

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 376
95TH GENERAL ASSEMBLY

1744L.06C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 393.275 and 660.122, RSMo, and to enact in lieu thereof eight new sections relating to energy efficiency investments by electric corporations, with an expiration date for a certain section and a penalty provision.

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

Section A. Sections 393.275 and 660.122, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 8.305, 393.275, 393.1016, 393.1017, 393.1018, 393.1124, 660.121, and 660.122, to read as follows:

8.305. 1. Any appliance purchased with state moneys or a portion of state moneys shall be an appliance that has earned the Energy Star under the Energy Star program co-sponsored by the United States Department of Energy and the United States Environmental Protection Agency. For purposes of this section, the term "appliance" shall have the same meaning as in section 144.526, RSMo.

2. The commissioner of the office of administration may exempt any appliance from the requirements of subsection 1 of this section when the cost of compliance is expected to exceed the projected energy cost savings gained.

3. The provisions of this section shall expire on August 28, 2011.

393.275. 1. The commission shall notify the governing body of each city or county imposing a business license tax pursuant to section 66.300, 92.045, 94.110, 94.270 or 94.360, RSMo, or a similar tax adopted pursuant to charter provisions in any constitutional charter city with a population of at least three hundred fifty thousand inhabitants which is located in more

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.

5 than one county, on gross receipts of any gas corporation, electric corporation, water corporation
6 or sewer corporation of any tariff increases authorized for such firm doing business in that city
7 or county if the approved increase exceeds seven percent. The commission shall include with
8 such notice to any city or county the percentage increase approved for the utility, together with
9 an estimate of the annual increase in gross receipts resulting from the tariff increase on customers
10 residing in that city or county. The provisions of this subsection shall not apply to rate
11 adjustments in the purchase price of natural gas which are approved by the commission.

12 2. The governing body of each city or county notified of a tariff increase as provided in
13 subsection 1 of this section shall reduce the tax rate of its business license tax on the gross
14 receipts of utility corporations. Within sixty days of the effective date of the tariff increase, the
15 tax rate shall be reduced to the extent necessary so that revenue for the ensuing twelve months
16 will be approximately equal to the revenue received during the preceding twelve months plus a
17 growth factor. The growth factor shall be equal to the average of the additional revenue received
18 in each of the preceding three years. However, a city or county may maintain the tax rate of its
19 business license tax on the gross receipts of utility corporations without reduction if an ordinance
20 to maintain the tax rate is enacted by the governing body of the city or an order to maintain the
21 tax rate is issued by the governing body of the county after September 28, 1985. The provisions
22 of this subsection shall not apply to rate adjustments in the purchase price of natural gas which
23 are approved by the commission **and such purchased gas adjustment rates shall include the**
24 **gas cost portion of net write-offs incurred by the gas corporation in providing service to**
25 **system sales customers upon the filing and approval of new rate schedules applicable to**
26 **such customers. Such rate schedules shall be designed to simultaneously decrease the gas**
27 **corporation's base rates and increase its purchased gas adjustment rates by like amounts**
28 **so as to reasonably ensure that the gas cost portion of the net write-offs applicable to such**
29 **customers, as such portion is determined by the commission, is only being recovered once**
30 **through the gas corporation's purchased gas adjustment rates. Increases and decreases**
31 **in the gas cost portion of net write-offs shall thereafter be reflected in the gas corporation's**
32 **purchased gas adjustment rates under tariff provisions approved by the commission**
33 **provided, however, that such tariff provisions shall:**

34 (1) Limit increases or decreases in the gas cost portion of net write-offs as reflected
35 in purchased gas adjustment rates to once each year;

36 (2) Require a true-up of the gas cost portion of net write-offs as reflected in
37 purchased gas adjustment rates once each year; and

38 (3) Require commission review of the gas cost portion of net write-offs as reflected
39 in purchased gas adjustment rates once each year to ensure that the gas corporation is
40 prudently pursuing collection of amounts owed by its customers.

