

FIRST REGULAR SESSION

HOUSE BILL NO. 692

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FRANCIS.

1629H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 386.800 and 394.020, RSMo, and to enact in lieu thereof two new sections relating to service territories of retail electric service providers.

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

Section A. Sections 386.800 and 394.020, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 386.800 and 394.020, to read as follows:

386.800. 1. No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991, unless:

(1) The structure was lawfully receiving permanent service from the municipally owned electric utility prior to July 11, 1991; ~~[or]~~

(2) The service is provided pursuant to an approved territorial agreement under section 394.312;

(3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or

(4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386, and chapter 393, and the electrical corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. In the event that a municipally owned electric utility in a city with a population of more than one hundred twenty-five thousand located in a county of the first class not having a charter form of government and not adjacent to any other county of the first class desires to serve customers

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 beyond the authorized service territory in an area which was previously served by an electrical
19 corporation regulated under the provisions of chapter 386, and chapter 393, as provided in this
20 subdivision, **in the absence of an approved territorial agreement under section 394.312**, the
21 municipally owned utility shall apply to the public service commission for an order assigning
22 nonexclusive service territories **and concurrently shall provide written notice of the**
23 **application to other electric service suppliers with electric facilities located in or within one**
24 **mile outside of the boundaries of the proposed expanded service territory.** The proposed
25 service area shall be contiguous to the authorized service territory which was previously served
26 by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as
27 a condition precedent to the granting of the application. The commission shall have one hundred
28 twenty days from the date of application to grant or deny the requested order. The commission,
29 **after a hearing**, may grant the order upon a finding that granting of the applicant's request is not
30 detrimental to the public interest. In granting the applicant's request the commission shall give
31 due regard to territories previously granted to **or served by** other electric **service** suppliers **and**
32 **the duplication of electric service facilities.**

33 2. ~~[Any municipally owned electric utility may extend, pursuant to lawful annexation,~~
34 ~~its service territory to include any structure located within a newly annexed area which has not~~
35 ~~received permanent service from another supplier within ninety days prior to the effective date~~
36 ~~of the annexation.]~~ **Any municipally owned electric utility may extend, pursuant to lawful**
37 **annexation, its electric service territory to include areas where another electric service**
38 **supplier is not currently serving a structure but has existing electric service facilities**
39 **located in or within one mile outside the boundaries of the area proposed to be annexed,**
40 **provided that it first notifies in writing the affected electric service supplier within sixty**
41 **days prior to the effective date of the proposed annexation. If the affected electric service**
42 **supplier objects to the expansion of the municipally owned electric utility's service**
43 **territory, in the absence of an approved territorial agreement under section 394.312, it may**
44 **file an application with the public service commission for an order denying, in whole or in**
45 **part, the electric service territory expansion or otherwise assigning exclusive or**
46 **nonexclusive service territories among the electric service suppliers that are parties to the**
47 **case. The application shall be made and notice of such filing shall be given to all affected**
48 **electric service suppliers pursuant to the rules and regulations of the commission governing**
49 **applications for certificates of public convenience and necessity. The commission, after a**
50 **hearing, shall make its determination based on findings of what best serves the public**
51 **interest and shall issue its decision by report and order no later than one hundred twenty**
52 **days from the date of the application unless otherwise ordered by the commission for good**

53 **cause shown. Review of such commission decisions shall be governed by sections 386.500**
54 **to 386.550.**

55 3. When a municipally owned electric utility desires to extend its service territory to
56 include any structure located within a newly annexed area which has received permanent service
57 from another **electric service** supplier within ninety days prior to the effective date of the
58 annexation, it shall:

59 (1) Notify by publication in a newspaper of general circulation the record owner of said
60 structure, and notify in writing any affected electric **service** supplier and the public service
61 commission, within sixty days after the effective date of the annexation its desire to extend its
62 service territory to include said structure; and

63 (2) Within six months after the effective date of the annexation receive the approval of
64 the municipality's governing body to begin negotiations pursuant to section 394.312 with ~~[any]~~
65 **the** affected electric **service** supplier.

66 4. Upon receiving approval from the municipality's governing body pursuant to
67 subsection 3 of this section, the municipally owned electric utility and the affected electric
68 **service** supplier shall meet and negotiate in good faith the terms of the territorial agreement and
69 any transfers or acquisitions, including, as an alternative, granting the affected electric **service**
70 supplier a franchise or authority to continue providing service in the annexed area. In the event
71 that the affected electric **service** supplier does not provide wholesale electric power to the
72 municipality, if the affected electric **service** supplier so desires, the parties ~~[shall]~~ **may** also
73 negotiate, consistent with applicable law, regulations and existing power supply agreements, for
74 power contracts which would provide for the purchase of power by the municipality from the
75 affected electric **service** supplier for an amount of power equivalent to the loss of any sales to
76 customers receiving permanent service at structures within the annexed areas which are being
77 sought by the municipally owned electric utility. The parties shall have no more than one
78 hundred eighty days from the date of receiving approval from the municipality's governing body
79 within which to conclude their negotiations and file their territorial agreement with the
80 commission for approval under the provisions of section 394.312. The time period for
81 negotiations allowed under this subsection may be extended for a period not to exceed one
82 hundred eighty days by a mutual agreement of the parties and a written request with the public
83 service commission.

