

FIRST REGULAR SESSION

# SENATE BILL NO. 476

90TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GOODE.

Read 1st time February 22, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S1942.04I

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## AN ACT

To amend chapter 393, RSMo, by adding thereto twenty-three new sections relating to retail choice in electric service.

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

Section A. Chapter 393, RSMo, is amended by adding thereto twenty-three new sections, to be known as sections 393.800, 393.803, 393.806, 393.809, 393.812, 393.815, 393.818, 393.821, 393.824, 393.827, 393.830, 393.833, 393.836, 393.839, 393.842, 393.845, 393.848, 393.851, 393.854, 393.857, 393.860, 393.863 and 393.866, to read as follows:

**393.800. Sections 393.800 to 393.866 shall be known as "The Electric Utility Restructuring Act".**

**393.803. As used in sections 393.800 to 393.866, the following terms mean:**

- (1) "Affiliated with", ownership of a controlling interest in or by another entity;**
- (2) "Aggregate", to combine the loads of retail customers for the purpose of purchasing generation service;**
- (3) "Aggregator", any entity that, as an intermediary, puts together customers into a buying group for the purchase of generation service;**
- (4) "Broker", any entity that acts as an agent or intermediary in the sale and purchase of generation service to retail customers but does not take title to the generation service;**
- (5) "Certified territory", the service territory certified to a utility pursuant to section 386.800, RSMo, and sections 393.106 and 393.170, and rules adopted by the commission pursuant to such sections;**
- (6) "Commencement date", the date established by the commission, pursuant to section 393.806, on which choice of electric supplier shall begin for retail consumers of electric service in Missouri;**

**(7) "Commission", the Missouri public service commission;**

**(8) "Competitive electricity provider", a marketer, broker, aggregator, retail electric provider or other entity selling generation service to consumers at retail, but does not include any exempt utility;**

**(9) "Competitive transition charge", a charge established pursuant to section 393.818;**

**(10) "Distribution services", services provided from the point where electricity enters the distribution system to the point at which the electricity is delivered to consumers, including metering and meter reading;**

**(11) "Distribution utility", any utility engaged in the furnishing of distribution services to consumers under a service certificate issued by the commission or any municipal electric distribution system;**

**(12) "Electric cooperative", any cooperative formed pursuant to the provisions of chapter 394, RSMo, or any nonstock member-owned cooperative corporation;**

**(13) "Electric utility", an electric public utility, municipal electric utility or electric cooperative;**

**(14) "Exempt utility", any municipal electric utility that has not elected pursuant to section 393.812 to participate fully in competition in retail sales of generation service or any electric cooperative that has not elected pursuant to section 393.815 to participate in competition in retail sales of generation service;**

**(15) "FERC", means the Federal Energy Regulatory Commission;**

**(16) "Generation assets", all real property, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, generation of electricity;**

**(17) "Generation service", the provision of electricity to a consumer through transmission and distribution utilities but does not include transmission or distribution services;**

**(18) "High-level radioactive waste":**

**(a) Irradiated reactor fuel;**

**(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for uranium processing irradiated reactor fuel; and**

**(c) Solids into which such liquid wastes have been converted;**

**(19) "High-level radioactive waste disposal costs", costs incurred for disposal of high-level radioactive waste from a nuclear generating facility;**

**(20) "Independent system operator" or "ISO", an organization regulated by the FERC which plans and operates a transmission system over which it has jurisdiction**

and which has been approved by the FERC as an ISO that complies with FERC criteria;

(21) "Low-level radioactive waste", radioactive waste not classified as one of the following: high-level radioactive waste, transuranic waste, spent nuclear fuel or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(22) "Low-level radioactive waste disposal costs", costs incurred for disposal of low-level radioactive waste from a nuclear generating facility;

(23) "Marketer", any entity that takes title to generation service and acts as an agent or intermediary in the sale and purchase of generation service to retail customers;

(24) "Mitigation", the prudent efforts on the part of an electric utility to reduce costs such that under normal cost of service regulation prices could have been reduced but instead of reducing prices generation asset cost recovery is accelerated by an amount equal to these cost reductions thus reducing competitive transition costs;

(25) "Nuclear decommissioning costs", costs that the federal Nuclear Regulatory Commission considers to be nuclear decommissioning costs or that are approved by the commission;

(26) "Public utility", an electric utility the rates of which are regulated by the commission;

(27) "Recoverable competitive transition costs", competitive transition costs that a public utility is allowed to recover pursuant to section 393.818;

(28) "Retail consumer", the ultimate consumer of electric power, irrespective of the quantity purchased;

(29) "Retail electric provider" or "REP", an entity which acquires supplies of electricity or some combination of outright ownership of generation and contracts for purchases of electricity for sale to retail consumers or aggregators;

(30) "Standard offer", an open offer for service by an REP to all retail consumers who qualify for service under the terms and conditions of that offer;

(31) "Transmission services", services provided from the point where electricity is generated to the point at which the electricity enters the distribution system;

(32) "Transmission utility", any utility engaged in the furnishing of transmission services.

**393.806. 1. Except as otherwise provided in sections 393.800 to 393.866, on and after the commencement date:**

(1) All consumers of electricity in areas of the state served by competitive electricity providers shall have the right to purchase generation service directly from the competitive electricity provider of the consumer's choice in accordance with the principles in sections 393.800 to 393.866, and the specific competition plan developed by

the commission. The plan developed by the commission shall incorporate the substance of sections 393.800 to 393.866, along with other provisions which the commission finds appropriate and required to carry out the purposes of sections 393.800 to 393.866. This plan shall implement a market structure which will provide direct access to the electricity market for all consumers;

(2) Beginning on the commencement date, all retail consumers of electric service in areas of the state served by competitive electricity providers shall be permitted to choose the supplier or suppliers of their choice, under one or more of the following means:

(a) Taking service directly from a retail electric provider under a standard offer;  
(b) Taking service directly under the terms of a bilateral contract with an REP;  
(c) Taking service through a market aggregator who will negotiate directly with one or more generation suppliers on behalf of the retail consumer; or

(d) Taking service from the incumbent electric utility as a supplier of last resort and purchasing from the statewide pool established in section 393.821 if the consumer is otherwise unable to secure electric service through other means;

(3) Sale of generation service by competitive electricity providers shall not be subject to rate regulation by the commission.

