

SECOND REGULAR SESSION

HOUSE BILL NO. 2827

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BROMLEY.

5867H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 386.266 and 393.1400, RSMo, and to enact in lieu thereof two new sections relating to utility rate proceedings.

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

Section A. Sections 386.266 and 393.1400, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 386.266 and 393.1400, to read as follows:

386.266. 1. Subject to the requirements of this section, any electrical corporation
2 may make an application to the commission to approve rate schedules authorizing an interim
3 energy charge, or periodic rate adjustments outside of general rate proceedings to reflect
4 increases and decreases in its prudently incurred fuel and purchased-power costs, including
5 transportation. The commission may, in accordance with existing law, include in such rate
6 schedules features designed to provide the electrical corporation with incentives to improve
7 the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

8 2. Subject to the requirements of this section, any electrical, gas, or water corporation
9 may make an application to the commission to approve rate schedules authorizing periodic
10 rate adjustments outside of general rate proceedings to reflect increases and decreases in its
11 prudently incurred costs, whether capital or expense, to comply with any federal, state, or
12 local environmental law, regulation, or rule. Any rate adjustment made under such rate
13 schedules shall not exceed an annual amount equal to two and one-half percent of the
14 electrical, gas, or water corporation's Missouri gross jurisdictional revenues, excluding gross
15 receipts tax, sales tax and other similar pass-through taxes not included in tariffed rates, for
16 regulated services as established in the utility's most recent general rate case or complaint
17 proceeding. In addition to the rate adjustment, the electrical, gas, or water corporation shall

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 be permitted to collect any applicable gross receipts tax, sales tax, or other similar pass-
19 through taxes, and such taxes shall not be counted against the two and one-half percent rate
20 adjustment cap. Any costs not recovered as a result of the annual two and one-half percent
21 limitation on rate adjustments may be deferred, at a carrying cost each month equal to the
22 utilities net of tax cost of capital, for recovery in a subsequent year or in the corporation's next
23 general rate case or complaint proceeding.

24 3. Subject to the requirements of this section, any gas or electrical corporation may
25 make an application to the commission to approve rate schedules authorizing periodic rate
26 adjustments outside of general rate proceedings to adjust rates of customers in eligible
27 customer classes to account for the impact on utility revenues of increases or decreases in
28 residential and commercial customer usage due to variations in either weather, conservation,
29 or both. For purposes of this section: for electrical corporations, "eligible customer classes"
30 means the residential class and classes that are not demand metered; and for gas corporations,
31 "eligible customer classes" means the residential class and the smallest general service class.
32 As used in this subsection, "revenues" means the revenues recovered through base rates, and
33 does not include revenues collected through a rate adjustment mechanism authorized by this
34 section or any other provisions of law. This subsection shall apply to electrical corporations
35 beginning January 1, 2019~~, and shall expire for electrical corporations on January 1, 2029.~~
36 ~~An electrical corporation may make a one-time application to the commission under this~~
37 ~~subsection if such corporation has provided notice to the commission under subsection 5 of~~
38 ~~section 393.1400, provided the corporation shall not concurrently utilize electric rate~~
39 ~~adjustments under this subsection and the deferrals set forth in subsection 5 of section~~
40 ~~393.1400].~~

41 4. Subject to the requirements of this section, a water corporation with more than
42 eight thousand Missouri retail customers may make an application to the commission to
43 approve rate schedules authorizing periodic rate adjustments outside of general rate
44 proceedings to ensure revenues billed by such water corporation for regulated services equal
45 the revenue requirement for regulated services as established in the water corporation's most
46 recent general rate proceeding or complaint proceeding, excluding any other commission-
47 approved surcharges and gross receipts tax, sales tax, and other similar pass-through taxes not
48 included in tariffed rates, due to any revenue variation resulting from increases or decreases in
49 residential, commercial, public authority, and sale for resale usage.

