

SENATE BILL NO. 1716

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MCCREERY.

7130S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 393.135 and 393.150, RSMo, and to enact in lieu thereof two new sections relating to the regulation of public utilities.

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

Section A. Sections 393.135 and 393.150, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 393.135 and 393.150, to read as follows:

393.135. 1. Except as provided in subsection 2 of
2 this section, any charge made or demanded by an electrical
3 corporation for service, or in connection therewith, which
4 is based on the costs of construction in progress upon any
5 existing or new facility of the electrical corporation, or
6 any other cost associated with owning, operating,
7 maintaining, or financing any property before it is fully
8 operational and used for service, is unjust and
9 unreasonable, and is prohibited.

10 2. [(1) An electrical corporation may be permitted,
11 subject to the limitations in this subsection, to include
12 construction work in progress for any new natural gas-
13 generating unit in rate base. The inclusion of construction
14 work in progress allowed under this subsection shall be in
15 lieu of any otherwise applicable allowance for funds used
16 during construction that would have accrued from and after
17 the effective date of new base rates that reflect inclusion

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

18 of the construction work in progress in rate base. The
19 commission shall determine, in a proceeding under section
20 393.170, the amount of construction work in progress that
21 may be included in rate base. The amount shall be limited
22 by:

23 (a) The estimated cost of such project; and

24 (b) Project expenditures made within the estimated
25 construction period for such project.] Base rate recoveries
26 arising from inclusion of construction work in progress in
27 rate base are subject to refund, with interest on the
28 refunded amount at the same rate as the rate of interest for
29 delinquent taxes determined by the director of revenue in
30 accordance with section 32.065, if, and to the extent the
31 commission determines, in a subsequent complaint or general
32 rate proceeding, that construction costs giving rise to the
33 construction work in progress included in rate base were
34 imprudently incurred or [if the project for which
35 construction costs have been included in the rate base is
36 not placed in service within a reasonable amount of time, as
37 determined by the commission] **otherwise unreasonable**. Rate
38 base used to determine return deferred under subdivision (2)
39 of subsection 3 of section 393.1400 shall include an offset
40 for rate base that has been used to determine return
41 included in base rates as a result of construction work in
42 progress inclusion in rate base under this subsection. The
43 offset shall apply from and after the in-service date of the
44 asset that has been used to determine return included in
45 base rates as a result of construction work in progress
46 inclusion in rate base under this subsection.

47 [(2) This subsection shall expire on December 31,
48 2035, unless the commission determines, after a hearing
49 conducted in 2035, upon a submission from an electrical

50 corporation of an application requesting and demonstrating
51 that good cause exists to extend the effectiveness of this
52 subsection through December 31, 2045. The secretary of the
53 commission shall notify the revisor of statutes when the
54 conditions set forth for the extension of this subsection
55 have been met.]

393.150. 1. Whenever there shall be filed with the
2 commission by any gas corporation, electrical corporation,
3 water corporation or sewer corporation any schedule stating
4 a new rate or charge, or any new form of contract or
5 agreement, or any new rule, regulation or practice relating
6 to any rate, charge or service or to any general privilege
7 or facility, the commission shall have, and it is hereby
8 given, authority, either upon complaint or upon its own
9 initiative without complaint, at once, and if it so orders
10 without answer or other formal pleading by the interested
11 gas corporation, electrical corporation, water corporation
12 or sewer corporation, but upon reasonable notice, to enter
13 upon a hearing concerning the propriety of such rate,
14 charge, form of contract or agreement, rule, regulation or
15 practice, and pending such hearing and the decision thereon,
16 the commission upon filing with such schedule, and
17 delivering to the gas corporation, electrical corporation,
18 water corporation or sewer corporation affected thereby, a
19 statement in writing of its reasons for such suspension, may
20 suspend the operation of such schedule and defer the use of
21 such rate, charge, form of contract or agreement, rule,
22 regulation or practice, but not for a longer period than one
23 hundred and twenty days beyond the time when such rate,
24 charge, form of contract or agreement, rule, regulation or
25 practice would otherwise go into effect; and after full
26 hearing, whether completed before or after the rate, charge,