2. The commission shall determine the commencement date of retail electric competition, which shall be the later of January 1, 2002, or the date the commission determines that sufficient competitive electricity providers have been certified by the commission to provide a competitive market for retail electric service and that all provisions of sections 393.800 to 393.866 which must be implemented prior to commencement of retail electric competition have been implemented.

**393.809. 1. On and after the commencement date:**

(1) Certified territories of distribution utilities shall be retained and distribution utilities that are subject to the jurisdiction of the commission shall continue to be regulated by the commission as provided by law;

(2) Generation service purchased at retail shall be delivered to the consumer only through a distribution utility having the certified territory where the service is delivered and through transmission utilities holding certificates of convenience issued by the commission and serving the territory where the service is delivered;

(3) There shall be no restriction on the ownership of transmission facilities;

(4) Affiliates of electric utilities may own electric generation assets, and may sell generation directly to retail consumers, provided that the generation and marketing assets, personnel and services are operationally and financially separate from the transmission and distribution functions of the electric utility;

(5) The commission shall establish the appropriate rates for local transmission

and distribution services and for consumer services including metering, meter reading and billing. Consolidated billing shall be provided by a local distribution utility upon a receipt of a request from a retail electric consumer on a form provided by the commission.

**2. All existing electric utilities must functionally unbundle their services and rates on or before January 1, 2002.**

**393.812. 1. In a municipality served by a municipal utility, electric competition in retail sales of generation service shall continue in any territory annexed by a municipality if such competition exists in such territory at the time of annexation. In the case where the municipal electric utility has not elected to participate fully in competition in retail sales of generation service, the municipal electric utility shall not be subject to the provisions of sections 393.800 to 393.866 other than the provisions of section 393.833 and shall not sell generation service at retail to consumers outside the utility's certified territory. The municipal electric utility shall be required to provide all competitive electricity providers open access to the utility's distribution services in the annexed territory on a nondiscriminatory basis at fair and reasonable rates. Any competitive electricity provider denied such access shall have a cause of action in the circuit court of the county where the municipality is located or, if the municipality is located in more than one county, the county where the greatest portion of the population of the municipality resides. If the court finds that the municipal electric utility denied the competitive electricity provider access to the utility's distribution services in the annexed territory on a nondiscriminatory basis at fair and reasonable rates, the court may enjoin the utility from further denial of such access and may order the utility to pay the competitive electricity provider any damages arising from the denial.**

**2. Except as provided by subsection 1 of this section, a municipal electric utility shall not participate in competition in retail sales of generation service unless:**

**(1) The governing body or administrative board of the municipality owning or operating the utility or the voters residing in the certified territory of the utility elect as provided in subsection 3 of this section for the utility to participate fully in competition in retail sales of generation service. If the governing body, administrative board or voters elect full participation, the municipal electric utility shall be subject to all of the provisions of sections 393.800 to 393.866 in the same manner as any other nonexempt utility and may sell generation service at retail to any consumer eligible to receive service from a competitive electricity provider, regardless of the consumer's location;**

**(2) The governing body or administrative board of the municipality owning or operating the utility or the voters residing in the certified territory of the utility may**

elect as provided in subsection 3 of this section for the utility to participate in competition in retail sales of generation service only within the utility's certified territory. If the governing body, administrative board or voters elect such participation, the municipal electric utility shall not be subject to the provisions of sections 393.800 to 393.866 other than the provisions of sections 393.818 and 393.833. The municipal electric utility shall be required to provide all competitive electricity providers open access to the utility's distribution services on a nondiscriminatory basis at fair and reasonable rates. Any competitive electricity provider denied such access shall have a cause of action in the circuit court of the county where the municipality is located or, if the municipality is located in more than one county, the county where the greatest portion of the population of the municipality resides. If the court finds that the municipal electric utility denied the competitive electricity provider open access to the utility's distribution services on a nondiscriminatory basis at fair and reasonable rates, the court may enjoin the utility from further denial of such access and may order the utility to pay the competitive electricity provider any damages arising from the denial.

3. (1) The governing body of a municipality owning or operating a municipal electric utility may submit, by ordinance, to the qualified voters residing in the utility's certified territory a proposition for the utility to participate in competition in retail sales of generation service. If a majority of the voters voting on the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the final canvass of the election results.

(2) Upon a petition filed in accordance with subsection 4 of this section, the governing body of a municipality owning or operating a municipal electric utility shall submit to the qualified voters residing in the utility's certified territory a proposition for the utility to participate in competition in retail sales of generation service. If a majority of the voters voting on the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the final canvass of the election results.

(3) The governing body of a municipality owning or operating a municipal electric utility may elect, by ordinance, to participate in competition in retail sales of generation service, subject to a protest petition filed in accordance with subsection 4 of this section within thirty days after the adoption of the ordinance. If such petition is so filed, there shall be submitted to the qualified voters residing in the utility's certified territory a proposition for the utility to participate in competition in retail sales of generation service. If a valid protest petition is not submitted or if, upon submission of valid protest petition and an election, a majority of the voters voting on

**the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the adoption of the ordinance or the final canvass of the election results.**

**4. (1) A petition provided for by this section shall be filed with the county election authority and shall be signed by at least ten percent of the qualified voters in the service utility's certified territory who voted in the most recent gubernatorial election.**

**(2) If the petition requests an election to participate fully in competition in retail sales of generation service as provided by subdivision (1) of subsection 2 of this section, the following shall appear on the petition:**

**"We request an election to determine whether the municipal electric utility of the city of ..... (insert name of city) shall be allowed to sell generation service to customers outside the utility's current territory and shall allow its current customers to choose their provider of generation services."**

