

FIRST REGULAR SESSION

# HOUSE BILL NO. 554

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES EMERY (Sponsor), JONES (117), WALSH, BIVINS, KOENIG, TALBOY, SCHOELLER, WASSON, JONES (89), VOGT, PARSON, SMITH (14), KELLY, DAVIS, SCHOEMEHL, SCHARNHORST, CORCORAN, BURLISON, COLONA, CARTER, VIEBROCK, SPRENG, BRUNS, HUMMEL, MEADOWS, FRAME, NOLTE, WILSON (119), RIDDLE AND SCHAD (Co-sponsors).

1194L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 393.135, RSMo, and to enact in lieu thereof sixteen new sections relating to electrical corporations.

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

Section A. Section 393.135, RSMo, is repealed and sixteen new sections enacted in lieu thereof, to be known as sections 393.135, 393.1250, 393.1253, 393.1256, 393.1259, 393.1262, 393.1265, 393.1268, 393.1271, 393.1274, 393.1277, 393.1280, 393.1283, 393.1286, 393.1289, and 393.1292, to read as follows:

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

**2. The provisions of subsection 1 of this section shall not apply to a clean baseload generating plant or a renewable source generating facility, as defined in section 393.1253. In addition, the commission may authorize an electrical corporation to make or demand charges for service based in whole or in part on additional amortizations to maintain the electrical corporation's financial ratios that will, in the commission's judgment, better enable the electrical corporation to cost-effectively construct a clean baseload generating plant or a renewable source generating facility.**

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.

393.1250. 1. Sections 393.1250 to 393.1292 shall be known and may be cited as the "Missouri Clean and Renewable Energy Construction Act", the purpose of which is to enable the construction of clean baseload electric generating plants within the state of Missouri or facilities that utilize renewable sources to produce energy. Sections 393.1250 to 393.1292 shall only apply to qualifying generating plants or facilities that are placed into commercial operation after August 28, 2009.

2. Where an electrical corporation forms a subsidiary corporation, limited liability company, partnership or other entity, a subsidiary, to acquire, finance, license, construct, own, operate, maintain or decommission a clean baseload generating plant to be used as a generating resource in whole or in part for the electrical corporation's ratepayers, the commission shall treat, for rate-making purposes, for the purpose of obtaining any required regulatory approvals, and for all other purposes of sections 393.1250 to 393.1292, all capital costs and expenses incurred by the subsidiary in connection with the clean baseload generating plant as if the costs and expenses were incurred directly by the electrical corporation and as if the plant itself was owned directly by the electrical corporation. Regulatory approvals, under sections 393.1250 to 393.1292 and otherwise, related to a clean baseload generating plant and recovery of costs through rates for such a plant shall be the same whether the clean baseload generating plant is owned directly by the electrical corporation or by a subsidiary of the electrical corporation, and the electrical corporation shall be entitled to obtain a commission determination of any regulatory and rate-making issues arising from ownership of the plant by such a subsidiary as part of the electrical corporation's request for a project development order relating to the plant under sections 393.1250 to 393.1292. Moreover, for all purposes of the assessment and levy of property taxes under Missouri law, including chapters 137, 138, 151 and 153, RSMo, the property of a subsidiary of an electrical corporation owning a clean baseload generating plant as described in this subsection shall be treated as if it were owned by the electrical corporation.

3. Nothing in subsection 2 of this section is intended to alter ownership of the project between the electrical corporation and any such subsidiary or other entity for any other purpose, including but not limited to, the granting of any interest in such subsidiary or other entity of the assets thereof in connection with any financing or otherwise.

4. Within thirty days after the effective date of sections 393.1250 to 393.1292, the commission shall convene a docket in which the commission shall consider the relative merits of various methods to finance clean baseload generating plants and renewable source generating facilities, including consideration of financing such plants and facilities without utilization of the provisions of sections 393.1250 to 393.1292, financing such plants

37 and facilities using the additional amortizations provided for in subsection 2 of section  
38 393.135, financing such plants and facilities using revised rates under sections 393.1265  
39 and 393.1274, or financing such plants and facilities using a combination of financing  
40 methods.

393.1253. As used in sections 393.1250 to 393.1292, the following words and phrases  
2 mean:

3 (1) "AFUDC", the allowance for funds used during construction of a facility  
4 calculated according to regulatory accounting principles;

5 (2) "Capital costs" or "facility capital costs", all capital costs including applicable  
6 taxes, associated with the design, siting, selection, acquisition, licensing, construction,  
7 testing, and placing into service of a clean baseload generating plant or renewable source  
8 generating facility, and ancillary facilities, as well as capital costs incurred to expand or  
9 upgrade the transmission grid in order to connect the clean baseload generating plant or  
10 renewable source generating facility to the transmission grid, under generally accepted  
11 principles of regulatory or financial accounting. This includes all costs described in the  
12 Federal Energy Regulatory Commission's Uniform System of Accounts Prescribed for  
13 Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, Electric  
14 Plant Instructions, as components of construction cost in 18 CFR Part 101, including  
15 AFUDC, and capital costs associated with facilities or investments for the transportation,  
16 delivery, storage, handling, and disposal of fuel;

17 (3) "Clean baseload generating plant", a new coal or nuclear fueled electrical  
18 generating facility located in the state of Missouri that is designed to be operated at a  
19 capacity factor exceeding seventy percent annually, has a gross initial generation capacity  
20 rating of five hundred megawatts or more, and is intended in whole or in part to serve  
21 retail customers of an electrical corporation in Missouri, and for a coal plant, is designed  
22 to utilize the best available control technology as of the date of the filing of the application  
23 for a facility review order, as defined by the United States Environmental Protection  
24 Agency, for the control of air emissions;

25 (4) "Construction work in progress", the electrical corporation's share of all capital  
26 costs as defined in this section associated with a clean baseload generating plant or  
27 renewable source generating facility, which have been incurred but have not been included  
28 in the electrical corporation's plant in service, and are recorded in Federal Energy  
29 Regulatory Commission's Uniform System of Accounts Prescribed for Public Utilities and  
30 Licensees Subject to the Provisions of the Federal Power Act, Balance Sheet Chart  
31 Accounts, as construction work in progress for electric plants in 18 CFR Part 101, or any

