

FIRST REGULAR SESSION

SENATE BILL NO. 334

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

1561S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 386.800 and 394.020, RSMo, and to enact in lieu thereof two new sections relating to service territories of retail electric service providers.

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

Section A. Sections 386.800 and 394.020, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 386.800 and 394.020, to read as follows:

386.800. 1. No municipally owned electric utility may
2 provide electric energy at retail to any structure located
3 outside the municipality's corporate boundaries after July
4 11, 1991, unless:

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

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

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

13 (4) The structure is located in an area which was
14 previously served by an electrical corporation regulated
15 under chapter 386, and chapter 393, and the electrical
16 corporation's authorized service territory was contiguous to
17 or inclusive of the municipality's previous corporate
18 boundaries, and the electrical corporation's ownership or

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

19 operating rights within the area were acquired in total by
20 the municipally owned electrical system prior to July 11,
21 1991. In the event that a municipally owned electric
22 utility in a city with a population of more than one hundred
23 twenty-five thousand located in a county of the first class
24 not having a charter form of government and not adjacent to
25 any other county of the first class desires to serve
26 customers beyond the authorized service territory in an area
27 which was previously served by an electrical corporation
28 regulated under the provisions of chapter 386, and chapter
29 393, as provided in this subdivision, **in the absence of an**
30 **approved territorial agreement under section 394.312** the
31 municipally owned utility shall apply to the public service
32 commission for an order assigning nonexclusive service
33 territories **and concurrently shall provide written notice of**
34 **the application to other electric service suppliers with**
35 **electric facilities located in or within one mile outside of**
36 **the boundaries of the proposed expanded service territory.**
37 The proposed service area shall be contiguous to the
38 authorized service territory which was previously served by
39 an electrical corporation regulated under the provisions of
40 chapter 386, and chapter 393, as a condition precedent to
41 the granting of the application. The commission shall have
42 one hundred twenty days from the date of application to
43 grant or deny the requested order. The commission **after**
44 **hearing** may grant the order upon a finding that granting of
45 the applicant's request is not detrimental to the public
46 interest. In granting the applicant's request the
47 commission shall give due regard to territories previously
48 granted to **or served by** other electric **service** suppliers **and**
49 **the duplication of electric service facilities.**

50 2. [Any municipally owned electric utility may extend,
51 pursuant to lawful annexation, its service territory to
52 include any structure located within a newly annexed area
53 which has not received permanent service from another
54 supplier within ninety days prior to the effective date of
55 the annexation.] **Any municipally owned electric utility may**
56 **extend pursuant to lawful annexation its electric service**
57 **territory to include areas where another electric service**
58 **supplier is not currently serving a structure but has**
59 **existing electric service facilities located in or within**
60 **one mile outside the boundaries of the area proposed to be**
61 **annexed, provided it first notifies in writing the affected**
62 **electric service supplier within sixty days prior to the**
63 **effective date of the proposed annexation. If the affected**
64 **electric service supplier objects to the expansion of the**
65 **municipally owned electric utility's service territory, in**
66 **the absence of an approved territorial agreement under**
67 **section 394.312 it may file an application with the public**
68 **service commission for an order denying, in whole or in**
69 **part, the electric service territory expansion or otherwise**
70 **assigning exclusive or nonexclusive service territories**
71 **among the electric service suppliers that are parties to the**
72 **case. The application shall be made and notice of such**
73 **filing shall be given to all affected electric service**
74 **suppliers pursuant to the rules and regulations of the**
75 **commission governing applications for certificates of public**
76 **convenience and necessity. The commission after hearing**
77 **shall make its determination based on findings of what best**
78 **serves the public interest and shall issue its decision by**
79 **report and order no later than one hundred twenty days from**
80 **the date of the application unless otherwise ordered by the**

81 **commission for good cause shown. Review of such commission**
82 **decisions shall be governed by sections 386.500 to 386.550.**

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

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

95 (2) Within six months after the effective date of the
96 annexation receive the approval of the municipality's
97 governing body to begin negotiations pursuant to section
98 394.312 with [any] **the** affected electric **service** supplier.

99 4. Upon receiving approval from the municipality's
100 governing body pursuant to subsection 3 of this section, the
101 municipally owned electric utility and the affected electric
102 **service** supplier shall meet and negotiate in good faith the
103 terms of the territorial agreement and any transfers or
104 acquisitions, including, as an alternative, granting the
105 affected electric **service** supplier a franchise or authority
106 to continue providing service in the annexed area. In the
107 event that the affected electric **service** supplier does not
108 provide wholesale electric power to the municipality, if the
109 affected electric **service** supplier so desires, the parties
110 [shall] **may** also negotiate, consistent with applicable law,
111 regulations and existing power supply agreements, for power
112 contracts which would provide for the purchase of power by

113 the municipality from the affected electric **service** supplier
114 for an amount of power equivalent to the loss of any sales
115 to customers receiving permanent service at structures
116 within the annexed areas which are being sought by the
117 municipally owned electric utility. The parties shall have
118 no more than one hundred eighty days from the date of
119 receiving approval from the municipality's governing body
120 within which to conclude their negotiations and file their
121 territorial agreement with the commission for approval under
122 the provisions of section 394.312. The time period for
123 negotiations allowed under this subsection may be extended
124 for a period not to exceed one hundred eighty days by a
125 mutual agreement of the parties and a written request with
126 the public service commission.