**(3) If the petition requests an election to participate in competition in retail sales of generation service only within the utility's certified territory as provided by subdivision (2) of subsection 2 of this section, the following shall appear on the petition:**

**"We request an election to determine whether the municipal electric utility of the city of ..... (insert name of city) shall allow its customers to choose their provider of generation services."**

**5. (1) When a proposition is submitted pursuant to this section to participate fully in competition in retail sales of generation service as provided by subdivision (1) of subsection 2 of this section, the county election authority shall cause the following proposition to be placed on the ballot in the utility's certified territory at the next general election or at a special election called for the purpose of voting on the proposition:**

**"Shall the municipal electric utility of the city of ..... (insert name of city) be allowed to sell generation service to customers outside the utility's current territory and allow its current customers to choose their provider of generation services?"**

**☐ YES**

**☐ NO**

**(2) When a proposition is submitted pursuant to this section to participate in competition in retail sales of generation service only within the utility's certified territory as provided by subdivision (2) of subsection 2 of this section, the county election authority shall cause the following proposition to be placed on the ballot in the utility's certified territory at the next general election or at a special election called for the purpose of voting on the proposition:**

**"Shall the municipal electric utility of the city of ..... (insert name of city)**

**allow its customers to choose their provider of generation services?**

**Q YES**

**Q NO**

**6. An election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.**

**7. The governing body or administrative board of a municipality is authorized to spend public moneys of the municipality to inform voters in an unbiased manner about probable impacts of participation in retail competition.**

**8. (1) If a municipal electric utility has elected to participate in competition in retail sales of generation service as provided by subdivision (1) or (2) of subsection 2 of this section, the municipal utility shall not subsequently elect to discontinue participation in competition in retail sales of generation service.**

**(2) If a municipal electric utility has elected to participate in competition in retail sales of generation service only within the utility's certified territory as provided by subdivision (2) of subsection 2 of this section, the municipal utility may subsequently elect to participate fully in competition in retail sales of generation service as provided by subdivision (1) of subsection 2 of this section.**

**9. If a municipal utility does not elect to participate fully in competition in retail sales of generation service as provided by subdivision (1) of subsection 2 of this section, the utility shall not sell generation service at retail to consumers outside the utility's certified territory.**

**10. If a municipal utility does not elect to participate fully in competition in retail sales of generation service as provided by subdivision (1) of subsection 2 of this section, the utility shall not sell generation service at wholesale except incidental sales necessary to reduce the cost of providing retail service in the utility's certified territory.**

**11. If a municipal utility elects to participate fully in competition in retail sales of generation service and provides service to customers in a political subdivision in the service territory outside of the municipality, the municipal utility shall make a payment in lieu of tax to such other municipality or other political subdivision in the amount of any business license taxes, if any, which apply to other providers of energy services providing services in such other municipality or other political subdivision in which the municipal utility is providing service.**

**393.815. 1. An electric cooperative may elect to participate in competition in retail sales of generation service. To elect to participate, the cooperative shall call a special election. The election may be called by the board of trustees or shall be called within one hundred eighty days after receipt of a valid petition signed by at least ten percent of the members of the cooperative. The proposition appearing on the ballot at**



the election shall be:

"Shall ..... (insert name of the cooperative) allow members to choose their provider of generation services?"

Q YES

Q NO

Written notice of the election shall be delivered to the members not less than twenty-one nor more than forty-five days before the date of the election. Voting on the proposition shall be by mail ballot. If a majority of the members voting on the proposition vote for the proposition, the electric cooperative shall participate in competition in retail sales of generation service.

2. Any person wishing to disseminate to members of an electric cooperative any information relating to a proposition to be submitted at an election pursuant to this section may submit the information to the electric cooperative. The electric cooperative shall mail the information to the members of the cooperative as soon as practicable. All expenses incidental to mailing the information shall be paid by the person submitting the information to the electric cooperative.

3. Once an electric cooperative participates in competition in retail sales of generation service the cooperative shall not subsequently elect to discontinue participation.

4. If an electric cooperative has not elected to participate in competition in retail sales of generation service, the cooperative shall not sell generation service at retail to consumers outside the cooperative's certified territory unless the cooperative subsequently elects to participate in competition in retail sales of generation service.

393.818. 1. Following the process established in this section, electric utilities competing in the retail sale of generation service are entitled to recover a reasonable amount of prudently incurred, net, verifiable competitive transition costs. The amount of recovery shall be determined by the commission pursuant to this section.

2. Each utility, and any successor, shall have the duty to mitigate competitive transition costs.

3. (1) Each public electric utility may file a recovery plan within six months after August 28, 1999. The recovery plan shall document anticipated competitive transition costs, mitigation proposals and offsetting increases in the value of other generating assets.

(2) The commission may allow a utility whose earnings exceed the allowed rate of return to apply such excess earnings toward the mitigation of competitive transition costs, as part of a plan to introduce retail competition.

(3) To apply excess earnings toward mitigation of competitive transition costs, a utility shall request such rate treatment from the commission in its recovery plan. Application of excess earnings toward the mitigation of competitive transition

costs for a reasonable period of time not to exceed three years shall not be denied by the commission provided that:

(a) The electrical corporation can demonstrate a reasonable likelihood that it will incur competitive transition costs when competition is allowed in Missouri, that some mitigation of competitive transition costs will be achieved by the measures proposed in the recovery plan; and

(b) The rates of the utility shall not, as a result of the competitive transition cost mitigation effort, increase above the level in effect as of August 28, 1999.

(4) After evidentiary hearings, the commission shall approve and publish a recovery plan for each utility submitting a plan. Approval shall occur within nine months after the utility files its recovery plan.

(5) In any subsequent request to the commission for an increase in general rate levels by a utility receiving approval of measures to mitigate competitive transition costs pursuant to this section, the utility shall demonstrate that its rate increase request does not reflect the mitigation measures previously authorized.

4. (1) The recovery plan may incorporate a competitive transition charge, which shall be allocated to customers as provided in subdivision (2) of this subsection. A competitive transition charge shall be imposed on all customers receiving services under a special contract that is entered into or renewed after the effective date of sections 393.800 to 393.866.

