

HCS HB 835 -- UTILITIES (Haffner)

COMMITTEE OF ORIGIN: Standing Committee on Utilities

This bill modifies provisions relating to utilities.

ENERGY PROPERTY TAXATION (sections 137.123, 153.030, 153.034 and 393.1073, RSMo)

This bill modifies several provisions related to property that uses wind energy to generate electricity.

Beginning January 1, 2022, this bill sets a methodology, as described in the bill, for the purpose of assessing all real, excluding land, or tangible personal property associated with a project that uses wind energy to generate electricity (Section 137.123).

Additionally, this bill requires that any public utility company which has ownership of any real or personal property associated with a project that directly uses wind energy to generate electricity will be taxed using a standardized methodology of:

(1) Any wind energy property of such company will be assessed on the county assessor's local tax rolls; and

(2) All other real property, excluding land, or personal property related to the wind energy project will be assessed using the methodology provided under the depreciation table in this bill.

Additionally, this bill repeals an expired provision of law that established the "Task Force on Wind Energy".

Beginning January 1, 2022, the bill also provides that any real and personal property of any public utility that was constructed using financing under Chapter 100 will be valued and taxed upon the county assessor's local tax rolls. The property constructed using financing under Chapter 100 will be assessed using the methodology set forth in the bill.

COMMON SEWER DISTRICTS (Sections 204.300, 204.569 and 204.610)

Currently, the trustees of a common sewer district may be paid a reasonable compensation for their services, if approved by a resolution of the board of trustees; and the trustees of a 10-member board of trustees cannot receive any compensation. This bill allows the trustees to be paid up to \$100 per meeting, but not more than two meetings per calendar month, by the district for their service.

Currently, the trustees of a Reorganized Common Sewer District receive no compensation for their services. This bill allows the trustees to be paid up to \$100 per meeting, but not more than two meetings per calendar month, by the district for their service, plus the trustees will be reimbursed for their actual expenses.

In addition, under current law, when an unincorporated sewer subdistrict of a common sewer district has been formed, the board of trustees of the common sewer district has the power to issue bonds with assent of 4/7 of the voters of the subdistrict on the question. The bill states that as an alternative to such vote, if the subdistrict is a part of a common sewer district located in whole or in part in certain counties, bonds may be issued for the subdistrict if the question receives the written assent of 3/4 of the customers of the subdistrict.

#### PUBLIC SERVICE COMMISSION ASSESSMENT (Section 386.370)

Currently, the Public Service Commission can assess no more than 0.25% of the total gross intrastate operating revenues against all utilities under the jurisdiction of the Commission for the cost of regulating such utilities. The bill changes the assessment rate to no more than 0.38% of the total gross intrastate operating revenues.

#### RENEWABLE NATURAL GAS (Section 386.895)

The bill requires the Public Service Commission to adopt rules for a voluntary renewable natural gas program. The Commission must establish reporting requirements and a process for gas corporations to fully recover prudent, just, and reasonable costs associated with a renewable natural gas program.

Any prudent, just, and reasonable costs incurred by a gas corporation are recovered by means of an automatic adjustment clause. The costs will include costs to establish and maintain equipment and facilities deemed prudent at the time the initial investment was made.

An affiliate of a gas corporation can not be prohibited from making a capital investment in a biogas production project if the affiliate is not a public utility.

#### ELECTRIC ENERGY (Section 393.106)

This bill specifies that axillary power may be purchased on a wholesale basis for use at an electric generation facility located in any county of the first classification with more than 92,000 but

fewer than 101,000 inhabitants which began operating prior to August 28, 2021, and is operated as an independent power producer. Currently, this only applies to Cass County.

#### NUCLEAR CLEAN POWER ACT (Sections 393.135 and 393.1250)

This bill creates the "Missouri Nuclear Clean Power Act", which allows clean base load electric generating plants or facilities rated at 200 megawatts or more that utilize renewable sources to produce energy not in commercial operation as of August 28, 2021, to charge for costs associated with construction work in progress before the facility is operational.

The costs recovered by an electrical corporation are subject to inclusion or exclusion in a ratemaking proceeding under the authority of the Public Service Commission. The Commission may also authorize an electrical corporation to charge for additional amortization to maintain the corporations financial ratios that will better allow to cost-effectively construct a clean baseload generating plant or a renewable source generating facility.

#### UTILITY RATE ADJUSTMENTS (Sections 393.137)

This bill provides that the Public Service Commission shall have the authority to adjust the rates of utility corporations that do not have general rate proceedings pending as of the effective date of the bill to reflect the effects of any tax legislation passed by the U.S. Congress or the General Assembly. As an alternative to the rate change, an electrical corporation may make deferrals to a regulatory asset, provided that good cause is shown.

