

HCS SS#2 SCS SB 202 -- PROVISION OF ELECTRICAL SERVICES

SPONSOR: Cierpiot (O'Donnell)

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Utilities by a vote of 6 to 2. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 8 to 3.

The following is a summary of the House Committee Substitute for SB 202.

This bill modifies provisions relating to the provision of electrical services.

SERVICE TERRITORIES OF RETAIL ELECTRIC SERVICE PROVIDERS (Sections 91.025, 386.800, 393.106, 394.020, & 394.315, RSMo)

The bill changes the provisions relating to service territories of retail electric service providers. In the event that a retail electric supplier is providing service to a structure located within a municipality that has ceased to be a rural area, and the structure is demolished and replaced by a new structure, the retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure.

Additionally, in the absence of an approved territorial agreement, the municipally owned utility must apply to the Public Service Commission for an order assigning nonexclusive service territories and concurrently must provide written notice of the application to other electric service suppliers with electric facilities located within a mile outside of the boundaries of the proposed expanded service territory. In granting the applicant's request, the Commission must give due regard to territories previously served by the other electric service suppliers and the wasteful duplication of electric service facilities.

Any municipally owned electric utility may extend its electric service territory to include areas where another electric supplier currently is not providing permanent service to a structure. If a rural electric cooperative has existing electric service facilities in the area proposed to be annexed, the majority of the existing developers, landowners, or prospective electric customers may submit a written request to the governing body of the annexing municipality to invoke mandatory good faith negotiations. These provisions also apply in the event an electrical corporation rather than a municipally owned electric utility is providing electric service in the municipality.

The bill also changes the term "fair and reasonable compensation" to be 200%, rather than 400%, of gross revenues less gross receipts taxes received by the affected electric service supplier from the 12 month period preceding the approval of the municipality's governing body. Additionally, this bill changes the definition of the population of a "rural area" to be increased by 6% every 10 years after each census beginning in 2030.

At the time that a municipally owned utility applies to the Public Service Commission for an order assigning nonexclusive service territories, the utility must concurrently provide written notice of the application to other electric service suppliers with electric facilities located within a mile outside of the boundaries of the proposed expanded service territory. In granting the applicant's request, the Commission must consider territories previously granted to or served by other electric service suppliers and the duplication of electric service facilities.

Any municipally owned electric utility may extend its electric service territory to include areas where another electric service supplier is not currently serving a structure but has existing electric service facilities located in or within a mile outside the boundaries of the area proposed to be annexed, provided it first notifies in writing the affected electric service supplier within 60 days prior to the effective date of the proposed annexation. If the affected electric service supplier objects, it must follow procedures specified in the bill.

Responsibility for payment of fees set by the Commission to carry out its duties related to determining service territories are on the parties to the proceeding as ordered by the Commission in each case.

If an electrical corporation is providing electric service within a municipality and the corporation has previously received a certificate of convenience and necessity from the Commission to provide electric service in the annexed area or the area proposed to be annexed, certain provisions of the bill apply equally to the electrical corporation as if it were a municipally owned utility. A municipality is not precluded from having a population of at least 1,500 inhabitants as of August 28, 2021, from requiring a rural electric cooperative to obtain a franchise to provide electric service, or to impose a sales tax, within the boundaries of the municipality.

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 0.315% of the total gross intrastate operating revenues.

WHOLESALE ELECTRIC ENERGY (Section 393.106)

The bill specifies that auxillary 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.

CUSTOMER CLASS RATES OF ELECTRICAL CORPORATIONS (Section 393.1620)
When determining the allocation of an electrical corporation's total revenue requirement among the electrical corporation's customer classes for the ultimate purpose of setting base rates for each customer class, the Public Service Commission may only consider class cost of service study results that allocate the electrical corporation's production plant costs from nuclear and fossil generating units using the average and excess method or one of the methods of assignment or allocation contained within the National Association of Regulatory Utility Commissioners 1992 manual or a subsequent manual.

This provision expires on August 28, 2031.

FINANCING ORDERS (Section 393.1700)

An electrical corporation may petition the Public Service Commission for a financing order, which is an order from the Commission that authorizes the issuance of securitized utility tariff bonds; the imposition, collection, and periodic adjustments of a securitized utility tariff charge; the creation of securitized utility tariff property; and the sale, assignment, or transfer of securitized utility tariff property to an assignee. A securitized utility tariff charge must be used to repay, finance, or refinance energy transition costs or qualified extraordinary costs and financing costs that are charges imposed on and part of all retail customer bills.

The bill specifies a time frame for proceedings on a petition for a financing order. Judicial relief may be had as set forth in law for Commission decisions.

A financing order issued by the Commission must include certain elements.

A financing order issued to an electrical corporation may provide that the creation of the electrical corporation's securitized utility tariff property is conditioned upon, and simultaneous with, the sale or other transfer of the securitized utility tariff property to an assignee and the pledge of the securitized utility tariff property to secure securitized utility tariff bonds.

If a financing order is issued, the electrical corporation must file a petition or letter at least annually applying the formula-based true-up mechanism requesting administrative approval to make applicable adjustments. The Commission has 30 days from receiving the petition or letter to approve the request or inform the electrical corporation of any mathematical or clerical errors in its calculation.

Once securitized utility tariff bonds are authorized the Commission may not amend, modify, or terminate the financing order by any subsequent action or make changes to securitized utility tariff charges approved in the financing order.

A financing order remains in effect, and securitized utility tariff property under the financing order continues to exist, until securitized utility tariff bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such securitized utility tariff bonds have been covered in full.