(2) The recovery plan shall establish net, non-mitigatable competitive transition costs and a recovery period designed to recover such costs expeditiously, provided that the recovery period and the amount of qualified transition costs shall yield a competitive transition charge which shall not cause the total price for electric power, including transmission and distribution services, for any customer class to exceed the cost per kilowatt-hour paid on the commencement date. This cap on rates shall only apply to customers that elect to receive generation service from the distribution utility or its affiliate.

(3) A public electric utility may seek, and the commission may approve after hearings, an exception to the limitations set forth in subdivision (3) of subsection 3 of this section only in any of the following circumstances:

(a) The public electricity utility is subject to significant unforeseeable increases in the rates of Federal or State taxes or other significant changes in law or regulations that would not allow the utility to earn a fair rate of return;

(b) The public utility is directed by the commission or an independent system operator or its functional equivalent to make extraordinary expenditures to repair or upgrade its transmission or distribution system;

(c) The public utility seeks to increase its allowance for nuclear

decommissioning costs, spent fuel storage costs, or the Department of Energy enrichment service costs to reflect new information not available at the time the utility's existing rates were determined, and such costs are not recoverable in the competitive generation market and are not covered in the competitive transition charge, and such costs would not allow the utility to earn a fair rate of return.

5. Competitive transition costs shall not be recoverable for reductions in usage occurring in the normal course of business, including those resulting from changes in business cycles, termination of operations, weather, reduced production, changes in manufacturing processes, energy conservation efforts or other similar factors.

6. The commission shall determine the competitive transition costs associated with assets and obligations that are documented in the accounting records of a vertically integrated electric utility and that are properly allocable to a particular potentially competitive service as of the date on which alternative sellers of similar potentially competitive services begin providing such service to customers in this state. The electric utility must be given a reasonable opportunity to recover the proportion of such costs determined by the commission to be recoverable from retail consumers. In determining the share of costs to be recoverable, the commission shall balance the interests of retail consumers and electric utility stockholders. The commission shall take into account:

(1) The extent to which the utility was legally required to incur the costs of specific assets and obligations;

(2) The extent to which the market value of the assets and obligations of the utility, relating to the provision of potentially competitive services, exceeds the costs of the assets and obligations;

(3) The effectiveness of the efforts of the utility to increase the market value of any assets, and to decrease the costs of any obligations, associated with the provision of potentially competitive service;

(4) The extent to which the rates previously established by the commission have compensated shareholders for the risk of not recovering the costs of the assets and obligations;

(5) The effects of the differences between the market value and the cost, including, without limitation, tax considerations, for the assets and obligations; and

(6) If the utility had the discretion to determine whether to incur or mitigate the costs, the conduct of the utility with respect to the costs of the assets and obligations when compared to other utilities with similar obligations to serve the public.

7. Competitive transition costs shall be determined on a net basis, be verifiable, be reconciled to actual electricity market conditions from time to time and shall not include transmission and distribution assets. In the instance where an electric utility

acquires another electric utility, competitive transition costs shall be allocated to each utility participating in such acquisition by the same methodology as each participating utility's generating plant in service was allocated to each participating utility in the utility's last rate proceeding before the commission.

8. Costs arising pursuant to prudently incurred purchase power contracts or associated with any buy-out, buy-down or renegotiation of the contracts shall be eligible for recovery in competitive transition recovery charges.

9. Any recovery of competitive transition costs shall be through a non-bypassable, nondiscriminatory, appropriately structured charge that is fair to all consumer classes, lawful, constitutional, limited in duration, and consistent with the promotion of fully competitive markets and, unless the commission determines another charge is more appropriate, shall be through a fixed per kilowatt hour charge on all sales. Charges to recover competitive transition costs shall only apply to consumers within a utility's retail service territory as it existed prior to the commencement date for retail competition, except for such costs that have resulted from the provision of wholesale power to another utility. The charges shall not apply to wheeling-through transactions nor shall they apply to the exercise of any competitive alternative that existed prior to August 28, 1999, including, but not limited to, the installation of new self-generation or cogeneration equipment, or the expansion of existing self-generation or cogeneration equipment.

10. Any competitive transition cost recovered through an electric utility's competitive transition charges shall be used solely for the purpose of reducing such electric utility's related competitive transition costs.

11. In the instance where an electric utility provides generation service in Missouri and another state or states, competitive transition costs shall be allocated to the Missouri jurisdiction by the same methodology as the recipient utility's generating plant in service was allocated to the Missouri jurisdiction in the utility's last rate proceeding before the commission, or other method approved by the commission.

12. The commission is authorized to allow electric utilities to collect a competitive transition charge, subject to its determination in the context of a rate case proceeding that such charge is equitable, appropriate, balanced, in the public interest and consistent with the intent of sections 393.800 to 393.866. The burden of proof for any competitive transition cost-recovery claim shall be borne by the electric utility making such claim.

13. The commission, upon its own motion when evidence of need is apparent, or upon application by a utility or a utility's successor, may, after hearings, review and determine the remaining, if any, recoverable competitive transition costs. Such review may reconcile the difference between actual and expected competitive prices for

electricity. Any over-recovery or under-recovery may be incorporated into a revised competitive transition charge to be applied prospectively.

**393.821. 1.** To ensure that all consumers receive service in the competitive market all portions of the state where retail electric customers may purchase generation service from the competitive electricity provider of the customer's choice, there is hereby established a statewide pool to help local distribution utilities serve as the providers of last resort. The statewide pool shall aggregate electric generation service for all retail customers in the state that have the choice of retail electric provider and do not receive service from any other source.

**2.** The statewide pool shall cease to exist on December 31, 2005, if the pool provides service to less than ten percent of residential customers, unless the commission determines, prior to that date, that the statewide pool will be needed to service public convenience and necessity after that date, and, in such case, the commission shall establish a specific date to revisit the continued need for the statewide pool.