27 form of contract or agreement, rule, regulation or practice
28 goes into effect, the commission may make such order in
29 reference to such rate, charge, form of contract or
30 agreement, rule, regulation or practice as would be proper
31 in a proceeding initiated after the rate, charge, form of
32 contract or agreement, rule, regulation or practice had
33 become effective. In any proceeding under this section
34 wherein testimony is prefiled, each party shall be afforded
35 an opportunity to respond to any rebuttal testimony and
36 exhibits of other parties through prefiled testimony.

37 2. If any such hearing cannot be concluded within the
38 period of suspension, as above stated, the commission may,
39 in its discretion, extend the time of suspension for a
40 further period not exceeding six months, the last day of
41 which period shall be considered the operation of law date.
42 At any hearing involving a rate sought to be increased, the
43 burden of proof to show that the increased rate or proposed
44 increased rate is just and reasonable shall be upon the gas
45 corporation, electrical corporation, water corporation or
46 sewer corporation, and the commission shall give to the
47 hearing and decision of such questions preference over all
48 other questions pending before it and decide the same as
49 speedily as possible.

50 3. [(1) Beginning July 1, 2026, the test year for
51 proceedings under this section shall, if requested by a gas
52 corporation, water corporation, or sewer corporation, be a
53 future year consisting of the first twelve full calendar
54 months after the operation of law date determined in
55 subsections 1 and 2 of this section for schedules stating
56 new base rates filed by a gas corporation, water
57 corporation, or sewer corporation under this section, unless
58 the commission makes a determination that using a future

59 test year under this section is detrimental to the public
60 interest. For ratemaking purposes, the average of the
61 projected month-end total rate base amount during the future
62 test year shall be used to establish new base rates. Unless
63 otherwise ordered by the commission, new base rates shall
64 not go into effect before the first day of the future test
65 year.

66 (2) With respect to gas corporations, water
67 corporations, or sewer corporations that elect to utilize a
68 future test year and notwithstanding section 393.270 to the
69 contrary, within forty-five days of the end of the future
70 test year, such gas corporation, water corporation, or sewer
71 corporation shall update its base rates that were approved
72 by the commission in its report and order issued under
73 subsections 1 and 2 of this section to reflect the total
74 rate base, annualized depreciation expense, income tax
75 expense, payroll expense, employee benefits (other than
76 pensions and other post-retirement benefits), and rate case
77 expense at the end of the future test year. The total
78 ending rate base and expense items reflected in this update
79 shall not be greater than the total ending rate base and
80 expense items approved by the commission in its report and
81 order establishing base rates. The commission and parties
82 to the case shall have sixty days to review the updated
83 information provided by a gas corporation, water
84 corporation, or sewer corporation, unless any party who was
85 a party to the rate case files a request for a hearing at
86 which point the commission shall suspend the filed tariffs
87 and order a procedural schedule. The commission shall order
88 the corporation to file new tariff sheets that reflect any
89 update approved by the commission.

90 4. A gas corporation, water corporation, or sewer
91 corporation that requests a test year under subsection 3 of
92 this section shall not recover the costs of any plant
93 investments made during the test year period under any of
94 the mechanisms provided for in section 393.1000, 393.1003,
95 393.1006, 393.1009, 393.1012, 393.1015, 393.1500, 393.1503,
96 393.1506, or 393.1509.

