

HCS SB 63 -- UTILITIES

SPONSOR: Mayer (Pollock)

COMMITTEE ACTION: Voted "do pass" by the Committee on Utilities by a vote of 15 to 7.

This substitute changes the laws regarding utilities. In its main provisions, the substitute:

(1) Allows each board member of a public water supply district to receive a fee of up to \$100 for attending each regularly or specially called board meeting. A member can receive payment for up to two meetings per month except those in a first classification county who can receive payment for up to four meetings per month. No member can be paid for attending more than one board meeting per week. The president of a board may receive an additional \$50 for attending each regularly or specially called board meeting but cannot receive the additional fee for attending more than two meetings in a month. A member will be reimbursed for any actual expenditures in the performance of his or her duties on behalf of the district. The circuit court having jurisdiction over the district is authorized to suspend or remove any member of the board for good cause upon a petition, notice, and hearing. A board member cannot receive any attendance fees or additional compensation until he or she has completed a minimum of six hours of training regarding the responsibilities of the board and its members concerning specified areas regarding the water supply district and the Open Meetings and Records Law, commonly known as the Sunshine Law. A water board member is prohibited from receiving any attendance fees or additional compensation if he or she fails to connect an eligible customer who has made a proper request for water service, has gone without water service, or has not been connected to water service within eight months of the request. Once service is restored or connected, the board member may again receive the attendance fee for the time periods after the re-connection or initial connection of service is made and may receive additional compensation (Section 247.060, RSMo);

(2) Removes the certified mail requirement for nonpayment of sewer service charges. Currently, any municipality, sewer corporation, or sewer district that contracts with a water company to terminate water service to customer premises for nonpayment of sewer bills is required to send the notice of termination of water service by certified mail (Section 250.236);

(3) Prohibits a firm, corporation, or agency located in whole or in part outside the state with certain water withdrawing or diverting capabilities from transporting water withdrawn or

diverted from within the Southeast Missouri Regional Water District to a location outside of the water district if it interferes with the reasonable and customary activities of a registered major water user within the district (Sections 256.400 and 256.433);

(4) Reduces the total amount of assessments to all public utilities to fund the Missouri Public Service Commission from a maximum of one-fourth of 1% to twenty-two hundredths of 1% of the total gross intrastate operating revenues of all utilities subject to the jurisdiction of the commission and allows the Office of Public Counsel to be funded by a maximum of two hundredths of 1% of the total gross intrastate operating revenues of all utilities subject to the jurisdiction of the commission and the amount allocated to telecommunications companies cannot exceed 3% of the total estimated expenses directly attributable to the public counsel's responsibilities. The public counsel will be allowed to attribute regulatory expenses in the same manner as the commission for the purpose of receiving a proportion of gross operating revenue. If any electrical corporation is granted a license from the United States Nuclear Regulatory Commission, the commission funding must increase to an amount not to exceed twenty-three hundredths of 1% and the public counsel funding must increase to an amount not to exceed three hundredths of 1% of the total gross intrastate operating revenues of all utilities subject to the jurisdiction of the commission for the fiscal year after the license was granted and for each year thereafter (Section 386.370);

(5) Changes the appellate procedures for an issue initially decided by the Missouri Public Service Commission by:

(a) Requiring the commission in any proceeding resulting in the establishment of new rates for a public utility to cause to be prepared and approve a detailed reconciliation containing the dollar value and rate or charge impact of each contested issue decided by the commission;

(b) Allowing a notice of a commission order affecting a person or corporation to be provided by electronic service in addition to the current options of certified mail, electronic service, or prepaid mail to individuals or specified corporate employees that are subject to summons as provided in the rules of civil procedure;

(c) Specifying that within 15 days after a request for a rehearing is denied or a final decision on rehearing is made, an appellant may file a notice of appeal with the commission and with the appropriate appellate court. Currently, the appellant may apply to the appropriate circuit court within 30 days after

the rehearing is denied or the final decision on the rehearing is made;

(d) Requiring the commission within 30 days of the filing of the notice of appeal to certify its record in the case to the court of appeals and requires the appellant within 60 days of the filing of a notice of appeal to submit to the court its initial brief;

(e) Specifying that the commission and any party to a commission action or proceeding must have the right to intervene and submit briefs in the review proceedings to the court of appeals in accordance with the briefing schedule established by the court;

(f) Requiring the court of appeals, upon the submission of a case, to render its opinion affirming or setting aside in whole or in part the order or decision of the commission under review;

(g) Allowing an appellate court to stay or suspend the operation of a commission order or decision that does not involve the establishment of new rates and charges for a public utility if it determines that great or irreparable damage would otherwise result to the appellant;

(h) Allowing an appellate court to require the commission to provide temporary rate adjustments in a case where the court determines that a commission order or decision was unlawful or unreasonably decided. The requirements for calculating a temporary rate adjustment based on the type of deviation from lawful or reasonable rates are specified in the substitute;

(i) Specifying that no action affecting the public utility's collection of rates and charges can be taken in a case where the appellate court cannot make a determination because the commission failed to include adequate findings of fact to support the commission's decision and requires the commission to provide adequate findings of fact to support its decision or order within 90 days of receiving a court-issued mandate; and

(j) Allowing the commission and any party that is aggrieved by the opinion of an appellate court to seek rehearing and/or transfer to the Missouri Supreme Court under rules established by the court and removing the provision which requires a \$500 bond be filed within 10 days after a judgment has been entered in a circuit court in order to file an appeal with the Missouri Supreme Court or a court of appeals (Sections 386.420, 386.490, and 386.510 - 386.540);

