

HOUSE BILL NO. 3455

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BOYKO.

7379H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 393.135 and 393.150, RSMo, and to enact in lieu thereof two new sections relating to the regulation of public utilities.

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

Section A. Sections 393.135 and 393.150, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 393.135 and 393.150, to read as follows:

393.135. 1. Except as provided in subsection 2 of this section, any charge made or
2 demanded by an electrical corporation for service, or in connection therewith, which is based
3 on the costs of construction in progress upon any existing or new facility of the electrical
4 corporation, or any other cost associated with owning, operating, maintaining, or financing
5 any property before it is fully operational and used for service, is unjust and unreasonable,
6 and is prohibited.

7 2. ~~[(1) An electrical corporation may be permitted, subject to the limitations in this~~
8 ~~subsection, to include construction work in progress for any new natural gas generating unit~~
9 ~~in rate base. The inclusion of construction work in progress allowed under this subsection~~
10 ~~shall be in lieu of any otherwise applicable allowance for funds used during construction that~~
11 ~~would have accrued from and after the effective date of new base rates that reflect inclusion~~
12 ~~of the construction work in progress in rate base. The commission shall determine, in a~~
13 ~~proceeding under section 393.170, the amount of construction work in progress that may be~~
14 ~~included in rate base. The amount shall be limited by:~~

15 (a) ~~The estimated cost of such project; and~~

16 (b) ~~Project expenditures made within the estimated construction period for such~~
17 ~~project.] Base rate recoveries arising from inclusion of construction work in progress in rate~~

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 base are subject to refund, with interest on the refunded amount at the same rate as the rate of
19 interest for delinquent taxes determined by the director of revenue in accordance with section
20 32.065, if, and to the extent the commission determines, in a subsequent complaint or general
21 rate proceeding, that construction costs giving rise to the construction work in progress
22 included in rate base were imprudently incurred or ~~if the project for which construction costs~~
23 ~~have been included in the rate base is not placed in service within a reasonable amount of~~
24 ~~time, as determined by the commission]~~ **otherwise unreasonable**. Rate base used to
25 determine return deferred under subdivision (2) of subsection 3 of section 393.1400 shall
26 include an offset for rate base that has been used to determine return included in base rates as
27 a result of construction work in progress inclusion in rate base under this subsection. The
28 offset shall apply from and after the in-service date of the asset that has been used to
29 determine return included in base rates as a result of construction work in progress inclusion
30 in rate base under this subsection.

31 ~~[(2) This subsection shall expire on December 31, 2035, unless the commission~~
32 ~~determines, after a hearing conducted in 2035, upon a submission from an electrical~~
33 ~~corporation of an application requesting and demonstrating that good cause exists to extend~~
34 ~~the effectiveness of this subsection through December 31, 2045. The secretary of the~~
35 ~~commission shall notify the revisor of statutes when the conditions set forth for the extension~~
36 ~~of this subsection have been met.]~~

393.150. 1. Whenever there shall be filed with the commission by any gas
2 corporation, electrical corporation, water corporation or sewer corporation any schedule
3 stating a new rate or charge, or any new form of contract or agreement, or any new rule,
4 regulation or practice relating to any rate, charge or service or to any general privilege or
5 facility, the commission shall have, and it is hereby given, authority, either upon complaint or
6 upon its own initiative without complaint, at once, and if it so orders without answer or other
7 formal pleading by the interested gas corporation, electrical corporation, water corporation or
8 sewer corporation, but upon reasonable notice, to enter upon a hearing concerning the
9 propriety of such rate, charge, form of contract or agreement, rule, regulation or practice, and
10 pending such hearing and the decision thereon, the commission upon filing with such
11 schedule, and delivering to the gas corporation, electrical corporation, water corporation or
12 sewer corporation affected thereby, a statement in writing of its reasons for such suspension,
13 may suspend the operation of such schedule and defer the use of such rate, charge, form of
14 contract or agreement, rule, regulation or practice, but not for a longer period than one
15 hundred and twenty days beyond the time when such rate, charge, form of contract or
16 agreement, rule, regulation or practice would otherwise go into effect; and after full hearing,
17 whether completed before or after the rate, charge, form of contract or agreement, rule,
18 regulation or practice goes into effect, the commission may make such order in reference to

19 such rate, charge, form of contract or agreement, rule, regulation or practice as would be
20 proper in a proceeding initiated after the rate, charge, form of contract or agreement, rule,
21 regulation or practice had become effective. In any proceeding under this section wherein
22 testimony is prefiled, each party shall be afforded an opportunity to respond to any rebuttal
23 testimony and exhibits of other parties through prefiled testimony.