**3.** The statewide pool shall be governed by a board of directors selected as provided in this subsection. The board shall consist of no less than nine nor greater than fifteen members, as determined by the commission. Board members shall be selected by the commission and shall be persons without a substantial financial interest in electric generation, transmission or distribution service, as determined by the commission and shall meet all other membership requirements established by the commission.

**4.** The board may employ necessary staff and maintain any facilities necessary to carry out its duties.

**5.** Each local distribution utility shall provide load forecasts for the entire load for which it provides distribution services to the board according to procedures established by the commission.

**6.** Each retail electric provider, aggregator and broker shall provide, to each local distribution utility, a list of its customers which are served by that utility, and the local distribution utility shall estimate the load requirements for such customers and provide the load estimates to the board.

**7.** The statewide pool shall contract to purchase electric service for that portion of the total load not served by another retail electric provider, aggregator or broker, including transmission to the distribution substations of each local distribution utility.

**8.** The commission shall establish rates which allow each local distribution utility to collect, from customers, the costs of purchases from the statewide pool. The commission may establish a purchased electricity adjustment mechanism, including annual true-up for differences between charges to utilities for purchases from the

statewide pool and collections from customers for such service.

9. Any consumer may cancel purchases from the aggregated statewide pool at any time. The commission shall establish procedures providing for a positive indication by a consumer that the consumer is canceling purchases from the pool.

10. During such time as the statewide pool is in existence, an electric utility or electric services company supplying generation services in Missouri may impose a reasonable switching fee for consumers that cancel service with that supplier. This fee shall not exceed a nominal charge covering only the administrative costs incurred by the generation supplier. Retail electric generation service shall be provided to a consumer entering the statewide pool after the cancellation date at the prevailing rate for the pool.

11. Unless otherwise provided in this section, the statewide pool shall comply with the registration, licensing and other provisions of section 393.839 that are applicable to an REP.

393.824. The commission shall have a continuing obligation to investigate the degree of market concentration for generation services and to make a determination whether or not individual entities who own or control generation are exerting market power to the extent that generation prices are maintained above competitive levels. If the commission finds this to be the case, it shall implement necessary remedies, including imposing price caps on generation owners with market power, requiring owners of generation with market power to offer generation services at prices based on established market indices, ordering the divestiture of generation assets, and/or to take such other measures as may be necessary to ensure that Missouri retail electric consumers realize the benefit of competition in generation markets.

393.827. 1. Before January 1, 2002, the commission shall adopt rules and regulations requiring that consumers' retail electric bills and any standard offers shall disclose such components as the commission determines adequately informs consumers. Separate components shall include, but not be limited to:

- (1) Generation service charges;
- (2) Distribution service charges;
- (3) Transmission service charges;
- (4) Competitive transition charges; and
- (5) Taxes.

2. Before January 1, 2002, the commission shall adopt rules and regulations establishing procedures:

(1) To ensure that generation service of a customer of a competitive electricity provider is not switched to another competitive electricity provider without reliable confirmation of the customer's intent to make the change;

**(2) For handling of complaints of unauthorized switching of a customer's generation service from one competitive electricity provider to another;**

**(3) For retail customer billing practices. At a minimum, customers should be given the option to receive a single bill for electric service that includes distribution and generation services. Competitive electric providers shall be allowed to bill their customers for generation services or to contract with the local distribution utility to provide a combined bill for both distribution and generation services, if requested by the customer;**

**(4) For investigating disputes between consumers and competitive electric retail providers, marketers, brokers, or aggregators; and**

**(5) To institute a complaint mechanism for resolution of such disputes.**

**3. Before January 1, 2002, the commission shall adopt rules and regulations establishing procedures and standards for a competitive electricity provider to discontinue a customer's generation service for the customer's nonpayment and to reconnect the customer's service.**

**393.830. 1. On or before July 1, 2001, the commission shall adopt rules and regulations requiring that, on and after the commencement date for retail competition, a transmission or distribution utility, other than an exempt utility, shall provide the utility's transmission or distribution services to all generation service customers in the utility's certified territory, to all municipal electric utilities and electric cooperatives that are not exempt utilities and to all competitive electricity providers, whether affiliated with the utility or not, at rates and on terms of access and conditions comparable to the transmission or distribution utility's own use of its system. This subsection shall not be construed to require any provider of transmission services to provide new transmission facilities to any provider of generation services.**

**2. To the extent that a utility is vertically integrated, a utility shall functionally separate the utility's regulated and competitive services as provided pursuant to section 393.809.**

**3. Before January 1, 2002, the commission shall unbundle the rates for the utility's regulated services.**

**4. (1) The commission shall adopt rules and regulations, effective on and after the commencement date for retail competition, establishing standards of conduct for transmission and distribution utilities that are competitive electricity providers or that are affiliated with a competitive electricity provider, for the purpose of ensuring that:**

**(a) The competitive electricity provider, with respect to the provision of the generation service, maintains an arm's length relationship with the utility;**

**(b) The business or organizational relationship, or both, between the utility and the competitive electricity provider shall not allow concentration of market power nor**

interfere with the development of effective competition in retail sales of generation service;

(2) Such standards shall include, but not be limited to, a requirement that:

(a) The utility shall not give, through a tariff provision or otherwise, the utility's affiliated competitive electricity provider or customers of the utility's affiliated competitive electricity provider preference over nonaffiliated competitive electricity providers or customers of nonaffiliated competitive electricity providers in matters relating to distribution or transmission services;

(b) All regulated distribution and transmission services offered by the utility, including any discount, rebate or fee waiver, shall be available to all similarly situated customers and competitive electricity providers simultaneously and on the same basis, to the extent technically possible, and without undue or unreasonable discrimination;

(c) The utility shall not sell or otherwise provide distribution or transmission services to the utility's affiliated competitive electricity provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for those services;

(d) The utility shall process all similar requests for a distribution or transmission service in the same manner and within the same period of time;

(e) The utility shall not condition or tie the provision of any distribution or transmission service or rate agreement by the utility to the provision of any service in which an affiliated competitive electricity provider is involved;

