

FIRST REGULAR SESSION

HOUSE BILL NO. 946

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WALSH (Sponsor), WILDBERGER, ROORDA, MEINERS,
ZWEIFEL, LIESE, DONNELLY, MEADOWS, WALLACE, KRATKY, PAGE, SPRENG, VOGT,
HARRIS (110), FRAME, CHAPPELLE-NADAL, LOWE (44), NORR, GEORGE, BOWMAN, DAUS,
VILLA AND SCHOEMEHL (Co-sponsors).

Read 1st time February 22, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2116L.01I

AN ACT

To repeal sections 386.266 and 393.140, RSMo, and to enact in lieu thereof four new sections relating to electrical corporations, with penalty provisions.

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

Section A. Sections 386.266 and 393.140, RSMo, are repealed and four new sections
2 enacted in lieu thereof, to be known as sections 386.266, 393.140, 393.141, and 393.144, to read
3 as follows:

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

8 2. Subject to the requirements of this section, any electrical, gas, or water corporation
9 may make an application to the commission to approve rate schedules authorizing periodic rate
10 adjustments outside of general rate proceedings to reflect increases and decreases in its prudently
11 incurred costs, whether capital or expense, to comply with any federal, state, or local
12 environmental law, regulation, or rule. Any rate adjustment made under such rate schedules

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.

13 shall not exceed an annual amount equal to two and one-half percent of the electrical, gas, or
14 water corporation's Missouri gross jurisdictional revenues, excluding gross receipts tax, sales tax
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 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 6. Any amounts charged under any adjustment mechanism approved by the commission
57 under this section shall be separately disclosed on each customer bill.

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

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

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

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

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

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

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

85 **14. The commission shall not accept an application submitted to the commission**
86 **under this section by any electrical corporation in violation of any regulation promulgated**
87 **under subdivision (4) of section 393.140, RSMo, until such corporation is in compliance**
88 **with all such regulations.**

393.140. The commission shall:

2 (1) Have general supervision of all gas corporations, electrical corporations, water
3 corporations and sewer corporations having authority under any special or general law or under
4 any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other
5 fixtures in, over or under the streets, highways and public places of any municipality, for the
6 purpose of furnishing or distributing water or gas or of furnishing or transmitting electricity for
7 light, heat or power, or maintaining underground conduits or ducts for electrical conductors, or
8 for the purpose of collecting, carrying, treating, or disposing of sewage, and all gas plants,
9 electric plants, water systems and sewer systems owned, leased or operated by any gas
10 corporation, electrical corporation, water corporation, or sewer corporation.

11 (2) Investigate and ascertain, from time to time, the quality of gas or water supplied and
12 sewer service furnished by persons and corporations, examine or investigate the methods
13 employed by such persons and corporations in manufacturing, distributing and supplying gas or
14 electricity for light, heat or power and in transmitting the same, and in supplying and distributing
15 water for any purpose whatsoever, and in furnishing a sewer system, and have power to order
16 such reasonable improvements as will best promote the public interest, preserve the public health
17 and protect those using such gas, electricity, water, or sewer system, and those employed in the
18 manufacture and distribution thereof, and have power to order reasonable improvements and
19 extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices,
20 apparatus and property of gas corporations, electrical corporations, water corporations, and sewer
21 corporations.

22 (3) Have power, by order, to fix from time to time standards for the measurement of the
23 purity or illuminating power of gas to be manufactured, distributed or sold by persons or
24 corporations for lighting, heating or power purposes, to prescribe from time to time the efficiency
25 of the electric supply system, of the current supplied and of the lamps furnished by the persons
26 or corporations generating and selling electric current, and to fix from time to time standards for
27 the measurement of the purity or pressure of water to be distributed or sold by persons or
28 corporations for any purpose whatsoever, and to fix from time to time the standards for
29 designing, constructing, operating and maintaining sewer systems of sewer corporations,
30 including sewers, sewage pumping stations, sewage treatment works, primary treatment
31 facilities, sludge digestion and disposal facilities, secondary treatment facilities, disinfection
32 facilities, and any and all facilities related thereto; provided, however, that such standards shall

