical corporation or its**
472 **successors or assignees and the future consumption of electricity by customers.**

473 **(b) Securitized utility tariff property specified in a financing order exists until**
474 **securitized utility tariff bonds issued pursuant to the financing order are paid in full and**

475 all financing costs and other costs of such securitized utility tariff bonds have been
476 recovered in full.

477 (c) All or any portion of securitized utility tariff property specified in a financing
478 order issued to an electrical corporation may be transferred, sold, conveyed, or assigned
479 to a successor or assignee that is wholly owned, directly or indirectly, by the electrical
480 corporation and created for the limited purpose of acquiring, owning, or administering
481 securitized utility tariff property or issuing securitized utility tariff bonds under the
482 financing order. All or any portion of securitized utility tariff property may be pledged
483 to secure securitized utility tariff bonds issued pursuant to the financing order, amounts
484 payable to financing parties and to counterparties under any ancillary agreements, and
485 other financing costs. Any transfer, sale, conveyance, assignment, grant of a security
486 interest in or pledge of securitized utility tariff property by an electrical corporation, or an
487 affiliate of the electrical corporation, to an assignee, to the extent previously authorized in
488 a financing order, does not require the prior consent and approval of the commission.

489 (d) If an electrical corporation defaults on any required remittance of securitized
490 utility tariff charges arising from securitized utility tariff property specified in a financing
491 order, a court, upon application by an interested party, and without limiting any other
492 remedies available to the applying party, shall order the sequestration and payment of the
493 revenues arising from the securitized utility tariff property to the financing parties or their
494 assignees. Any such financing order remains in full force and effect notwithstanding any
495 reorganization, bankruptcy, or other insolvency proceedings with respect to the electrical
496 corporation or its successors or assignees.

497 (e) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in
498 securitized utility tariff property specified in a financing order issued to an electrical
499 corporation, and in the revenue and collections arising from that property, is not subject
500 to setoff, counterclaim, surcharge, or defense by the electrical corporation or any other
501 person or in connection with the reorganization, bankruptcy, or other insolvency of the
502 electrical corporation or any other entity.

503 (f) Any successor to an electrical corporation, whether pursuant to any
504 reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any
505 merger or acquisition, sale, or other business combination, or transfer by operation of law,
506 as a result of electrical corporation restructuring or otherwise, shall perform and satisfy
507 all obligations of, and have the same rights under a financing order as, the electrical
508 corporation under the financing order in the same manner and to the same extent as the
509 electrical corporation, including collecting and paying to the person entitled to receive the
510 revenues, collections, payments, or proceeds of the securitized utility tariff property.

511 **Nothing in this section is intended to limit or impair any authority of the commission**
512 **concerning the transfer or succession of interests of public utilities.**

513 **(g) Securitized utility tariff bonds shall be nonrecourse to the credit or any assets**
514 **of the electrical corporation other than the securitized utility tariff property as specified**
515 **in the financing order and any rights under any ancillary agreement.**

516 **(2) (a) The creation, perfection, priority, and enforcement of any security interest**
517 **in securitized utility tariff property to secure the repayment of the principal and interest**
518 **and other amounts payable in respect of securitized utility tariff bonds, amounts payable**
519 **under any ancillary agreement and other financing costs are governed by this section and**
520 **not by the provisions of the code, except as otherwise provided in this section.**

521 **(b) A security interest in securitized utility tariff property is created, valid, and**
522 **binding at the later of the time:**

523 **a. The financing order is issued;**

524 **b. A security agreement is executed and delivered by the debtor granting such**
525 **security interest;**

526 **c. The debtor has rights in such securitized utility tariff property or the power to**
527 **transfer rights in such securitized utility tariff property; or**

528 **d. Value is received for the securitized utility tariff property.**

529

530 **The description of securitized utility tariff property in a security agreement is sufficient**
531 **if the description refers to this section and the financing order creating the securitized**
532 **utility tariff property. A security interest shall attach as provided in this paragraph**
533 **without any physical delivery of collateral or other act.**

534 **(c) Upon the filing of a financing statement with the office of the secretary of state**
535 **as provided in this section, a security interest in securitized utility tariff property shall be**
536 **perfected against all parties having claims of any kind in tort, contract, or otherwise**
537 **against the person granting the security interest, and regardless of whether the parties**
538 **have notice of the security interest. Without limiting the foregoing, upon such filing a**
539 **security interest in securitized utility tariff property shall be perfected against all claims**
540 **of lien creditors, and shall have priority over all competing security interests and other**
541 **claims other than any security interest previously perfected in accordance with this section.**

542 **(d) The priority of a security interest in securitized utility tariff property is not**
543 **affected by the commingling of securitized utility tariff charges with other amounts. Any**
544 **pledgee or secured party shall have a perfected security interest in the amount of all**
545 **securitized utility tariff charges that are deposited in any cash or deposit account of the**
546 **qualifying electrical corporation in which securitized utility tariff charges have been**

547 commingled with other funds and any other security interest that may apply to those funds
548 shall be terminated when they are transferred to a segregated account for the assignee or
549 a financing party.

550 (e) No application of the formula-based true-up mechanism as provided in this
551 section will affect the validity, perfection, or priority of a security interest in or transfer of
552 securitized utility tariff property.

553 (f) If a default occurs under the securitized utility tariff bonds that are secured by
554 a security interest in securitized utility tariff property, the financing parties or their
555 representatives may exercise the rights and remedies available to a secured party under
556 the code, including the rights and remedies available under part 6 of article 9 of the code.
557 The commission may also order amounts arising from securitized utility tariff charges be
558 transferred to a separate account for the financing parties' benefit, to which their lien and
559 security interest shall apply. On application by or on behalf of the financing parties, the
560 circuit court for the county or city in which the electrical corporation's headquarters is
561 located shall order the sequestration and payment to them of revenues arising from the
562 securitized utility tariff charges.