24 2. If any such hearing cannot be concluded within the period of suspension, as above
25 stated, the commission may, in its discretion, extend the time of suspension for a further
26 period not exceeding six months, the last day of which period shall be considered the
27 operation of law date. At any hearing involving a rate sought to be increased, the burden of
28 proof to show that the increased rate or proposed increased rate is just and reasonable shall be
29 upon the gas corporation, electrical corporation, water corporation or sewer corporation, and
30 the commission shall give to the hearing and decision of such questions preference over all
31 other questions pending before it and decide the same as speedily as possible.

32 3. ~~[(1) Beginning July 1, 2026, the test year for proceedings under this section shall,~~
33 ~~if requested by a gas corporation, water corporation, or sewer corporation, be a future year~~
34 ~~consisting of the first twelve full calendar months after the operation of law date determined~~
35 ~~in subsections 1 and 2 of this section for schedules stating new base rates filed by a gas~~
36 ~~corporation, water corporation, or sewer corporation under this section, unless the~~
37 ~~commission makes a determination that using a future test year under this section is~~
38 ~~detrimental to the public interest. For ratemaking purposes, the average of the projected~~
39 ~~month end total rate base amount during the future test year shall be used to establish new~~
40 ~~base rates. Unless otherwise ordered by the commission, new base rates shall not go into~~
41 ~~effect before the first day of the future test year.~~

42 ~~(2) With respect to gas corporations, water corporations, or sewer corporations that~~
43 ~~elect to utilize a future test year and notwithstanding section 393.270 to the contrary, within~~
44 ~~forty five days of the end of the future test year, such gas corporation, water corporation, or~~
45 ~~sewer corporation shall update its base rates that were approved by the commission in its~~
46 ~~report and order issued under subsections 1 and 2 of this section to reflect the total rate base,~~
47 ~~annualized depreciation expense, income tax expense, payroll expense, employee benefits~~
48 ~~(other than pensions and other post-retirement benefits), and rate case expense at the end of~~
49 ~~the future test year. The total ending rate base and expense items reflected in this update shall~~
50 ~~not be greater than the total ending rate base and expense items approved by the commission~~
51 ~~in its report and order establishing base rates. The commission and parties to the case shall~~
52 ~~have sixty days to review the updated information provided by a gas corporation, water~~
53 ~~corporation, or sewer corporation, unless any party who was a party to the rate case files a~~
54 ~~request for a hearing at which point the commission shall suspend the filed tariffs and order a~~

55 procedural schedule. The commission shall order the corporation to file new tariff sheets that
56 reflect any update approved by the commission.

57 4. ~~A gas corporation, water corporation, or sewer corporation that requests a test year~~
58 ~~under subsection 3 of this section shall not recover the costs of any plant investments made~~
59 ~~during the test year period under any of the mechanisms provided for in section 393.1000,~~
60 ~~393.1003, 393.1006, 393.1009, 393.1012, 393.1015, 393.1500, 393.1503, 393.1506, or~~
61 ~~393.1509.~~