50 5. The commission shall have the power to approve, modify, or reject adjustment
51 mechanisms submitted under subsections 1 to 4 of this section only after providing the
52 opportunity for a full hearing in a general rate proceeding, including a general rate proceeding
53 initiated by complaint. The commission may approve such rate schedules after considering

54 all relevant factors which may affect the costs or overall rates and charges of the corporation,
55 provided that it finds that the adjustment mechanism set forth in the schedules:

56 (1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a
57 fair return on equity;

58 (2) Includes provisions for an annual true-up which shall accurately and appropriately
59 remedy any over- or under-collections, including interest at the utility's short-term borrowing
60 rate, through subsequent rate adjustments or refunds;

61 (3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of
62 this section, includes provisions requiring that the utility file a general rate case with the
63 effective date of new rates to be no later than four years after the effective date of the
64 commission order implementing the adjustment mechanism. However, with respect to each
65 mechanism, the four-year period shall not include any periods in which the utility is
66 prohibited from collecting any charges under the adjustment mechanism, or any period for
67 which charges collected under the adjustment mechanism must be fully refunded. In the
68 event a court determines that the adjustment mechanism is unlawful and all moneys collected
69 thereunder are fully refunded, the utility shall be relieved of any obligation under that
70 adjustment mechanism to file a rate case;

71 (4) In the case of an adjustment mechanism submitted under subsection 1 or 2 of this
72 section, includes provisions for prudence reviews of the costs subject to the adjustment
73 mechanism no less frequently than at eighteen-month intervals, and shall require refund of
74 any imprudently incurred costs plus interest at the utility's short-term borrowing rate.

75 6. Once such an adjustment mechanism is approved by the commission under this
76 section, it shall remain in effect until such time as the commission authorizes the
77 modification, extension, or discontinuance of the mechanism in a general rate case or
78 complaint proceeding.

79 7. Any amounts charged under any adjustment mechanism approved by the
80 commission under this section shall be separately disclosed on each customer bill.

81 8. The commission may take into account any change in business risk to the
82 corporation resulting from implementation of the adjustment mechanism in setting the
83 corporation's allowed return in any rate proceeding, in addition to any other changes in
84 business risk experienced by the corporation.

85 9. In the event the commission lawfully approves an incentive- or performance-based
86 plan, such plan shall be binding on the commission for the entire term of the plan. This
87 subsection shall not be construed to authorize or prohibit any incentive- or performance-based
88 plan.

89 10. Prior to August 28, 2005, for subsections 1 to 3 of this section, and upon August
90 28, 2018, for subsection 4 of this section, the commission shall have the authority to

91 promulgate rules under the provisions of chapter 536 as it deems necessary, to govern the
92 structure, content and operation of such rate adjustments, and the procedure for the
93 submission, frequency, examination, hearing and approval of such rate adjustments. Any
94 electrical, gas, or water corporation may apply for any adjustment mechanism under this
95 section whether or not the commission has promulgated any such rules.

96 11. Nothing contained in this section shall be construed as affecting any existing
97 adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism
98 currently approved and in effect.

99 12. Each of the provisions of this section is severable. In the event any provision or
100 subsection of this section is deemed unlawful, all remaining provisions shall remain in effect.

101 13. The provisions of subsections 1 to 3 of this section shall take effect on January 1,
102 2006, and the commission shall have previously promulgated rules to implement the
103 application process for any rate adjustment mechanism under subsections 1 to 3 of this
104 section prior to the commission issuing an order for any such rate adjustment.

105 14. The public service commission shall appoint a task force, consisting of all
106 interested parties, to study and make recommendations on the cost recovery and
107 implementation of conservation and weatherization programs for electrical and gas
108 corporations.

109 15. (1) Each public utility operating under a mechanism proposed and approved
110 under subsection 3 of this section shall quarterly file a surveillance monitoring, consisting of
111 five parts. Each part, except the rate-base quantifications report, shall contain information for
112 the last twelve-month period and the last quarter data for total company electric operations
113 and Missouri jurisdictional operations. Rate-base quantifications shall contain only
114 information for the ending date of the period being reported.