563 (3) (a) Any sale, assignment, or other transfer of securitized utility tariff property
564 shall be an absolute transfer and true sale of, and not a pledge of or secured transaction
565 relating to, the seller's right, title, and interest in, to, and under the securitized utility tariff
566 property if the documents governing the transaction expressly state that the transaction
567 is a sale or other absolute transfer other than for federal and state income tax purposes.
568 For all purposes other than federal and state income tax purposes, the parties'
569 characterization of a transaction as a sale of an interest in securitized utility tariff property
570 shall be conclusive that the transaction is a true sale and that ownership has passed to the
571 party characterized as the purchaser, regardless of whether the purchaser has possession
572 of any documents evidencing or pertaining to the interest. A sale or similar outright
573 transfer of an interest in securitized utility tariff property may occur only when all of the
574 following have occurred:

575 a. The financing order creating the securitized utility tariff property has become
576 effective;

577 b. The documents evidencing the transfer of securitized utility tariff property have
578 been executed by the assignor and delivered to the assignee; and

579 c. Value is received for the securitized utility tariff property.

580

581 After such a transaction, the securitized utility tariff property is not subject to any claims
582 of the transferor or the transferor's creditors, other than creditors holding a prior security
583 interest in the securitized utility tariff property perfected in accordance with this section.

584 (b) The characterization of the sale, assignment, or other transfer as an absolute
585 transfer and true sale and the corresponding characterization of the property interest of
586 the purchaser, shall not be affected or impaired by the occurrence of any of the following
587 factors:

588 a. Commingling of securitized utility tariff charges with other amounts;

589 b. The retention by the seller of (i) a partial or residual interest, including an equity
590 interest, in the securitized utility tariff property, whether direct or indirect, or whether
591 subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise
592 fees, or license fees imposed on the collection of securitized utility tariff charges;

593 c. Any recourse that the purchaser may have against the seller;

594 d. Any indemnification rights, obligations, or repurchase rights made or provided
595 by the seller;

596 e. The obligation of the seller to collect securitized utility tariff charges on behalf
597 of an assignee;

598 f. The transferor acting as the servicer of the securitized utility tariff charges or the
599 existence of any contract that authorizes or requires the electrical corporation, to the extent
600 that any interest in securitized utility tariff property is sold or assigned, to contract with
601 the assignee or any financing party that it will continue to operate its system to provide
602 service to its customers, will collect amounts in respect of the securitized utility tariff
603 charges for the benefit and account of such assignee or financing party, and will account
604 for and remit such amounts to or for the account of such assignee or financing party;

605 g. The treatment of the sale, conveyance, assignment, or other transfer for tax,
606 financial reporting, or other purposes;

607 h. The granting or providing to bondholders a preferred right to the securitized
608 utility tariff property or credit enhancement by the electrical corporation or its affiliates
609 with respect to such securitized utility tariff bonds;

610 i. Any application of the formula-based true-up mechanism as provided in this
611 section.

612 (c) Any right that an electrical corporation has in the securitized utility tariff
613 property before its pledge, sale, or transfer or any other right created under this section
614 or created in the financing order and assignable under this section or assignable pursuant
615 to a financing order is property in the form of a contract right or a chose in action.

616 **Transfer of an interest in securitized utility tariff property to an assignee is enforceable**
617 **only upon the later of:**

618 **a. The issuance of a financing order;**

619 **b. The assignor having rights in such securitized utility tariff property or the power**
620 **to transfer rights in such securitized utility tariff property to an assignee;**

621 **c. The execution and delivery by the assignor of transfer documents in connection**
622 **with the issuance of securitized utility tariff bonds; and**

623 **d. The receipt of value for the securitized utility tariff property.**

624

625 **An enforceable transfer of an interest in securitized utility tariff property to an assignee**
626 **is perfected against all third parties, including subsequent judicial or other lien creditors,**
627 **when a notice of that transfer has been given by the filing of a financing statement in**
628 **accordance with subsection 7 of this section. The transfer is perfected against third parties**
629 **as of the date of filing.**

630 **(d) The priority of a transfer perfected under this section is not impaired by any**
631 **later modification of the financing order or securitized utility tariff property or by the**
632 **commingling of funds arising from securitized utility tariff property with other funds. Any**
633 **other security interest that may apply to those funds, other than a security interest**
634 **perfected under this section, is terminated when they are transferred to a segregated**
635 **account for the assignee or a financing party. If securitized utility tariff property has been**
636 **transferred to an assignee or financing party, any proceeds of that property shall be held**
637 **in trust for the assignee or financing party.**

638 **(e) The priority of the conflicting interests of assignees in the same interest or rights**
639 **in any securitized utility tariff property is determined as follows:**

640 **a. Conflicting perfected interests or rights of assignees rank according to priority**
641 **in time of perfection. Priority dates from the time a filing covering the transfer is made in**
642 **accordance with subsection 7 of this section;**

643 **b. A perfected interest or right of an assignee has priority over a conflicting**
644 **unperfected interest or right of an assignee;**

645 **c. A perfected interest or right of an assignee has priority over a person who**
646 **becomes a lien creditor after the perfection of such assignee's interest or right.**

647 **6. The description of securitized utility tariff property being transferred to an**
648 **assignee in any sale agreement, purchase agreement, or other transfer agreement, granted**
649 **or pledged to a pledgee in any security agreement, pledge agreement, or other security**
650 **document, or indicated in any financing statement is only sufficient if such description or**
651 **indication refers to the financing order that created the securitized utility tariff property**

652 and states that the agreement or financing statement covers all or part of the property
653 described in the financing order. This section applies to all purported transfers of, and all
654 purported grants or liens or security interests in, securitized utility tariff property,
655 regardless of whether the related sale agreement, purchase agreement, other transfer
656 agreement, security agreement, pledge agreement, or other security document was entered
657 into, or any financing statement was filed.