33 be supplemental to and in no way set standards lesser than the minimum standards adopted by
34 the state water pollution board, and by order to require gas so manufactured, distributed or sold
35 to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum
36 and maximum pressure at which gas shall be delivered by said persons or corporations. For the
37 purpose of determining whether the gas manufactured, distributed or sold by such persons or
38 corporations for lighting, heating or power purposes conforms to the standards of illuminating
39 power, purity and pressure, and for the purpose of determining whether the efficiency of the
40 electric supply system, of the current supplied and of the lamps furnished, and for the purpose
41 of determining whether the water furnished or sold conforms to the standard of purity and
42 pressure, and for the purpose of determining whether the sewer system conforms to the standards
43 for designing, constructing, operating and maintaining sewer systems, and conforms to the orders
44 issued by the commission, the commission shall have power, of its own motion, to examine and
45 investigate the plants and methods employed in manufacturing, delivering and supplying gas,
46 electricity or water, and the collecting, carrying, treating and disposing of sewage, and shall have
47 access, through its members or persons employed and authorized by it, to make such
48 examinations and investigations to all parts of the manufacturing plants owned, used or operated
49 for the manufacture, transmission or distribution of gas or electricity by any such person or
50 corporation, and to all parts of the systems owned, used or operated for the supplying and
51 distribution of water and the collecting, carrying, treating and disposing of sewage by any such
52 person or corporation. Any employee or agent of the commission who divulges any fact or
53 information which may come to his knowledge during the course of any such inspection or
54 examination, except insofar as he may be directed by the commission, or by a court or judge
55 thereof, or authorized by law, shall be guilty of a misdemeanor.

56 (4) **Promulgate rules by January 1, 2008, under the authority of section 386.125,**
57 **RSMo, that establish:**

58 (a) **Minimum standards for the management of vegetation in, and adjacent to, the**
59 **utility system easement or right-of-way of electrical corporations. Such standards may be**
60 **prescriptive standards, performance standards, or both;**

61 (b) **Minimum standards for the inspection, maintenance, repair, and replacement**
62 **of utility infrastructure used by electrical corporations for the provision of electrical**
63 **service. Such standards may be prescriptive standards, performance standards, or both;**

64 (c) **Minimum reliability standards for the provision of utility service by electrical**
65 **corporations. Such standards shall include conditions under which electrical corporations**
66 **shall reimburse any customer who sustains economic loss or damage valued over two**
67 **hundred dollars that results from electric service outages in violation of the standards**
68 **developed under this paragraph;**

69 **(d) Reporting requirements for electrical corporations under the requirements of**
70 **paragraphs (a), (b), and (c) of this subdivision. Any reports issued by an electrical**
71 **corporation under this subdivision shall be made available to the public; and**

72 **(e) A schedule of penalties to be assessed against any electrical corporation in**
73 **violation of any provision of this subdivision, with no single penalty to exceed two hundred**
74 **fifty thousand dollars per day per violation.**

75 **(5) Conduct inspection and monitoring activities as necessary to ensure and enforce**
76 **compliance by electrical corporations with the standards developed under subdivision 4**
77 **of this section.**

78 **(6)** Have power, in its discretion, to prescribe uniform methods of keeping accounts,
79 records and books, to be observed by gas corporations, electrical corporations, water corporations
80 and sewer corporations engaged in the manufacture, sale or distribution of gas and electricity for
81 light, heat or power, or in the distribution and sale of water for any purpose whatsoever, or in the
82 collection, carriage, treatment and disposal of sewage for municipal, domestic or other necessary
83 beneficial purpose. It may also, in its discretion, prescribe, by order, forms of accounts, records
84 and memoranda to be kept by such persons and corporations. Notice of alterations by the
85 commission in the required method or form of keeping a system of accounts shall be given to
86 such persons or corporations by the commission at least six months before the same shall take
87 effect. Any other and additional forms of accounts, records and memoranda kept by such
88 corporation shall be subject to examination by the commission.

89 **[(5)] (7)** Examine all persons and corporations under its supervision and keep informed
90 as to the methods, practices, regulations and property employed by them in the transaction of
91 their business. Whenever the commission shall be of the opinion, after a hearing had upon its
92 own motion or upon complaint, that the rates or charges or the acts or regulations of any such
93 persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential
94 or in any wise in violation of any provision of law, the commission shall determine and prescribe
95 the just and reasonable rates and charges thereafter to be in force for the service to be furnished,
96 notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the
97 just and reasonable acts and regulations to be done and observed; and whenever the commission
98 shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the
99 property, equipment or appliances of any such person or corporation are unsafe, insufficient or
100 inadequate, the commission shall determine and prescribe the safe, efficient and adequate
101 property, equipment and appliances thereafter to be used, maintained and operated for the
102 security and accommodation of the public and in compliance with the provisions of law and of
103 their franchises and charters.