32 other account established in the Uniform System of Accounts for the recording of  
33 construction work in progress;

34 (5) "Cost of tax capitalized interest" for any period, the sum of all federal and state  
35 income tax for such period attributable to the disallowance of interest deductions due to  
36 tax capitalized interest, which amount shall include a gross-up for income taxes. The cost  
37 of tax capitalized interest shall be computed using the following formula: ([tax capitalized  
38 interest minus the debt component of AFUDC] times [the composite federal and state  
39 income tax rate used in the electrical corporation's most recent ratemaking proceeding, as  
40 adjusted to reflect changes, if any, to statutory tax rates applicable to the period]) divided  
41 by (one minus the electrical corporation's composite federal and state income tax rate);

42 (6) "Facility review application", an application for a facility review order;

43 (7) "Facility review order", an order issued by the commission under section  
44 393.1265;

45 (8) "General rate proceeding", a proceeding before the commission under section  
46 393.150 or section 386.390, RSMo, and other applicable provisions for the establishment  
47 of new electric rates and charges, and where orders in general rate proceedings are  
48 referenced in sections 393.1250 to 393.1292, such orders include revised rate orders issued  
49 in proceedings under sections 393.1259 to 393.1280;

50 (9) "In-service expenses", all reasonably projected expenses of the type recognized  
51 under generally accepted principles of regulatory or financial accounting as a result of a  
52 clean baseload generating plant or renewable source generating facility commencing  
53 commercial operation, including:

54 (a) Expenses associated with operating and maintaining the facility, as well as taxes  
55 and governmental charges, including taxes other than income taxes, applicable to the  
56 facility;

57 (b) Depreciation and amortization expenses related to the facility;

58 (c) The weighted average cost of capital applied to the electrical corporation's  
59 investment in supplies, inventories, and working capital associated with the facility; and

60 (d) Other costs determined by the commission to be appropriate for rate-making  
61 purposes. In-service expenses include, but are not limited to, labor, supplies, insurance,  
62 general and administrative expenses, and the cost of outside services;

63 (10) "Person", any individual, group, firm, partnership, company, or corporation;

64 (11) "Political subdivision", any county or municipality within this state;

65 (12) "Preconstruction costs", all costs associated with a potential clean baseload  
66 generating plant or renewable source generating facility incurred before issuance of a  
67 facility review order, including, without limitation, the costs of contracting, evaluation,

68 design, engineering, forging materials, environmental and geotechnical analysis and  
69 permitting, including early site permitting and combined operating license permitting,  
70 initial site preparation costs and related consulting and professional costs, and costs  
71 associated with any other activities on the site permitted under applicable federal, state,  
72 or local laws or regulations prior to receipt of any final authorization to construct the clean  
73 baseload generating plant or renewable source generating facility from applicable federal,  
74 state or local agencies, and shall include AFUDC associated with all of the foregoing costs.  
75 Preconstruction costs may be incurred prior to applying for a project development order;

76 (13) "Project development application", an application for a project development  
77 order;

78 (14) "Project development order", an order issued under section 393.1256;

79 (15) "Renewable source generating facility", any electric generating facility  
80 powered by wind, hydropower, solar power, landfill methane, biomass, or any other  
81 renewable source of power that does not produce significant carbon emissions;

82 (16) "Return on equity", the return on common equity established in the facility  
83 review order for a clean baseload generating plant or renewable source generating facility.  
84 If a return on common equity was established by the commission in an order in the  
85 electrical corporation's most recent general rate proceeding issued no more than five years  
86 before the date an application for a facility review order is filed, that return on common  
87 equity shall be used for computing future rate revisions under sections 393.1259 to  
88 393.1280. If a return on common equity was not established by the commission in an order  
89 in a general rate proceeding for the electrical corporation issued no more than five years  
90 before the date an application for a facility review order is filed, a project specific return  
91 on common equity shall be established in the facility review order application proceeding  
92 and shall apply exclusively to the establishment of the weighted average cost of capital  
93 under sections 393.1250 to 393.1292 and shall not be used for any other purpose. The  
94 return on common equity as set forth in this subdivision shall apply to the establishment  
95 of the weighted average cost of capital under sections 393.1250 to 393.1292 until a different  
96 return on equity is established in a general rate proceeding;

97 (17) "Revised rates", a revised schedule of electric rates and charges reflecting a  
98 change to the electrical corporation's then current nonfuel and purchased power rates and  
99 charges to add incremental revenue requirements related to a clean baseload generating  
100 plant or renewable source generating facility as authorized in sections 393.1250 to  
101 393.1292;

102 (18) "Revised rates order", an order issued by the commission under sections  
103 393.1259 to 393.1280 approving, modifying, or denying the electrical corporation's request  
104 to charge revised rates under sections 393.1250 to 393.1292;

105 (19) "Revised rates proceedings", all proceedings to consider an application for  
106 revised rates or review of a revised rates order;

107 (20) "Staff", the executive director or the executive director and the employees of  
108 the commission;

109 (21) "Tax interest capitalized", the interest that is capitalized for income tax  
110 purposes under Section 263A(f) of the Internal Revenue Code of 1986, as amended, or  
111 other provision of federal or state income tax law;

112 (22) "Weighted average cost of capital" or "cost of capital", the electrical  
113 corporation's average cost of debt and equity capital:

114 (a) Incorporating the:

115 a. Return on equity;

116 b. Electrical corporation's current weighted average cost of debt; and

117 c. Electrical corporation's weighted average cost of preferred stock;

118 (b) Adjusting subparagraphs a and c of paragraph (a) of this subdivision for the  
119 effect of current income taxes by dividing them by one minus the composite federal and  
120 state income tax rate used in the electrical corporation's most recent rate-making  
121 proceeding, as adjusted to reflect changes, if any, to statutory tax rates applicable to the  
122 period; and

123 (c) Weighting the items described in paragraph (a) in this subdivision and adjusted  
124 in paragraph (b) of this subdivision according to the electrical corporation's current capital  
125 structure for rate-making purposes.