(f) The utility shall process all similar requests for information in the same manner, and within the same period of time. The utility shall not provide information to an affiliated competitive electricity provider without a request when information is made available to, nonaffiliated competitive electricity providers only upon request. The utility shall not allow an affiliated competitive electricity provider preferential access to any nonpublic information regarding the distribution or transmission system or customers taking service from the utility that is not made available to nonaffiliated competitive electricity providers upon request. The utility shall instruct all of its employees not to provide affiliated competitive electricity providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information;

(g) Except with the customer's consent, employees of the utility shall not share with any affiliated competitive electricity provider or any nonaffiliated electricity provider:

a. Any market information acquired from the affiliated competitive electricity provider or from any nonaffiliated competitive electricity provider; or

b. Any market information developed by the utility in the course of responding



to requests for distribution or transmission service;

(h) The utility and competitive electricity provider affiliated with the utility shall keep separate books of accounts and records.

5. The rules and regulations adopted by the commission shall not preclude any competitive retail electric provider associated or affiliated with a distribution utility from using the name or a name similar to that of the distribution utility; but the commission may prescribe rules for how such names or logos may be used and what disclosures or disclaimers may be required.

393.833. 1. A competitive electricity supplier shall provide generation service to its customers and shall provide proof, to the ISO, of adequate capacity reserve in the amount and under the conditions established by the ISO or shall purchase such services from the ISO.

2. A distribution utility is not liable for damages to any current or future customer if the customer's competitive electricity provider fails to deliver service in accordance with its contract with the customer.

3. A distribution utility is not required to purchase any reserve supply of electricity to fulfill the obligations imposed by this section.

4. Except as provided by subsection 1 and subdivision (2) of subsection 2 of section 393.812, the provisions of this section shall not apply to any exempt utility.

393.836. 1. In areas of the state served by competitive electricity providers, customers of all classes shall be entitled to aggregate their electrical loads on a voluntary basis if each customer agrees to do so by a positive written declaration. Aggregation may be accomplished by private entities, by political subdivisions or on any other basis made available by market opportunities.

2. If a political subdivision seeks to serve as an aggregator on behalf of residential customers, the political subdivision shall offer the opportunity to purchase generation service to all residential customers within the subdivision's jurisdiction. However, if a political subdivision serves as an aggregator, the subdivision shall not require consumers within the subdivision's jurisdiction to purchase generation service from the subdivision.

393.839. 1. On and after the commencement date for retail competition, no competitive electricity provider, aggregator or broker shall sell any generation service to a customer for consumption within this state without having first obtained from the commission a license, subject to rules and regulations established by the commission, to engage in business as a competitive electricity provider, aggregator or broker. The commission may establish a fee requirement for such license.

2. The commission shall adopt rules and regulations establishing procedures and conditions that a competitive electricity provider shall be required to comply with to

obtain and maintain a license to engage in business as a competitive electricity provider. The commission may suspend or revoke a license granted pursuant to this section to any licensee found to have violated or failed to meet any requirement of this section. Such procedures and conditions shall include procedures and conditions relating to:

(1) Reliability of service, including, but not limited to, a requirement that the applicant file with the commission evidence satisfactory to the commission that the applicant has the ability to enter into binding interconnection arrangements for transmission and distribution services and that the applicant has complied with all applicable requirements of the ISO regarding adequate capacity reserve;

(2) Financial and operational fitness, including, but not limited to:

(a) A requirement that the applicant file with the commission evidence satisfactory to the commission that the applicant has financial capacity sufficient to refund deposits to retail customers in the case of bankruptcy, nonperformance or any other reason; and

(b) A requirement that, when the commission determines necessary, the applicant shall file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to the applicants customers;

(3) Billing practices and customer service, including, but not limited to, a requirement of disclosure of customer complaints filed against the applicant with a regulatory agency other than the commission during the twelve months before the filing of the application;

(4) Disclosure of pending legal actions against the applicant;

(5) Disclosure of the names and business addresses of all affiliates of the applicant;

(6) Requiring that the applicant file with the commission an agreement to collect and remit all state and local sales and use taxes and local business license taxes to the proper collecting authority, provided that such agreement shall state that the applicant waives its right to challenge the validity of the agreement and its right to the refund of amounts paid pursuant to the agreement;

(7) A requirement that the licensed seller provide a quarterly report to the commission which provides comprehensive data, as specified by the commission, regarding the fraction of sales by the licensed seller to the various classes of customer, including residential, commercial and industrial, and a requirement that the sales by the licensed seller during the current quarter to residential customers shall make up a fraction of the seller's total sales which is no less than ninety percent of the fraction of residential sales out of the statewide total of sales for the preceding quarter. This

requirement may be met by any of the following: direct sales to residential customers, sales to aggregators serving only residential customers or sales to the statewide pool established in section 393.821;

(8) A requirement that a licensed seller's rates to a customer shall not exceed the standard offer rates offered by the local distribution utility providing generation services to such customer, if any, either directly or through an affiliate.

3. In addition to any requirements adopted pursuant to subsection 2 of this section, a competitive electricity provider, in order to qualify for a license, shall be required to:

(1) Establish an office in this state;

(2) Submit evidence satisfactory to the commission that the provider complies with the provisions of subsection 4 of this section;

(3) Make an appointment, in writing, of the secretary of state, or the secretary's successor in office, to be the competitive electricity provider's agent for service of process in any action or proceeding arising out of the competitive electricity, provider's engaging in business as such in this state. Such appointment, in writing, shall be evidence of the competitive electricity provider's agreement that any such process that is served on the secretary of state shall be of the same legal force and validity as if served upon the competitive electricity provider personally within the state; and

(4) Establish a customer call center.

4. If a competitive electricity provider or an affiliate of a provider had a certified territory in this state before the commencement date for retail competition, the provider shall not be eligible for a license unless there are competitive generation services available in such territory, as determined by standards established by the commission.

5. If, after reviewing the license application of a competitive electricity provider, the commission finds that the applicant is qualified to be a competitive electricity provider, the commission shall issue a license to the applicant.

