

SECOND REGULAR SESSION

SENATE BILL NO. 723

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3744S.011

AN ACT

To repeal sections 393.1400, 393.1640, and 393.1655, RSMo, and to enact in lieu thereof three new sections relating to discounted electric rates.

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

Section A. Sections 393.1400, 393.1640, and 393.1655, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 393.1400,
3 393.1640, and 393.1655, to read as follows:

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
4 shall not include an electrical corporation as described in subsection 2 of section
5 393.110;

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

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

15 (5) "Weighted average cost of capital", the return on rate base used to
16 determine the revenue requirement in the electrical corporation's most recently
17 completed general rate proceeding; provided, that in the absence of a commission
18 determination of the return on rate base within the three-year period prior to

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 August 28, 2018, the weighted average cost of capital shall be determined using
20 the electrical corporation's actual capital structure as of December 31, 2017,
21 excluding short-term debt, the electrical corporation's actual cost of long-term
22 debt and preferred stock as of December 31, 2017, and a cost of common equity
23 of nine and one-half percent.

24 2. (1) Notwithstanding any other provision of this chapter to the contrary,
25 electrical corporations shall defer to a regulatory asset eighty-five percent of all
26 depreciation expense and return associated with all qualifying electric plant
27 recorded to plant-in-service on the utility's books commencing on or after August
28 28, 2018, if the electrical corporation has made the election provided for by
29 subsection 5 of this section by that date, or on the date such election is made if
30 the election is made after August 28, 2018. In each general rate proceeding
31 concluded after August 28, 2018, the balance of the regulatory asset as of the
32 rate-base cutoff date shall be included in the electrical corporation's rate base
33 without any offset, reduction, or adjustment based upon consideration of any
34 other factor, other than as provided for in subdivision (2) of this subsection, with
35 the regulatory asset balance arising from deferrals associated with qualifying
36 electric plant placed in service after the rate-base cutoff date to be included in
37 rate base in the next general rate proceeding. The expiration of this section shall
38 not affect the continued inclusion in rate base and amortization of regulatory
39 asset balances that arose under this section prior to such expiration.

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

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

52 3. (1) Depreciation expense deferred under this section shall account for
53 all qualifying electric plant placed into service less retirements of plant replaced
54 by such qualifying electric plant.

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

61 4. Beginning February 28, 2019, and by each February twenty-eighth
62 thereafter while the electrical corporation is allowed to make the deferrals
63 provided for by subsection 2 of this section, electrical corporations that defer
64 depreciation expense and return authorized under this section shall submit to the
65 commission a five-year capital investment plan setting forth the general
66 categories of capital expenditures the electrical corporation will pursue in
67 furtherance of replacing, modernizing, and securing its infrastructure. The plan
68 shall also include a specific capital investment plan for the first year of the
69 five-year plan consistent with the level of specificity used for annual capital
70 budgeting purposes. For each of the first five years that an electrical corporation
71 is allowed to make the deferrals provided for by subsection 2 of this section, the
72 purchase and installation of smart meters shall constitute no more than six
73 percent of the electrical corporation's total capital expenditures during any given
74 year under the corporation's specific capital investment plan. At least twenty-five
75 percent of the cost of each year's capital investment plan shall be comprised of
76 grid modernization projects, including but not limited to:

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

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

81 (3) Deployment and integration of distributed resources and generation,
82 including renewable resources;

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

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

89 (6) Integration of smart appliances and devices;

90 (7) Deployment and integration of advanced electricity storage and

91 peak-shaving technologies, including plug-in electric and hybrid electric vehicles,
92 and thermal storage air conditioning;

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

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

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

99 Project specific information need not be included for the five-year period covered
100 by the plan. Within thirty days of the filing of any capital investment plan or
101 annual update to an existing plan, the electrical corporation shall host a public
102 stakeholder meeting to answer questions and receive feedback about the
103 plan. After feedback is received, the electrical corporation shall file a notice with
104 the commission of any modifications to the capital investment plan it has
105 accepted. Changes to the plan, its implementation, or the level of investments
106 made shall not constitute evidence of imprudence of the investments made under
107 such plan. The submission of a capital investment plan under this section shall
108 not affect in any way the commission's authority with respect to the grant or
109 denial of a certificate of convenience and necessity under section 393.170. By
110 February twenty-eighth following each year in which the electrical corporation
111 submits a capital investment plan, the electrical corporation shall submit a report
112 to the commission detailing actual capital investments made the previous year.