658 7. The secretary of state shall maintain any financing statement filed to perfect a
659 sale or other transfer of securitized utility tariff property and any security interest in
660 securitized utility tariff property under this section in the same manner that the secretary
661 of state maintains financing statements filed under the code to perfect a security interest
662 in collateral owned by a transmitting utility. Except as otherwise provided in this section,
663 all financing statements filed pursuant to this section shall be governed by the provisions
664 regarding financing statements and the filing thereof under the code, including part 5 of
665 article 9 of the code. A security interest in securitized utility tariff property may be
666 perfected only by the filing of a financing statement in accordance with this section, and
667 no other method of perfection shall be effective. Notwithstanding any provision of the code
668 to the contrary, a financing statement filed pursuant to this section is effective until a
669 termination statement is filed under the code, and no continuation statement need be filed
670 to maintain its effectiveness. A financing statement filed pursuant to this section may
671 indicate that the debtor is a transmitting utility, and without regard to whether the debtor
672 is an electrical corporation, an assignee or otherwise qualifies as a transmitting utility
673 under the code, but the failure to make such indication shall not impair the duration and
674 effectiveness of the financing statement.

675 8. The law governing the validity, enforceability, attachment, perfection, priority,
676 and exercise of remedies with respect to the transfer of an interest or right or the pledge
677 or creation of a security interest in any securitized utility tariff property shall be the laws
678 of this state.

679 9. Neither the state nor its political subdivisions are liable on any securitized utility
680 tariff bonds, and the bonds are not a debt or a general obligation of the state or any of its
681 political subdivisions, agencies, or instrumentalities, nor are they special obligations or
682 indebtedness of the state or any agency or political subdivision. An issue of securitized
683 utility tariff bonds does not, directly, indirectly, or contingently, obligate the state or any
684 agency, political subdivision, or instrumentality of the state to levy any tax or make any
685 appropriation for payment of the securitized utility tariff bonds, other than in their
686 capacity as consumers of electricity. All securitized utility tariff bonds shall contain on the
687 face thereof a statement to the following effect: "Neither the full faith and credit nor the

688 **taxing power of the state of Missouri is pledged to the payment of the principal of, or**
689 **interest on, this bond."**

690 **10. All of the following entities may legally invest any sinking funds, moneys, or**
691 **other funds in securitized utility tariff bonds:**

692 **(1) Subject to applicable statutory restrictions on state or local investment**
693 **authority, the state, units of local government, political subdivisions, public bodies, and**
694 **public officers, except for members of the commission, the commission's technical advisory**
695 **and other staff, or employees of the office of the public counsel;**

696 **(2) Banks and bankers, savings and loan associations, credit unions, trust**
697 **companies, savings banks and institutions, investment companies, insurance companies,**
698 **insurance associations, and other persons carrying on a banking or insurance business;**

699 **(3) Personal representatives, guardians, trustees, and other fiduciaries;**

700 **(4) All other persons authorized to invest in bonds or other obligations of a similar**
701 **nature.**

702 **11. (1) The state and its agencies, including the commission, pledge and agree with**
703 **bondholders, the owners of the securitized utility tariff property, and other financing**
704 **parties that the state and its agencies will not take any action listed in this subdivision.**
705 **This subdivision does not preclude limitation or alteration if full compensation is made by**
706 **law for the full protection of the securitized utility tariff charges collected pursuant to a**
707 **financing order and of the bondholders and any assignee or financing party entering into**
708 **a contract with the electrical corporation. The prohibited actions are as follows:**

709 **(a) Alter the provisions of this section, which authorize the commission to create**
710 **an irrevocable contract right or chose in action by the issuance of a financing order, to**
711 **create securitized utility tariff property, and make the securitized utility tariff charges**
712 **imposed by a financing order irrevocable, binding, or nonbypassable charges for all**
713 **existing and future retail customers of the electrical corporation except its existing special**
714 **contract customers;**

715 **(b) Take or permit any action that impairs or would impair the value of securitized**
716 **utility tariff property or the security for the securitized utility tariff bonds or revises the**
717 **securitized utility tariff costs for which recovery is authorized;**

718 **(c) In any way impair the rights and remedies of the bondholders, assignees, and**
719 **other financing parties;**

720 **(d) Except for changes made pursuant to the formula-based true-up mechanism**
721 **authorized under this section, reduce, alter, or impair securitized utility tariff charges that**
722 **are to be imposed, billed, charged, collected, and remitted for the benefit of the**
723 **bondholders, any assignee, and any other financing parties until any and all principal,**

724 interest, premium, financing costs and other fees, expenses, or charges incurred, and any
725 contracts to be performed, in connection with the related securitized utility tariff bonds
726 have been paid and performed in full.

727 (2) Any person or entity that issues securitized utility tariff bonds may include the
728 language specified in this subsection in the securitized utility tariff bonds and related
729 documentation.

730 12. An assignee or financing party is not an electrical corporation or person
731 providing electric service by virtue of engaging in the transactions described in this section.

732 13. If there is a conflict between this section and any other law regarding the
733 attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment
734 or transfer of, or security interest in securitized utility tariff property, this section shall
735 govern.

736 14. If any provision of this section is held invalid or is invalidated, superseded,
737 replaced, repealed, or expires for any reason, that occurrence does not affect the validity
738 of any action allowed under this section which is taken by an electrical corporation, an
739 assignee, a financing party, a collection agent, or a party to an ancillary agreement; and
740 any such action remains in full force and effect with respect to all securitized utility tariff
741 bonds issued or authorized in a financing order issued under this section before the date
742 that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or
743 expires for any reason.

