

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for Senate Bill No. 820, Page 8, Section 386.890, Line 198,  
2 by inserting after said section and line the following:

3  
4 "393.170. 1. No gas corporation, electrical corporation, water corporation or sewer  
5 corporation shall begin construction of a gas plant, electric plant, water system or sewer system,  
6 other than an energy generation unit that has a capacity of one megawatt or less, without first having  
7 obtained the permission and approval of the commission.

8 2. No such corporation shall exercise any right or privilege under any franchise hereafter  
9 granted, or under any franchise heretofore granted but not heretofore actually exercised, or the  
10 exercise of which shall have been suspended for more than one year, without first having obtained  
11 the permission and approval of the commission. Before such certificate shall be issued a certified  
12 copy of the charter of such corporation shall be filed in the office of the commission, together with a  
13 verified statement of the president and secretary of the corporation, showing that it has received the  
14 required consent of the proper municipal authorities.

15 3. The commission shall have the power to grant the permission and approval herein  
16 specified whenever it shall after due hearing determine that such construction or such exercise of the  
17 right, privilege or franchise is necessary or convenient for the public service. The commission may  
18 by its order impose such condition or conditions as it may deem reasonable and necessary. Unless  
19 exercised within a period of two years from the grant thereof, any authority conferred by ~~[such~~  
20 ~~certificate of convenience and necessity issued by]~~ this section by the commission shall be null and  
21 void.

22 4. For purposes of the application of this section to any approval, permission, right,  
23 privilege, or franchise for electrical corporations, the term "public service" shall mean the delivery  
24 of electrical service to consumers in this state, and the exercise of any authority conferred by the  
25 commission shall mean the actual commencement of construction on such electrical system. No  
26 such approval, permission, or certificate of convenience and necessity shall be granted by the  
27 commission without the prior approval of the county commission for each county through which the  
28 electrical system seeking approval shall pass. Any transmission line providing less than fifty  
29 percent of its electrical load to consumers in this state shall not be considered public service."; and  
30

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

Further amend said bill, Page 9, Section 442.404, Line 40, by inserting after said section and line the following:

"523.010. 1. In case land, or other property, is sought to be appropriated by any road, railroad, street railway, telephone, telegraph or any electrical corporation organized for the manufacture or transmission of electric current for light, heat or power, including the construction, when that is the case, of necessary dams and appurtenant canals, flumes, tunnels and tailraces and including the erection, when that is the case, of necessary electric steam powerhouses, hydroelectric powerhouses and electric substations or any oil, pipeline or gas corporation engaged in the business of transporting or carrying oil, liquid fertilizer solutions, or gas by means of pipes or pipelines laid underneath the surface of the ground, or other corporation created under the laws of this state for public use, and such corporation and the owners cannot agree upon the proper compensation to be paid, or in the case the owner is incapable of contracting, be unknown, or be a nonresident of the state, such corporation may apply to the circuit court of the county of this state where such land or any part thereof lies by petition setting forth the general directions in which it is desired to construct its road, railroad, street railway, telephone, or telegraph line or electric line, including, when that is the case, the construction and maintenance of necessary dams and appurtenant canals, tunnels, flumes and tailraces and, when that is the case, the appropriation of land submerged by the construction of such dam, and including the erection and maintenance, when that is the case, of necessary electric steam powerhouses, hydroelectric powerhouses and electric substations, or oil, pipeline, liquid fertilizer solution pipeline, or gas line over or underneath the surface of such lands, a description of the real estate, or other property, which the company seeks to acquire; the names of the owners thereof, if known; or if unknown, a pertinent description of the property whose owners are unknown and praying the appointment of three disinterested residents of the county, as commissioners, or a jury, to assess the damages which such owners may severally sustain in consequence of the establishment, erection and maintenance of such road, railroad, street railway, telephone, telegraph line, or electrical line including damages from the construction and maintenance of necessary dams and the condemnation of land submerged thereby, and the construction and maintenance of appurtenant canals, flumes, tunnels and tailraces and the erection and maintenance of necessary electric steam powerhouses, hydroelectric powerhouses and electric substations, or oil, pipeline, or gas line over or underneath the surface of such lands; to which petition the owners of any or all as the plaintiff may elect of such parcels as lie within the county or circuit may be made parties defendant by names if the names are known, and by the description of the unknown owners of the land therein described if their names are unknown.

