

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1493

92ND GENERAL ASSEMBLY

Reported from the Committee on Commerce and the Environment, April 23, 2004, with recommendation that the Senate Committee Substitute do pass.

4021S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 247.085, 247.172, 386.390, and 394.312, RSMo, and to enact in lieu thereof five new sections relating to water and electric utilities.

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

Section A. Sections 247.085, 247.172, 386.390, and 394.312, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 247.085, 247.172,
3 386.390, 393.156, and 394.312, to read as follows:

247.085. 1. The board of directors of any public water supply district [which is
2 dependent upon purchases of water to supply its needs] shall have power to sell and
3 convey part or all of the property of the district to any city, owning and operating a
4 waterworks system, in consideration whereof the city shall obligate itself to pay or
5 assume the payment of all outstanding bond obligations of the district, and to provide
6 reasonable and adequate water service and furnish water ample in quantity for all
7 needful purposes, and pure and wholesome in quality, to the inhabitants of the territory
8 lying within the district, during such period of time and under such terms and conditions
9 as may be agreed upon by the city and the board of directors of the district; provided,
10 however, that no action shall be taken as provided herein until said city and public
11 water supply district shall cause a printed notice of their intention to act under this
12 section to be published in a manner prescribed for by law in a newspaper having a
13 general circulation in said city and public water supply district, and a statement of the
14 time and manner of said publication shall be recited in any agreement or contract
15 executed hereunder.

16 2. Thereafter the board of directors may sell and convey any remaining property
17 of the district and after payment of the debts of the district, other than bond obligations,

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

18 the board of directors may use the funds of the district for the purpose of providing fire
19 protection or for any other public purpose which in the opinion of the board will be
20 beneficial to the inhabitants of the district.

21 **3. The powers granted by this section are in addition to the powers**
22 **granted by other sections and are not subject to the terms and conditions set**
23 **forth in those sections.**

247.172. 1. Competition to sell and distribute water, as between and among
2 public water supply districts, water corporations subject to public service commission
3 jurisdiction, and municipally owned utilities may be displaced by written territorial
4 agreements, but only to the extent hereinafter provided for in this section.

5 2. Such territorial agreements shall specifically designate the boundaries of the
6 water service area of each water supplier subject to the agreement, any and all powers
7 granted to a public water supply district by a municipality, pursuant to the agreement,
8 to operate within the corporate boundaries of that municipality, notwithstanding the
9 provisions of sections 247.010 to 247.670 to the contrary, and any and all powers granted
10 to a municipally owned utility, pursuant to the agreement, to operate in areas beyond
11 the corporate municipal boundaries of its municipality.

12 **3. Where the parties cannot agree upon the boundaries of the water service**
13 **areas that are to be set forth in the agreement,** they may, by mutual consent of
14 all parties involved, petition the public service commission to designate the boundaries
15 of the water service areas to be served by each party and such designations by the
16 commission shall be binding on all such parties. Petitions shall be made pursuant to the
17 rules and regulations of the commission governing applications for certificates of public
18 convenience and necessity and the commission shall [be required to] hold evidentiary
19 hearings on all petitions so received, **except that in those instances where the**
20 **matter is resolved by a stipulation and agreement submitted to the**
21 **commission by all the parties, such hearings may be waived by agreement of**
22 **the parties.** The commission shall base its final determination **regarding such**
23 **petitions** upon a finding that the commission's designation of water service areas is in
24 the public interest.

25 [3.] 4. Before becoming effective, all territorial agreements entered into under
26 the provisions of this section, including any subsequent amendments to such agreements,
27 or the transfer or assignment of the agreement or any rights or obligations of any party
28 to an agreement, shall receive the approval of the public service commission by report
29 and order. Applications for commission approval shall be made and notice of such filing
30 shall be given to other water suppliers pursuant to the rules and regulations of the

31 commission governing applications for certificates of public convenience and
32 necessity. Unless otherwise ordered by the commission for good cause shown, the
33 commission shall rule on such applications not later than one hundred twenty days after
34 the application is properly filed with the secretary of the commission.

35 [4.] 5. The commission shall hold evidentiary hearings to determine whether
36 such territorial agreements should be approved or disapproved, **except that in those**
37 **instances where the matter is resolved by a stipulation and agreement**
38 **submitted to the commission by all the parties, such hearings may be waived**
39 **by agreement of the parties.** The commission may approve the application if it [shall
40 after hearing determine] **determines** that approval of the territorial agreement in total
41 is not detrimental to the public interest. Review of commission decisions under this
42 section shall be governed by the provisions of sections 386.500 to 386.550, RSMo.