97 5. For a gas corporation, water corporation, or sewer
98 corporation that elected to use a future test year, a
99 reconciliation of the rate base at the end of the future
100 test year shall be provided to the commission within forty-
101 five days of the end of the future test year. If the actual
102 average month-end total rate base amount during the future
103 test year is less than the average month-end total rate base
104 amount used to set base rates in the prior general rate
105 proceeding under subsections 1 and 2 of this section, and
106 notwithstanding section 393.270 to the contrary, the portion
107 of the annual revenue requirement comprising the average
108 total rate base difference shall be returned to customers.
109 The revenue requirement shall be calculated using rate base,
110 depreciation expense, income tax expense, and the pretax
111 rate of return from the prior general rate proceeding under
112 subsections 1 and 2 of this section. The difference in
113 revenue requirement shall be placed into a regulatory
114 liability to be returned to customers in the next general
115 rate proceeding with such regulatory liability to accrue
116 carrying costs at the utility's weighted average cost of
117 capital.

118 6.] The commission may take into account any change in
119 business risk to the corporation resulting from
120 implementation of [the] **any** adjustment mechanism in setting
121 the corporation's allowed return in any rate proceeding, in

122 addition to any other changes in business risk experienced
123 by the corporation.

124 [7. For a gas corporation, water corporation, or sewer
125 corporation that elected to use a future test year, a
126 reconciliation of depreciation expense, income tax expense,
127 payroll expense, employee benefits except for pensions and
128 other postretirement benefits, and rate case expense
129 incurred during the future test year shall be provided to
130 the commission within forty-five days of the end of the
131 future test year. If the actual amounts for these expenses
132 are less than the amounts used to calculate the revenue
133 requirement in the prior general rate proceeding under
134 subsections 1 and 2 of this section, and notwithstanding
135 section 393.270 to the contrary, the differences shall be
136 returned to customers. The difference in revenue
137 requirement shall be placed into a regulatory liability to
138 be returned to customers in the next general rate case with
139 such regulatory liability to accrue carrying costs at the
140 utility's weighted average cost of capital. Expense
141 differences to be returned to customers resulting from this
142 reconciliation shall not be used to offset additional
143 capital spending in the reconciliation described in
144 subsection 5 of this section.

145 8. The commission shall promulgate rules to implement
146 the provisions of this section no later than July 1, 2027.
147 Such rules shall include a procedure allowing any party to a
148 rate proceeding that utilizes a future test year as provided
149 in subsection 3 of this section to undertake a meaningful
150 review of the update provided by the gas corporation, water
151 corporation, or sewer corporation under subsection 3 of this
152 section and the reconciliations provided by the gas
153 corporation, water corporation, or sewer corporation under

154 subsections 5 and 7 of this section, and to argue for the
155 disallowance of any costs included in the total rate base,
156 depreciation expense, income tax expense, payroll expense,
157 employee benefits (other than pensions and other
158 postretirement benefits), and rate case expense at the end
159 of the future test year that differs from the projected
160 values upon which the commission relied in issuing its
161 report and order to approve new base rates under subsections
162 1 and 2 of this section. Any rule or portion of a rule, as
163 that term is defined in section 536.010, that is created
164 under the authority delegated in this section shall become
165 effective only if it complies with and is subject to all of
166 the provisions of chapter 536 and, if applicable, section
167 536.028. This section and chapter 536 are nonseverable and
168 if any of the powers vested with the general assembly
169 pursuant to chapter 536 to review, to delay the effective
170 date, or to disapprove and annul a rule are subsequently
171 held unconstitutional, then the grant of rulemaking
172 authority and any rule proposed or adopted after August 28,
173 2025, shall be invalid and void.

174 9.] 4. For purposes of this section, the following
175 terms shall mean:

176 (1) "Base rates", rates or charges for public utility
177 service other than rates or charges under any rate
178 adjustment mechanism including, but not limited to, those
179 approved under the provisions of sections 386.266, 393.1000,
180 393.1009, 393.1030, 393.1075, and 393.1500;

181 (2) "Revenue requirement", the amount of retail
182 revenues from base rates charged to retail customers for
183 public utility service needed for a public utility to
184 recover its cost to provide utility service including

185 reasonable and necessary expenses, prudent investments, and
186 the cost of capital.

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