393.1705. 1. For purposes of this section, the term "replacement resources" shall
2 mean:

3 (1) Renewable generation facilities which produce electric energy from wind, solar
4 thermal sources, photovoltaic cells and panels, dedicated crops grown for energy
5 production, cellulosic agricultural residues, plant residues, methane from landfills, from
6 agricultural operations, or from wastewater treatment, thermal depolymerization or
7 pyrolysis for converting waste material to energy, clean and untreated wood such as
8 pallets, hydropower, not including pumped storage, that does not require a new diversion
9 or impoundment of water and that has a nameplate rating of ten megawatts or less, and
10 fuel cells using hydrogen produced by one of the above-named replacement sources;

11 (2) Generation facilities which produce electric energy from natural gas that enable
12 the electrical corporation to:

13 (a) Provide electric energy when renewable generation facilities and energy storage
14 facilities are insufficient to meet the needs of the electrical corporation's system;

15 (b) Meet requirements of the electrical corporation's regional transmission
16 organization; or

- 17 (c) Serve the objectives of both paragraphs (a) and (b) of this subdivision;
- 18 (3) Energy storage facilities that enable the electrical corporation to:
- 19 (a) Provide electric energy when renewable generation facilities are not generating
- 20 electric energy in sufficient quantities to meet the needs of the electrical corporation's
- 21 system;
- 22 (b) Meet requirements of the electrical corporation's regional transmission
- 23 organization; or
- 24 (c) Serve the objectives of both paragraphs (a) and (b) of this subdivision; and
- 25 (4) Transmission facilities that enable the delivery of electric energy from
- 26 renewable generation facilities or energy storage facilities, including but not limited to,
- 27 interconnection, network upgrades, voltage and reactive power support, and transmission
- 28 facilities needed to maintain reliability as a result of the retirement of generation facilities.
- 29 2. If requested by an electrical corporation in a petition filed concurrently with a
- 30 petition filed under subsection 2 of section 393.1700 to recover securitized utility tariff costs
- 31 and notwithstanding any other provision of chapter 386 or 393 to the contrary, including
- 32 section 393.170 which section shall not apply to the construction of replacement resources
- 33 as defined in subsection 1 of this section:
- 34 (1) Except for electric generating facilities retired or abandoned prior to August
- 35 28, 2021, unless the commission issues an order rejecting a petition for a financing order
- 36 filed under the provisions of section 393.1700 that was accompanied by a petition for
- 37 approval of investment in replacement resources filed under the provisions of this section,
- 38 the commission shall approve investment in replacement resources by the electrical
- 39 corporation of an amount that is approximately equal to the undepreciated investment in
- 40 the electric generating facilities covered by such petition to acquire or build an existing or
- 41 new replacement resource to replace the retired or abandoned or to be retired or
- 42 abandoned unit. There is no requirement that the replacement resource's capacity or
- 43 energy production match the energy or capacity production of the retired or abandoned
- 44 unit. Such approval shall constitute an affirmative and binding determination by the
- 45 commission, to be applied in all subsequent proceedings respecting the rates of the
- 46 electrical corporation, that such investment is prudent and reasonable, that the
- 47 replacement resource is necessary for the electrical corporation's provision of electric
- 48 service to its customers, and that such investment shall be reflected in the revenue
- 49 requirement used to set the electrical corporation's base rates, subject only to the
- 50 commission's authority to determine that the electrical corporation did not manage or
- 51 execute the project in a reasonable and prudent manner in some respect and its authority
- 52 to disallow for ratemaking purposes only that portion of the investment that would not

53 have been incurred had the unreasonable or imprudent management or execution of the
54 project not occurred; and

55 (2) The commission shall create a deferral mechanism by which the electrical
56 corporation shall defer, to a regulatory asset or regulatory liability as appropriate, the
57 changes in the electrical corporation's revenue requirement used to last set its base rates
58 as specified in this subdivision. Such changes shall be deferred during the period starting
59 on the date of retirement or abandonment of the subject unit and ending when the base
60 rates of the electrical corporation that is the subject of the petition are changed as the
61 result of a general rate proceeding where the rate base cutoff date in that general rate
62 proceeding occurs on or after the retirement or abandonment. For purposes of this
63 subdivision, the changes in the electrical corporation's revenue requirement that shall be
64 deferred shall only consist of:

65 (a) Changes in depreciation expense associated with the retired or abandoned unit;

66 (b) Changes in labor and benefit costs for employees or contractors no longer
67 employed or retained by the electrical corporation who formerly worked at the retired or
68 abandoned unit, net of severance and relocation costs of the electrical corporation paid to
69 such employees or contractors;

70 (c) Changes in nonlabor, nonfuel operations, and maintenance costs caused by the
71 retirement or abandonment of the unit;

72 (d) The return on the retired or abandoned unit once it is removed from plant-in-
73 service on the electrical corporation's books at the electrical corporation's weighted
74 average cost of capital, plus applicable federal, state, and local income or excise taxes, used
75 to establish the electrical corporation's revenue requirement last used to set its base rates;

76 (e) Depreciation expense on the replacement resources starting with the date it is
77 recorded to plant-in-service on the electrical corporation's books;

78 (f) Labor and benefits costs for employees or contractors who work at the
79 replacement resources;

80 (g) Nonlabor, nonfuel operations, and maintenance costs of the replacement
81 resources; and

82 (h) The return on the replacement resources once they are recorded to plant-in-
83 service on the electrical corporation's books at the electrical corporation's weighted
84 average cost of capital, plus applicable federal, state, and local income or excise taxes, used
85 to establish the electrical corporation's revenue requirement last used to set its base rates.