115 (2) Part one of the surveillance monitoring report shall be the rate-base
116 quantifications report. The quantification of rate-base items in part one shall be consistent
117 with the methods or procedures used in the most recent rate proceeding unless otherwise
118 specified. The report shall consist of specific rate-base quantifications of:

- 119 (a) Plant in service;
- 120 (b) Reserve for depreciation;
- 121 (c) Materials and supplies;
- 122 (d) Cash working capital;
- 123 (e) Fuel inventory, if applicable;
- 124 (f) Prepayments;
- 125 (g) Other regulatory assets;
- 126 (h) Customer advances;
- 127 (i) Customer deposits;

- 128 (j) Accumulated deferred income taxes;
- 129 (k) Any other item included in the electrical corporation's rate base in its most recent
130 rate proceeding;
- 131 (l) Net operating income from part three; and
- 132 (m) Calculation of the overall return on rate base.
- 133 (3) Part two of the surveillance monitoring report shall be the capitalization
134 quantifications report, which shall consist of specific capitalization quantifications of:
- 135 (a) Common stock equity (net);
- 136 (b) Preferred stock, par or stated value outstanding;
- 137 (c) Long-term debt, including current maturities;
- 138 (d) Short-term debt; and
- 139 (e) Weighted cost of capital, including component costs.
- 140 (4) Part three of the surveillance monitoring report shall be the income statement,
141 which shall consist of an income statement containing specific quantification of:
- 142 (a) Operating revenues to include sales to industrial, commercial, and residential
143 customers, sales for resale, and other components of total operating revenues;
- 144 (b) Operating and maintenance expenses for fuel expense, production expenses,
145 purchased power energy and capacity, if applicable;
- 146 (c) Transmission expenses;
- 147 (d) Distribution expenses;
- 148 (e) Customer accounts expenses;
- 149 (f) Customer service and information expenses;
- 150 (g) Sales expenses;
- 151 (h) Administrative and general expenses;
- 152 (i) Depreciation, amortization, and decommissioning expense;
- 153 (j) Taxes other than income taxes;
- 154 (k) Income taxes; and
- 155 (l) Quantification of heating degree and cooling degree days, actual and normal.
- 156 (5) Part four of the surveillance monitoring report shall be the jurisdictional allocation
157 factor report, which shall consist of a listing of jurisdictional allocation factors for the rate
158 base, capitalization quantification reports, and income statement.
- 159 (6) Part five of the surveillance monitoring report shall be the financial data notes,
160 which shall consist of notes to financial data including, but not limited to:
- 161 (a) Out of period adjustments;
- 162 (b) Specific quantification of material variances between actual and budget financial
163 performance;

164 (c) Material variances between current twelve-month period and prior twelve-month
165 period revenue;

166 (d) Expense level of items ordered by the commission to be tracked under the order
167 establishing the rate adjustment mechanism;

168 (e) Budgeted capital projects; and

169 (f) Events that materially affect debt or equity surveillance components.

170 (7) This subsection shall expire on January 1, 2029.

393.1400. 1. For purposes of this section, the following terms shall mean:

2 (1) "Commission", the public service commission;

3 (2) "Electrical corporation", the same as defined in section 386.020, but shall not
4 include an electrical corporation as described in subsection 2 of section 393.110;

5 (3) "Qualifying electric plant", all rate-base additions, except rate-base additions for
6 new coal-fired generating units, new nuclear generating units, new natural gas units, or rate-
7 base additions that increase revenues by allowing service to new customer premises;

8 (4) "Rate-base cutoff date", the date rate-base additions are accounted for in a general
9 rate proceeding. In the absence of a commission order that specifies the rate-base cutoff date,
10 such date as reflected in any jointly proposed procedural schedule submitted by the parties in
11 the applicable general rate proceeding, or as otherwise agreed to by such parties, shall be
12 used;

13 (5) "Weighted average cost of capital", the return on rate base used to determine the
14 revenue requirement in the electrical corporation's most recently completed general rate
15 proceeding; provided, that in the absence of a commission determination of the return on rate
16 base within the three-year period prior to August 28, 2022, the weighted average cost of
17 capital shall be determined using the electrical corporation's actual capital structure as of
18 December 31, 2021, excluding short-term debt, the electrical corporation's actual cost of long-
19 term debt and preferred stock as of December 31, 2021, and a cost of common equity of nine
20 and one-half percent.