393.1016. As used in sections 393.1016 to 393.1018, the following terms mean:

(1) "Appropriate pretax revenues", the revenues necessary to produce net operating income equal to:

(a) The electric corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS; and

(b) Recover state, federal, and local income tax or excise taxes applicable to such income; and

(c) Recover all other ISRS costs;

(2) "Commission", the Missouri public service commission;

(3) "Eligible infrastructure system replacements", electric utility transmission and distribution plant projects that:

(a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;

(b) Are in service and used and useful;

(c) Were not included in the electric corporation's rate base in its most recent general rate case; and

(d) Replace existing infrastructure;

(4) "Electric corporation", every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever owning, operating, controlling, or managing any electric plant operating for public use under privilege, license, or franchise now or hereafter granted by the state or any political subdivision, county, or municipality thereof as defined in section 386.020, RSMo;

(5) "Electric utility transmission and distribution plant projects", may consist only of:

(a) Poles, towers, cables, wire, conduits, vaults, transformers, breakers, switchgear, reclosers, switches, protective relay devices, SCADA and telecommunications devices, stationary batteries, substation structures, and other electrical system components installed as replacements for existing facilities that have worn out or are in deteriorated condition, including but not limited to replacements made in accordance with the commission's rule addressing electrical corporation infrastructure standards, 4 CSR 240-23.020; and

(b) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of

37 eminent domain provided that the costs related to such projects have not been reimbursed
38 to the electric corporation;

39 (6) "ISRS", infrastructure system replacement surcharge;

40 (7) "ISRS costs", depreciation expense and property taxes that will be due within
41 twelve months of the ISRS filing;

42 (8) "ISRS revenues", revenues produced through an ISRS exclusive of revenues
43 from all other rates and charges.

393.1017. 1. Notwithstanding any provisions of chapter 386, RSMo, and this
2 chapter to the contrary, beginning August 28, 2009, an electric corporation providing
3 electric service may file a petition and proposed rate schedules with the commission to
4 establish or change ISRS rate schedules that will allow for the adjustment of the electric
5 corporation's rates and charges to provide for the recovery of costs for eligible
6 infrastructure system replacements. The commission shall not approve an ISRS to the
7 extent it would produce total annualized ISRS revenues below the lesser of one million
8 dollars or one-half of one percent of the electric corporation's base revenue level approved
9 by the commission in the electric corporation's base revenue level approved by the
10 commission in the electric corporation's most recent general rate proceeding. The
11 commission shall not approve an ISRS to the extent it would produce total annualized
12 ISRS revenues exceeding ten percent of the electric corporation's base revenue level
13 approved by the commission in the electric corporation's most recent general rate
14 proceeding. An ISRS and any future changes thereto shall be calculated and implemented
15 in accordance with the provisions of sections 393.1016 to 393.1018. ISRS revenues shall
16 be subject to a refund based upon a finding and order of the commission to the extent
17 provided in subsections 5 and 8 of section 393.1018.

18 2. The commission shall not approve an ISRS for any electric corporation that has
19 not had a general rate proceeding decided or dismissed by issuance of a commission order
20 within the past five years, unless the electric corporation has filed for or is the subject of
21 a new general rate proceeding.

22 3. In no event shall an electric corporation collect an ISRS for a period exceeding
23 five years unless the electric corporation has filed for or is the subject of a new general rate
24 proceeding; provided that the ISRS may be collected until the effective date of new rate
25 schedules established as a result of the new general rate proceeding, or until the subject
26 general rate proceeding is otherwise decided or dismissed by issuance of a commission
27 order without new rates being established.

393.1018. 1. (1) At the time that an electric corporation files a petition with the
2 commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate

3 schedules and its supporting documentation regarding the calculation of the proposed
4 ISRS with the petition, and shall serve the office of the public counsel with a copy of its
5 petition, its proposed rate schedules, and its supporting documentation.

6 (2) Upon the filing of a petition and any associated rate schedules, seeking to
7 establish or change an ISRS, the commission shall publish notice of the filing.

8 2. (1) When a petition, along with any associated proposed rate schedules, is filed
9 under the provisions of sections 393.1016 to 393.1018, the commission shall conduct an
10 examination of the proposed ISRS.

11 (2) The staff of the commission may examine information of the electric corporation
12 to confirm that the underlying costs are in accordance with the provisions of sections
13 393.1016 to 393.1018, and to confirm proper calculation of the proposed charge, and may
14 submit a report regarding its examination to the commission not later than sixty days after
15 the petition is filed. No other revenue requirement or ratemaking issues may be examined
16 in consideration of the petition or associated proposed rate schedules filed under the
17 provisions of sections 393.1016 to 393.1018.

18 (3) The commission may hold a hearing on the petition and any associated rate
19 schedules and shall issue an order to become effective not later than one hundred twenty
20 days after the petition is filed.

21 (4) If the commission finds that a petition complies with the requirements of
22 sections 393.1016 to 393.1018, the commission shall enter an order authorizing the
23 corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as
24 determined by the commission under the provisions of sections 393.1016 to 393.1018.

25 3. An electric corporation may effectuate a change in its rate under the provisions
26 of this section no more than two times every twelve months.

