

SECOND REGULAR SESSION

HOUSE BILL NO. 1664

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BERRY (Sponsor) AND MCNEIL (Co-sponsor).

5732H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 393.1030 and 393.1075, RSMo, and to enact in lieu thereof two new sections relating to solar energy rebates.

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

Section A. Sections 393.1030 and 393.1075, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 393.1030 and 393.1075, to read as follows:

393.1030. 1. The commission shall, in consultation with the department, prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources. Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's sales:

- (1) No less than two percent for calendar years 2011 through 2013;
- (2) No less than five percent for calendar years 2014 through 2017;
- (3) No less than ten percent for calendar years 2018 through 2020; and
- (4) No less than fifteen percent in each calendar year beginning in 2021.

At least two percent of each portfolio requirement shall be derived from solar energy. The portfolio requirements shall apply to all power sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state. A utility may comply with the standard in whole or in part by purchasing RECs. Each kilowatt-hour of eligible energy generated in Missouri shall count as 1.25 kilowatt-hours for purposes of compliance.

2. The commission, in consultation with the department and within one year of November 4, 2008, shall select a program for tracking and verifying the trading of renewable energy credits. An unused credit may exist for up to three years from the date of its creation. A credit may be used only once to comply with sections 393.1020 to 393.1030 and may not also

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.

18 be used to satisfy any similar nonfederal requirement. An electric utility may not use a credit
19 derived from a green pricing program. Certificates from net-metered sources shall initially be
20 owned by the customer-generator. The commission, except where the department is specified,
21 shall make whatever rules are necessary to enforce the renewable energy standard. Such rules
22 shall include:

23 (1) A maximum average retail rate increase of one percent determined by estimating and
24 comparing the electric utility's cost of compliance with least-cost renewable generation and the
25 cost of continuing to generate or purchase electricity from entirely nonrenewable sources, taking
26 into proper account future environmental regulatory risk including the risk of greenhouse gas
27 regulation. **An additional maximum average retail rate increase of one percent used to fund**
28 **solar rebates under section 393.1075. In making the calculation for rate increases, the**
29 **commission may use the costs incurred for capital projects only if such capital projects**
30 **have been placed into service and the costs incurred for such capital projects have been**
31 **paid.** Notwithstanding the foregoing, until June 30, 2020, if the maximum average retail rate
32 increase would be less than or equal to one percent if an electric utility's investment in
33 solar-related projects initiated, owned or operated by the electric utility is ignored for purposes
34 of calculating the increase, then additional solar rebates shall be paid and included in rates in an
35 amount up to the amount that would produce a retail rate increase equal to the difference between
36 a one percent retail rate increase and the retail rate increase calculated when ignoring an electric
37 utility's investment in solar-related projects initiated, owned, or operated by the electric utility.
38 Notwithstanding any provision to the contrary in this section, even if the payment of additional
39 solar rebates will produce a maximum average retail rate increase of greater than one percent
40 when an electric utility's investment in solar-related projects initiated, owned or operated by the
41 electric utility are included in the calculation, the additional solar rebate costs shall be included
42 in the prudently incurred costs to be recovered as contemplated by subdivision (4) of this
43 subsection;

44 (2) Penalties of at least twice the average market value of renewable energy credits for
45 the compliance period for failure to meet the targets of subsection 1 of this section. An electric
46 utility will be excused if it proves to the commission that failure was due to events beyond its
47 reasonable control that could not have been reasonably mitigated, or that the maximum average
48 retail rate increase has been reached. Penalties shall not be recovered from customers. Amounts
49 forfeited under this section shall be remitted to the department to purchase renewable energy
50 credits needed for compliance. Any excess forfeited revenues shall be used by the department's
51 energy center solely for renewable energy and energy efficiency projects;

52 (3) Provisions for an annual report to be filed by each electric utility in a format
53 sufficient to document its progress in meeting the targets;

54 (4) Provision for recovery outside the context of a regular rate case of prudently incurred
55 costs and the pass-through of benefits to customers of any savings achieved by an electrical
56 corporation in meeting the requirements of this section.