86

87 The base against which changes under paragraphs (a), (b), and (c) of this subdivision shall
88 be the values of each such item used to set the electrical corporation's base electric rates

89 in its last general rate proceeding concluded prior to the time the deferrals are made,
90 provided, if the docketed record in such general rate proceeding does not specify one or
91 more necessary revenue requirement parameters to establish the base for paragraphs (a)
92 to (c) of this subdivision because of a "black box" settlement or otherwise, the commission
93 shall, in the docket created by a petition filed under this section and based on the docketed
94 record in such prior general rate proceeding, establish the missing parameters, which shall
95 then be used to accomplish the deferrals. The base with respect to paragraphs (e), (f), and
96 (g) of this subdivision shall be zero. Notwithstanding the foregoing provisions of this
97 subdivision, deferrals created by this subdivision shall cease on the effective date of rates
98 from a base rate case that shall be filed no later than one year after the subject electric
99 generating unit was retired or abandoned. For purposes of this subdivision, the return in
100 paragraphs (d) and (h) shall equal the weighted average cost of capital used to set the
101 electrical corporation's base electrical rates in its last general rate proceeding concluded
102 prior to the time the deferrals are made, provided, if the docketed record in such general
103 rate proceeding does not specify one or more necessary revenue requirement parameters
104 to establish the base for an item because of a "black box" settlement or otherwise, the
105 commission shall, in the docket created by a petition filed under this section and based on
106 the docketed record in such general rate proceeding, establish the missing parameters,
107 which shall then be used to accomplish the deferrals.

108 (3) The commission shall also create a deferral mechanism by which the electrical
109 corporation shall defer to a regulatory asset the changes in the electrical corporation's
110 revenue requirement last used to set its base rates as specified in this subdivision. Such
111 changes shall be deferred during the period beginning on the date deferrals cease under
112 subdivision (2) of this subsection and ending when the electrical corporation's base rates
113 are next changed as a result of a general rate proceeding. For purposes of this subdivision,
114 such changes in the electrical corporation's revenue requirement that shall be deferred
115 shall only consist of:

116 (a) Return on the replacement resources once they go into service on the electrical
117 corporation's books at the electrical corporation's weighted average cost of capital, plus
118 applicable federal, state, and local income or excise taxes, used to establish the electrical
119 corporation's revenue requirement last used to set its base rates;

120 (b) Depreciation expense on the replacement resources starting with the date the
121 replacement resource is recorded to plant in-service on the electrical corporation's books;

122 (c) Increase in-labor and benefits costs for employees or contractors who work at
123 the replacement resources; and

124 (d) Increase in nonlabor, nonfuel operations, and maintenance costs of the
125 replacement resources.

126

127 Notwithstanding the foregoing provisions of this subdivision, deferrals to the regulatory
128 asset created by this subdivision shall cease at the earlier of the date the electrical
129 corporation's base rates are first changed after the replacement resource is recorded to
130 plant in service on the electrical corporation's books where the rate base cutoff date in that
131 general rate proceeding occurred on or after the retirement or abandonment, or the
132 effective date of rates from a base rate case that shall be filed no later than one year after
133 the unit was retired or abandoned. If there is more than one replacement resource for the
134 retired or abandoned plant and if one or more such replacement resource is placed in
135 service prior to the rate base cutoff date in the general rate proceeding described in
136 subdivision (2) of this subsection, the deferrals called for under this subdivision shall be
137 reduced as needed to reflect that event. The base with respect to paragraphs (b) and (c)
138 of this subdivision shall be zero. For purposes of this subdivision, the return in paragraph
139 (a) shall equal the weighted average cost of capital used to set the electrical corporation's
140 base electric rates in its last general rate proceeding concluded prior to the time the
141 deferrals are made, provided, if the docketed record in such general rate proceeding does
142 not specify one or more necessary revenue requirement parameters to establish the base
143 for an item because of a "black box" settlement or otherwise, the commission shall, in the
144 docket created by a petition filed under this section and based on the docketed record in
145 such prior general rate proceeding, establish the missing parameters, which shall then be
146 used to accomplish the deferrals.

147 (4) Notwithstanding the provisions of section 393.1400 to the contrary, a
148 replacement resource shall not constitute "qualifying electric plant" for purposes of section
149 393.1400, nor shall it constitute a renewable energy resource under section 393.1030,
150 during the period when a deferral is occurring under subdivision (2) or (3) of this
151 subsection. In addition, and notwithstanding the provisions of section 393.1400 to the
152 contrary, deferrals required by this section relating to the electrical corporation's
153 undepreciated investment in the retired or abandoned unit shall not constitute a change
154 in accumulated depreciation when determining the return deferred on qualifying electric
155 plant under section 393.1400.

156 (5) Parts of regulatory asset or liability balances created under this section that are
157 not yet being recovered or returned through rates shall include carrying costs at the
158 electrical corporation's weighted average cost of capital last used to set its base electric
159 service rates or, if such cost of capital was not specified for the revenue requirement last

160 used to set such electric service rates at the weighted average cost of capital determined by
161 the commission under subdivision (3) of this subsection, in each case plus applicable
162 federal, state, and local income or excise taxes. All regulatory asset or liability balances
163 from deferrals under this subsection shall be recovered in base rates over a period equal
164 to the remaining useful life of the replacement resource.

165 (6) In each general rate proceeding concluded after a deferral commences under
166 subdivision (2) or (3) of this subsection, the regulatory asset or liability balances arising
167 from such deferrals, as of the rate base cutoff date, shall be included in the electrical
168 corporation's rate base without any offset, reduction, or adjustment based upon
169 consideration of any other factor, other than to reflect any prudence disallowances ordered
170 by the commission, with the regulatory asset balances arising from such deferrals that
171 occur after the rate base cutoff date to be included in rate base in the next general rate
172 proceeding. The provisions of this section shall not be construed to affect existing law
173 respecting burdens of production and persuasion in general rate proceedings.