21 2. (1) Notwithstanding any other provision of this chapter to the contrary, electrical
22 corporations shall defer to a regulatory asset eighty-five percent of all depreciation expense
23 and return associated with all qualifying electric plant recorded to plant-in-service on the
24 utility's books commencing on or after August 28, 2018, if the electrical corporation has made
25 the election provided for by subsection 5 of this section by that date, or on the date such
26 election is made if the election is made after August 28, 2018. In each general rate
27 proceeding concluded after August 28, 2018, the balance of the regulatory asset as of the rate-
28 base cutoff date shall, subject only to the cap provided for in section 393.1655 or section
29 393.1656, as applicable, be included in the electrical corporation's rate base without any
30 offset, reduction, or adjustment based upon consideration of any other factor, other than as

31 provided for in subdivision (2) of this subsection, with the regulatory asset balance arising
32 from deferrals associated with qualifying electric plant placed in service after the rate-base
33 cutoff date to be included in rate base in the next general rate proceeding. The expiration of
34 this section shall not affect the continued inclusion in rate base and amortization of regulatory
35 asset balances that arose under this section prior to such expiration.

36 (2) The regulatory asset balances arising under this section shall be adjusted to reflect
37 any prudence disallowances ordered by the commission. The provisions of this section shall
38 not be construed to affect existing law respecting the burdens of production and persuasion in
39 general rate proceedings for rate-base additions.

40 (3) Parts of regulatory asset balances created under this section that are not yet being
41 recovered through rates shall include carrying costs at the electrical corporation's weighted
42 average cost of capital, plus applicable federal, state, and local income or excise taxes.
43 Regulatory asset balances arising under this section and included in rate base shall be
44 recovered in rates through a twenty-year amortization beginning on the date new rates
45 reflecting such amortization take effect.

46 3. (1) Depreciation expense deferred under this section shall account for all
47 qualifying electric plant placed into service less retirements of plant replaced by such
48 qualifying electric plant.

49 (2) Return deferred under this section shall be determined using the weighted average
50 cost of capital applied to the change in plant-related rate base caused by the qualifying electric
51 plant, plus applicable federal, state, and local income or excise taxes. In determining the
52 return deferred, the electrical corporation shall account for changes in all plant-related
53 accumulated deferred income taxes and changes in accumulated depreciation, excluding
54 retirements.

55 4. Beginning February 28, 2019, and by each February twenty-eighth thereafter while
56 the electrical corporation is allowed to make the deferrals provided for by subsection 2 of this
57 section, electrical corporations that defer depreciation expense and return authorized under
58 this section shall submit to the commission a five-year capital investment plan setting forth
59 the general categories of capital expenditures the electrical corporation will pursue in
60 furtherance of replacing, modernizing, and securing its infrastructure. The plan shall also
61 include a specific capital investment plan for the first year of the five-year plan consistent
62 with the level of specificity used for annual capital budgeting purposes. For each project in
63 the specific capital investment plan on which construction commences on or after January
64 first of the year in which the plan is submitted, and where the cost of the project is estimated
65 to exceed twenty million dollars, the electrical corporation shall identify all costs and benefits
66 that can be quantitatively evaluated and shall further identify how those costs and benefits are
67 quantified. For any cost or benefit with respect to such a project that the electrical

68 corporation believes cannot be quantitatively evaluated, the electrical corporation shall state
69 the reasons the cost or benefit cannot be quantitatively evaluated, and how the electrical
70 corporation addresses such costs and benefits when reviewing and deciding to pursue such a
71 project. No such project shall be based solely on costs and benefits that the electrical
72 corporation believes cannot be quantitatively evaluated. Any quantification for such a project
73 that does not produce quantified benefits exceeding the costs shall be accompanied by
74 additional justification in support of the project. For each of the first five years that an
75 electrical corporation is allowed to make the deferrals provided for by subsection 2 of this
76 section, the purchase and installation of smart meters shall constitute no more than six percent
77 of the electrical corporation's total capital expenditures during any given year under the
78 corporation's specific capital investment plan. At least twenty-five percent of the cost of each
79 year's capital investment plan shall be comprised of grid modernization projects, including
80 but not limited to:

81 (1) Increased use of digital information and controls technology to improve
82 reliability, security, and efficiency of the electric grid;