2 393.1256. 1. The provisions of this section apply to the preconstruction costs of a  
2 clean baseload generating plant or renewable source generating facility.

3 2. An electrical corporation may file a project development application with the  
4 commission. The electrical corporation may combine the project development application  
5 with an application for a certificate of public convenience and necessity under subsection  
6 1 of section 393.170, a facility review order application, a revised rate order application,  
7 a general rate proceeding, or any combination thereof. Where the same information is  
8 required in different sections of the combined application, it may be set forth once and  
9 cross referenced as appropriate.

10 3. In a project development application, the electrical corporation shall:

11 (1) Describe the facility being considered and shall designate:

12 (a) The anticipated generation capacity or range of capacity of the facility; and

13           **(b) The projected annual capacity factors or range of capacity factors of the**  
14 **facility;**

15           **(2) Provide information establishing the need for the generation capacity**  
16 **represented by the potential facility;**

17           **(3) Provide information establishing the availability, reasonableness, and prudence**  
18 **of the potential fuel sources and potential generation types that the electrical corporation**  
19 **is considering for the facility; and**

20           **(4) Provide such other information as may be required to establish that the decision**  
21 **to incur preconstruction costs related to the potential facility is prudent considering the**  
22 **information known to the electrical corporation at the time and considering the other**  
23 **alternatives available to the electrical corporation for supplying its generation needs.**

24           **4. The commission shall issue a project development order affirming the prudence**  
25 **of the electrical corporation's decision to incur preconstruction costs for the facility**  
26 **specified in the application if the electrical corporation demonstrates by a preponderance**  
27 **of the evidence that the decision to incur preconstruction costs for the facility is prudent.**  
28 **In issuing its project development order, the commission shall not rule on the prudence or**  
29 **recoverability of specific items of cost, but shall rule instead on the prudence of the**  
30 **decision to incur preconstruction costs for the facility described in subdivision (1) of**  
31 **subsection 3 of this section.**

32           **5. Unless during the course of the revised rates proceeding or general rate**  
33 **proceeding where the preconstruction costs related to the facility are first being included**  
34 **in rates, a party proves by a preponderance of the evidence that individual items of**  
35 **preconstruction costs were imprudently incurred, or that other decisions respecting the**  
36 **preconstruction costs subsequent to the issuance of a project development order were**  
37 **imprudently made considering the information available to the electrical corporation at**  
38 **the time they were made, then all the preconstruction costs incurred for the potential**  
39 **facility shall be properly included in the electrical corporation's plant in service and shall**  
40 **be fully recoverable through rates in future general rate proceedings or revised rates**  
41 **proceedings under sections 393.1259 to 393.1280.**

42           **6. To the extent that a party in a general rate proceeding or revised rates**  
43 **proceeding establishes the imprudence of specific items of preconstruction costs or of**  
44 **specific decisions made subsequent to the issuance of a project development order as set**  
45 **forth in subsection 5 of this section, then the commission may disallow the resulting costs,**  
46 **but only to the extent that a prudent electrical corporation would have avoided those costs**  
47 **considering the information available to the electrical corporation at the time when they**  
48 **were incurred.**

49           **7. If the electrical corporation decides to abandon the project after issuance of a**  
50 **prudency determination under this section but before issuance of a facility review order,**  
51 **then the capital costs, whether incurred before or after the effective date of sections**  
52 **393.1250 to 393.1292, which are related to that project may be deferred, with AFUDC**  
53 **being calculated on the balance, and shall nonetheless be recoverable through rates,**  
54 **provided that as to the decision to abandon the project, the electrical corporation shall bear**  
55 **the burden of proving by a preponderance of the evidence that the decision was prudent**  
56 **and that the cost to ratepayers of abandoning the project as of the time the abandonment**  
57 **decision is made are projected to be less than the cost to ratepayers of completing the**  
58 **project. Without in any way limiting the effect of subsection 4 of this section as to a project**  
59 **that is not abandoned, recovery of capital costs and AFUDC thereon may be disallowed**  
60 **only to the extent that the failure by the electrical corporation to anticipate or avoid the**  
61 **allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent**  
62 **considering the information available at the time that the electrical corporation could have**  
63 **acted to avoid or minimize the costs. The commission shall order the amortization and**  
64 **recovery of the capital costs, with AFUDC thereon, through rates established in a general**  
65 **rate proceeding for the electrical corporation. The commission's order in the general rate**  
66 **proceeding shall provide that unamortized capital costs shall bear interest at the electrical**  
67 **corporation's AFUDC rate, and shall provide that the capital costs and AFUDC thereon**  
68 **shall be fully amortized within a period not to exceed one and one-half times the period**  
69 **during which the costs that are the subject of the amortization were incurred. If a portion**  
70 **of the project that is abandoned is owned by a person, firm, or entity other than the**  
71 **electrical corporation or by a subsidiary of an electrical corporation as contemplated by**  
72 **subsection 2 of section 393.1250, only that portion of the capital costs (with AFUDC**  
73 **thereon) that are associated with the electrical corporation's or its subsidiary's ownership**  
74 **interest in the project shall be recovered by the electrical corporation hereunder. This**  
75 **subsection shall not apply to projects abandoned under the provisions of subsection 4 of**  
76 **section 393.1268.**

77           **8. Prudency determinations under subsection 4 of this section shall be final and not**  
78 **subject to further review in any future proceedings.**

79           **9. At any time after an initial project development order has been issued, an**  
80 **electrical corporation may file an amended project development application seeking a**  
81 **determination of the prudency of the electrical corporation's decision to continue to incur**  
82 **preconstruction costs considering changed circumstances or changes in the type or location**  
83 **of the facility that the electrical corporation is pursuing or considering other**  
84 **characteristics or decisions related to the facility. The amended project development**



85 application shall be considered in a separate docket; however, the testimony and other  
86 evidence of the prior project development application docket shall be considered to be part  
87 of the new docket.