43 [5.] 6. Commission approval of any territorial agreement entered into under the
44 provisions of this section shall in no way affect or diminish the rights and duties of any
45 water supplier not a party to the agreement to provide service within the boundaries
46 designated in such territorial agreement. In the event any water corporation which is
47 not a party to the territorial agreement and which is subject to the jurisdiction, control
48 and regulation of the commission under chapters 386, RSMo, and 393, RSMo, has sought
49 or hereafter seeks authorization from the commission to sell and distribute water or
50 construct, operate and maintain water supply facilities within the boundaries designated
51 in any such territorial agreement, the commission, in making its determination
52 regarding such requested authority, shall give no consideration or weight to the existence
53 of any such territorial agreement, and any actual rendition of retail water supply
54 services by any of the parties to such territorial agreement will not preclude the
55 commission from granting the requested authority.

56 [6.] 7. The commission shall have jurisdiction to entertain and hear complaints
57 involving any commission-approved territorial agreement. Such complaints shall be
58 brought and prosecuted in the same manner as other complaints before the
59 commission. [After hearing,] **The commission shall hold an evidentiary hearing**
60 **regarding such complaints except that in those instances where the matter**
61 **is resolved by a stipulation and agreement submitted to the commission by all**
62 **the parties, such hearings may be waived by agreement of the parties.** If the
63 commission determines that [the] a territorial agreement [is not] **that is the subject**
64 **of a complaint is no longer** in the public interest, it shall have the authority to
65 suspend or revoke the territorial agreement. If the commission determines that the
66 territorial agreement is still in the public interest, such territorial agreement shall

67 remain in full force and effect. [Except as provided in this section, nothing in this
68 section shall be construed as otherwise conferring upon the commission jurisdiction over
69 the service, rates, financing, accounting, or management of any public water supply
70 district or municipally owned utility, or to amend, modify, or otherwise limit the rights
71 of public water supply districts to provide service as otherwise provided by law.

72 7.] 8. Notwithstanding the provisions of section 386.410, RSMo, the commission
73 shall by rule set a schedule of fees based upon its costs in reviewing proposed territorial
74 agreements for approval or disapproval. Responsibility for payment of the fees shall be
75 that of the parties to the proceeding as ordered by the commission in each case. The fees
76 shall be paid to the director of revenue who shall remit such payments to the state
77 treasurer. The state treasurer shall credit such payments to the public service
78 commission fund, or its successor fund, as established in section 33.571, RSMo. [Nothing
79 in this section shall be construed as otherwise conferring upon the commission
80 jurisdiction over the service, rates, financing, accounting or management of any public
81 water supply district or municipally owned utility and except as provided in this section,
82 nothing shall affect the rights, privileges or duties of public water supply districts, water
83 corporations subject to public service commission jurisdiction or municipally owned
84 utilities.]

85 **9. Nothing in this section shall be construed as otherwise conferring**
86 **upon the commission jurisdiction over the service, rates, financing,**
87 **accounting, or management of any public water supply district or**
88 **municipality-owned utility, or to amend, modify, or otherwise limit the rights**
89 **of public water supply districts to provide service as otherwise provided by**
90 **law. Except as provided in this section, nothing shall affect the rights,**
91 **privileges, or duties of public water supply districts, municipally owned**
92 **utilities, or water corporations subject to public service commission**
93 **jurisdiction.**

94 **10. Notwithstanding any other provision of this section, the commission**
95 **may hold a hearing regarding any application, complaint, or petition filed**
96 **under this section upon its own motion.**

386.390. 1. Complaint may be made by the commission of its own motion, or by
2 the public counsel or any corporation or person, chamber of commerce, board of trade,
3 or any civic, commercial, mercantile, traffic, agricultural or manufacturing association
4 or organization, or any body politic or municipal corporation, by petition or complaint in
5 writing, setting forth any act or thing done or omitted to be done by any corporation,
6 person or public utility, including any rule, regulation or charge heretofore established

7 or fixed by or for any corporation, person or public utility, in violation, or claimed to be
8 in violation, of any provision of law, or of any rule or order or decision of the commission;
9 provided, that no complaint shall be entertained by the commission, except upon its own
10 motion, as to the reasonableness of any rates or charges of any gas, electrical, water,
11 sewer, or telephone corporation, unless the same be signed by the public counsel or the
12 mayor or the president or chairman of the board of aldermen or a majority of the council,
13 commission or other legislative body of any city, town, village or county, within which
14 the alleged violation occurred, or not less than twenty-five **residential** consumers or
15 purchasers[, or prospective consumers or purchasers,] **or five large industrial**
16 **customers** of such gas, electricity, water, sewer, or telephone service. **For the**
17 **purposes of this section, the term "large industrial customer" means any**
18 **customer using more than ten million kilowatt hours of electricity per year.**

19 2. All matters upon which complaint may be founded may be joined in one
20 hearing, and no motion shall be entertained against a complaint for misjoinder of causes
21 of action or grievances or misjoinder or nonjoinder of parties; and in any review by the
22 courts of orders or decisions of the commission the same rule shall apply with regard to
23 the joinder of causes and parties as herein provided.