83 (2) Dynamic optimization of grid operations and resources, with full cybersecurity;

84 (3) Deployment and integration of distributed resources and generation, including
85 renewable resources;

86 (4) Development and incorporation of demand response, demand-side resources, and
87 energy-efficiency resources;

88 (5) Deployment of smart technologies (real-time, automated, interactive technologies
89 that optimize the physical operation of appliances and consumer devices) for metering,
90 communications, concerning grid operations and status, and distribution automation;

91 (6) Integration of smart appliances and devices;

92 (7) Deployment and integration of advanced electricity storage and peak-shaving
93 technologies, including plug-in electric and hybrid electric vehicles, and thermal storage air
94 conditioning;

95 (8) Provision of timely information and control options to consumer;

96 (9) Development of standards for communication and interoperability of appliances
97 and equipment connected to the electric grid, including the infrastructure serving the grid; and

98 (10) Identification and lowering of unreasonable or unnecessary barriers to adoption
99 of smart grid technologies, practices, and services.

100

101 Project specific information need not be included for the five-year period covered by the plan.
102 Within thirty days of the filing of any capital investment plan or annual update to an existing
103 plan, the electrical corporation shall host a public stakeholder meeting to answer questions
104 and receive feedback about the plan. After feedback is received, the electrical corporation

105 shall file a notice with the commission of any modifications to the capital investment plan it
106 has accepted. Changes to the plan, its implementation, or the level of investments made shall
107 not constitute evidence of imprudence of the investments made under such plan. The
108 submission of a capital investment plan under this section shall not affect in any way the
109 commission's authority with respect to the grant or denial of a certificate of convenience and
110 necessity under section 393.170. By February twenty-eighth following each year in which
111 the electrical corporation submits a capital investment plan, the electrical corporation shall
112 submit a report to the commission detailing actual capital investments made the previous
113 year, the quantitatively evaluated benefits and costs generated by each of those investments
114 that exceeded twenty million dollars, and any efficiencies achieved as a result of those
115 investments.

116 5. This section shall only apply to any electrical corporation that has filed a notice
117 with the commission of the electrical corporation's election to make the deferrals for which
118 this section provides. ~~[An electrical corporation may provide notice to the commission one
119 time under this subsection if such corporation has applied to the commission under subsection
120 2 of section 386.266, provided the corporation shall not concurrently utilize deferrals under
121 this subsection and the electric rate adjustments set forth in subsection 3 of section 386.266.]~~
122 An electrical corporation's election shall allow it to make the deferrals provided for by
123 subsection 2 of this section until December 31, 2028. Notwithstanding the immediately
124 preceding sentence, an electrical corporation may seek permission to continue to make the
125 deferrals provided for by subsection 2 of this section for an additional five years beyond
126 December 31, 2028, by filing an application with the commission seeking such permission by
127 December 31, 2026, which application shall be ruled upon by the commission within one
128 hundred eighty days after its filing. In deciding whether to grant such permission to continue
129 the commission shall have the authority, consistent with its statutory authority outside this
130 section, to consider such factors as in its judgment it deems necessary and may condition the
131 permission on factors that are relevant to the deferrals authorized by subsection 2 of this
132 section. The commission shall make the determination of whether to grant such permission to
133 continue after a hearing. An electrical corporation making deferrals provided for by
134 subsection 2 of this section on and after January 1, 2024, shall be subject to the revenue
135 requirement impact cap set forth under section 393.1656. Failure to obtain such commission
136 permission to continue shall not affect deferrals made through the date for which permission
137 has been granted, or the regulatory and ratemaking treatment of the regulatory assets arising
138 from such deferrals as provided for by this section.

139 6. The commission may take into account any change in business risk to the
140 corporation resulting from implementation of the deferrals in setting the corporation's allowed

141 return in any rate proceeding, in addition to any other changes in business risk experienced by
142 the corporation.

143 7. This section shall expire on December 31, 2033, except that the amortization of the
144 regulatory asset balances arising under this section shall continue to be reflected in the
145 electrical corporation's rates and remaining regulatory asset balances shall be included in the
146 electrical corporation's rate base consistent with the ratemaking treatment and amortization
147 previously approved by the commission pursuant to this section.

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