88 **10. The commission shall enter an order granting or denying an application for a**  
89 **project development order or an application for an amended project development order,**  
90 **collectively called a "project development order application", within three months of the**  
91 **filing of the project development order application. If the project development order**  
92 **application is combined with an application for a facility review order or with a general**  
93 **rate proceeding, the deadline for granting or denying the project development order**  
94 **application shall be the later of the deadline for issuing the facility review order or the**  
95 **effective date of the commission's report and order in the general rate proceeding. If an**  
96 **application for a certificate of public convenience and necessity under subsection 1 of**  
97 **section 393.170 is combined with a project development order application, the commission**  
98 **shall also enter an order granting or denying the certificate by the deadline established**  
99 **under this section for granting or denying the project development order application. If**  
100 **the commission fails to issue an order respecting the project development order**  
101 **application, and certificate application, if applicable, by the deadline established under this**  
102 **section, a party may move that the commission issue an order granting or denying the**  
103 **project development order application, and certificate application, if applicable. If the**  
104 **commission fails to issue such an order within ten days after the motion to issue an order**  
105 **is filed, the relief requested in the project development order application, and certificate**  
106 **application, if applicable, will be considered granted.**

**393.1259. The application for a facility review order under sections 393.1259 to**  
2 **393.1280 shall include:**

- 3 (1) Information showing the anticipated construction schedule for the facility;
- 4 (2) Information showing the anticipated components of capital costs and the  
5 anticipated schedule for incurring the costs;
- 6 (3) Information showing the projected effect of investment in the facility on the  
7 electrical corporation's overall revenue requirement for each year during the construction  
8 period;
- 9 (4) Information identifying:
  - 10 (a) The specific type of units selected for the facility;
  - 11 (b) The suppliers of the major components of the facility; and
  - 12 (c) The basis for selecting the type of units, major components, and suppliers;

13           **(5) Information detailing the qualification and selection of principal contractors**  
14 **and suppliers, other than those listed in paragraph (c) of subdivision (4) of this section, for**  
15 **construction of the facility;**

16           **(6) Information showing the anticipated in-service expenses associated with the**  
17 **facility for the twelve months following commencement of commercial operation adjusted**  
18 **to normalize any atypical or abnormal expense levels anticipated during that period;**

19           **(7) Information required by section 393.1265;**

20           **(8) Information identifying risk factors related to the construction and operation**  
21 **of the facility;**

22           **(9) Information identifying the proposed rate design and class allocation factors to**  
23 **be used in formulating revised rates;**

24           **(10) Information identifying the return on equity proposed by the electrical**  
25 **corporation under subdivision (17) of section 393.1253;**

26           **(11) The revised rates, if any are requested, that the electrical corporation intends**  
27 **to put in place concurrently with the issuance of the resulting facility review order, as**  
28 **provided for in subsection 3 of section 393.1265; and**

29           **(12) Information demonstrating that the method or combination of methods used**  
30 **to finance the facility constitutes the lowest feasible cost financing method or feasible**  
31 **combination of methods that will allow the electrical corporation adequate access to**  
32 **financing needed to construct the facility at a reasonable cost.**

**393.1262. 1. An electrical corporation may file a facility review order application**  
2 **with the commission. The electrical corporation may combine the facility review order**  
3 **application with an application for a certificate of public convenience and necessity under**  
4 **subsection 1 of section 393.170, a project development order application, a revised rate**  
5 **order application as provided for in subdivision (11) of section 393.1259, a general rate**  
6 **proceeding, or any combination thereof. An application or combined application shall**  
7 **contain an introduction and all material required by law or regulation to be contained in**  
8 **an application filed under sections 393.1250 to 393.1292.**

9           **2. Where the same information is required in different sections of the combined**  
10 **application, it may be set forth once and cross referenced as appropriate.**

**393.1265. 1. After a hearing, the commission shall issue a facility review order**  
2 **approving rate recovery for facility capital costs if it determines that the electrical**  
3 **corporation's decision to proceed with construction of the facility is prudent and**  
4 **reasonable considering the information available to the electrical corporation at the time.**

5           **2. The facility review order shall establish:**

6           **(1) The anticipated construction schedule for the facility including contingencies;**

- 7           (2) The anticipated components of capital costs and the anticipated schedule for  
8 incurring them, including contingencies;
- 9           (3) The return on equity established in conformity with subdivision (17) of section  
10 393.1253;
- 11          (4) The choice of the specific type of unit or units and major components of the  
12 facility;
- 13          (5) The qualification and selection of principal contractors and suppliers for  
14 construction of the facility; and
- 15          (6) The inflation indices to be used by the electrical corporation for costs of facility  
16 construction, covering major cost components or groups of related cost components. Each  
17 electrical corporation shall provide its own indices, including:
- 18           (a) The source of the data for each index if the source is external to the electrical  
19 corporation, or the methodology for each index which is compiled from internal electrical  
20 corporation data;
- 21           (b) The method of computation of inflation from each index;
- 22           (c) A calculated overall weighted index for capital costs; and
- 23           (d) A five-year history of each index on an annual basis.
- 24          3. If revised rates are requested, the facility review order shall specify initial revised  
25 rates reflecting the electrical corporation's current investment in the facility, which shall  
26 be determined using the standards set forth in subsection 2 of section 393.1274 and  
27 implemented according to section 393.1274.
- 28          4. The facility review order shall establish the rate design and class allocation  
29 factors to be used in calculating revised rates related to the facility. In establishing revised  
30 rates, all factors, allocations, and rate designs shall be as determined in the electrical  
31 corporation's last rate order or as otherwise previously established by the commission.
- 32          5. As circumstances warrant, the electrical corporation may petition the  
33 commission for an order modifying any of the schedules, estimates, findings, class  
34 allocation factors, rate designs, or conditions that form part of any facility review order  
35 issued under this section. The commission shall grant the relief requested if, after a  
36 hearing, the commission finds:
- 37           (1) As to the changes in the schedules, estimates, findings, or conditions, that the  
38 evidence of record justifies a finding that the changes are not the result of imprudence on  
39 the part of the electrical corporation; and
- 40           (2) As to the changes in the class allocation factors or rate designs, that the evidence  
41 of record indicates the proposed class allocation factors or rate designs are just and  
42 reasonable.