104 [(6)] **(8)** Require every person and corporation under its supervision and it shall be the
105 duty of every person and corporation to file with the commission an annual report, verified by
106 the oath of the president, treasurer, general manager or receiver, if any, thereof. The verification
107 shall be made by said official holding office at the time of the filing of said report, and if not
108 made upon the knowledge of the person verifying the same, shall set forth the sources of his
109 information and the grounds of his belief as to any matters not stated to be verified upon his
110 knowledge. The report shall show in detail the amount of its authorized capital stock and the
111 amount thereof issued and outstanding; the amount of its authorized bonded indebtedness and
112 the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; its
113 receipts and expenditures during the preceding year; the amount paid as dividends upon its stock
114 and as interest upon its bonds; the names of its officers and the aggregate amount paid as salaries
115 to them and the amount paid as wages to its employees; the location of its plant or plants and
116 system, with a full description of its property and franchises, stating in detail how each franchise
117 stated to be owned was acquired; and such other facts pertaining to the operation and
118 maintenance of the plant and system, and the affairs of such person or corporation as may be
119 required by the commission. Such reports shall be in the form, cover the period and be filed at
120 the time prescribed by the commission. The commission may, from time to time, make changes
121 and additions in such forms. When any such report is defective or believed to be erroneous, the
122 commission shall notify the person or corporation making such report to amend the same within
123 a time prescribed by the commission. Any such person or corporation which shall neglect to
124 make any such report or which shall fail to correct any such report within the time prescribed by
125 the commission shall be liable to a penalty of one hundred dollars and an additional penalty of
126 one hundred dollars for each day after the prescribed time for which it shall neglect to file or
127 correct the same, to be sued for in the name of the state of Missouri. The amount recovered in
128 any such action shall be paid to the public school fund of the state. The commission may extend
129 the time prescribed for cause shown.

130 [(7)] **(9)** Have power, either through its members or inspectors or employees duly
131 authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories,
132 powerhouses, ducts, conduits and offices of any such corporations or persons.

133 [(8)] **(10)** Have power to examine the accounts, books, contracts, records, documents and
134 papers of any such corporation or person, and have power, after hearing, to prescribe by order
135 the accounts in which particular outlays and receipts shall be entered, charged or credited.

136 [(9)] **(11)** Have power to compel, by subpoena duces tecum, the production of any
137 accounts, books, contracts, records, documents, memoranda and papers. In lieu of requiring
138 production of originals by subpoena duces tecum the commission or any commissioner may
139 require sworn copies of any such books, records, contracts, documents and papers, or parts

140 thereof, to be filed with it. The commission may require of all such corporations or persons
141 specific answers to questions upon which the commission may need information, and may also
142 require such corporations or persons to file periodic reports in the form, covering the period and
143 filed at the time prescribed by the commission. If such corporation or person shall fail to make
144 specific answer to any question or shall fail to make a periodic report when required by the
145 commission as herein provided within the time and in the form prescribed by the commission
146 for the making and filing of any such report or answer, such corporation or person shall forfeit
147 to the state the sum of one hundred dollars for each and every day it shall continue to be in
148 default with respect to such report or answer. Such forfeiture shall be recovered in an action
149 brought by the commission in the name of the state of Missouri. The amount recovered in any
150 such action shall be paid to the public school fund of the state.

151 [(10)] **(12)** Have power in all parts of the state, either as a commission or through its
152 members, to subpoena witnesses, take testimony and administer oaths to witnesses in any
153 proceeding or examination instituted before it, or conducted by it, in reference to any matter
154 under sections 393.110 to 393.285.

155 [(11)] **(13)** Have power to require every gas corporation, electrical corporation, water
156 corporation, and sewer corporation to file with the commission and to print and keep open to
157 public inspection schedules showing all rates and charges made, established or enforced or to be
158 charged or enforced, all forms of contract or agreement and all rules and regulations relating to
159 rates, charges or service used or to be used, and all general privileges and facilities granted or
160 allowed by such gas corporation, electrical corporation, water corporation, or sewer corporation;
161 but this subdivision shall not apply to state, municipal or federal contracts. Unless the
162 commission otherwise orders, no change shall be made in any rate or charge, or in any form of
163 contract or agreement, or any rule or regulation relating to any rate, charge or service, or in any
164 general privilege or facility, which shall have been filed and published by a gas corporation,
165 electrical corporation, water corporation, or sewer corporation in compliance with an order or
166 decision of the commission, except after thirty days' notice to the commission and publication
167 for thirty days as required by order of the commission, which shall plainly state the changes
168 proposed to be made in the schedule then in force and the time when the change will go into
169 effect. The commission for good cause shown may allow changes without requiring the thirty
170 days' notice under such conditions as it may prescribe. No corporation shall charge, demand,
171 collect or receive a greater or less or different compensation for any service rendered or to be
172 rendered than the rates and charges applicable to such services as specified in its schedule filed
173 and in effect at the time; nor shall any corporation refund or remit in any manner or by any
174 device any portion of the rates or charges so specified, nor to extend to any person or corporation
175 any form of contract or agreement, or any rule or regulation, or any privilege or facility, except

176 such as are regularly and uniformly extended to all persons and corporations under like
177 circumstances. The commission shall have power to prescribe the form of every such schedule,
178 and from time to time prescribe by order such changes in the form thereof as may be deemed
179 wise. The commission shall also have power to establish such rules and regulations, to carry into
180 effect the provisions of this subdivision, as it may deem necessary, and to modify and amend
181 such rules or regulations from time to time.