174 3. Proceedings on a petition submitted pursuant to this section begin with the filing
175 of a petition by an electrical corporation under this section that is filed concurrently with
176 a petition submitted under section 393.1700, and shall be disposed of in accordance with
177 the requirements of chapters 386 and 393 and the rules of the commission, except as
178 follows:

179 (1) The commission shall establish a procedural schedule that permits a commission
180 decision no later than two hundred fifteen days after the date the petition is filed. Such
181 procedural schedule adopted by the commission in connection with a petition filed under
182 this section shall contain the same milestones and requirements as the procedural schedule
183 adopted in a proceeding seeking approval of a financing order under section 393.1700 and
184 shall run concurrently therewith;

185 (2) No later than two hundred fifteen days after the date the petition is filed, the
186 commission shall issue an order approving the petition or, if it also rejects the
187 accompanying petition for a financing order filed under section 393.1700, rejecting the
188 petition. Judicial review may be had only in accordance with sections 386.500 and 386.510.

393.1715. 1. An electrical corporation may petition the commission for a
2 determination of the ratemaking principles and treatment, as proposed by the electrical
3 corporation, that will apply to the reflection in base rates of the electrical corporation's
4 capital and noncapital costs associated with the proposed retirement of one or more of the
5 electrical corporation's generating facilities. Without limiting the foregoing, such
6 principles and treatment may also establish the retirement date and useful life parameters
7 used to set depreciation rates for such facilities. Except as provided for in subsection 4 of

8 **this section, the ratemaking principles and treatment approved by the commission under**
9 **this section for such facilities shall apply to the determination of the revenue requirement**
10 **in each of the electrical corporation's post-determination general rate proceedings until**
11 **such time as such facility is fully depreciated on the electrical corporation's books.**

12 **2. If the commission fails to issue a determination within two hundred fifteen days**
13 **that a petition for determination of ratemaking principles and treatment is filed, the**
14 **ratemaking principles and treatment proposed by the petitioning electrical corporation**
15 **shall be deemed to have been approved by the commission.**

16 **3. Subject to the provisions of subsection 4 of this section, ratemaking principles**
17 **and treatment approved by the commission, or deemed to have been approved under**
18 **subsection 2 of this section, shall be binding for ratemaking purposes.**

19 **4. (1) An electrical corporation with ratemaking principles and treatment**
20 **approved by the commission, or deemed to have been approved under subsection 2 of this**
21 **section, shall monitor the major factors and circumstances relating to the facility to which**
22 **such principles and treatment apply. Such factors and circumstances include, but are not**
23 **limited to:**

24 **(a) Terrorist activity or an act of God;**

25 **(b) A significant change in federal or state tax laws;**

26 **(c) A significant change in federal utility laws or regulations or a significant change**
27 **in generally accepted accounting principles;**

28 **(d) An unexpected, extended outage or shutdown of a major generating unit, other**
29 **than any major generating unit shut down due to an extended outage at the time of the**
30 **approval of the ratemaking principles and treatment;**

31 **(e) A significant change in the cost or reliability of power generation technologies;**

32 **(f) A significant change in fuel prices and wholesale electric market conditions;**

33 **(g) A significant change in the cost or effectiveness of emission control technologies;**

34 **(h) A significant change in the price of emission allowances;**

35 **(i) A significant change in the electrical corporation's load forecast;**

36 **(j) A significant change in capital market conditions;**

37 **(k) A significant change in the scope or effective dates of environmental**
38 **regulations; or**

39 **(l) A significant change in federal or state environmental laws.**

40 **(2) If the electrical corporation determines that one or more major factor or**
41 **circumstance has changed in a manner that warrants a change in the approved ratemaking**
42 **principles and treatment, then it shall file a notice in the docket in which the approved**

43 **ratemaking principles and treatment were established within forty-five days of any such**
44 **determination. In its notification, the electrical corporation shall:**

45 **(a) Explain and specify the changes it contends are appropriate to the ratemaking**
46 **principles and treatment and the reasons for the proposed changes;**

47 **(b) Provide a description of the alternatives that it evaluated and the process that**
48 **it went through in developing its proposed changes; and**

49 **(c) Provide detailed workpapers that support the evaluation and the process**
50 **whereby proposed changes were developed.**

51 **(3) If a party has concerns regarding the proposed changes, that party shall file a**
52 **notice of its concerns within thirty days of the electrical corporation's filing. If the parties**
53 **agree on a resolution of the concerns, the agreement shall be submitted to the commission**
54 **for approval. If the parties do not reach agreement on changes to the ratemaking**
55 **principles and treatment within ninety days of the date the electrical corporation filed its**
56 **notice, whether the previously approved ratemaking and treatment will be changed shall**
57 **be determined by the commission. If a party to the docket in which the approved**
58 **ratemaking principles and treatment were approved believes that one or more major factor**
59 **or circumstance has changed in a manner that warrants a change in the approved**
60 **ratemaking principles and treatment and if the electrical corporation does not agree the**
61 **principles and treatment should be changed, such party shall file a notice in the docket in**
62 **which the approved ratemaking principles and treatment were established within forty-five**
63 **days of any such determination. In its notification, such party shall:**

64 **(a) Explain and specify the changes it contends are appropriate to the ratemaking**
65 **principles and treatment and the reasons for the proposed changes;**

66 **(b) Provide a description of the alternatives that it evaluated and the process that**
67 **it went through in developing its proposed changes; and**

68 **(c) Provide detailed workpapers that support the evaluation and the process**
69 **whereby proposed changes were developed.**

70 **(4) If a party, including the electrical corporation, has concerns regarding the**
71 **proposed changes, that party shall file a notice of its concerns within thirty days of the**
72 **other party's filing. If the parties do not reach agreement on changes to the ratemaking**
73 **principles and treatment within ninety days of the date the notice was filed, whether the**
74 **previously approved ratemaking and treatment will be changed shall be determined by the**
75 **commission.**