(6) Requires after October 1, 2011, an electrical corporation seeking an early site permit from the United States Nuclear

Regulatory Commission, upon beginning the permitting process, to submit monitoring reports to the Missouri Public Service Commission every six months documenting work completed, total expenditures to date, work yet to be completed, and anticipated expenditures in order to obtain the permit. An electrical company that has obtained an early site permit is allowed to recover from ratepayers the costs associated with early site development for certain electrical generation facilities. An electric utility seeking a permit may recover up to \$45 million in prudently incurred expenses for obtaining a site permit. Rates may also be adjusted to allow recovery of interest on the uncollected principal balance at a per annum rate equal to the electric corporation's commission-approved return on the rate base. Recovery of the prudently incurred expenses will be allowed for up to 20 years and will commence with the effective date of tariffs approved by the commission in the applicable corporation's first general rate proceeding following the date on which the early site permit is obtained. This process will allow for the recovery of expenses made prior to the time that a generation facility is fully operational and, therefore, is an exception to Section 393.135. If an electrical corporation has recovered from ratepayers its expenses for the permit and it subsequently sells or transfers some or all of its interest in the permit or receives reimbursement for its expenses from another source, the commission will prescribe how reimbursement of these sums must be made to ratepayers and how any profits from the sale or transfer will be shared between the corporation and ratepayers. Credits made to ratepayers must include interest on the uncredited balance at an annual rate equal to the corporation's commission-approved short-term borrowing rate. If a license is not granted, the commission has authority to determine if the costs of seeking the permit were imprudent and may require the electrical corporation to credit ratepayers with the amount of the imprudent costs over a period of not less than five but not more than 10 years (Section 395.135);

(7) Revises the rate adjustment rules for natural gas. Currently, rate adjustments in the purchase price of natural gas that are approved by the Missouri Public Service Commission are exempt from certain provisions relating to business license taxation. The substitute adds a qualifying provision that any purchased gas adjustment rate must include the gas cost portion of net write-offs incurred by the gas company in providing service to customers. Any net write-offs may only be recovered once a year through purchased gas adjustment rates, and an annual true-up of the gas cost portion of the net write-offs is required. The commission must annually review the gas company's debt collection efforts to ensure that it is prudently pursuing collection of the amounts owed by its customers (Section 393.275);

(8) Revises the definition for "eligible infrastructure system replacements" to include energy efficiency projects that are in service, used, and useful; do not increase revenues by connecting the infrastructure replacements to new customers; and were not included in the water corporation's rate base in its most recent rate case and defines "energy efficiency" as measures that reduce the amount of energy required to achieve a given end result. It adds service lines and meters that have worn out, are in a deteriorated condition, or replaced as part of an order issued by the commission, as well as energy efficiency projects, to the list of projects that are allowable water utility plant projects, and allows, beginning August 28, 2011, specified small water corporations to file a petition and proposed rate schedules with the commission to establish or change its infrastructure system replacement surcharge rate schedules that will allow for the adjustment of the corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements if the surcharge produces on an annual basis revenues of at least \$1 million or \$10,000 for a small water corporation. Currently, only water corporations in St. Louis County are allowed to file a petition and proposed rate schedules (Sections 393.1000 and 393.1003);

(9) Allows certain individuals, even if they have received certain state tax credits, to be eligible for a low-income program offering monetary incentives under the Missouri Energy Efficiency Investment Act to consumers of an electrical corporation (Section 393.1075);

(10) Changes the laws regarding the Missouri Propane Education and Research Council by removing the provision allowing the Director of the Division of Energy within the Department of Natural Resources to initiate a referendum on the abolishment of the council and the fee for odorized propane. The substitute also removes the director's authority to fill council vacancies and instead requires appointments to be made by the council following a public nomination process. The director will no longer approve or recommend changes to the council's budget. The council must approve or modify the budget after a 30-day public comment period prior to the beginning of each fiscal period. The council will have authority to receive notice of meetings and require additional reports from the council and establish alternative means to collect the odorized propane fee and establish late payment charges. The provision allowing the National Propane Education and Research Council to establish a program coordinating its operation with the Missouri council and authorizing the Missouri council to keep funds from a federal rebate on propane fees collected by the national council is removed (Sections 414.530, 414.560, and 414.570);

(11) Specifies that an electric or gas company must allow a customer who has not yet been disconnected and who incurs an arrearage during the cold weather rule period to retain service by paying one-third of the arrearage, plus the current bill, in each of the three months following the cold weather rule period (Section 660.122); and

(12) Repeals the provision which requires the Missouri Energy Task Force to reconvene at least one time a year and issue a status report to the Governor and General Assembly by December 31 of each year (Section 386.850).

The substitute contains an emergency clause for the provisions regarding the appellate procedures for an issue initially decided by the Missouri Public Service Commission.

FISCAL NOTE: Estimated Net Effect on General Revenue Fund of an income of \$0 to a cost of Unknown in FY 2012, a cost of \$80,000 to Unknown in FY 2013, and a cost of \$80,000 to Unknown in FY 2014. No impact on Other State Funds in FY 2012, FY 2013, and FY 2014.

PROPOSERS: Supporters say that the bill will help clarify the laws regarding major water users by prohibiting water from being diverted to a location not within a certain water district.

Testifying for the bill were Senator Mayer; Missouri Rice Council; and Department of Natural Resources.

OPPOSERS: There was no opposition voiced to the committee.