57 3. As provided for in this section, except for those electrical corporations that qualify for
58 an exemption under section 393.1050, each electric utility shall make available to its retail
59 customers a solar rebate for new or expanded solar electric systems sited on customers' premises,
60 up to a maximum of twenty-five kilowatts per system, measured in direct current that were
61 confirmed by the electric utility to have become operational in compliance with the provisions
62 of section 386.890. The solar rebates shall be two dollars per watt for systems becoming
63 operational on or before June 30, 2014; one dollar and fifty cents per watt for systems becoming
64 operational between July 1, 2014, and June 30, 2015; one dollar per watt for systems becoming
65 operational between July 1, 2015, and June 30, 2016; fifty cents per watt for systems becoming
66 operational between July 1, 2016, and June 30, 2017; fifty cents per watt for systems becoming
67 operational between July 1, 2017, and June 30, 2019; twenty-five cents per watt for systems
68 becoming operational between July 1, 2019, and June 30, 2020; and zero cents per watt for
69 systems becoming operational after June 30, 2020. An electric utility may, through its tariffs,
70 require applications for rebates to be submitted up to one hundred eighty-two days prior to the
71 June thirtieth operational date. Nothing in this section shall prevent an electrical corporation
72 from offering rebates after July 1, 2020, through an approved tariff. If the electric utility
73 determines the maximum average retail rate increase provided for in subdivision (1) of
74 subsection 2 of this section will be reached in any calendar year, the electric utility shall be
75 entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum average
76 retail rate increase if the electrical corporation files with the commission to suspend its rebate
77 tariff for the remainder of that calendar year at least sixty days prior to the change taking effect.
78 The filing with the commission to suspend the electrical corporation's rebate tariff shall include
79 the calculation reflecting that the maximum average retail rate increase will be reached and
80 supporting documentation reflecting that the maximum average retail rate increase will be
81 reached. The commission shall rule on the suspension filing within sixty days of the date it is
82 filed. If the commission determines that the maximum average retail rate increase will be
83 reached, the commission shall approve the tariff suspension. The electric utility shall continue
84 to process and pay applicable solar rebates until a final commission ruling; however, if the
85 continued payment causes the electric utility to pay rebates that cause it to exceed the maximum
86 average retail rate increase, the expenditures shall be considered prudently incurred costs as
87 contemplated by subdivision (4) of subsection 2 of this section and shall be recoverable as such
88 by the electric utility. As a condition of receiving a rebate, customers shall transfer to the electric
89 utility all right, title, and interest in and to the renewable energy credits associated with the new

90 or expanded solar electric system that qualified the customer for the solar rebate for a period of
91 ten years from the date the electric utility confirmed that the solar electric system was installed
92 and operational.

93 4. The department shall, in consultation with the commission, establish by rule a
94 certification process for electricity generated from renewable resources and used to fulfill the
95 requirements of subsection 1 of this section. Certification criteria for renewable energy
96 generation shall be determined by factors that include fuel type, technology, and the
97 environmental impacts of the generating facility. Renewable energy facilities shall not cause
98 undue adverse air, water, or land use impacts, including impacts associated with the gathering
99 of generation feedstocks. If any amount of fossil fuel is used with renewable energy resources,
100 only the portion of electrical output attributable to renewable energy resources shall be used to
101 fulfill the portfolio requirements.

102 5. In carrying out the provisions of this section, the commission and the department shall
103 include methane generated from the anaerobic digestion of farm animal waste and thermal
104 depolymerization or pyrolysis for converting waste material to energy as renewable energy
105 resources for purposes of this section.

106 6. The commission shall have the authority to promulgate rules for the implementation
107 of this section, but only to the extent such rules are consistent with, and do not delay the
108 implementation of, the provisions of this section. Any rule or portion of a rule, as that term is
109 defined in section 536.010, that is created under the authority delegated in this section shall
110 become effective only if it complies with and is subject to all of the provisions of chapter 536
111 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of
112 the powers vested with the general assembly pursuant to chapter 536 to review, to delay the
113 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
114 grant of rulemaking authority and any rule proposed or adopted after August 28, 2013, shall be
115 invalid and void.

393.1075. 1. This section shall be known as the "Missouri Energy Efficiency Investment
2 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 off-peak
6 periods;

7 (3) "Demand-side program", any program conducted by the utility to modify the net
8 consumption of electricity on the retail customer's side of the electric meter, including but not
9 limited to energy efficiency measures, **solar rebates defined under subsection 3 of section**
10 **393.1030 that are also authorized by the one percent increase in retail rates under**

11 **subdivision (1) of subsection 2 of section 393.1030**, load management, demand response, and
12 interruptible or curtailable load;

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

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

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

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

25 (1) Provide timely cost recovery for utilities;

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

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

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

44 5. To comply with this section the commission may develop cost recovery mechanisms
45 to further encourage investments in demand-side programs including, in combination and
46 without limitation: capitalization of investments in and expenditures for demand-side programs,

47 rate design modifications, accelerated depreciation on demand-side investments, and allowing
48 the utility to retain a portion of the net benefits of a demand-side program for its shareholders.
49 In setting rates the commission shall fairly apportion the costs and benefits of demand-side
50 programs to each customer class except as provided for in subsection 6 of this section. Prior to
51 approving a rate design modification associated with demand-side cost recovery, the commission
52 shall conclude a docket studying the effects thereof and promulgate an appropriate rule.

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

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

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

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

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

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

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

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

79 11. The commission shall provide oversight and may adopt rules and procedures and
80 approve corporation-specific settlements and tariff provisions, independent evaluation of
81 demand-side programs, as necessary, to ensure that electric corporations can achieve the goals
82 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is

83 created under the authority delegated in this section shall become effective only if it complies
84 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
85 This section and chapter 536 are nonseverable and if any of the powers vested with the general
86 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
87 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
88 any rule proposed or adopted after August 28, 2009, shall be invalid and void.

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

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

97 14. (1) Any customer of an electrical corporation who has received a state tax credit
98 under sections 135.350 to 135.362 or under sections 253.545 to 253.561 shall not be eligible for
99 participation in any demand-side program offered by an electrical corporation under this section
100 if such program offers a monetary incentive to the customer, except as provided in subdivision
101 (4) of this subsection.

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

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

109 (4) The provisions of this subsection shall not apply to any low-income customer who
110 would otherwise be eligible to participate in a demand-side program that is offered by an
111 electrical corporation to low-income customers.

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

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