43 The commission shall consider a request under this subsection in a new docket with the  
44 resulting order to be an amended facility review order, which docket shall be subject to the  
45 provisions of subsection 6 of this section.

46 **6. The commission shall enter an order granting or denying an application for a**  
47 **facility review order or for an amended facility review order, collectively called a "facility**  
48 **review order application", within six months of the filing of the facility review order**  
49 **application. If the facility review order application is combined with a general rate**  
50 **proceeding, the deadline for granting or denying the facility review order application shall**  
51 **become the effective date of the commission's report and order in the general rate**  
52 **proceeding. If an application for a certificate of public convenience and necessity under**  
53 **subsection 1 of section 393.170 is combined with a facility review order application, the**  
54 **commission shall enter an order granting or denying the certificate by the deadline**  
55 **established under this section for granting or denying the facility review order application.**  
56 **If the commission fails to issue an order respecting the facility review order application,**  
57 **and certificate application, if applicable, by the deadline established under this section, a**  
58 **party may move that the commission issue an order granting or denying the facility review**  
59 **order application, and certificate application, if applicable. If the commission fails to issue**  
60 **such an order within ten days after the motion to issue an order is filed, the relief requested**  
61 **in the facility review order application, and certificate application, if applicable, will be**  
62 **considered granted.**

**393.1268. 1. A facility review order shall constitute a final and binding**  
2 **determination that the costs of the facility are properly includable in rates as and when**  
3 **they are incurred, and are prudently incurred so long as the facility is constructed or is**  
4 **being constructed within the parameters of:**

5 **(1) The approved construction schedule including contingencies; and**

6 **(2) The approved capital cost estimates including contingencies.**

7 **2. So long as the facility is constructed or being constructed in accordance with the**  
8 **approved schedules, estimates, and projections set forth in the facility review order, as**  
9 **adjusted by the inflation indices adopted by the facility review order, the electrical**  
10 **corporation shall be allowed to recover its capital costs related to the facility through**  
11 **revised rate filings or general rate proceedings.**

12 **3. If, during the course of the revised rates proceeding or general rate proceeding**  
13 **where the capital costs related to the facility are first being included in rates, a party**  
14 **proves by a preponderance of the evidence that there has been a material and adverse**  
15 **deviation from the approved schedules, estimates, and projections set forth in the facility**  
16 **review order, as adjusted by the inflation indices adopted therein, the commission may**

17 disallow the additional capital costs that result from the deviation, but only to the extent  
18 that the failure by the electrical corporation to avoid the deviation, or to minimize the  
19 resulting expense, was imprudent considering the information available at the time that  
20 the electrical corporation could have acted to avoid the deviation or minimize its effect.  
21 Deviations due to significant weather delays, natural disasters, changes in supplier costs,  
22 unavailability of supply of equipment, labor or materials, regulatory changes, or other  
23 factors beyond the electrical corporation's control shall not result in any disallowance of  
24 costs.

25 **4. If any provision of section 393.135 or sections 393.1250 to 393.1292 that affects**  
26 **an electrical corporation's ability to recover capital costs, including AFUDC thereon, for**  
27 **a project involving a clean baseload generating plant or a renewable source generating**  
28 **facility is abrogated, repealed, materially amended, or materially limited by subsequent**  
29 **action of the general assembly, by initiative petition, by constitutional amendment, or by**  
30 **judicial decision before a facility review order has been issued, then the electrical**  
31 **corporation may abandon the project and recover the capital costs incurred by the**  
32 **electrical corporation and AFUDC thereon that were incurred in reliance on the provisions**  
33 **of section 393.135 or sections 393.1250 to 393.1292. Recovery of the capital costs, with**  
34 **AFUDC thereon, shall be through rates established in a general rate proceeding for the**  
35 **electrical corporation, with the commission's order in the general rate proceeding to**  
36 **provide that unamortized capital costs shall bear interest at the electrical corporation's**  
37 **AFUDC rate and shall be fully amortized within a period not to exceed one and one-half**  
38 **times the period during which the costs that are the subject of the amortization were**  
39 **incurred. If a portion of the project that is abandoned is owned by a person, firm, or entity**  
40 **other than the electrical corporation or by a subsidiary of an electrical corporation as**  
41 **contemplated by subsection 2 of section 393.1250, only that portion of the capital costs**  
42 **(with AFUDC thereon) that are associated with the electrical corporation's or its**  
43 **subsidiary's ownership interest in the project shall be recovered by the electrical**  
44 **corporation hereunder. Moreover, if a facility review order for a project involving a clean**  
45 **baseload generating plant or a renewable source generating facility has been issued prior**  
46 **to the time any such provision of sections 393.1250 to 393.1292 is abrogated, repealed,**  
47 **materially amended, or materially limited by subsequent action of the general assembly,**  
48 **by initiative petition, by constitutional amendment, or by judicial decision, the capital costs**  
49 **incurred by the electrical corporation in order to complete such a project and the electrical**  
50 **corporation's cost of capital and cost of tax capitalized interest associated therewith shall**  
51 **be permitted to be recovered through such electrical corporation's rates as if no**  
52 **abrogation, repeal, material amendment, or material limitation had occurred.**

**393.1271. 1. After issuance of a facility review order approving rate recovery for capital costs related to the facility, the electrical corporation shall file reports with the commission staff semiannually until the facility begins commercial operation. Such reports shall be filed no later than forty-five days after the close of the period covered by the report, shall not be combined with any other filing, and shall contain the following information:**

- 7 (1) The progress of construction of the facility;**
- 8 (2) Updated construction schedules;**
- 9 (3) Schedules of the capital costs incurred; and**
- 10 (4) Updated schedules of the anticipated capital costs.**

**11 2. The commission staff shall conduct on going monitoring of the construction of the facility and expenditure of capital through review and audit of the semiannual reports under this section, and shall have the right to inspect the books and records regarding the plant and the physical progress of construction.**