The securitized utility tariff bonds issued pursuant to a financing order can not be considered to be debt of the electrical corporation other than for federal and state income taxes.

No electrical corporation is required to file a petition for a financing order. A decision not to file for a financing order is not admissible in any Commission proceeding or otherwise utilized or relied on by the Commission in certain proceedings.

Debt reflected by the securitized utility tariff bonds can not be utilized or considered in establishing the electrical corporation's capital structure used to determine any regulatory matter.

The Commission may not, directly or indirectly, consider the existence of securitized utility tariff bonds or the potential use of securitized utility tariff bond financing proceeds in determining the electrical corporation's authorized rate of return used to determine the electrical corporation's revenue requirement used to set rates.

Electric bills of an electrical corporation that has obtained a financing order and caused securitized utility tariff bonds to be

issued must include specific information as listed in the bill.

Securitized utility tariff property specified in a financing order exists until securitized utility tariff bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such securitized utility tariff bonds have been recovered in full.

If an electrical corporation defaults on any required remittance of securitized utility tariff charges arising from securitized utility tariff property specified in a financing order, a court, upon application by an interested party, must order the sequestration and payment of the revenues arising from the securitized utility tariff property to the financing parties or their assignees.

Any successor to an electrical corporation must perform and satisfy all obligations of, and have the same rights under a financing order as, the electrical corporation under the financing order.

The bill contains several provisions related to security interests in securitized utility tariff property.

A security interest in securitized utility tariff property is created, valid, and binding and perfected at the later of the time:

- 1) The financing order is issued;
- 2) A security agreement is executed and delivered by the debtor granting such security interest;
- 3) The debtor has rights in such securitized utility tariff property or the power to transfer rights in such securitized utility tariff property; or
- 4) Value is received for the securitized utility tariff property. The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any securitized utility tariff property must be the laws of Missouri.

The bill lists entities that may legally invest any sinking funds, moneys, or other funds in securitized utility tariff bonds.

REPLACEMENT RESOURCES (Section 393.1705)

An electrical corporation may file a petition concurrently with a petition filed for a financing order for investment in replacement resources and the Commission must approve such investment as

specified in the bill. Such approval constitutes an affirmative and binding determination by the Commission, to be applied in all subsequent proceedings respecting the rates of the electrical corporation, that such investment is prudent and reasonable, that the replacement resource is necessary for the electrical corporation's provision of electric service to its customers, and that such investment must be reflected in the revenue requirement used to set the electrical corporation's base rates. The approval is subject only to the Commission's authority to determine that the electrical corporation did not manage or execute the project in a reasonable and prudent manner in some respect and the Commission's authority to disallow for ratemaking purposes only that portion of the investment that would not have been incurred had the unreasonable or imprudent management or execution of the project not occurred.

The changes in the electrical corporation's revenue requirement that must be deferred to a regulatory asset or only consist of specified items.

The bill specifies a time frame for proceedings on a petition to have investment in replacement resources approved.

RATEMAKING PRINCIPLES AND TREATMENT (Section 393.1715)

An electrical corporation may petition the Commission for a determination of the ratemaking principles and treatment, as proposed by the corporation, that will apply to the reflection in base rates of the electrical corporation's capital and noncapital costs associated with one or more of the corporation's coal-fired facilities.

If the Commission fails to issue a determination within 215 days that a petition for a determination of ratemaking principles and treatment is filed, the ratemaking principles and treatment proposed by the petitioning electrical corporation must be deemed to have been approved.

The factors and circumstances to which such principles and treatment apply are specified in the bill. If the electrical corporation determines that one or more major factor or circumstance has changed in a manner that warrants a change in the approved ratemaking principles and treatment, then it must file a notice in the docket within 45 days of such determination.

A party that has concerns about the proposed changes in principles and treatment must file a notice of its concerns within 30 days of the electrical corporation's filing. If a party believes that one or more factor or circumstance warrants a change in the approved

principles and treatment and the electrical corporation does not agree, such party must file a notice within 45 days, and such notice must include certain information.

An electrical corporation is permitted to retain coal-fired generating assets in rate base and recover costs associated with operating the coal-fired assets that remain in service to provide greater certainty that generating capacity will be available to provide essential service to customers, including during extreme weather events, and the Commission may allow any portion of such cost recovery on the basis that such coal-fired generating assets operate at a low capacity factor, or are off-line and providing capacity only, during normal operating conditions.

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 provided for voting by proxy, electronic means, or mail. The annual meeting may also be conducted through virtual means. This provision expires August 28, 2022.

UNIFORM COMMERCIAL CODE (Section 400.9-109)

Article 9 of the Uniform Commercial Code relating to secured transactions does not apply to the creation, perfection, priority, or enforcement of any sale, assignment of, pledge of, security interest in, or other transfer of, any interest or right or portion of any interest or right in any securitized utility tariff property, except as expressly specified.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPONENTS: Supporters say this bill allows bigger public utilities in the state to borrow money to maintain, repair or replace aging equipment. This is a financial tool that helps save consumers money. Over 25 states have some form of securitization for utility companies. In addition, the bill allows for electric utilities to maintain part-time coal plants to help with peak baseload demands.

Testifying for the bill were Senator Cierpiot; Renew Missouri Advocates; Evergy; Missouri Chamber of Commerce and Industry; Association of Missouri Electric Cooperatives; The Nature Conservancy; Dogwood Energy; National Resources Defense Council; and Ameren Missouri.

OPPONENTS: Written testimony was submitted in opposition to the bill.

Written testimony has been submitted for this bill. The full written testimony can be found under Testimony on the bill page on the House website.