27 4. In determining the appropriate pretax revenue, the commission shall consider
28 only the following factors:

29 (1) The current state, federal, and local income tax or excise rates;

30 (2) The electric corporation's actual regulatory capital structure as determined
31 during the most recent general rate proceeding of the electric corporation;

32 (3) The actual cost rates for the electric corporation's debt and preferred stock as
33 determined during the most recent general rate proceeding of the electric corporation;

34 (4) The electric corporation's cost of common equity as determined during the most
35 recent general rate proceeding of the electric corporation;

36 (5) The current property tax rate or rates applicable to the eligible infrastructure
37 system replacements;

38 (6) The current depreciation rates applicable to the eligible infrastructure system
39 replacements; and

40 (7) In the event information under subdivisions (2), (3), and (4) of this subsection
41 are unavailable and the commission is not provided with such information as an
42 agreed-upon basis, the commission shall refer to the testimony submitted during the most
43 recent general rate proceeding of the electric corporation and use, in lieu of any such
44 unavailable information, the recommended capital structure, recommended cost rates for
45 debt and preferred stock, and recommended cost of common equity that would produce
46 the average weighted cost of capital based upon the various recommendations contained
47 in such testimony.

48 5. (1) The monthly ISRS charge may be calculated based on a reasonable estimate
49 of billing units in the period in which the charge will be in effect, which shall be
50 conclusively established by dividing the appropriate pretax revenues by the customer
51 numbers reported by the electric corporation in the annual report it most recently filed
52 with the commission under subdivision (6) of section 393.140, and then further dividing
53 this quotient by twelve. Provided, however, that the monthly ISRS may vary according to
54 customer class and may be calculated based on customer numbers as determined during
55 the most recent general rate proceeding of the electric corporation so long as the monthly
56 ISRS for each customer class maintains a proportional relationship equivalent to the
57 proportional relationship of the monthly customer charge for each customer class.

58 (2) At the end of each twelve-month calendar period the ISRS is in effect, the
59 electric corporation shall reconcile the differences between the revenues resulting from an
60 ISRS and the appropriate pretax revenues as found by the commission for that period and
61 shall submit the reconciliation and a proposed ISRS adjustment to the commission for
62 approval to recover or refund the difference, as appropriate, through adjustments of an
63 ISRS charge.

64 6. (1) An electric corporation that has implemented an ISRS under the provisions
65 of sections 393.1016 to 393.1018 shall file revised rate schedules to reset the ISRS to zero
66 when new base rates and charges become effective for the electric corporation following
67 a commission order establishing customer rates in a general rate proceeding that
68 incorporates in the utility's base rates subject to subsections 8 and 9 of this section eligible
69 costs previously reflected in an ISRS.

70 (2) Upon the inclusion in an electric corporation's base rates subject to subsections
71 8 and 9 of this section of eligible costs previously reflected in an ISRS, the electric
72 corporation shall immediately thereafter reconcile any previously unreconciled ISRS

73 revenues as necessary to ensure that revenues resulting from the ISRS match as closely as
74 possible the appropriate pretax revenues as found by the commission for that period.

75 7. An electric corporation's filing of a petition or change to an ISRS under the
76 provisions of sections 393.1016 to 393.1018 shall not be considered a request for a general
77 increase in the electric corporation's base rates and charges.

78 8. Commission approval of a petition and any associated rate schedules to establish
79 or change an ISRS under the provisions of sections 393.1016 to 393.1018 shall in no way
80 be binding upon the commission in determining the ratemaking treatment to be applied
81 to eligible infrastructure system replacements during a subsequent general rate proceeding
82 when the commission may undertake to review the prudence of such costs. In the event the
83 commission disallows, during a subsequent general rate proceeding, recovery of costs
84 associated with eligible infrastructure system replacements previously included in an ISRS,
85 the electric corporation shall offset its ISRS in the future as necessary to recognize and
86 account for any such overcollections.

87 9. Nothing in this section shall be construed as limiting the authority of the
88 commission to review and consider infrastructure system replacement costs along with
89 other costs during any general rate proceeding of any electric corporation.

90 10. Nothing contained in sections 393.1016 to 393.1018 shall be construed to impair
91 in any way the authority of the commission to review the reasonableness of the rates or
92 charges of an electric corporation, including review of the prudence of eligible
93 infrastructure system replacements made by an electric corporation, under the provisions
94 of section 386.390, RSMo.

95 11. The commission shall have the authority to promulgate rules for the
96 implementation of sections 393.1016 to 393.1018, but only to the extent such rules are
97 consistent with, and do not delay the implementation of, the provisions of sections 393.1016
98 to 393.1018. Any rule or portion of a rule, as that term is defined in section 536.010,
99 RSMo, that is created under the authority delegated in this section shall become effective
100 only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and,
101 if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
102 nonseverable and if any of the powers vested with the general assembly under chapter 536,
103 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are
104 subsequently held unconstitutional, then the grant of rulemaking authority and any rule
105 proposed or adopted after August 28, 2009, shall be invalid and void.