113 5. This section shall only apply to any electrical corporation that has filed
114 a notice with the commission of the electrical corporation's election to make the
115 deferrals for which this section provides. No electrical corporation shall file a
116 notice with the commission under this subsection if such corporation has made
117 an application under subsection 3 of section 386.266, and such application has
118 been approved. An electrical corporation's election shall allow it to make the
119 deferrals provided for by subsection 2 of this section until December 31, 2023,
120 unless the electrical corporation requests and the commission approves the
121 continuation of such deferrals beyond that date [and approves continuation of the
122 discounts authorized by section 393.1640 beyond that date as hereinafter
123 provided]. An electrical corporation that wishes to continue to make the deferrals
124 provided for by subsection 2 of this section from January 1, 2024, through
125 December 31, 2028, shall obtain the commission's approval to do so, shall be
126 subject to the compound annual growth rate limitations set forth under section

127 393.1655[, and shall also obtain the commission's approval to continue to provide
128 the discounts authorized by section 393.1640] in a commission order issued on or
129 before December 31, 2023. The commission shall have the authority to grant or
130 deny such approval based upon the commission's evaluation of the costs and
131 benefits of such continuation to electrical corporations and consumers, but shall
132 not be authorized to condition such approval or otherwise modify the deferrals
133 authorized by subsection 2 of this section[, or the discounts authorized by section
134 393.1640]. In deciding whether to extend the program for an additional five
135 years, the commission shall develop an objective analytical framework to
136 determine whether there is a continuing need. The commission shall make a
137 finding about whether there is a continuing need after hearing. Failure to obtain
138 such commission approval shall not affect deferrals made through December 31,
139 2023, or the regulatory and ratemaking treatment of the regulatory assets arising
140 from such deferrals as provided for by this section.

141 6. This section shall expire on December 31, 2028, except that the
142 amortization of the regulatory asset balances arising under this section shall
143 continue to be reflected in the electrical corporation's rates and remaining
144 regulatory asset balances shall be included in the electrical corporation's rate
145 base consistent with the ratemaking treatment and amortization previously
146 approved by the commission pursuant to this section.

393.1640. 1. Subject to the limitations provided for in subsection 2 of this
2 section, and upon proper application by an eligible customer prior to public
3 announcement of a growth project, a new or existing account meeting the
4 following criteria shall be considered for qualification for the discount set forth
5 in this subsection if:

6 (1) The customer adds incremental load, net of any offsetting load
7 reductions due to the termination of other accounts of the customer or an affiliate
8 of the customer within twelve months prior to the commencement of service to the
9 new load, with average monthly demand that is reasonably projected to be at
10 least three hundred kilowatts with a load factor of at least fifty-five percent
11 within two years after the date the application is submitted;

12 (2) The customer receives local, regional, or state economic development
13 incentives in conjunction with the incremental load; and

14 (3) The customer meets the criteria set forth in the electrical corporation's
15 economic development rider tariff sheet, as approved by the commission, that are
16 not inconsistent with the provisions of this subsection.

17 The discount shall be a percentage applied to all base-rate components of the
18 bill. The percentage shall be fixed for each year of service under the discount for
19 a period of up to five years. Subject to the remaining provisions of this
20 subsection, the average of the annual discount percentages shall equal forty
21 percent and shall not be less than thirty percent nor more than fifty percent in
22 any year. The discount shall be applied to such incremental load from the date
23 when the meter has been permanently set until the date that such incremental
24 load no longer meets the criteria required to qualify for the discount, as
25 determined under the provisions of subsection 2 of this section. An eligible
26 customer shall also receive a ten percent discount of all base-rate components of
27 the bill applied to such incremental load for one year after the initial discount
28 period ends if the electrical corporation determines that the customer is taking
29 service from an under-utilized circuit. [In no event shall a customer receive a
30 discount under this subsection after December 31, 2028.] The electrical
31 corporation may include in its tariff additional or alternative terms and
32 conditions to a customer's utilization of the discount, subject to approval of such
33 terms and conditions by the commission. The customer, on forms supplied by the
34 electrical corporation, shall apply for the discount provided for by this subsection
35 at least ninety days prior to the date the customer requests that the incremental
36 demand receive the discounts provided for by this subsection. If the incremental
37 demand is not separately metered, the electrical corporation's determination of
38 the incremental demand shall control. Notwithstanding the foregoing provisions
39 of this subsection, the cents-per-kilowatt-hour realization resulting from
40 application of any such discounted rate as calculated shall be higher than the
41 electrical corporation's variable cost to serve such accounts in aggregate and the
42 discounted rate also shall make a positive contribution to fixed costs associated
43 with such service. If in a subsequent general rate proceeding the commission
44 determines that application of such discounted rate is not adequate to cover the
45 electrical corporation's variable cost to serve such accounts and provide a positive
46 contribution to fixed costs then the commission shall increase the rate
47 prospectively to the extent necessary to do so.