62 5. ~~For a gas corporation, water corporation, or sewer corporation that elected to use a~~
63 ~~future test year, a reconciliation of the rate base at the end of the future test year shall be~~
64 ~~provided to the commission within forty five days of the end of the future test year. If the~~
65 ~~actual average month-end total rate base amount during the future test year is less than the~~
66 ~~average month-end total rate base amount used to set base rates in the prior general rate~~
67 ~~proceeding under subsections 1 and 2 of this section, and notwithstanding section 393.270 to~~
68 ~~the contrary, the portion of the annual revenue requirement comprising the average total rate~~
69 ~~base difference shall be returned to customers. The revenue requirement shall be calculated~~
70 ~~using rate base, depreciation expense, income tax expense, and the pretax rate of return from~~
71 ~~the prior general rate proceeding under subsections 1 and 2 of this section. The difference in~~
72 ~~revenue requirement shall be placed into a regulatory liability to be returned to customers in~~
73 ~~the next general rate proceeding with such regulatory liability to accrue carrying costs at the~~
74 ~~utility's weighted average cost of capital.~~

75 6.] The commission may take into account any change in business risk to the
76 corporation resulting from implementation of [the] any adjustment mechanism in setting the
77 corporation's allowed return in any rate proceeding, in addition to any other changes in
78 business risk experienced by the corporation.

79 [7. ~~For a gas corporation, water corporation, or sewer corporation that elected to use a~~
80 ~~future test year, a reconciliation of depreciation expense, income tax expense, payroll~~
81 ~~expense, employee benefits except for pensions and other postretirement benefits, and rate~~
82 ~~base expense incurred during the future test year shall be provided to the commission within~~
83 ~~forty five days of the end of the future test year. If the actual amounts for these expenses are~~
84 ~~less than the amounts used to calculate the revenue requirement in the prior general rate~~
85 ~~proceeding under subsections 1 and 2 of this section, and notwithstanding section 393.270 to~~
86 ~~the contrary, the differences shall be returned to customers. The difference in revenue~~
87 ~~requirement shall be placed into a regulatory liability to be returned to customers in the next~~
88 ~~general rate case with such regulatory liability to accrue carrying costs at the utility's~~
89 ~~weighted average cost of capital. Expense differences to be returned to customers resulting~~
90 ~~from this reconciliation shall not be used to offset additional capital spending in the~~
91 ~~reconciliation described in subsection 5 of this section.~~

92 ~~8. The commission shall promulgate rules to implement the provisions of this section~~
93 ~~no later than July 1, 2027. Such rules shall include a procedure allowing any party to a rate~~
94 ~~proceeding that utilizes a future test year as provided in subsection 3 of this section to~~
95 ~~undertake a meaningful review of the update provided by the gas corporation, water~~
96 ~~corporation, or sewer corporation under subsection 3 of this section and the reconciliations~~
97 ~~provided by the gas corporation, water corporation, or sewer corporation under subsections 5~~
98 ~~and 7 of this section, and to argue for the disallowance of any costs included in the total rate~~
99 ~~base, depreciation expense, income tax expense, payroll expense, employee benefits (other~~
100 ~~than pensions and other postretirement benefits), and rate case expense at the end of the future~~
101 ~~test year that differs from the projected values upon which the commission relied in issuing its~~
102 ~~report and order to approve new base rates under subsections 1 and 2 of this section. Any rule~~
103 ~~or portion of a rule, as that term is defined in section 536.010, that is created under the~~
104 ~~authority delegated in this section shall become effective only if it complies with and is~~
105 ~~subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section~~
106 ~~and chapter 536 are nonseverable and if any of the powers vested with the general assembly~~
107 ~~pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a~~
108 ~~rule are subsequently held unconstitutional, then the grant of rulemaking authority and any~~
109 ~~rule proposed or adopted after August 28, 2025, shall be invalid and void.~~

110 ~~9. For purposes of this section, the following terms shall mean:~~

111 ~~(1) "Base rates", rates or charges for public utility service other than rates or charges~~
112 ~~under any rate adjustment mechanism including, but not limited to, those approved under the~~
113 ~~provisions of sections 386.266, 393.1000, 393.1009, 393.1030, 393.1075, and 393.1500;~~

114 ~~(2) "Revenue requirement", the amount of retail revenues from base rates charged to~~
115 ~~retail customers for public utility service needed for a public utility to recover its cost to~~
116 ~~provide utility service including reasonable and necessary expenses, prudent investments, and~~
117 ~~the cost of capital.]~~

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