393.1124. 1. This section shall be known as the "Missouri Energy Efficiency
2 Investment Act".

3 2. As used in this section, the following terms shall mean:

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

5 (2) "Demand response", measures that decrease peak demand or shift demand to
6 off-peak periods;

7 (3) "Demand-side program", any program conducted by the utility to modify the
8 net consumption of electricity on the retail customer's side of the electric meter, including,
9 but not limited to energy efficiency measures, load management, demand response, and
10 interruptible or curtailable load;

11 (4) "Energy efficiency", measures that reduce the amount of electricity required
12 to achieve a given end use;

13 (5) "Interruptible or curtailable rate", a rate under which a customer receives a
14 reduced charge in exchange for agreeing to allow the utility to withdraw the supply of
15 electricity under certain specified conditions;

16 (6) "Total resource cost test", a test that compares the sum of avoided utility costs
17 and avoided probable environmental compliance costs to the sum of all incremental costs
18 of end-use measures that are implemented due to the program, as defined by the
19 commission in rules.

20 3. It shall be the policy of the state to value demand-side investments equal to
21 traditional investments in supply and delivery infrastructure and allow recovery of all
22 reasonable and prudent costs of delivering cost-effective demand-side programs. In
23 support of this policy, the commission shall:

24 (1) Provide timely cost recovery for utilities;

25 (2) Ensure that utility financial incentives are aligned with helping customers use
26 energy more efficiently and in a manner that sustains or enhances utility customers'
27 incentives to use energy more efficiently; and

28 (3) Provide timely earnings opportunities associated with cost-effective measurable
29 and verifiable efficiency savings.

30 4. The commission shall permit electric corporations to implement commission-
31 approved demand-side programs proposed pursuant to this section with a goal of achieving
32 all cost-effective demand-side savings. Recovery for such programs shall not be permitted
33 unless the programs are approved by the commission, result in energy or demand savings
34 and are beneficial to all customers in the customer class in which the programs are
35 proposed, regardless of whether the programs are utilized by all customers. The
36 commission shall consider the total resource cost test a preferred cost-effectiveness test.
37 Programs targeted to low-income customers or general education campaigns do not need
38 to meet a cost-effectiveness test, so long as the commission determines that the program or
39 campaign is in the public interest. Nothing herein shall preclude the approval of demand-

side programs that do not meet the test if the costs of the program above the level determined to be cost-effective are funded by the customers participating in the program or through tax or other governmental credits or incentives specifically designed for that purpose.

5. To comply with this section the commission may develop cost recovery mechanisms to further encourage investments in demand-side programs including, in combination and without limitation: capitalization of investments in and expenditures for demand-side programs, rate design modifications, accelerated depreciation on demand-side investments, and allowing the utility to retain a portion of the net benefits of a demand-side program for its shareholders. In setting rates the commission shall fairly apportion the costs and benefits of demand-side programs to each customer class except as provided for in subsection 6 of this section. Prior to approving a rate design modification associated with demand-side cost recovery, the commission shall conclude a docket studying the effects thereof and promulgate an appropriate rule.

6. The commission may reduce or exempt allocation of demand-side expenditures to low income classes, as defined in an appropriate rate proceeding, as a subclass of residential service.

7. Provided that the customer has notified the electric corporation that the customer elects not to participate in demand-side measures offered by an electrical corporation, none of the costs of demand-side measures of an electric corporation offered under this section or by any other authority, and no other charges implemented in accordance with this section, shall be assigned to any account of any customer, including its affiliates and subsidiaries, meeting one or more of the following criteria:

(1) The customer has one or more accounts within the service territory of the electrical corporation that has a demand of five thousand kilowatts or more;

(2) The customer operates an interstate pipeline pumping station, regardless of size; or

(3) The customer has accounts within the service territory of the electrical corporation that have, in aggregate, a demand of two thousand five hundred kilowatts or more, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.

The commission shall promulgate rules (1) requiring any customer seeking exemptions under this section to demonstrate that the customer has comprehensive energy efficiency initiatives in place that are funded using financial criteria similar to the total resource cost

76 test; and (2) requiring the customer to demonstrate an achievement of savings as
77 determined by the commission.

78 8. Customers that have notified the electrical corporation that they do not wish to
79 participate in demand-side programs under this section shall not subsequently be eligible
80 to participate in demand-side programs except under guidelines established by the
81 commission in rulemaking.