**393.1274. 1. No earlier than three months after issuance of a facility review order, which, if requested by the electrical corporation, shall include an order approving revised rates as provided for in subsection 3 of section 393.1265, and every three months thereafter, the electrical corporation may file with the commission requests for the approval of revised rates that shall include the electrical corporation's additional investment in the facility reflected on the accounting books and records of the electrical corporation that were not previously included in rates.**

**8 2. For revised rates implemented as part of the facility review order under subsection 3 of section 393.1265, or for additional revised rates implemented under a request made under subsection 1 of this section, an electrical corporation shall be allowed to recover through the revised rates:**

- 12 (1) Its weighted average cost of capital applied to the outstanding balance of construction work in progress, including construction work in progress arising from preconstruction costs; and**
- 15 (2) Its cost of tax capitalized interest.**

**16**

**17 Subdivisions (1) and (2) of this subsection shall be calculated as of a date specified in the filing and shall be recovered through a separately stated charge to appear on customers' bills. No phase-in of revised rates shall be permitted. The electrical corporation shall not be permitted to include in its rate base in any general rate proceeding a deferred tax asset computed by reference to tax capitalized interest with respect to the construction, including preconstruction, of the clean baseload generating plant or renewable source generating**

23 facility. The electrical corporation shall be required to reduce its revenue requirement in  
24 any general rate proceeding to reflect the reduction in tax liability the electrical  
25 corporation receives from tax depreciation deductions attributable to the tax capitalized  
26 interest with respect to the construction, including preconstruction, of the clean baseload  
27 generating plant or renewable source generating facility. The recovery of tax capitalized  
28 interest with an income tax gross-up is intended to require ratepayers to pay no more and  
29 no less than necessary to make the electrical corporation whole on an after-tax cash basis.

30       **3. Initial revised rates approved under subsection 3 of section 393.1265 as part of**  
31 **the issuance of the facility review order, and revised rates filed under subsection 1 of this**  
32 **section, shall become effective ten days after the filing of rate schedules reflecting the new**  
33 **rates to be charged to each rate class. Such rates shall be collected by the electrical**  
34 **corporation on an interim basis subject to refund as provided for in subsection 6 of this**  
35 **section. Any construction work in progress for which the weighted average cost of capital**  
36 **is not being recovered through revised rates shall continue to earn AFUDC and may be**  
37 **included in rates through future filings. Revised rates filings under subsection 1 of this**  
38 **section shall include the most recent monitoring report filed under subsection 1 of section**  
39 **393.1271 updated to reflect information current as of the date specified in the filing. For**  
40 **revised rates filings under subsection 1 of this section, the commission shall provide notice**  
41 **of the revised rates filings to all parties to the electrical corporation's facility review**  
42 **application proceeding and permit the intervention of any party filing an application for**  
43 **intervention within two weeks of the filing if such a party meets the standard for**  
44 **intervention contained in the commission's rules. Late interventions may be approved in**  
45 **appropriate circumstances, but shall not result in the extension of any other dates**  
46 **contained herein.**

47       **4. The commission staff shall review and audit the revised rates filed under**  
48 **subsection 1 of this section or subsection 3 of section 393.1265 and the information**  
49 **supporting such rates to determine if the revised rates were calculated in accordance with**  
50 **the facility review order. No later than two months after the date of the revised rates**  
51 **filings, the commission staff shall file with the commission and serve on all parties of record**  
52 **a verified report indicating the results of its review and audit and proposing any changes**  
53 **to the revised rates or the information supporting them that the commission staff**  
54 **determines to be necessary to comply with the terms of the facility review order.**

55       **5. Written comments related to the report may be filed with the commission by**  
56 **parties to the docket within one month from the date of the filing of the report. Comments**  
57 **shall be served on the commission staff and simultaneously mailed or electronically**

58 transmitted to the electrical corporation and to all parties of record. The commission staff  
59 may revise its report considering comments filed.

60         **6. The commission shall enter an order affirming that the revised rates are in**  
61 **accordance with the facility review order, or specifying any variance between the revised**  
62 **rates and the facility review order, within four months of the revised rates filing. If revised**  
63 **rates are requested in connection with the issuance of the facility review order, the**  
64 **commission shall enter an order respecting revised rates within the deadline established**  
65 **under subsection 6 of section 393.1265 for granting or denying the facility review order**  
66 **application. If the commission fails to issue an order within the periods prescribed in this**  
67 **section, a party may move that the commission issue an order affirming that the revised**  
68 **rates are in accordance with the facility review order, or specifying any variance between**  
69 **the revised rates and the facility review order. If the commission fails to issue such an**  
70 **order within ten days after the motion to issue an order is filed, the revised rates shall be**  
71 **deemed final, and no longer subject to refund, subject, however, to the final audit**  
72 **provisions of subsection 12 of this section. If the commission determines that the revised**  
73 **rates put into effect by the electrical corporation resulted in a recovery of revenues above**  
74 **those authorized by the facility review order, the electrical corporation shall credit**  
75 **customer's bills for the excess recovery over the following four monthly billing cycles, with**  
76 **interest at the electrical corporation's short-term borrowing rate. If the commission**  
77 **determines that the revised rates put into effect by the electrical corporation resulted in a**  
78 **recovery of revenues less than those authorized by the facility review order, the electrical**  
79 **corporation shall add the under recovery to customer's bills over the following four**  
80 **monthly billing cycles, with interest at the electrical corporation's short-term borrowing**  
81 **rate.**

82         **7. Where both the commission staff and the electrical corporation agree in writing**  
83 **on the revised rates to be implemented, the commission shall give substantial weight to the**  
84 **agreement in issuing its revised rates order.**

85         **8. If the electrical corporation is granted a rate increase in the revised rates order,**  
86 **the electrical corporation shall promptly provide notice of the increase to its customers.**

87         **9. Upon implementation of revised rates under this section, the electrical**  
88 **corporation shall cease to accrue AFUDC on that component of its construction work in**  
89 **progress on which it is recovering its weighted average cost of capital through revised**  
90 **rates.**

