

FIRST REGULAR SESSION

HOUSE BILL NO. 1016

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHOELLER (Sponsor) AND COLONA (Co-sponsor).

2170L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 393, RSMo, by adding thereto three new sections relating to infrastructure replacement surcharge for electric corporations.

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

Section A. Chapter 393, RSMo, is amended by adding thereto three new sections, to be known as sections 393.1016, 393.1017, and 393.1018, to read as follows:

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;

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.

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

19 (d) Replace existing infrastructure;

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

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

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

34 (b) Facilities relocations required due to construction or improvement of a
35 highway, road, street, public way, or other public work by or on behalf of the United
36 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 agreed-
42 upon basis, the commission shall refer to the testimony submitted during the most recent
43 general rate proceeding of the electric corporation and use, in lieu of any such unavailable
44 information, the recommended capital structure, recommended cost rates for debt and
45 preferred stock, and recommended cost of common equity that would produce the average
46 weighted cost of capital based upon the various recommendations contained in such
47 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.**

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