#### EMINENT DOMAIN FOR UTILITIES (393.170 and 523.262)

The bill also specifies that, before the Public Service Commission (PSC) issues an approval for a merchant line, an entity, defined in the bill, must provide the PSC with a resolution of support passed by the county commission in each county through which the merchant line will be built. The bill specifies that no entity has the power of eminent domain for the purposes of constructing merchant lines. This restriction will not apply to any rural electric cooperatives or any electrical corporation operating under a cooperative business plan.

#### UTILITY RATEMAKING (Section 393.355)

Currently, the Public Service Commission may approve a special rate, outside of a general rate proceeding, not based on the cost of service for electrical services provided to certain facilities if the Commission determines that but for the special rate the

facility would not commence operations and that the special rate is in the best interest of the state. This bill changes the facilities that qualify for the special rates to include a facility whose primary industry is the processing of primary metals.

#### WATER AND SEWER INFRASTRUCTURE (Sections 393.1500 to 393.1509)

Currently, water corporations with more than 1,000 customers are required to use a competitive bidding process for no less than 10% of the corporation's external expenditures for planned infrastructure projects on the water corporation's distribution system. This bill requires a competitive bidding process be used for 20% of the corporation's external expenditures for such projects.

The bill also establishes the "Missouri Water and Sewer Infrastructure Act", which specifies that a water or sewer company may file a petition and proposed rate schedules with the Public Service Commission to create or change an infrastructure rate adjustment (WSIRA) that provides for the recovery of pretax revenues associated with eligible infrastructure projects. The WSIRA and any future changes must meet specific requirements.

The Commission cannot approve a WSIRA for a water or sewer corporation that has not had a general rate proceeding decided or dismissed within the past three years of the filing of a WSIRA petition unless the corporation has filed for or is the subject of a pending general rate proceeding. A corporation cannot collect a WSIRA for more than three years unless the corporation had filed for or is the subject of a new rate proceeding. In such case, the WSIRA can be collected until the effective date of the new rate schedules.

At the time the corporation files a petition to establish or change a WSIRA, it must submit proposed WSIRA rate schedules and supporting documentation, and it must also serve the Office of Public Counsel with a copy of the petition, rate schedules, and documentation. Upon filing, the Commission must publish a notice of the filing, and conduct an examination of the proposed WSIRA, as specified in the bill. The Commission may hold a hearing on the petition and any associated WSIRA rate schedules. If the Commission finds that a petition complies with the requirements, the Commission must enter an order authorizing the corporation to implement the WSIRA. A corporation may effectuate a change in its WSIRA no more than twice in every 12-month period.

The bill specifies information the Commission may consider in determining the appropriate pretax revenues and how the WSIRA is calculated. If this information is unavailable and the Commission

has not provided it on an agreed-upon basis, the Commission must use the last authorized overall pretax weighted average cost of capital for a WSIRA or the last authorized overall pretax weighted average cost of capital in a general rate proceeding for the corporation. At the end of each 12-month period that the WSIRA is in effect, the corporation must reconcile the differences between the revenues from a WSIRA and the appropriate pretax revenues found by the Commission for that period and submit the reconciliation and proposed WSIRA to the Commission for approval to recover or credit the difference.

A corporation that has a WSIRA must file revised WSIRA schedules when new base rates and charges become effective following a general rate proceeding that includes the WSIRA eligible costs in the base rates. Once the eligible costs are included in corporation's base rates, the corporation must reconcile any previously unreconciled WSIRA revenues to ensure that revenues resulting from the WSIRA match as closely as possible the appropriate pretax revenues.

A corporation's filing of a petition to establish or change a WSIRA is not considered a request for a general increase in the corporation's base rates and charges. Nothing in this bill impairs the authority of the Commission to review the prudence or eligibility of specific projects in the proposed WSIRA. The commission may take into account any change in business risk to the water or sewer corporation resulting from the WSIRA when setting the allowed return in a general rate proceeding.

The provisions of the Missouri Water and Sewer Infrastructure Act expire on December 31, 2031.

MO ELECTRICITY BILL REDUCTION ACT (Sections 393.1700 to 393.1715 and 400.9-109)

This bill defines "securitized utility tariff bonds" as "bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidence of indebtedness or ownership that are issued by an electrical corporation or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance commission-approved energy transition costs and financing costs, and that are secured by or payable from energy transition property". Electrical corporations may apply to the Public Service Commission for a financing order authorizing the:

- (1) Issuance of bonds;
- (2) Collection of securitized utility tariff charges on customer

bills (which are separate from the electrical corporation's base rates) to finance costs related to the retirement of an electric generating facility; and

(3) Creation of securitized utility tariff property following the retirement of an electric generating facility.