6. After notice and an opportunity for hearing in accordance with chapter 536, RSMo, the commission may deny an application for a license to engage in business as a competitive electricity provider or may limit, suspend or revoke a license if the action is necessary to protect the interests of the public or to enforce the provisions of sections 393.800 to 393.866 or a rule and regulation of the commission.

7. In determining whether an applicant is qualified for a license to engage in business as a competitive electricity provider or whether to deny an application for a license or to limit, suspend or revoke a license, the commission may consider whether the applicant for or holder of the license, or any affiliate thereof, has engaged in any activities that are inconsistent with provision of reliable service to customers or with

**effective competition in retail sales of generation service.**

**8. A license to engage in business as a competitive electricity provider shall be valid for a term of five years and shall be renewable under the terms and conditions established by the commission and in effect at the time of renewal.**

**9. The commission shall adopt rules and regulations establishing procedures for application, renewal and issuance of licenses.**

**10. Rules and regulations adopted pursuant to this section:**

**(1) Shall not be unduly burdensome;**

**(2) Shall not unnecessarily delay or inhibit the initiation and development of competition in retail sales of generation service; and**

**(3) May establish, when appropriate to carry out the provisions of sections 393.800 to 393.866, different requirements for licensing competitive electricity providers of:**

**(a) Different services; or**

**(b) Similar services to different classes of customers.**

**11. If a public entity, other than a municipal electric utility or electric cooperative that does not participate in retail sales of generation service pursuant to sections 393.812 and 393.815, serves as an aggregator, it may not require consumers within its jurisdiction to purchase generation service from that entity.**

**393.842. 1. The state, the commission and Missouri utilities shall work with the federal government, other states in the region and regional reliability councils to establish independent system operators or their functional equivalents to operate the transmission system.**

**2. Each utility, cooperative electric association, and municipal utility doing business in Missouri must join an Independent System Operator (ISO), or functional equivalent, prior to July 1, 2000.**

**3. The ISO, or functional equivalent, shall:**

**(1) Independently manage and control transmission facilities of any electric utility;**

**(2) Provide for nondiscriminatory access to and use of the transmission system for buyers and sellers of electricity;**

**(3) Direct or provide the transmission activities of the control area operators;**

**(4) Calculate import capabilities, transmission line loading limits, and other such measures;**

**(5) Direct transmission line loading relief and generation redispatch for reliability purposes;**

**(6) Coordinate, plan, and order the installation of new transmission facilities;**

**(7) Adopt standards for inspection, maintenance, repair, and replacement for the**

transmission facilities under its control and direct the inspection, maintenance, repair, and replacement of all facilities under its control; and

(8) Implement procedures and act to assure the provision of adequate and reliable service. These standards must be consistent with the reliability criteria no less stringent than those established by the North American Electric Reliability Council or their successors.

4. Any utility that is not a member of such a regional entity as of July 1, 2000, shall file a plan with the commission which sets forth a means of independently operating its transmission system so as to ensure nondiscriminatory open-access and the reliable provision of electricity service.

393.845. On and after August 28, 1999, nothing shall preclude the commission from approving, proposing or endorsing performance based or incentive rate mechanisms and rate caps as part of the commission's rate making process for electric public utilities for the purpose of benefiting both customers and utilities, allowing more expeditious setting of rates with consideration of factors other than cost of service and allowing the greatest possible mitigation of competitive transition costs.

393.848. 1. (1) Upon complaint or upon its own motion, for good cause shown, the commission shall conduct an investigation of the impact on the proper functioning of a fully competitive retail electricity market, including the effects of mergers, consolidations, acquisition or disposition of assets or securities of electricity suppliers, transmission congestion and anti-competitive or discriminatory conduct affecting the retail distribution of electricity.

(2) The commission may require a competitive electricity provider to provide information, including documents and testimony, in accordance with the commission's regulations regarding the discovery of information.

(3) Confidential, proprietary or trade secret information provided under this section shall not be disclosed to any person not directly employed or retained by the commission to conduct the investigation without the consent of the party providing the information.

(4) Notwithstanding the prohibition on disclosure of information in subdivision (3) of this subsection, the commission shall disclose information obtained under this subsection to the office of the public counsel under an appropriate confidentiality agreement, and may disclose to other parties under appropriate conditions. The commission may disclose the information to appropriate federal or state law enforcement officials if it determines that the disclosure of the information is necessary to prevent or restrain a violation of federal or state law and it provide the party that provided the information with reasonable notice and opportunity to prevent or limit disclosure.

**2. If as a result of an investigation conducted under this section, the commission has reason to believe that anti-competitive or discriminatory conduct, including the unlawful exercise of market power is preventing the retail electricity customers of Missouri from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission shall, in addition to the power granted to it in section 393.824:**

**(1) Refer its findings to the attorney general, the United States Department of Justice, the Securities and Exchange Commission or the Federal Energy Regulatory Commission;**

**(2) Subject to subdivision (3) of subsection 2 of this section, disclose any information it has obtained in the course of its investigation to the agency or agencies to which it has made a referral;**

**(3) Intervene, as provided and permitted by law or regulation, in any proceedings initiated as a result of a referral made under subdivision (1) of subsection 2 of this section.**

**393.851. The commission, before the commencement of retail electric competition, shall carry out an educational program for customers to:**

**(1) Inform customers of the changes in the provision of electric service, including, but not limited to, the availability of competitive electricity providers;**

**(2) Inform customers of the requirements relating to disclosures, explanations or sales information for sellers of competitive services;**

**(3) Provide assistance to customers in understanding and using the information to make reasonably informed choices about which service to purchase and from whom to purchase it.**

**393.854. As used in sections 393.298 to 393.302 and sections 393.854 to 393.866, the following terms mean:**

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

**(2) "Distribution system", the physical plant used to provide energy services including facilities, structures, wires and appurtenances thereto;**