2. If the proceedings seek to affect the lands of persons under conservatorship, the conservators must be made parties defendant. If the present owner of any land to be affected has less estate than a fee, the person having the next vested estate in remainder may at the option of the petitioners be made party defendant; but if such remaindermen are not made parties, their interest shall not be bound by the proceedings.

1           3. It shall not be necessary to make any persons party defendants in respect to their  
2 ownership unless they are either in actual possession of the premises to be affected claiming title or  
3 having a title of the premises appearing of record upon the proper records of the county.

4           4. Except as provided in subsection 5 of this section, nothing in this chapter shall be  
5 construed to give a public utility, as defined in section 386.020, or a rural electric cooperative, as  
6 provided in chapter 394, the power to condemn property which is currently used by another provider  
7 of public utility service, including a municipality or a special purpose district, when such property is  
8 used or useful in providing utility services, if the public utility or cooperative seeking to condemn  
9 such property, directly or indirectly, will use or proposes to use the property for the same purpose, or  
10 a purpose substantially similar to the purpose for which the property is being used by the provider of  
11 the public utility service.

12           5. A public utility or a rural electric cooperative may only condemn the property of another  
13 provider of public utility service, even if the property is used or useful in providing utility services  
14 by such provider, if the condemnation is necessary for the public purpose of acquiring a  
15 nonexclusive easement or right-of-way across the property of such provider and only if the  
16 acquisition will not materially impair or interfere with the current use of such property by the utility  
17 or cooperative and will not prevent or materially impair such provider of public utility service from  
18 any future expansion of its facilities on such property.

19           6. If a public utility or rural electric cooperative seeks to condemn the property of another  
20 provider of public utility service, and the conditions in subsection 4 of this section do not apply, this  
21 section does not limit the condemnation powers otherwise possessed by such public utility or rural  
22 electric cooperative.

23           7. Suits in inverse condemnation or involving dangerous conditions of public property  
24 against a municipal corporation established under Article VI, Section 30(a) of the Missouri  
25 Constitution shall be brought only in the county where such land or any part thereof lies.

26           8. For purposes of this section, the authority for an electrical corporation as defined in  
27 section 386.020 to condemn property shall not extend to the construction or operation of  
28 transmission lines that provide less than fifty percent of their electrical load to end user electrical  
29 consumers in this state.

30           523.039. 1. In all condemnation proceedings filed after December 31, 2006, just  
31 compensation for condemned property shall be determined under one of the three following  
32 subdivisions, whichever yields the highest compensation, as applicable to the particular type of  
33 property and taking:

34           (1) An amount equivalent to the fair market value of such property;

35           (2) For condemnations that result in a homestead taking, an amount equivalent to the fair  
36 market value of such property multiplied by one hundred twenty-five percent; or

37           (3) For condemnations of property that result in any taking that prevents the owner from  
38 utilizing property in substantially the same manner as it was currently being utilized on the day of  
39 the taking and involving property owned within the same family for fifty or more years, an amount

equivalent to the sum of the fair market value and heritage value. For the purposes of this subdivision, family ownership of property may be established through evidence of ownership by children, grandchildren, siblings, or nephews or nieces of the family member owning the property fifty years prior to the taking; and in addition, may be established through marriage or adoption by such family members. If any entity owns the real property, members of the family shall have an ownership interest in more than fifty percent of the entity in order to be within the family line of ownership for the purposes of this subdivision. The property owner shall have the burden of proving to the commissioners or ~~jury~~ court that the property has been owned within the same family for fifty or more years.