84 5. For purposes of this section, the term "fair and reasonable compensation" shall mean
85 the following:

86 (1) The present-day reproduction cost, new, of the properties and facilities serving the
87 annexed areas, less depreciation computed on a straight-line basis; and

88 (2) An amount equal to the reasonable and prudent cost of detaching the facilities in the
89 annexed areas and the reasonable and prudent cost of constructing any necessary facilities to
90 reintegrate the system of the affected electric **service** supplier outside the annexed area after
91 detaching the portion to be transferred to the municipally owned electric utility; and

92 (3) Four hundred percent of gross revenues less gross receipts taxes received by the
93 affected electric **service** supplier from the twelve-month period preceding the approval of the
94 municipality's governing body under the provisions of subdivision (2) of subsection 3 of this
95 section, normalized to produce a representative usage from customers at the subject structures
96 in the annexed area; and

97 (4) Any federal, state and local taxes which may be incurred as a result of the transaction,
98 including the recapture of any deduction or credit; and

99 (5) Any other costs reasonably incurred by the affected electric supplier in connection
100 with the transaction.

101 6. In the event the parties are unable to reach an agreement under subsection 4 of this
102 section, within sixty days after the expiration of the time specified for negotiations, the
103 municipally owned electric utility **or the affected electric service supplier** may apply to the
104 commission for an order assigning exclusive service territories within the annexed area and a
105 determination of the fair and reasonable compensation amount to be paid to the affected electric
106 **service** supplier under subsection 5 of this section. Applications shall be made and notice of
107 such filing shall be given to all affected parties pursuant to the rules and regulations of the
108 commission governing applications for certificates of public convenience and necessity. Unless
109 otherwise ordered by the commission for good cause shown, the commission shall rule on such
110 applications not later than one hundred twenty days after the application is properly filed with
111 the secretary of the commission. The commission shall hold evidentiary hearings to assign
112 service territory between **the** affected electric **service** suppliers inside the annexed area and to
113 determine the amount of compensation due any affected electric **service** supplier for the transfer
114 of plant, facilities or associated lost revenues between electric **service** suppliers in the annexed
115 area. The commission shall make such determinations based on findings of what best serves the
116 public interest and shall issue its decision by report and order. Review of such commission
117 decisions shall be governed by sections 386.500 to 386.550. The payment of compensation and
118 transfer of title and operation of the facilities shall occur within ninety days after the order and
119 any appeal therefrom becomes final unless the order provides otherwise.

120 7. In reaching its decision under subsection 6 of this section, the commission shall
121 consider the following factors:

122 (1) Whether the acquisition or transfers sought by the municipally owned electric utility
123 within the annexed area from the affected electric **service** supplier are, in total, in the public

interest, including **the preference of the owner of any affected structure**, consideration of rate disparities between the competing electric **service** suppliers, and issues of unjust rate discrimination among customers of a single electric **service** supplier if the rates to be charged in the annexed areas are lower than those charged to other system customers; and

(2) The fair and reasonable compensation to be paid by the municipally owned electric utility, to the affected electric **service** supplier with existing system operations within the annexed area, for any proposed acquisitions or transfers; and

(3) Any effect on system operation, including, but not limited to, loss of load and loss of revenue; and

(4) Any other issues upon which the municipally owned electric utility and the affected electric **service** supplier might otherwise agree, including, but not limited to, the valuation formulas and factors contained in subsections 4, 5 and 6, of this section, even if the parties could not voluntarily reach an agreement thereon under those subsections.

8. The commission is hereby given all necessary jurisdiction over municipally owned electric utilities and rural electric cooperatives to carry out the purposes of this section consistent with other applicable law; provided, however, the commission shall not have jurisdiction to compel the transfer of customers or structures with a connected load greater than one thousand kilowatts. The commission shall by rule set appropriate fees to be charged on a case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary costs incurred by the commission in carrying out its duties under this section. **Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case. The fees shall be paid to the director of revenue who shall remit such payments to the state treasurer. The state treasurer shall credit such payments to the public service commission fund or its successor fund. Nothing in this section shall be construed as otherwise conferring upon the public service commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally owned electric utility, and except as provided in this section, nothing shall affect the rights, privileges, or duties of rural electric cooperatives, electrical corporations, or municipally owned electric utilities.**

9. When an electrical corporation instead of a municipally owned electric utility is providing electric service within a municipality, and the electrical corporation previously has received a certificate of convenience and necessity under section 393.170 to provide electric service in the annexed area or area proposed to be annexed, the provisions of subsections 2 through 8 of this section shall apply equally to the electrical corporation as if it were a municipally owned electric utility.

159 **10. Nothing in this section shall be construed to otherwise preclude a municipality**
160 **having a population of or in excess of one thousand five hundred inhabitants as of August**
161 **28, 2021, from requiring a rural electric cooperative to obtain a franchise to provide**
162 **electric service, or to impose a sales tax, within the boundaries of the municipality. Said**
163 **municipality shall grant said franchise, and may require a rural electric cooperative to**
164 **collect and remit a sales tax based on the electricity sold, on a nondiscriminatory basis and**
165 **in a manner consistent with other applicable law.**

394.020. In this chapter, unless the context otherwise requires,

2 (1) "Member" means each incorporator of a cooperative and each person admitted to and
3 retaining membership therein, and shall include a husband and wife admitted to joint
4 membership;

5 (2) "Person" includes any natural person, firm, association, corporation, business trust,
6 partnership, federal agency, state or political subdivision or agency thereof, or any body politic;
7 and

8 (3) "Rural area" ~~[shall be deemed to mean any area of the United States not included~~
9 ~~within the boundaries of any city, town or village having a population in excess of fifteen~~
10 ~~hundred inhabitants, and such term shall be deemed to include both the farm and nonfarm~~
11 ~~population thereof]~~ **means any area described in Section 343(a)(13)(C) of the Consolidated**
12 **Farm and Rural Development Act, 7 U.S.C. 1991(a)(13)(C).**

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