91         **10. Other provisions of this section notwithstanding:**

92             **(1) The electrical corporation may file a final set of revised rates for the facility to**  
93 **go into effect upon commercial operation of the facility, the filing to be made no sooner**



94 than seven months before the projected date that the facility is to commence commercial  
95 operations. In the final revised rates, the electrical corporation may include recovery of  
96 the weighted average cost of capital applied to the actual capital costs associated with the  
97 facility and projected capital costs through the end of the period of construction of the  
98 facility that have not previously been included in rates. Rate adjustments to reflect the  
99 revenue requirement related to in-service expenses shall be included in the final revised  
100 rates and shall be based on the electrical corporation's most current budget estimates of  
101 those expenses for the succeeding twelve-month period at the time the final revised rates  
102 are filed or actual expenses, if available. The final revised rates filing shall be processed  
103 in the same manner and fashion as other revised rates filings made under subsection 1 of  
104 this section;

105 (2) If the commission rejects a revised rate filing on grounds that may be corrected  
106 in a subsequent filing, or if the electrical corporation withdraws a revised rate filing before  
107 a revised rates order is issued, the electrical corporation may file a subsequent request for  
108 revised rates at any time thereafter;

109 (3) The electrical corporation may seek to recover any capital costs, in-service  
110 expenses, or other costs not included in revised rates, if any, through future general rate  
111 proceedings.

112 11. If the electrical corporation decides to abandon the project after a facility  
113 review order approving rate recovery for the project has been issued, then the capital costs  
114 related to the project, whether incurred before or after the effective date of sections  
115 393.1250 to 393.1292, shall nonetheless be recoverable, provided that as to the decision to  
116 abandon the project, the electrical corporation shall bear the burden of proving by a  
117 preponderance of the evidence that the decision was prudent and that the cost to  
118 ratepayers of abandoning the project as of the time the abandonment decision is made are  
119 projected to be less than the cost to ratepayers of completing the project. Without limiting  
120 the effect of subsection 1 of section 393.1268 as to a facility that is not abandoned, recovery  
121 of capital costs may be disallowed as a result of abandoning a facility only to the extent that  
122 the failure by the electrical corporation to avoid the allegedly imprudent costs, or to  
123 minimize the magnitude of the costs, was imprudent considering the information available  
124 at the time that the electrical corporation could have acted to avoid or minimize the costs.  
125 The commission shall order the amortization and recovery of the capital costs of the  
126 abandoned facility as part of an order adjusting rates under this section or in a general  
127 rate proceeding for the electrical corporation. The commissioner's order shall provide that  
128 the unamortized capital costs shall bear interest at the electrical corporation's AFUDC  
129 rate, and shall be fully amortized within a period not to exceed one and one-half times the

130 period during which the costs that are the subject of the amortization were incurred. If  
131 a portion of the project that is abandoned is owned by a person, firm, or entity other than  
132 the electrical corporation or by a subsidiary of an electrical corporation as contemplated  
133 by subsection 2 of section 393.1250, only that portion of the preconstruction costs (with  
134 AFUDC thereon) that are associated with the electrical corporation's or its subsidiary's  
135 ownership interest in the project shall be recovered by the electrical corporation  
136 hereunder.

137       **12.** After completion of a facility that is subject to a facility review order, the  
138 commission staff shall conduct an audit of the electrical corporation's revenues, expenses,  
139 and rates. The audit shall be based on a twelve-month test period ending no later than  
140 December thirty-first of the calendar year following the year in which the facility entered  
141 commercial operation and shall be filed within four months of the conclusion of the test  
142 period. The sole purpose of the audit shall be to determine if the costs actually recovered  
143 through all revised rates orders equal the actual capital costs for the new facility and the  
144 in-service expenses. Any over recovery or under recovery determined by the commission  
145 to have existed shall be credited to or recovered from rate payers, as the case may be,  
146 through subsequent bill credits or surcharges, with interest at the utility's short-term  
147 borrowing rate.

**393.1277. 1.** The provisions of this section and section 393.1280 shall supplement  
2 the provisions of section 386.500, RSMo, and shall control to the extent inconsistent with  
3 section 386.500, RSMo. Within the time allowed for seeking rehearing of a commission  
4 order under section 386.500, RSMo, after issuance of a revised rates order under section  
5 393.1265 or 393.1274, or within thirty days of the failure by the commission to issue a  
6 revised rates order as required under subsection 6 of section 393.1274, any aggrieved party  
7 may apply to the commission for rehearing of the revised rates order or of the failure to  
8 issue a revised rates order.

9       **2.** In seeking rehearing under this section, a party shall identify with particularity  
10 the specific issues it intends to raise with regard to the revised rates order.

**393.1280. 1.** The commission shall issue its order ruling upon an application for  
2 rehearing of a revised rates order within six months of the filing of the application. If the  
3 application for rehearing has been resolved among the parties by settlement agreement,  
4 the commission shall consider and accept or reject any settlement agreement entered into  
5 by some or all of the parties within forty-five days of its filing.

6       **2.** Proceedings under this section are limited to issues related to whether the revised  
7 rates filed by the electrical corporation comply with the terms of the commission order  
8 issued under section 393.1265 and with the specific requirements of section 393.1274.

9 Other matters determined in orders issued under sections 393.1256 to 393.1280 or in a  
10 general rate proceeding are not subject to review in proceedings under this section or  
11 section 393.1277.

12 3. In proceedings under this section and section 393.1277, the commission shall  
13 allow limited discovery and restrict the issues for discovery and hearing to whether the  
14 revised rates comply with the terms of the commission order issued under section 393.1265  
15 and compliance with the specific requirements of section 393.1274.

16 4. The commission shall issue motions to strike, protective orders, motions to quash,  
17 motions for costs and sanctions, and other rulings as are necessary to enforce the terms of  
18 the limitations contained in this section.

19 5. The commission shall dismiss any party who, after notice, fails to abide by the  
20 limitations contained in this section.