48 2. In each general rate proceeding concluded after August 28, 2018, the
49 reduced level of revenues arising from the application of discounted rates
50 provided for by subsection 1 of this section shall be allocated to all the electrical
51 corporation's customer classes, including the classes with customers that qualify
52 for discounts under this section. This increase shall be implemented through the

53 application of a uniform percentage adjustment to the revenue requirement
54 responsibility of all customer classes. To qualify for the discounted rates provided
55 for in this section, if incremental load is separately metered, customers shall meet
56 the applicable criteria within twenty-four months after the date the meter is
57 permanently set based on metering data for calendar months thirteen through
58 twenty-four and annually thereafter. If such data indicates that the customer did
59 not meet the criteria for any applicable twelve-month period, it shall thereafter
60 no longer qualify for the discounted rate. The provisions of this section do not
61 supersede or limit the ability of an electrical corporation to continue to utilize
62 economic development or retention tariffs previously approved by the commission
63 that are in effect on August 28, 2018. If, however, a customer is receiving any
64 economic development or retention-related discounts as of the date it would
65 otherwise qualify for a discount provided for by this section, the customer shall
66 agree to relinquish the prior discount concurrently with the date it begins to
67 receive a discount under this section; otherwise, the customer shall not be eligible
68 to receive any discount under this section. Customer demand existing at the time
69 the customer begins to receive discounted rates under this section shall not
70 constitute incremental demand. The discounted rates provided for by this section
71 apply only to base-rate components, with the charges or credits arising from any
72 rate adjustment mechanism authorized by law to be applied to customers
73 qualifying for discounted rates under this section in the same manner as such
74 rate adjustments would apply in the absence of this section.

75 3. For purposes of this section, "electrical corporation" shall mean the
76 same as defined in section 386.020, but shall not include an electrical corporation
77 as described in subsection 2 of section 393.110.

78 [4. This section shall expire on December 31, 2028, provided, that unless
79 the electrical corporation has timely obtained the order provided for by subsection
80 5 of section 393.1400, the electrical corporation's customers shall, after December
81 31, 2023, no longer receive the discounts provided under this section.]

393.1655. 1. This section applies to an electrical corporation that has
2 elected to exercise any option under section 393.1400 and that has more than two
3 hundred thousand Missouri retail customers in 2018, and shall continue to apply
4 to such electrical corporation until December 31, 2023, if the commission has not
5 issued an order approving continuation of the deferrals authorized by subsection
6 2 of section 393.1400, [and continuation of the discounts authorized by section
7 393.1640 as authorized by subsection 5 of section 393.1400 with respect to the

8 electrical corporation,] or until December 31, 2028, if the commission has issued
9 such an order with respect to the electrical corporation.

10 2. Notwithstanding any other provision of law and except as otherwise
11 provided for by this section, an electrical corporation's base rates shall be held
12 constant for a period starting on the date new base rates were established in the
13 electrical corporation's last general rate proceeding concluded prior to the date
14 the electrical corporation gave notice under subsection 5 of section 393.1400 and
15 ending on the third anniversary of that date, unless a force majeure event as
16 determined by the commission occurs. Whether a force majeure event has
17 occurred shall be subject to commission review and approval in a general rate
18 proceeding, and shall not preclude the commission from reviewing the prudence
19 of any revenue reductions or costs incurred during any proceeding to set
20 rates. This subsection shall not affect the electrical corporation's ability to adjust
21 its nonbase rates during the three-year period provided for in this subsection as
22 authorized by its commission-approved rate adjustment mechanisms arising
23 under section 386.266, 393.1030, or 393.1075, or as authorized by any other rate
24 adjustment mechanism authorized by law.

25 3. This subsection shall apply to electrical corporations that have a
26 general rate proceeding pending before the commission as of the later of February
27 1, 2018, or August 28, 2018. If the difference between (a) the electrical
28 corporation's average overall rate at any point in time while this section applies
29 to the electrical corporation, and (b) the electrical corporation's average overall
30 rate as of the date new base rates are set in the electrical corporation's most
31 recent general rate proceeding concluded prior to the date the electrical
32 corporation gave notice under section 393.1400, reflects a compound annual
33 growth rate of more than three percent, the electrical corporation shall not
34 recover any amount in excess of such three percent as a performance penalty.

35 4. This section shall apply to electrical corporations that do not have a
36 general rate proceeding pending before the commission as of the later of February
37 1, 2018, or August 28, 2018. If the difference between (a) the electrical
38 corporation's average overall rate at any point in time while this section applies
39 to the electrical corporation, and (b) the average of (i) the electrical corporation's
40 average overall rate as of the date new base rates are set in the electrical
41 corporation's most recent general rate proceeding concluded prior to the date the
42 electrical corporation gave notice under section 393.1400, and (ii) the electrical
43 corporation's average overall rate set under section 393.137, reflects a compound

44 annual growth rate of more than two and eighty-five hundredths percent, the
45 electrical corporation shall not recover any amount in excess of such two and
46 eighty-five hundredths percent as a performance penalty.