127 5. For purposes of this section, the term "fair and
128 reasonable compensation" shall mean the following:

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

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

139 (3) Four hundred percent of gross revenues less gross
140 receipts taxes received by the affected electric **service**
141 supplier from the twelve-month period preceding the approval
142 of the municipality's governing body under the provisions of
143 subdivision (2) of subsection 3 of this section, normalized

144 to produce a representative usage from customers at the
145 subject structures in the annexed area; and

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

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

152 6. In the event the parties are unable to reach an
153 agreement under subsection 4 of this section, within sixty
154 days after the expiration of the time specified for
155 negotiations, the municipally owned electric utility **or the**
156 **affected electric service supplier** may apply to the
157 commission for an order assigning exclusive service
158 territories within the annexed area and a determination of
159 the fair and reasonable compensation amount to be paid to
160 the affected electric **service** supplier under subsection 5 of
161 this section. Applications shall be made and notice of such
162 filing shall be given to all affected parties pursuant to
163 the rules and regulations of the commission governing
164 applications for certificates of public convenience and
165 necessity. Unless otherwise ordered by the commission for
166 good cause shown, the commission shall rule on such
167 applications not later than one hundred twenty days after
168 the application is properly filed with the secretary of the
169 commission. The commission shall hold evidentiary hearings
170 to assign service territory between **the** affected electric
171 **service** suppliers inside the annexed area and to determine
172 the amount of compensation due any affected electric **service**
173 supplier for the transfer of plant, facilities or associated
174 lost revenues between electric **service** suppliers in the
175 annexed area. The commission shall make such determinations

176 based on findings of what best serves the public interest
177 and shall issue its decision by report and order. Review of
178 such commission decisions shall be governed by sections
179 386.500 to 386.550. The payment of compensation and
180 transfer of title and operation of the facilities shall
181 occur within ninety days after the order and any appeal
182 therefrom becomes final unless the order provides otherwise.

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

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

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

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

202 (4) Any other issues upon which the municipally owned
203 electric utility and the affected electric **service** supplier
204 might otherwise agree, including, but not limited to, the
205 valuation formulas and factors contained in subsections 4, 5
206 and 6, of this section, even if the parties could not

207 voluntarily reach an agreement thereon under those
208 subsections.

209 8. The commission is hereby given all necessary
210 jurisdiction over municipally owned electric utilities and
211 rural electric cooperatives to carry out the purposes of
212 this section consistent with other applicable law; provided,
213 however, the commission shall not have jurisdiction to
214 compel the transfer of customers or structures with a
215 connected load greater than one thousand kilowatts. The
216 commission shall by rule set appropriate fees to be charged
217 on a case-by-case basis to municipally owned electric
218 utilities and rural electric cooperatives to cover all
219 necessary costs incurred by the commission in carrying out
220 its duties under this section. **Responsibility for payment**
221 **of the fees shall be that of the parties to the proceeding**
222 **as ordered by the commission in each case. The fees shall**
223 **be paid to the director of revenue who shall remit such**
224 **payments to the state treasurer. The state treasurer shall**
225 **credit such payments to the public service commission fund**
226 **or its successor fund. Nothing in this section shall be**
227 **construed as otherwise conferring upon the public service**
228 **commission jurisdiction over the service, rates, financing,**
229 **accounting, or management of any rural electric cooperative**
230 **or municipally owned electric utility, and except as**
231 **provided in this section, nothing shall affect the rights,**
232 **privileges, or duties of rural electric cooperatives,**
233 **electrical corporations, or municipally owned electric**
234 **utilities.**

235 9. When an electrical corporation instead of a
236 municipally owned electric utility is providing electric
237 service within a municipality, and the electrical
238 corporation previously has received a certificate of

239 convenience and necessity under section 393.170 to provide
240 electric service in the annexed area or area proposed to be
241 annexed, the provisions of subsections 2 through 8 of this
242 section shall apply equally to the electrical corporation as
243 if it were a municipally owned electric utility.

244 10. Nothing in this section shall be construed to
245 otherwise preclude a municipality having a population of or
246 in excess of fifteen hundred inhabitants as of August 28,
247 2021, from requiring a rural electric cooperative to obtain
248 a franchise to provide electric service, or to impose a
249 sales tax, within the boundaries of the municipality. Said
250 municipality shall grant said franchise, and may require a
251 rural electric cooperative to collect and remit a sales tax
252 based on the electricity sold, on a nondiscriminatory basis
253 and in a manner consistent with other applicable law.

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

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

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

11 (3) "Rural area" [shall be deemed to mean any area of
12 the United States not included within the boundaries of any
13 city, town or village having a population in excess of
14 fifteen hundred inhabitants, and such term shall be deemed
15 to include both the farm and nonfarm population thereof]
16 means any area described in section 343 (a) (13) (C) of the

17 Consolidated Farm and Rural Development Act, 7 U.S.C.
18 1991 (a) (13) (C) .

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