24 3. The commission shall not be required to dismiss any complaint because of the
25 absence of direct damage to the complainant. Upon the filing of a complaint, the
26 commission shall cause a copy thereof to be served upon the public utility, corporation
27 or person complained of.

28 4. Service in all hearings, investigations and proceedings pending before the
29 commission may be made upon any person upon whom summons may be served in
30 accordance with the provisions of the code of civil procedure of this state, and may be
31 made personally or by mailing in a sealed envelope with postage prepaid.

32 5. The commission shall fix the time when and the place where a hearing will be
33 had upon the complaint and shall serve notice thereof, not less than ten days before the
34 time set for such hearing, unless the commission shall find that the public necessity
35 requires that such hearing be held at an earlier date.

36 **6. Any overearnings complaints heard by the commission shall be**
37 **decided within eleven months.**

393.156. 1. As part of a pilot program to be conducted by the
2 **commission, any electrical corporation proposing to construct, lease, or invest**
3 **more than ten percent of its net electric utility plant in Missouri as stated in**
4 **the utility's annual report to the Missouri public service commission in any**
5 **new generation plant or to contract for the purchase of power and energy**

6 associated with a new generation plant located in the state of Missouri and
7 owned or leased by an entity with a physical presence in the state of Missouri
8 as of April 1, 2004, or a subsidiary thereof, may file with the commission an
9 application requesting a determination of prudence of the decision to
10 construct, lease, or invest in such infrastructure or contract for power and
11 energy based upon the circumstances prevailing and information and
12 alternatives presented at the time of the determination. The commission may
13 in its discretion consider an application proposing to enter into a contract for
14 the purchase of power and energy not associated with such a new generation
15 plant. As part of its application, the corporation may also request that the
16 commission determine certain ratemaking principles that will be applied to
17 the investment or contract in future proceedings before the commission. The
18 application may include, at the option of the corporation, a request for a
19 certificate of convenience and necessity under section 393.170, if necessary. At
20 the time the application is filed, the corporation shall file all evidence
21 supporting its proposed course of action, including testimony, exhibits, work
22 papers, and studies, including electronic versions of all models used. The
23 corporation shall also file proposed confidentiality agreements, including any
24 required by third-party vendors, and identify all material for which a need
25 for confidentiality is asserted. If any proposed generation facility is not to
26 be located within the state of Missouri, in addition to evidence that the
27 project itself is reasonable and prudent, the corporation shall submit
28 evidence that the location of the facility is in the best interest of Missouri
29 ratepayers of the corporation.

30 2. The commission shall establish guidelines for the submission of the
31 application by the corporation. The commission shall conduct a hearing and
32 issue an order within one hundred and eighty days after the filing of the
33 application in accordance with any guidelines established by the
34 commission. The commission may approve the application as proposed by the
35 corporation, approve the application on the basis of conditions required to
36 be accepted by the corporation, or may reject the application. If, after
37 hearing, the commission determines that the decision to construct, lease, or
38 invest in such infrastructure or enter into such contract is reasonable and
39 prudent, the commission shall issue an order and certificate so stating and
40 addressing, whether by approving, modifying, or rejecting, each ratemaking
41 principle raised in the hearing. The commission may impose conditions on
42 the certificate requiring the corporation to monitor, and to report to the

43 commission on a specified schedule, any significant changes in specified
44 costs, load, regulatory, economic, or other assumptions upon which the
45 decision was based. Costs will be included in rates of the corporation only in
46 accordance with the existing law, except as otherwise provided in subsection
47 6 of this section. Nothing in this section alters the authority or procedures
48 of the commission in setting the rates of the corporation, or to review the
49 prudence of construction management.

50 3. The order by the commission approving, modifying, or rejecting the
51 determination of prudence and addressing ratemaking principles will be
52 applied in any future rate case to the investment and costs of the facility or
53 the treatment of the cost of the contract and shall be binding for ratemaking
54 purposes in all future proceedings. Ratemaking principles may include, but
55 are not limited to, authorized return on equity, capital structure to finance
56 the facility, estimated service life, depreciation rate for cost of service
57 purposes, jurisdictional allocation method to be applied to the cost, and
58 in-service criteria used to determine when a facility is fully operational and
59 used for service consistent with section 393.135.

