

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 673
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Energy and Environment March 15, 2007 with recommendation that House Committee Substitute for House Bill No. 673 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

1908L.02C

AN ACT

To repeal section 386.266, RSMo, and to enact in lieu thereof one new section relating to the public service commission.

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

Section A. Section 386.266, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 386.266, to read as follows:

386.266. 1. Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

2. Subject to the requirements of this section, any electrical, gas, or water corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule. Any rate adjustment made under such rate schedules shall not exceed an annual amount equal to two and one-half percent of the electrical, gas, or water corporation's Missouri gross jurisdictional revenues, excluding gross receipts tax, sales tax

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

15 and other similar pass-through taxes not included in tariffed rates, for regulated services as
16 established in the utility's most recent general rate case or complaint proceeding. In addition to
17 the rate adjustment, the electrical, gas, or water corporation shall be permitted to collect any
18 applicable gross receipts tax, sales tax, or other similar pass-through taxes, and such taxes shall
19 not be counted against the two and one-half percent rate adjustment cap. Any costs not
20 recovered as a result of the annual two and one-half percent limitation on rate adjustments may
21 be deferred, at a carrying cost each month equal to the utilities net of tax cost of capital, for
22 recovery in a subsequent year or in the corporation's next general rate case or complaint
23 proceeding.

24 3. Subject to the requirements of this section, any gas corporation may make an
25 application to the commission to approve rate schedules authorizing periodic rate adjustments
26 outside of general rate proceedings to reflect the nongas revenue effects of increases or decreases
27 in residential and commercial customer usage due to variations in either weather, conservation,
28 or both.

29 4. The commission shall have the power to approve, modify, or reject adjustment
30 mechanisms submitted under subsections 1 to 3 of this section only after providing the
31 opportunity for a full hearing in a general rate proceeding, including a general rate proceeding
32 initiated by complaint. The commission may approve such rate schedules after considering all
33 relevant factors which may affect the costs or overall rates and charges of the corporation,
34 provided that it finds that the adjustment mechanism set forth in the schedules:

35 (1) Is reasonably designed to provide the utility with a sufficient opportunity to earn [a
36 fair] a **just and reasonable** return on equity;

37 (2) Includes provisions for an annual true-up which shall accurately and appropriately
38 remedy any over- or under-collections, including interest at the utility's short-term borrowing
39 rate, through subsequent rate adjustments or refunds;

40 (3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of this
41 section, includes provisions requiring that the utility file a general rate case with the effective
42 date of new rates to be no later than four years after the effective date of the commission order
43 implementing the adjustment mechanism. However, with respect to each mechanism, the
44 four-year period shall not include any periods in which the utility is prohibited from collecting
45 any charges under the adjustment mechanism, or any period for which charges collected under
46 the adjustment mechanism must be fully refunded. In the event a court determines that the
47 adjustment mechanism is unlawful and all moneys collected thereunder are fully refunded, the
48 utility shall be relieved of any obligation under that adjustment mechanism to file a rate case;

49 (4) In the case of an adjustment mechanism submitted under subsection 1 or 2 of this
50 section, includes provisions for prudence reviews of the costs subject to the adjustment

51 mechanism no less frequently than at eighteen-month intervals, and shall require refund of any
52 imprudently incurred costs plus interest at the utility's short-term borrowing rate.

53 5. Once such an adjustment mechanism is approved by the commission under this
54 section, it shall remain in effect until such time as the commission authorizes the modification,
55 extension, or discontinuance of the mechanism in a general rate case or complaint proceeding.
56 **If while the adjustment mechanism is in effect, however, the utility for four consecutive**
57 **quarterly reporting periods, reviewed quarterly, earns more than one hundred basis points**
58 **in excess of its authorized return on equity, the utility shall, within ninety days, initiate a**
59 **general rate case.**

60 6. Any amounts charged under any adjustment mechanism approved by the commission
61 under this section shall be separately disclosed on each customer bill.

62 7. The commission may take into account any change in business risk to the corporation
63 resulting from implementation of the adjustment mechanism in setting the corporation's allowed
64 return in any rate proceeding, in addition to any other changes in business risk experienced by
65 the corporation.

66 8. In the event the commission lawfully approves an incentive- or performance-based
67 plan, such plan shall be binding on the commission for the entire term of the plan. This
68 subsection shall not be construed to authorize or prohibit any incentive- or performance-based
69 plan.

70 9. Prior to August 28, 2005, the commission shall have the authority to promulgate rules
71 under the provisions of chapter 536, RSMo, as it deems necessary, to govern the structure,
72 content and operation of such rate adjustments, and the procedure for the submission, frequency,
73 examination, hearing and approval of such rate adjustments. Such rules shall be promulgated
74 no later than one hundred fifty days after the initiation of such rulemaking proceeding. Any
75 electrical, gas, or water corporation may apply for any adjustment mechanism under this section
76 whether or not the commission has promulgated any such rules.

77 10. Nothing contained in this section shall be construed as affecting any existing
78 adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism
79 currently approved and in effect.

80 11. Each of the provisions of this section is severable. In the event any provision or
81 subsection of this section is deemed unlawful, all remaining provisions shall remain in effect.

82 12. The provisions of this section shall take effect on January 1, 2006, and the
83 commission shall have previously promulgated rules to implement the application process for
84 any rate adjustment mechanism under this section prior to the commission issuing an order for
85 any rate adjustment.

86 13. The public service commission shall appoint a task force, consisting of all interested
87 parties, to study and make recommendations on the cost recovery and implementation of
88 conservation and weatherization programs for electrical and gas corporations.

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