82 9. Customers who participate in demand-side programs initiated after August 1,
83 2009, shall be required to participate in program funding for a period of time to be
84 established by the commission in rulemaking.

85 10. Customers electing not to participate in an electric corporation's demand-side
86 programs under this section shall still be allowed to participate in interruptible or
87 curtailable rate schedules or tariffs offered by the electric corporation.

88 11. The commission shall provide oversight and may adopt rules and procedures
89 and approve corporation-specific settlements and tariff provisions, independent evaluation
90 of demand-side programs, as necessary, to ensure that electric corporations can achieve the
91 goals of this section. Any rule or portion of a rule, as that term is defined in section
92 536.010, RSMo, that is created under the authority delegated in this section shall become
93 effective only if it complies with and is subject to all of the provisions of chapter 536,
94 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
95 nonseverable and if any of the powers vested with the general assembly pursuant to
96 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule
97 are subsequently held unconstitutional, then the grant of rulemaking authority and any
98 rule proposed or adopted after August 28, 2009, shall be invalid and void.

99 12. Each electric corporation shall submit an annual report to the commission
100 describing the demand-side programs implemented by the utility in the previous year. The
101 report shall document program expenditures, including incentive payments, peak demand
102 and energy savings impacts and the techniques used to estimate those impacts, avoided
103 costs and the techniques used to estimate those costs, the estimated cost-effectiveness of the
104 demand-side programs, and the net economic benefits of the demand-side programs.

105 13. Charges attributable to demand-side programs under this section shall be
106 clearly shown as a separate line item on bills to the electrical corporation's customers.

107 14. (1) Any customer of an electrical corporation who has received a state tax
108 credit under sections 135.350 to 135.362, RSMo, or under sections 253.545 to 253.561,
109 RSMo, shall not be eligible for participation in any demand-side program offered by an
110 electrical corporation under this section if such program offers a monetary incentive to the
111 customer.

(2) As a condition of participation in any demand-side program offered by an electrical corporation under this section when such program offers a monetary incentive to the customer, the commission shall develop rules that require documentation to be provided by the customer to the electrical corporation to show that the customer has not received a tax credit listed in subdivision (1) of this subsection.

(3) The penalty for a customer who provides false documentation under subdivision (2) of this subsection shall be a class A misdemeanor.

15. The commission shall develop rules that provide for disclosure of participants in all demand-side programs offered by electrical corporations under this section when such programs provide monetary incentives to the customer. The disclosure required by this subsection may include, but not be limited to, the following: the name of the participant, or the names of the principles if for a company, the property address, and the amount of the monetary incentive received.

660.121. Any qualified individual household receiving energy assistance through the state utilicare program or the federal Low Income Home Energy Assistance Program shall be eligible to receive an assessment of additional needs, and shall be encouraged to attend any appropriate energy conservation workshop, financial management workshop, and any other education program conducted by the community action agencies as defined in sections 660.370 to 660.374, or any other public or nonprofit entity that is a state subgrantee with experience in assisting low-income persons that has, or is currently, administering an effective weatherization or energy efficiency program.

660.122. Funds appropriated under the authority of sections 660.100 to 660.136 may be used to pay the expenses of reconnecting or maintaining service to **eligible** households [that have had their primary or secondary heating or cooling source disconnected or service discontinued because of their failure to pay their bill]. **Eligible households which have paid or attempted to pay their utility bills shall not be discriminated against in receiving such assistance.** Any qualified household or other household which has as its head a person who is elderly or disabled, as defined in section 660.100, shall be eligible for assistance under this section if the income for the household is no more than one hundred fifty percent of the current federal poverty level or sixty percent of the state median income and if moneys have been appropriated by the general assembly to the utilicare stabilization fund established pursuant to section 660.136. Payments under this section shall be made directly to the primary or secondary heating or cooling source supplier. Any primary or secondary heating or cooling source supplier subject to the supervision and regulation of the public service commission shall, at any time during the period of the cold weather rule specified in the cold weather rule as established and as amended by the public service commission, reconnect and provide services to each household eligible for assistance

16 under this section in compliance with the terms of such cold weather rule, **provided that such**
17 **suppliers shall permit customers who have not yet been disconnected and who incurred an**
18 **arrearage during the cold weather rule period to retain service by paying during each of**
19 **the three months following the cold weather rule period an amount equal to one-third of**
20 **the customer's arrearage, plus the customer's current bill.** All home energy suppliers
21 receiving funds under this section shall provide service to eligible households consistent with
22 their contractual agreements with the department of social services **and sections 660.100 to**
23 **660.136.**

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