

SECOND REGULAR SESSION

HOUSE BILL NO. 2235

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KORMAN.

5949H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 393.1025, 393.1030, and 393.1075, RSMo, and to enact in lieu thereof four new sections relating to renewable energy.

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

Section A. Sections 393.1025, 393.1030, and 393.1075, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 393.1025, 393.1030, 393.1032, and 393.1075, to read as follows:

393.1025. As used in sections 393.1020 to 393.1030, the following terms mean:

- (1) "Commission", the public service commission;
- (2) "Department", the department of natural resources;
- (3) "Electric utility", any electrical corporation as defined by section 386.020;
- (4) "Renewable energy credit" or "REC", a tradeable certificate of proof that one megawatt-hour of electricity has been generated from renewable energy sources; and
- (5) "Renewable energy resources", electric energy produced from wind, solar thermal sources, photovoltaic cells and panels, dedicated crops grown for energy production, cellulosic agricultural residues, plant residues, methane from landfills, from agricultural operations, or from wastewater treatment, thermal depolymerization or pyrolysis for converting waste material to energy, clean and untreated wood such as pallets, hydropower (not including pumped storage) [that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less], fuel cells using hydrogen produced by one of the above-named renewable energy sources, and other sources of energy not including nuclear that become available after November 4, 2008, and are certified as renewable by rule by the department.

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.

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

5 (1) No less than two percent for calendar years 2011 through 2013;

6 (2) No less than five percent for calendar years 2014 through 2017;

7 (3) No less than ten percent for calendar years 2018 through 2020; and

8 (4) No less than fifteen percent in each calendar year beginning in 2021.

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

14 2. The commission, in consultation with the department and within one year of
15 November 4, 2008, shall select a program for tracking and verifying the trading of renewable
16 energy credits. An unused credit may exist for up to three years from the date of its creation.
17 A credit may be used only once to comply with sections 393.1020 to 393.1030 and may not also
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. Notwithstanding the foregoing, until June 30, 2020, if the maximum average retail
28 rate increase would be less than or equal to one percent if an electric utility's investment in
29 solar-related projects initiated, owned or operated by the electric utility is ignored for purposes
30 of calculating the increase, then additional solar rebates shall be paid and included in rates in an
31 amount up to the amount that would produce a retail rate increase equal to the difference between
32 a one percent retail rate increase and the retail rate increase calculated when ignoring an electric
33 utility's investment in solar-related projects initiated, owned, or operated by the electric utility.
34 Notwithstanding any provision to the contrary in this section, even if the payment of additional
35 solar rebates will produce a maximum average retail rate increase of greater than one percent
36 when an electric utility's investment in solar-related projects initiated, owned or operated by the

37 electric utility are included in the calculation, the additional solar rebate costs shall be included
38 in the prudently incurred costs to be recovered as contemplated by subdivision (4) of this
39 subsection;

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

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

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

53 3. As provided for in this section, except for those electrical corporations that qualify for
54 an exemption under section 393.1050, each electric utility shall make available to its retail
55 customers a solar rebate for new or expanded solar electric systems sited on customers' premises,
56 up to a maximum of twenty-five kilowatts per system, measured in direct current that were
57 confirmed by the electric utility to have become operational in compliance with the provisions
58 of section 386.890. The solar rebates shall be two dollars per watt for systems becoming
59 operational on or before June 30, [2014] **2015**; one dollar and fifty cents per watt for systems
60 becoming operational between July 1, [2014] **2015**, and June 30, [2015] **2016**; one dollar per
61 watt for systems becoming operational between July 1, [2015] **2016**, and June 30, [2016] **2017**;
62 fifty cents per watt for systems becoming operational between July 1, [2016] **2017**, and June 30,
63 [2017] **2018**; fifty cents per watt for systems becoming operational between July 1, [2017] **2018**,
64 and June 30, [2019] **2020**; twenty-five cents per watt for systems becoming operational between
65 July 1, [2019] **2020**, and June 30, [2020] **2021**; and zero cents per watt for systems becoming
66 operational after June 30, [2020] **2021**. An electric utility may, through its tariffs, require
67 applications for rebates to be submitted up to one hundred eighty-two days prior to the June
68 thirtieth operational date. Nothing in this section shall prevent an electrical corporation from
69 offering rebates [after July 1, 2020] **greater than required by this section**, through an approved
70 tariff. If the electric utility determines the maximum average retail rate increase provided for in
71 subdivision (1) of subsection 2 of this section will be reached in any calendar year, the electric
72 utility shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the