60 4. If the commission fails to issue an order determining the prudence
61 of the proposal within one hundred eighty days after the application is filed
62 in accordance with the guidelines established by the commission, the project
63 or contract is deemed to be prudent as proposed, any certificate for
64 convenience and necessity requested by the corporation in the application
65 shall be deemed approved by the commission.

66 5. The corporation shall have two hundred seventy days after the
67 effective date of an order determining a project to be prudent to notify the
68 commission whether it will construct the facility. If the corporation notifies
69 the commission it will not proceed with construction of the facility, any
70 ratemaking principles included in the order will be of no further force and
71 effect and there shall be no adverse presumption applied to the corporation
72 in any future proceeding before the commission based on the decision by the
73 commission or the decision of the corporation not to proceed under the order.

74 6. The corporation shall report to the commission at the times specified
75 in the order of the commission, or upon the occurrence of any significant
76 unusual event such as an act of God, a significant change in federal or state
77 environmental or utility law or regulation, or other significant events which
78 may individually or collectively, materially, and adversely affect the project
79 for which a certificate has been issued. At the time of any such report, the

80 corporation may request the commission to consider a modification or
81 termination of the project, or, upon the occurrence of any such significant
82 event, the commission on its own motion may require the corporation to
83 present evidence supporting a decision to continue a project for which a
84 certificate has been issued. In the event the commission, after hearing,
85 determines that continuation of a project is no longer prudent, or should be
86 modified, the commission in its discretion may allow the corporation to
87 recover in rates, in a timely manner, consistent with financial obligations of
88 the corporation, the amounts already expensed, incurred, or obligated on
89 such project including, if applicable, capitalized, net of income taxes, interest
90 expense, and a capitalized return on equity invested in the project up to the
91 time the order is entered even though the project may never be fully
92 operational or used for service. The approved costs will be amortized to
93 expenses and recovered in rates, over a period of years and in a manner to
94 be determined by the commission at the time the application is initially
95 approved or when the order to modify or terminate the project is issued.

96 7. No corporation shall file more than one application covering more
97 than one project to meet a specific need under this section in any twelve-
98 month period; provided however, if an application is dismissed or denied or
99 the corporation notifies the commission it will not proceed under an
100 approved application, the corporation may file a new application for the same
101 or an alternate facility at any time. The commission may waive this
102 limitation when it deems a waiver to be in the public interest. Nothing in this
103 section shall impair or alter whatever existing authority the commission has
104 to approve tariffs, applications, programs, or other filings relating to the
105 terms and conditions under which an electric, gas, or water corporation may
106 acquire, lease, invest in, expend monies on, or recover the costs of, an
107 infrastructure project or a contract for the purchase or use of power and
108 energy, natural gas supplies, financial hedging instruments, natural gas
109 transportation, or storage services, electric transmission services, or other
110 transactions undertaken to provide utility services.

111 8. Nothing in this section shall excuse a corporation from complying
112 with its public service obligation to provide safe and adequate service at just
113 and reasonable rates.

114 9. No application shall be filed under this section after June 15, 2006. No
115 application may be filed under this section by a utility subject to a rate
116 moratorium.

394.312. 1. Competition to provide retail electric service, as between rural
2 electric cooperatives, electrical corporations and municipally owned utilities may be
3 displaced by written territorial agreements, but only to the extent hereinafter provided
4 for in this section.

5 2. Such territorial agreements shall specifically designate the boundaries of the
6 electric service area of each electric service supplier subject to the agreement, any and
7 all powers granted to a rural electric cooperative by a municipality, pursuant to the
8 agreement, to operate within the corporate boundaries of that municipality,
9 notwithstanding the provisions of section 394.020 and of section 394.080 to the contrary,
10 and any and all powers granted to a municipally owned utility, pursuant to the
11 agreement, to operate in areas beyond the corporate municipal boundaries of its
12 municipality.

13 **3. Where the parties cannot agree upon the boundaries of the electric**
14 **service areas that are to be set forth in the agreement,** they may, by mutual
15 consent of all parties involved, petition the public service commission to designate the
16 boundaries of the electric service areas to be served by each party and such designations
17 by the commission shall be binding on all such parties. Petitions shall be made pursuant
18 to the rules and regulations of the commission governing applications for certificates of
19 public convenience and necessity [and the commission shall be required to]. **The**
20 **commission shall** hold evidentiary hearings on all petitions so received, **except that**
21 **in those instances where the matter is resolved by a stipulation and**
22 **agreement submitted to the commission by all the parties, such hearings may**
23 **be waived by agreement of the parties.** The commission shall base its final
24 determination **regarding such petitions** upon a finding that the commission's
25 designation of electric service areas is in the public interest.