**(3) "Distributor", an electrical or gas corporation as defined by section 386.020, RSMo, which is authorized by the commission pursuant to this chapter to provide or distribute energy services or a rural electric cooperative established pursuant to chapter 394, RSMo;**

**(4) "Energy services", the retail sale of electricity to customers or consumers and all associated services that are necessary for its delivery through a distribution system including but not limited to the generation, production, transmission, distribution, billing and metering of such services and the retail sale of natural gas, propane or methane to customers or consumers excluding any delivery charges;**

**(5) "Political subdivision", any county, municipality or village in the state of Missouri;**

**(6) "Seller", any person who uses, leases or controls the distribution system of a distributor or a political subdivision or any part thereof to sell energy services at retail within the political subdivision other than a distributor or a political subdivision which uses its own distribution system. For this purpose, a sale is deemed to be a sale at retail within a political subdivision if a person sells energy services to a retail customer within the political subdivision, notwithstanding that title to the energy services passes from such person to the retail customer or a third party outside of a political subdivision. A retail consumer of energy services is deemed not to be a seller within the meaning of this section.**

**393.857. 1. No person, other than a distributor or a political subdivision operating within its territorial limits, shall provide energy services in a political subdivision unless the person is certified by the commission as a seller and files its agreement with the commission to collect and remit all state and local sales and use taxes. All retail sales of energy shall be made by a distributor, seller or a political subdivision operating within its territorial limits. No distributor or political subdivision shall provide energy services to any person who has obtained energy services from a seller unless the seller has been certified as a seller and filed its agreement with the commission to collect and remit all state and local sales and use taxes and the commission has furnished such distributor or political subdivision with evidence of such certification. Electrical and gas corporations shall file tariffs to comply with the provisions of this section.**

**2. An agreement described in subsection 1 of this section shall expressly state that the seller waives (1) its right to challenge the validity of the agreement and (2) its right to the refund of amounts paid pursuant to the agreement. Any person who otherwise has standing may challenge the validity of this section without signing such agreement by filing an action for a declaratory judgment in circuit court in the county in which the political subdivision is located. The agreement filed with the commission under subsection 1 of this section shall be limited solely to the requirements of this subsection and the seller's agreement to pay its taxes and provisions which require the seller to make available to the political subdivision or the commission its records, including the right to audit.**

**3. The commission shall establish procedures for certification pursuant to chapter 536, RSMo.**

**4. Nothing in this section shall be construed to give any seller the right to use the rights-of-way, utility easements or the distribution system of any distributor or political subdivision for any purpose other than to provide energy services to the**

**seller's retail customers.**

**5. Any agreement described in subsection 1 of this section shall cease to be effective upon the failure of the seller to fulfill any material obligation under the agreement. The appropriate political subdivision shall notify the commission of any failure to pay any amount required by any agreement described in subsection 1 of this section. Upon such notification, the commission shall immediately notify the seller which shall cease to provide energy services unless it requests a hearing with the commission within fifteen days of the date the notice is filed with the commission. Upon receiving notice from the seller requesting a hearing, the commission shall conduct a hearing to determine whether all material obligations under an agreement have been satisfied. If the commission determines that material obligations have not been satisfied, it shall notify the distributor, and the seller shall thereafter be prohibited from providing energy services from the date set forth in the notice, which shall not be less than thirty days after the commission makes its determination. The distributor shall not provide energy services to the seller if the distributor does not request a hearing after being notified of the seller's material fault or if the commission determines that the seller has failed to satisfy a material obligation of the agreement and thirty days have expired from the date of the commission notification of a breach of a material obligation of any agreement authorized by subsection 1 of this section.**

**6. This section shall not be construed as conferring any rights on any seller to provide energy services within a political subdivision in the state of Missouri. No seller may provide energy services unless it does so in accordance with all applicable laws and in accordance with the applicable rules of the commission. Any seller of natural gas shall file its agreement with the commission within thirty days from the effective date of this section.**

**7. Any person liable for the taxes under chapter 144, RSMo, upon proof that such person has paid a tax in another state or political subdivision with respect to a charge for the sale or transfer of such gas, electricity or energy services, shall be allowed a credit against the tax authorized by chapter 144, RSMo, to the extent of the amount of the tax legally due and paid in the other state or political subdivision with respect to such charge.**

**393.860. Notwithstanding the provisions of section 1.140, RSMo, to the contrary, the provisions of section 393.857 shall be nonseverable, and if any provision is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of section 393.857.**

**393.863. 1. In the event that any legal action to challenge the validity of any agreement made pursuant to subsection 1 of section 393.857 is filed in any court of**



competent jurisdiction, the party initiating that action shall immediately furnish a certified copy of the initial pleading to the commission, which act shall be deemed to suspend the provisions of such agreement pending a final and nonappealable judgment or disposition of such action. Upon receipt of the notification, the commission shall immediately notify each affected political subdivision and person providing energy services of the suspension of those agreements. No seller or distributor shall provide energy services after it receives notice from the commission that the seller's agreements have been suspended pursuant to subsection 1 of section 393.857.

2. In the event that the provisions of section 393.857 are declared to be void or invalid by final judgment of a court of competent jurisdiction, no energy services shall be permitted except upon a finding of public convenience and necessity and compliance with all provisions of this chapter, regulations adopted pursuant to this chapter, and commission orders. No refund of any tax or fee shall be made to any seller that signs an agreement waiving its right to challenge the validity of section 393.857.

393.866. 1. No distributor or political subdivision shall provide energy services to any person who has obtained energy services from a seller unless the seller has been certified as a seller and filed its agreement with the commission to pay all applicable business license taxes and the commission has furnished such distributor or political subdivision with evidence of such certification.

2. Electrical and gas corporations shall file tariffs to enforce the provisions of subsections 1 and 2 of section 393.299.

3. Taxes imposed pursuant to section 393.302 shall be computed by multiplying a rate equal to the applicable business license tax, as authorized by section 66.330, 71.610, 92.045, 94.110 or 94.360, RSMo, or the applicable franchise fee, by all charges for gas, electricity, or energy services to the person using or consuming the gas, electricity, or energy services.