76 **5. A determination of ratemaking principles and treatment under this section does**
77 **not preclude an electrical corporation from also petitioning the commission under either**
78 **or both of sections 393.1700 and 393.1705, provided that any costs to which such**

79 **ratemaking principles and treatment would have applied in the electrical corporation's**
80 **general rate proceedings which become funded by securitized utility tariff bond proceeds**
81 **from a securitized utility tariff bond issued under section 393.1700 shall not thereafter be**
82 **reflected in the electrical corporation's base rates.**

83 **6. If determined by the commission to be just, reasonable, and necessary for the**
84 **provision of safe and adequate service, the electrical corporation may be permitted to**
85 **retain coal-fired generating assets in rate base and recover costs associated with operating**
86 **the coal-fired assets that remain in service to provide greater certainty that generating**
87 **capacity will be available to provide essential service to customers, including during**
88 **extreme weather events, and the commission may allow any portion of such cost recovery**
89 **on the basis that such coal-fired generating assets operate at a low capacity factor, or are**
90 **off-line and providing capacity only, during normal operating conditions.**

91 **7. The commission may promulgate rules necessary to implement the provisions of**
92 **sections 393.1700 to 393.1715. Any rule or portion of a rule, as that term is defined in**
93 **section 536.010, that is created under the authority delegated in this section shall become**
94 **effective only if it complies with and is subject to all of the provisions of chapter 536 and,**
95 **if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of**
96 **the powers vested with the general assembly pursuant to chapter 536 to review, to delay**
97 **the effective date, or to disapprove and annul a rule are subsequently held**
98 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
99 **after August 28, 2021, shall be invalid and void.**

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

2 (1) "Member" means each incorporator of a cooperative and each person admitted to and
3 retaining membership therein, and shall include a husband and wife admitted to joint
4 membership;

5 (2) "Person" includes any natural person, firm, association, corporation, business trust,
6 partnership, federal agency, state or political subdivision or agency thereof, or any body politic;
7 and

8 (3) "Rural area" shall be deemed to mean any area of the United States not included
9 within the boundaries of any city, town or village having a population in excess of [~~fifteen~~]
10 **sixteen** hundred inhabitants, and such term shall be deemed to include both the farm and
11 nonfarm population thereof. **The number of inhabitants specified in this subdivision shall**
12 **be increased by six percent every ten years after each decennial census beginning in 2030.**

394.120. 1. No person shall become a member of a cooperative unless such person shall
2 agree to use electric energy furnished by the cooperative when such electric energy shall be
3 available through its facilities. The bylaws of a cooperative may provide that any person,

4 including an incorporator, shall cease to be a member thereof if he or she shall fail or refuse to
5 use electric energy made available by the cooperative or if electric energy shall not be made
6 available to such person by the cooperative within a specified time after such person shall have
7 become a member thereof. Membership in the cooperative shall not be transferable, except as
8 provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in
9 respect of membership.

10 2. An annual meeting of the members shall be held at such time as shall be provided in
11 the bylaws.

12 3. Special meetings of the members may be called by the board of directors, by any three
13 directors, by not less than ten percent of the members, or by the president.

14 4. Meetings of members shall be held at such place as may be provided in the bylaws.
15 In the absence of any such provisions, all meetings shall be held in the city or town in which the
16 principal office of the cooperative is located.

17 5. Except as herein otherwise provided, written or printed notice stating the time and
18 place of each meeting of members and, in the case of a special meeting, the purpose or purposes
19 for which the meeting is called, shall be given to each member, either personally or by mail, not
20 less than ten nor more than twenty-five days before the date of the meeting.

21 6. Two percent of the first two thousand members and one percent of the remaining
22 members, present in person, or if the bylaws so provide, participating electronically or by mail,
23 shall constitute a quorum for the transaction of business at all meetings of the members, unless
24 the bylaws prescribe the presence of a greater percentage of the members for a quorum. If less
25 than a quorum is present at any meeting, a majority of those present in person may adjourn the
26 meeting from time to time without further notice.

27 7. Each member shall be entitled to one vote on each matter submitted to a vote at a
28 meeting. Voting shall be in person, but, if the bylaws so provide, may also be by proxy, by
29 electronic means, by mail, or any combination thereof. If the bylaws provide for voting by
30 proxy, by electronic means, or by mail, they shall also prescribe the conditions under which
31 proxy, electronic, or mail voting shall be exercised. In any event, no person shall vote as proxy
32 for more than two members at any meeting of the members.

33 **8. Notwithstanding the provisions of subsections 2 and 7 of this section, the board**
34 **of directors shall have the power to set the time and place of the annual meeting and also**
35 **to provide for voting by proxy, electronic means, by mail, or any combination thereof, and**
36 **to prescribe the conditions under which such voting shall be exercised. The meeting**
37 **requirement provided in this section may be satisfied through virtual means. The**
38 **provisions of this subsection shall expire on August 28, 2022.**

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

2 (1) "Permanent service", electrical service provided through facilities which have been
3 permanently installed on a structure and which are designed to provide electric service for the
4 structure's anticipated needs for the indefinite future, as contrasted with facilities installed
5 temporarily to provide electrical service during construction. Service provided temporarily shall
6 be at the risk of the electrical supplier and shall not be determinative of the rights of the provider
7 or recipient of permanent service;