182 [(12)] (14) In case any electrical corporation, gas corporation, water corporation or sewer
183 corporation engaged in carrying on any other business than owning, operating or managing a gas
184 plant, electric plant, water system or sewer system which other business is not otherwise subject
185 to the jurisdiction of the commission, and is so conducted that its operations are to be
186 substantially kept separate and apart from the owning, operating, managing or controlling of such
187 gas plant, electric plant, water system or sewer system, said corporation in respect to such other
188 business shall not be subject to any of the provisions of this chapter and shall not be required to
189 procure the consent or authorization of the commission to any act in such other business or to
190 make any report in respect thereof. But this subdivision shall not restrict or limit the powers of
191 the commission in respect to the owning, operating, managing or controlling by such corporation
192 of such gas plant, electric plant, water system or sewer system, and said powers shall include also
193 the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and
194 expenses fairly and justly to be awarded to or borne by the ownership, operation, management
195 or control of such gas plant, electric plant, water system or sewer system as distinguished from
196 such other business. In any such case if the owning, operating, managing or controlling of such
197 gas plant, electric plant, water system or sewer system by any such corporation is wholly
198 subsidiary and incidental to the other business carried on by it and is inconsiderable in amount
199 and not general in its character, the commission may by general rules exempt such corporation
200 from making full reports and from the keeping of accounts as to such subsidiary and incidental
201 business.

**393.141. The costs associated with any penalties paid by an electrical corporation
2 under section 393.144 or with any reimbursements paid to customers under paragraph (c)
3 of subdivision (4) of section 393.140 shall be borne solely by such corporation's
4 shareholders, and shall not be passed on to the corporation's customers in any form.**

**393.144. 1. In addition to any other remedy provided by law, upon a determination
2 by the commission that any standard, rule, or regulation promulgated pursuant to
3 subdivision 4 of section 393.140 has been violated by any electrical corporation, the
4 commission may issue an order assessing an administrative penalty upon the violator
5 under this section. An administrative penalty shall not be imposed until the commission
6 has sought to resolve the violations through conference, conciliation and persuasion. If the**

7 violation is resolved through conference, conciliation and persuasion, no administrative
8 penalty shall be assessed unless the violation was knowingly committed.

9 2. The maximum amount of administrative penalties assessed pursuant to this
10 section shall be no more than two hundred fifty thousand per day, or part thereof, for each
11 violation. In determining the amount of the administrative penalty, the commission shall
12 take into consideration all relevant circumstances, including, but not limited to, the harm
13 which the violation causes or may cause, the violator's previous compliance record with the
14 standards in subdivision (4) of section 393.140, the nature and persistence of the violation,
15 any corrective actions taken, and any other factors which the commission may reasonably
16 deem relevant.

17 3. Any order assessing an administrative penalty shall state that an administrative
18 penalty is being assessed under this section and that the corporation subject to the penalty
19 may appeal as provided by this section. Any such order which fails to state the law or
20 regulation under which the penalty is being sought, the manner of collection or rights of
21 appeal shall result in the state's waiving any right to collection of the penalty. An
22 administrative penalty shall be paid within sixty days from the date of issuance of the order
23 assessing the penalty. Any corporation subject to an administrative penalty may appeal
24 to the commission. Any appeal shall stay the due date of such administrative penalty until
25 the appeal is resolved. Any corporation that fails to pay an administrative penalty by the
26 final due date shall be liable to the state for a surcharge of fifteen percent of the penalty
27 plus ten percent per annum on any amounts owed. Any administrative penalty paid
28 pursuant to this section shall be handled in accordance with article IX, section 15 of the
29 Missouri Constitution. An action may be brought in the appropriate circuit court to collect
30 any unpaid administrative penalty, and for attorney's fees and costs incurred directly in
31 the collection thereof.

32 4. An administrative penalty assessed under this section shall not be increased in
33 those instances where commission action, or failure to act, has caused a continuation of the
34 violation that was a basis for the penalty. Any administrative penalty shall be assessed
35 within two years following the commission's initial discovery of such alleged violation, or
36 from the date the commission in the exercise of ordinary diligence should have discovered
37 such alleged violation.

38 5. Any final order imposing an administrative penalty under this section is subject
39 to judicial review upon the filing of a petition pursuant to section 536.100, RSMo, by any
40 corporation subject to the administrative penalty. No judicial review shall be available,
41 however, until all administrative remedies are exhausted.

42 **6. The state may elect to assess an administrative penalty under this section, or, in**
43 **lieu thereof, to request that the attorney general or prosecutor file an appropriate legal**
44 **action seeking a civil penalty in the appropriate circuit court.**

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