The Commission may issue a financing order, following notice and a hearing, if the Commission finds that such order meets certain conditions outlined in the bill. The pricing of securitized utility tariff bonds must lower present costs to customers. Simultaneously with the imposition of securitized utility tariff charges, a financing order must require the electrical corporation to reduce its rates through a reduction in base rates or a negative rider on customer bills in an amount equal to the revenue requirement associated with the electrical corporation's assets being financed by securitized utility tariff bonds.

Financing orders must remain in effect until the securitized utility tariff bonds and associated financing costs have been paid in full, notwithstanding any bankruptcy, reorganization, or insolvency of an electrical corporation. The Commission may also commence a proceeding and issue a subsequent financing order that provides for the refinancing, retiring, or refunding of securitized utility tariff bonds issued under the original financing order if the subsequent financing order meets all of the same criteria as the original financing order, and does not modify the covenants and terms of the securitized utility tariff bonds to be refinanced, retired, or refunded.

The Commission will have the authority to apply or modify any billing mechanism designed to recover security utility tariff charges, investigate compliance with the financing order, or impose regulatory sanctions against an electrical corporation for failing to comply with the terms of a financing order. Further, the Commission may not refuse to allow the recovery of costs associated with the retirement of electric generating facilities solely because such costs have been financed through a mechanism other than securitized utility tariff bonds. The bill authorizes the Commission to have powers and duties in addition to those already specified under law. The Commission, in a financing order and subject to the issuance advice letter process, shall afford the electrical corporation flexibility in establishing the terms and conditions for the securitized utility tariff bonds to accommodate changes in market conditions.

Further, a financing order is a final order of the Commission. Any party aggrieved by the issuance of a financing order may petition for suspension and review of the order only in the court of appeals

with jurisdiction coextensive with the Commission's location. The court must hear and determine the action as expeditiously as practicable.

The electric bills of electrical corporation customers must explicitly reflect that a portion of the charges on the bill that represent securitized utility tariff charges, and must be included as a separate line-item. In an annual filing, the electrical corporation must explain to customers the rate impact that financing of retired electric generating facilities, transition assistance to Missouri communities and workers, and capital investment in renewable facilities and services has had on customer rates. In the annual filing, the electrical corporation must also demonstrate that securitized utility tariff revenues have been applied solely to the repayment of securitized utility tariff bonds and other financing costs.

Electrical corporations can petition the Public Service Commission for a financing order to securitized qualified extraordinary costs. These costs would be a result from an extraordinary situation such as a tornado. The criteria required for the petition is outlined in the bill.

The electric corporation must have a financial advisor and bond counsel. The Commission can engage the financial advisor and counsel as it sees fit. All expenses associated incurred for the services of the financial advisor and counsel shall be included in the securitized utility tariff charge.

Securitized utility tariff property must exist until all securitized utility tariff bonds are paid in full and financing costs have been recovered. Securitized utility tariff property may be transferred, sold, conveyed, or assigned to certain successors or assignees specified in the bill. A successor to an electrical corporation must perform and satisfy all obligations of, and have the same duties and rights under a financing order as the electrical corporation to which the financing order applies.

Banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries, including political subdivisions, may invest in securitized utility tariff bonds; however, securitized utility tariff bonds must not be considered the debt of the State, any county, municipality, or political subdivision. The State, or any political subdivision, may not take any action that impairs the value of securitized utility tariff property or reduce or alter securitized utility tariff charges until all securitized utility tariff bonds and financing costs are paid in full. An assignee or financing party that is not regulated by the Commission may not

become subject to commission regulation as a result of engaging in any transaction under this act.

If any provision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this section which is taken by an electrical corporation, an assignee, a financing party, a collection agent, or a party to an ancillary agreement and any such action remains in full force and effect with respect to all securitized utility tariff bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed or expires for any reason.

The bill also specifies requirements for any security interest in securitized utility tariff property. A sale, assignment, or transfer of securitized utility tariff property is an absolute transfer, and may be created only when certain actions occur, as specified in the bill.

#### RURAL ELECTRIC COOPERATIVES (Section 394.120)

The bill allows the board of directors of a rural electric cooperative to set the time and place of its annual meeting and to provide for voting by proxy, electronic means, or mail. The annual meeting may also be conducted through virtual means. This provision expires August 28, 2022.