26 **[3.] 4.** The provisions of sections 386.310, RSMo, and 393.106, RSMo, and
27 sections 394.160 and 394.315 to the contrary notwithstanding, before becoming effective,
28 all territorial agreements entered into under the provisions of this section, including any
29 subsequent amendments to such agreements, or the transfer or assignment of the
30 agreement or any rights or obligations of any party to an agreement, shall receive the
31 approval of the public service commission by report and order. Applications for
32 commission approval shall be made and notice of such filing shall be given to other
33 electrical suppliers pursuant to the rules and regulations of the commission governing
34 applications for certificates of public convenience and necessity. Unless otherwise
35 ordered by the commission for good cause shown, the commission shall rule on such
36 applications not later than one hundred twenty days after the application is properly

37 filed with the secretary of the commission.

38 [4.] 5. The commission shall hold evidentiary hearings to determine whether
39 such territorial agreements should be approved or disapproved, **except that in those**
40 **instances where the matter is resolved by a stipulation and agreement**
41 **submitted to the commission by all the parties, such hearings may be waived**
42 **by agreement of the parties.** The commission may approve the application if it [shall
43 after hearing determine] **determines** that approval of the territorial agreement in total
44 is not detrimental to the public interest. Review of commission decisions under this
45 section shall be governed by the provisions of sections 386.500 to 386.550, RSMo.

46 [5.] 6. Commission approval of any territorial agreement entered into under the
47 provisions of this section shall in no way affect or diminish the rights and duties of any
48 supplier not a party to the agreement or of any electrical corporation authorized by law
49 to provide service within the boundaries designated in such territorial agreement. In the
50 event any electrical corporation which is not a party to the territorial agreement and
51 which is subject to the jurisdiction, control and regulation of the commission under
52 chapters 386, RSMo, and 393, RSMo, has heretofore sought or hereafter seeks
53 authorization from the commission to render electric service or construct, operate and
54 maintain electric facilities within the boundaries designated in any such territorial
55 agreement, the commission, in making its determination regarding such requested
56 authority, shall give no consideration or weight to the existence of any such territorial
57 agreement and any actual rendition of retail electric service by any of the parties to such
58 territorial agreement will not preclude the commission from granting the requested
59 authority.

60 [6.] 7. The commission shall have jurisdiction to entertain and hear complaints
61 involving any commission-approved territorial agreement. Such complaints shall be
62 brought and prosecuted in the same manner as other complaints before the
63 commission. [After hearing,] **The commission shall hold an evidentiary hearing**
64 **regarding such complaints, except that in those instances where the matter**
65 **is resolved by a stipulation and agreement submitted to the commission by all**
66 **the parties, such hearings may be waived by agreement of the parties.** If the
67 commission determines that [the] a territorial agreement [is not] **that is the subject**
68 **of a complaint is no longer** in the public interest, it shall have the authority to
69 suspend or revoke the territorial agreement. If the commission determines that the
70 territorial agreement is still in the public interest, such territorial agreement shall
71 remain in full force and effect. Except as provided in this section, nothing in this section
72 shall be construed as otherwise conferring upon the commission jurisdiction over the

73 service, rates, financing, accounting, or management of any rural electric cooperative or
74 municipally owned utility, or to amend, modify, or otherwise limit the rights of electrical
75 suppliers to provide service as otherwise provided by law.

76 [7.] 8. Notwithstanding the provisions of section 386.410, RSMo, the commission
77 shall by rule set a schedule of fees based upon its costs in reviewing proposed territorial
78 agreements for approval or disapproval. Responsibility for payment of the fees shall be
79 that of the parties to the proceeding as ordered by the commission in each case. The fees
80 shall be paid to the director of revenue who shall remit such payments to the state
81 treasurer. The state treasurer shall credit such payments to the public service
82 commission fund, or its successor fund, as established in section 33.571, RSMo. Nothing
83 in this section shall be construed as otherwise conferring upon the commission
84 jurisdiction over the service, rates, financing, accounting or management of any rural
85 electric cooperative or municipally owned utility and except as provided in this section
86 nothing shall affect the rights, privileges or duties of rural electric cooperatives,
87 electrical corporations or municipally owned utilities.

88 **9. Notwithstanding any other provision of this section, the commission**
89 **may hold a hearing regarding any application, complaint, or petition filed**
90 **pursuant to this section upon its own motion.**

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