73 maximum average retail rate increase if the electrical corporation files with the commission to
74 suspend its rebate tariff for the remainder of that calendar year at least sixty days prior to the
75 change taking effect. The filing with the commission to suspend the electrical corporation's
76 rebate tariff shall include the calculation reflecting that the maximum average retail rate increase
77 will be reached and supporting documentation reflecting that the maximum average retail rate
78 increase will be reached. The commission shall rule on the suspension filing within sixty days
79 of the date it is filed. If the commission determines that the maximum average retail rate
80 increase will be reached, the commission shall approve the tariff suspension. The electric utility
81 shall continue to process and pay applicable solar rebates until a final commission ruling;
82 however, if the continued payment causes the electric utility to pay rebates that cause it to exceed
83 the maximum average retail rate increase, the expenditures shall be considered prudently
84 incurred costs as contemplated by subdivision (4) of subsection 2 of this section and shall be
85 recoverable as such by the electric utility. As a condition of receiving a rebate, customers shall
86 transfer to the electric utility all right, title, and interest in and to the renewable energy credits
87 associated with the new or expanded solar electric system that qualified the customer for the
88 solar rebate for a period of ten years from the date the electric utility confirmed that the solar
89 electric system was installed and operational.

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

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

103 6. The commission shall have the authority to promulgate rules for the implementation
104 of this section, but only to the extent such rules are consistent with, and do not delay the
105 implementation of, the provisions of this section. Any rule or portion of a rule, as that term is
106 defined in section 536.010, that is created under the authority delegated in this section shall
107 become effective only if it complies with and is subject to all of the provisions of chapter 536
108 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of

109 the powers vested with the general assembly pursuant to chapter 536 to review, to delay the
110 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
111 grant of rulemaking authority and any rule proposed or adopted after August 28, 2013, shall be
112 invalid and void.

**393.1032. 1. Notwithstanding any other provision of law, all hydroelectric
2 generation facilities located in Missouri, hydroelectric generation facilities that are owned
3 by a Missouri utility, or under a purchased power agreement with a Missouri utility that
4 is required to comply with energy standards under sections 393.1020 to 393.1045, will be
5 classified as a certified renewable energy resource effective January 1, 2018. Beginning
6 January 1, 2021, all hydroelectric generation will be classified as a certified renewable
7 energy resource. Such certification as a renewable energy resource will become effective
8 immediately upon the occurrence of the delayed effective dates in this section, and will not
9 require any additional certification from the division of energy of the Missouri department
10 of economic development or an equivalent agency.**

**11 2. Prior to August 28, 2014, existing hydroelectric generation facilities that have
12 met the definition of a renewable energy resource and have been certified as such by the
13 division of energy of the Missouri department of economic development or an equivalent
14 agency shall be considered to be renewable energy resources under sections 393.1020 to
15 393.1045.**

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**, load management, demand response, and interruptible or curtailable [load] rate;

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

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

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

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

23 (1) Provide timely cost recovery for utilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

95 14. (1) Any customer of an electrical corporation who has received a state tax credit
96 under sections 135.350 to 135.362 or under sections 253.545 to 253.561 shall not be eligible for
97 participation in any demand-side program offered by an electrical corporation under this section
98 if such program offers a monetary incentive to the customer, except as provided in subdivision
99 (4) of this subsection.

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

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

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

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

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