21 6. The failure of the commission to enforce the terms of this section may be  
22 remedied by petition for writ of mandamus or prohibition in the circuit court, which  
23 petition the court shall advance over all other matters on its docket and heard on an  
24 emergency basis, without the requirement of a formal answer or other return, such hearing  
25 to be held as soon as practicable upon twenty-four hours' notice to the party against whom  
26 relief is sought. Proceedings related to the petitions may not serve to stay or delay  
27 proceedings before the commission.

28 7. The commission shall issue a final order that:

29 (1) Sets forth any changes that are required to the rates approved in the revised  
30 rates order;

31 (2) Determines the amount of any over collection or under collection of the revenues  
32 by the electrical corporation that resulted from application of the rates authorized in the  
33 revised rates order as compared to the rates authorized in the final order issued under this  
34 section; and

35 (3) Establishes a credit to refund the amount of an over collection or a surcharge  
36 to collect the amount of an under collection of revenues that arose during the time that the  
37 rates approved in the revised rates order, or imposed due to a failure of the commission to  
38 issue a revised rates order, were applicable and requires the electrical corporation to apply  
39 the credit or surcharge, including interest at the utility's short-term borrowing rate, until  
40 such time as the over collection or under collection is exhausted.

41 8. If the final order increases the amount of capital costs which the electrical  
42 corporation may recover through revised rates, the AFUDC booked on those capital costs  
43 between the issuance of the revised rates order and the final order shall remain on the  
44 books of the electrical corporation and shall not be reversed or adjusted. Surcharges

45 related to under collection of costs shall be calculated without consideration of AFUDC  
46 amounts recognized on the capital costs during this period.

47 **9. If the final order reduces the amount of capital costs which the electrical**  
48 **corporation may recover through revised rates for reasons other than the conclusive**  
49 **finding that the capital costs were imprudently incurred, then the electrical corporation**  
50 **may resume accrual of AFUDC on any capital costs that were not included in rate recovery**  
51 **and may book an amount of AFUDC equal to the AFUDC not recognized during the time**  
52 **the rates approved in the revised rates order were in effect.**

**393.1283. The denial of a project development application or a facility review**  
2 **application, or a combination thereof, shall not preclude the electrical corporation from**  
3 **filing a new or amended application or combined application at any time. An electrical**  
4 **corporation may proceed to construct a plant even if assurance of prudence or cost**  
5 **recovery under sections 393.1250 to 393.1292 is not sought or is denied, and the failure to**  
6 **seek or obtain such an assurance shall not be used as evidence or precedent in any future**  
7 **proceeding. In addition, an electrical corporation may recover its prudently-incurred costs**  
8 **associated with a project involving a clean baseload generating plant or renewable source**  
9 **generating facility that is abandoned without having sought a project development order**  
10 **or facility review order.**

**393.1286. 1. Except as otherwise specified in sections 393.1250 to 393.1292, all**  
2 **procedural requirements that apply to general rate proceedings by law or regulation shall**  
3 **apply to proceedings under sections 393.1250 to 393.1292, and to the judicial review of**  
4 **orders issued under sections 393.1250 to 393.1292. The requirements related to the form**  
5 **and content of filings to initiate general rate proceedings, however, only shall apply to**  
6 **proceedings that are combined with a general rate proceeding.**

7 **2. As to proceedings under sections 393.1250 to 393.1292 that are combined with**  
8 **a general rate proceeding, the procedural requirements related to general rate proceedings**  
9 **shall apply to the extent not inconsistent with sections 393.1250 to 393.1292.**

10 **3. In proceedings to review revised rates orders under sections 393.1277 and**  
11 **393.1280, no further notice to the public, customers, and others is required additional to**  
12 **that provided upon filing of the application for revised rates.**

13 **4. In proceedings under sections 393.1250 to 393.1292, the electrical corporation**  
14 **shall have the burden of proving that the prudence of its decision to incur preconstruction**  
15 **costs under section 393.1256 and to establish the appropriateness of a facility review order**  
16 **under section 393.1268. Without in any way limiting the conclusive effect of**  
17 **determinations under sections 393.1256 and 393.1268, in cases where sections 393.1250 to**  
18 **393.1292 allows a party to challenge the prudence of any transaction, cost, or decision of**

19 the electrical corporation, that party shall be required to make a prima facie case  
20 establishing a serious doubt about the prudence, and thereafter the burden of proof shall  
21 shift to the electrical corporation to demonstrate the prudence of the transaction, cost, or  
22 decision by a preponderance of the evidence.

23 **5. Determinations under sections 393.1256 and 393.1268 shall not be challenged,**  
24 **reopened, or reviewed in any subsequent commission proceeding, including in any general**  
25 **rate proceeding, and shall only be reviewed under an application for rehearing under**  
26 **section 386.500, RSMo. Determinations under sections 393.1265 and 393.1274 may be**  
27 **reviewed only under section 386.500, RSMo, as supplemented by sections 393.1277 and**  
28 **393.1280.**

**393.1289. Except as expressly set forth in sections 386.510 and 386.540, RSMo, no**  
2 **court of this state shall have jurisdiction to hear or determine any issue, case, or**  
3 **controversy concerning any matter which was or could have been determined in a**  
4 **proceeding before the commission under sections 393.1250 to 393.1292 or to stop or delay**  
5 **the construction, operation, or maintenance of a clean baseload generating plant or**  
6 **renewable source producing generating facility, except to require compliance with any**  
7 **unmet requirements of subsection 1 of section 393.170.**

**393.1292. Notwithstanding any other provision of law, no state or regional agency,**  
2 **or political subdivision or other local government may require any approval, consent,**  
3 **permit, certificate or other condition for the construction, operation, or maintenance of a**  
4 **clean baseload generating plant or other renewable source generating facility authorized**  
5 **by a certificate of public convenience and necessity issued by the commission; provided,**  
6 **that nothing herein shall prevent the application of state laws for the protection of**  
7 **employees engaged in the construction, operation, or maintenance of such facility;**  
8 **provided further that agencies of the state of Missouri shall continue to have authority to**  
9 **enforce compliance with applicable state statutes, rules, regulations, or standards**  
10 **promulgated within their authority.**

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