2. For condemnation of any agricultural or horticultural property by an electrical corporation as defined in section 386.020, except for an electrical corporation operating under a cooperative business plan as described in section 393.110, just compensation shall be an amount equivalent to fair market value multiplied by one hundred fifty percent, as determined by the court.

523.040. 1. The court, or judge thereof in vacation, on being satisfied that due notice of the pendency of the petition has been given, shall appoint three disinterested commissioners, who shall be residents of the county in which the real estate or a part thereof is situated, and in any city not within a county, any county with a charter form of government and with more than one million inhabitants, or any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants at least one of the commissioners shall be either a licensed real estate broker or a state-licensed or state-certified real estate appraiser, to assess the damages which the owners may severally sustain by reason of such appropriation, who, within forty-five days after appointment by the court, which forty-five days may be extended by the court to a date certain with good cause shown, after applying the definition of fair market value contained in subdivision (1) of section 523.001, and after having viewed the property, shall return to the clerk of such court, under oath, their report in duplicate of such assessment of damages, setting forth the amount of damages allowed to the person or persons named as owning or claiming the tract of land condemned, and should more than one tract be condemned in the petition, then the damages allowed to the owner, owners, claimant or claimants of each tract, respectively, shall be stated separately, together with a specific description of the tracts for which such damages are assessed; and the clerk shall file one copy of said report in his office and record the same in the order book of the court, and he shall deliver the other copy, duly certified by him, to the recorder of deeds of the county where the land lies (or to the recorder of deeds of the city of St. Louis, if the land lies in said city) who shall record the same in his office, and index each tract separately as provided in section 59.440, and the fee for so recording shall be taxed by the clerk as costs in the proceedings; and thereupon such company shall pay to the clerk the amount thus assessed for the party in whose favor such damages have been assessed; and on making such payment it shall be lawful for such company to hold the interest in the property so appropriated for the uses prescribed in this section; and upon failure to pay the assessment, the court may, upon motion and notice by the party entitled to such damages, enforce the payment of the same by execution, unless the said company shall, within ten

1 days from the return of such assessment, elect to abandon the proposed appropriation of any parcel  
2 of land, by an instrument in writing to that effect, to be filed with the clerk of the court, and entered  
3 on the minutes of the court, and as to so much as is thus abandoned, the assessment of damages shall  
4 be void.

5 2. Prior to the issuance of any report under subsection 1 of this section, a commissioner  
6 shall notify all parties named in the condemnation petition no less than ten days prior to the  
7 commissioners' viewing of the property of the named parties' opportunity to accompany the  
8 commissioners on the commissioners' viewing of the property and of the named parties' opportunity  
9 to present information to the commissioners.

10 3. The commissioners shall view the property, hear arguments, and review other relevant  
11 information that may be offered by the parties.

12 4. In any condemnation proceeding involving agricultural or horticultural property, at least  
13 one of the disinterested commissioners appointed by the court shall be a farmer who has been  
14 engaged in farming, as defined in section 350.010, for a minimum of ten years in the county where  
15 such property is situated.

16 523.060. 1. Any plaintiff or defendant, individual or corporate, shall have the right of trial  
17 by jury of twelve persons, if either party file exceptions to the award of commissioners in any  
18 condemnation case.

19 2. Such jury shall use the definition of fair market value provided for in subdivision (1) of  
20 section 523.001.

21 3. In any condemnation proceeding commenced by an electrical corporation as defined in  
22 section 386.020, except for an electrical corporation operating under a cooperative business plan as  
23 described in section 393.110, if the amount awarded is greater than the offer made by the  
24 condemning authority pursuant to section 523.253, the court may award attorney's fees to the  
25 property owner."; and

26  
27 Further amend said bill by amending the title, enacting clause, and intersectional references  
28 accordingly.