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

15 2. Once a rural electric cooperative, or its predecessor in interest, lawfully commences
16 supplying retail electric energy to a structure through permanent service facilities, it shall have
17 the right to continue serving such structure, and other suppliers of electrical energy shall not have
18 the right to provide service to the structure except as might be otherwise permitted in the context
19 of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a
20 territorial agreement approved under section 394.312. The public service commission, upon
21 application made by an affected party, may order a change of suppliers on the basis that it is in
22 the public interest for a reason other than a rate differential, and the commission is hereby given
23 jurisdiction over rural electric cooperatives to accomplish the purpose of this section. The
24 commission's jurisdiction under this section is limited to public interest determinations and
25 excludes questions as to the lawfulness of the provision of service, such questions being reserved
26 to courts of competent jurisdiction. Except as provided herein, nothing in this section shall be
27 construed as otherwise conferring upon the commission jurisdiction over the service, rates,
28 financing, accounting or management of any such cooperative, and except as provided in this
29 section, nothing contained herein shall affect the rights, privileges or duties of existing
30 cooperatives pursuant to this chapter. Nothing in this section shall be construed to make lawful
31 any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall
32 be construed to make unlawful the continued lawful provision of service to any structure which
33 may have had a different supplier in the past, if such a change in supplier was lawful at the time
34 it occurred. However, those customers who had cancelled service with their previous supplier
35 or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per
36 previous procedures. No customer shall be allowed to change electric suppliers by disconnecting
37 service between May 1, 1991, and July 11, 1991.

38 **3. Notwithstanding the provisions of this section and sections 91.025, 393.106, and**
39 **394.080 to the contrary, in the event that a retail electric supplier is providing service to**
40 **a structure located within a city, town, or village that has ceased to be a rural area, and**
41 **such structure is demolished and replaced by a new structure, such retail electric service**
42 **supplier may provide permanent service to the new structure upon the request of the**
43 **owner of the new structure.**

 400.9-109. (a) Except as otherwise provided in subsections (c) and (d), this article
2 applies to:

3 (1) A transaction, regardless of its form, that creates a security interest in personal
4 property or fixtures by contract;

5 (2) An agricultural lien;

6 (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

7 (4) A consignment;

8 (5) A security interest arising under section 400.2-401, 400.2-505, 400.2-711(3) or
9 400.2A-508(5), as provided in section 400.9-110; and

10 (6) A security interest arising under section 400.4-210 or 400.5-118.

11 (b) The application of this article to a security interest in a secured obligation is not
12 affected by the fact that the obligation is itself secured by a transaction or interest to which this
13 article does not apply.

14 (c) This article does not apply to the extent that:

15 (1) A statute, regulation, or treaty of the United States preempts this article;

16 (2) Another statute of this state expressly governs the creation, perfection, priority, or
17 enforcement of a security interest created by this state or a governmental unit of this state;

18 (3) A statute of another state, a foreign country, or a governmental unit of another state
19 or a foreign country, other than a statute generally applicable to security interests, expressly
20 governs creation, perfection, priority, or enforcement of a security interest created by the state,
21 country, or governmental unit; or

22 (4) The rights of a transferee beneficiary or nominated person under a letter of credit are
23 independent and superior under section 400.5-114.

24 (d) This article does not apply to:

25 (1) A landlord's lien, other than an agricultural lien;

26 (2) A lien, other than an agricultural lien, given by statute or other rule of law for
27 services or materials, but section 400.9-333 applies with respect to priority of the lien;

28 (3) An assignment of a claim for wages, salary, or other compensation of an employee;

29 (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part
30 of a sale of the business out of which they arose;

- 31 (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes
32 which is for the purpose of collection only;
- 33 (6) An assignment of a right to payment under a contract to an assignee that is also
34 obligated to perform under the contract;
- 35 (7) An assignment of a single account, payment intangible, or promissory note to an
36 assignee in full or partial satisfaction of a preexisting indebtedness;
- 37 (8) A transfer of an interest in or an assignment of a claim under a policy of insurance,
38 other than an assignment by or to a health-care provider of a health-care-insurance receivable and
39 any subsequent assignment of the right to payment, but sections 400.9-315 and 400.9-322 apply
40 with respect to proceeds and priorities in proceeds;
- 41 (9) An assignment of a right represented by a judgment, other than a judgment taken on
42 a right to payment that was collateral;
- 43 (10) A right of recoupment or set-off, but:
- 44 (A) Section 400.9-340 applies with respect to the effectiveness of rights of recoupment
45 or set-off against deposit accounts; and
- 46 (B) Section 400.9-404 applies with respect to defenses or claims of an account debtor;
- 47 (11) The creation or transfer of an interest in or lien on real property, including a lease
48 or rents thereunder, except to the extent that provision is made for:
- 49 (A) Liens on real property in sections 400.9-203 and 400.9-308;
- 50 (B) Fixtures in section 400.9-334;
- 51 (C) Fixture filings in sections 400.9-501, 400.9-502, 400.9-512, 400.9-516 and 400.9-
52 519; and
- 53 (D) Security agreements covering personal and real property in section 400.9-604;
- 54 (12) An assignment of a claim arising in tort, other than a commercial tort claim, but
55 sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~
- 56 (13) An assignment of a deposit account in a consumer transaction, but sections 400.9-
57 315 and 400.9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~
- 58 (14) An assignment of a claim or right to receive compensation for injuries or sickness
59 as described in 26 U.S.C. Section 104(a)(1) or (2), as amended from time to time; ~~or~~
- 60 (15) An assignment of a claim or right to receive benefits under a special needs trust as
61 described in 42 U.S.C. Section 1396p(d)(4), as amended from time to time; ~~or~~
- 62 (16) A transfer by a government or governmental subdivision or agency; or
- 63 (17) **The creation, attachment, perfection, priority, or enforcement of any security**
64 **interest in, or the sale, assignment, or other transfer of, any securitized utility tariff**
65 **property as defined in section 393.1700, or any interest therein or any portion thereof, in**
66 **each case except as otherwise expressly provided in section 393.1700.**

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