47 5. If a change in any rates charged under a rate adjustment mechanism
48 approved by the commission under sections 386.266 and 393.1030 would cause an
49 electrical corporation's average overall rate to exceed the compound annual
50 growth rate limitation set forth in subsection 3 or 4 of this section, the electrical
51 corporation shall reduce the rates charged under that rate adjustment mechanism
52 in an amount sufficient to ensure that the compound annual growth rate
53 limitation set forth in subsection 3 or 4 of this section is not exceeded due to the
54 application of the rate charged under such mechanism and the performance
55 penalties under such subsections are not triggered. Sums not recovered under
56 any such mechanism because of any reduction in rates under such a mechanism
57 pursuant to this subsection shall be deferred to and included in the regulatory
58 asset arising under section 393.1400 or, if applicable, under the regulatory and
59 ratemaking treatment ordered by the commission under section 393.1400, and
60 recovered through an amortization in base rates in the same manner as deferrals
61 under that section or order are recovered in base rates.

62 6. If the difference between (a) the electrical corporation's class average
63 overall rate at any point in time while this section applies to the electrical
64 corporation, and (b) the electrical corporation's class average overall rate as of the
65 date rates are set in the electrical corporation's most recent general rate
66 proceeding concluded prior to the date the electrical corporation gave notice under
67 subsection 5 of section 393.1400, reflects a compound annual growth rate of more
68 than two percent for the large power service rate class, the class average overall
69 rate shall increase by an amount so that the increase shall equal a compound
70 annual growth rate of two percent over such period for such large power service
71 rate class, with the reduced revenues arising from limiting the large power
72 service class average overall rate increase to two percent to be allocated to all the
73 electrical corporation's other customer classes through the application of a
74 uniform percentage adjustment to the revenue requirement responsibility of all
75 the other customer classes.

76 7. For purposes of this section, the following terms shall mean:

77 (1) "Average base rate", a rate calculated by dividing the total retail
78 revenue requirement for all the electrical corporation's rate classes by the total
79 sales volumes stated in kilowatt-hours for all such rate classes used to set rates

80 in the applicable general rate proceeding, exclusive of gross receipts tax, sales
81 tax, and other similar pass-through taxes;

82 (2) "Average overall rate", a rate equal to the sum of the average base rate
83 and the average rider rate;

84 (3) "Average rider rate", a rate calculated by dividing the total of the sums
85 to be recovered from all customer classes under the electrical corporation's rate
86 adjustment mechanisms in place other than a rate adjustment mechanism under
87 section 393.1075 by the total sales volumes stated in kilowatt-hours for all of the
88 electrical corporation's rate classes used to set rates under such rate adjustment
89 mechanisms, exclusive of gross receipts tax, sales tax, and other similar
90 pass-through taxes;

91 (4) "Class average base rate", a rate calculated by dividing the retail
92 revenue requirement from the applicable general rate proceeding that is allocated
93 to the electrical corporation's large power service rate class in that general rate
94 proceeding, by the total sales volumes stated in kilowatt-hours for that class used
95 to set rates in that general rate proceeding, exclusive of gross receipts tax, sales
96 tax, and other similar pass-through taxes;

97 (5) "Class average overall rate", a rate equal to the sum of the class
98 average base rate and the class average rider rate;

99 (6) "Class average rider rate", a rate calculated by dividing the total of the
100 sums allocated for recovery from the large power service rate class under the
101 electrical corporation's rate adjustment mechanisms in place other than a rate
102 adjustment mechanism under section 393.1075 by the total sales volumes stated
103 in kilowatt-hours for that class used to set rates under such rate adjustment
104 mechanisms, exclusive of gross receipts tax, sales tax, and other similar
105 pass-through taxes;

106 (7) "Force majeure event", an event or circumstance that occurs as a result
107 of a weather event, an act of God, war, terrorism, or other event which threatens
108 the financial integrity of the electrical corporation that causes a reduction in
109 revenues, an increase in the cost of providing electrical service, or some
110 combination thereof, and the event has an associated fiscal impact on the
111 electrical corporation's operations equal to three percent or greater of the total
112 revenue requirement established in the electrical corporation's last general rate
113 proceeding after taking into account the financial impact specified in section
114 393.137. Any force majeure event shall be subject to commission review and
115 approval, and shall not preclude the commission from reviewing the prudence of

116 any revenue reductions or costs incurred during any proceeding to set rates;
117 (8) "Large power service rate class", the rate class of each corporation that
118 requires the highest minimum monthly billing demand of all of the electrical
119 corporation's rate classes in order to qualify as a member of such rate class, and
120 that applies to qualifying customers only if they utilize the electrical corporation's
121 distribution system.

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