

SECOND REGULAR SESSION

HOUSE BILL NO. 2343

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EMERY.

5068L.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

Section A. Section 393.135, RSMo, is repealed and fourteen new sections enacted in lieu thereof, to be known as sections 393.135, 393.1250, 393.1253, 393.1256, 393.1259, 393.1262, 393.1265, 393.1268,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

393.135. **1. Except as provided in subsection 2 of this section or sections 393.1250 to 393.1292**, 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 commission may authorize an electrical corporation to make or demand charges for service based in whole or in part on additional amortizations to maintain an electrical corporation's corporate financial ratios that, in the commission's judgment, are designed to assist the electrical corporation in constructing or implementing cost-effective generating plants, environmental upgrades, smart grid infrastructure, high and low voltage delivery infrastructure, energy facilities, or energy efficiency programs.

393.1250. 1. Sections 393.1250 to 393.1292 shall be known and may be cited as the "Missouri Energy Security Construction Act". Missouri has growing energy needs and must provide for its future energy consumption in a responsible and efficient manner.

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.

4 Energy costs should be optimal and designed to secure an adequate supply of energy for
5 Missouri consumers at the best possible price. Legislation fostering large increases in the
6 supply of energy in Missouri is essential in order to achieve the goal of meeting the state's
7 future energy demand at the best possible price. Sections 393.1250 to 393.1292 shall not
8 apply to baseload electric generating plants or generating facilities that are in commercial
9 operation on August 28, 2010.

10 **2. Where an electrical corporation forms a subsidiary corporation, limited liability**
11 **company, partnership or other entity, a subsidiary, to acquire, finance, license, construct,**
12 **own, operate, maintain or decommission a baseload generating plant to be used as a**
13 **generating resource in whole or in part for the electrical corporation's ratepayers, the**
14 **commission shall treat, for rate-making purposes, for the purpose of obtaining any**
15 **required regulatory approvals, and for all other purposes of sections 393.1250 to 393.1292,**
16 **all capital costs and expenses incurred by the subsidiary in connection with the baseload**
17 **generating plant and all revenues, including off-system sales revenues generated from the**
18 **baseload generating plant as if the costs, expenses, and revenues were incurred or received**
19 **directly by the electrical corporation and as if the plant itself was owned directly by the**
20 **electrical corporation. Moreover, for all purposes of the assessment and levy of property**
21 **taxes under Missouri law, including chapters 137, 138, 151 and 153, the property of a**
22 **subsidiary of an electrical corporation owning a baseload generating plant as described in**
23 **this subsection shall be treated as if it were owned by the electrical corporation.**

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

28 **4. Within thirty days after the effective date of sections 393.1250 to 393.1292, the**
29 **commission shall convene a docket in which the commission shall consider the relative**
30 **merits of various methods to finance baseload generating plants and generating facilities,**
31 **including consideration of financing such plants and facilities without utilization of the**
32 **provisions of sections 393.1250 to 393.1292, financing such plants and facilities using the**
33 **additional amortizations provided for in subsection 3 of section 393.135, financing such**
34 **plants and facilities using revised rates under sections 393.1265 and 393.1274, or financing**
35 **such plants and facilities using a combination of financing 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) "Baseload generating plant", a new coal or nuclear fueled electrical generating
6 facility located in the state of Missouri that is designed to be operated at a capacity factor
7 exceeding seventy percent annually, has a gross initial generation capacity rating of five
8 hundred megawatts or more, and is intended in whole or in part to serve retail customers
9 of an electrical corporation in Missouri, and is designed to utilize the best available control
10 technology as of the date of the filing of the application for a facility review order, as
11 defined by the United States Environmental Protection Agency, for the control of air
12 emissions;

13 (3) "Capital costs" or "facility capital costs", all capital costs including applicable
14 taxes, associated with the design, siting, selection, acquisition, licensing, construction,
15 testing, and placing into service of a baseload generating plant or generating facility, and
16 ancillary facilities, as well as capital costs incurred to expand or upgrade the transmission
17 grid in order to connect the baseload generating plant or generating facility to the
18 transmission grid, under generally accepted principles of regulatory or financial
19 accounting. This includes all costs described in the Federal Energy Regulatory
20 Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees
21 Subject to the Provisions of the Federal Power Act, Electric Plant Instructions, as
22 components of construction cost in 18 CFR Part 101;

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

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

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

- 41 (7) "Facility review order", an order issued by the commission under section
42 **393.1265;**
- 43 (8) "General rate proceeding", a proceeding before the commission under section
44 **393.150 or section 386.390 and other applicable provisions for the establishment of new**
45 **electric rates and charges, and where orders in general rate proceedings are referenced in**
46 **sections 393.1250 to 393.1292, such orders include revised rate orders issued in proceedings**
47 **under sections 393.1259 to 393.1274;**
- 48 (9) "Generating facility", any electric generating facility;
- 49 (10) "In-service expenses", all reasonably projected expenses of the type recognized
50 **under generally accepted principles of regulatory or financial accounting as a result of a**
51 **baseload generating plant or generating facility commencing commercial operation;**
- 52 (11) "Person", any individual, group, firm, partnership, company, or corporation;
- 53 (12) "Political subdivision", any county or municipality within this state;
- 54 (13) "Preconstruction costs", all costs associated with a potential baseload
55 **generating plant or generating facility incurred before issuance of a facility review order,**
56 **including the costs of contracting, evaluation, design, engineering, forging materials,**
57 **environmental and geotechnical analysis and permitting, including early site permitting**
58 **and combined construction and operating license permitting, costs associated with**
59 **obtaining financing, initial site preparation costs and related consulting and professional**
60 **costs, and costs associated with any other activities on the site permitted under applicable**
61 **federal, state, or local laws or regulations prior to receipt of any final authorization, and**
62 **shall include AFUDC associated with all of the foregoing costs;**
- 63 (14) "Project development application", an application for a project development
64 **order;**
- 65 (15) "Project development order", an order issued under subsections 2 to 11 of
66 **section 393.1256;**
- 67 (16) "Return on equity", the return on common equity established in the facility
68 **review order for a baseload generating plant or generating facility;**
- 69 (17) "Revised rates", a revised schedule of electric rates and charges reflecting a
70 **change to the electrical corporation's then current nonfuel and purchased power rates and**
71 **charges to add incremental revenue requirements related to a baseload generating plant**
72 **or generating facility as authorized in sections 393.1250 to 393.1292;**
- 73 (18) "Revised rates order", an order issued by the commission under sections
74 **393.1259 to 393.1274 approving, modifying, or denying the electrical corporation's request**
75 **to charge revised rates under sections 393.1250 to 393.1292;**

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

78 (20) "Staff", the executive director or the executive director and the employees of
79 the commission;

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

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

85 (a) Incorporating the:

86 a. Return on equity;

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

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

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

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

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

3 2. Preconstruction costs associated with a potential baseload generating plan, with
4 AFUDC thereon, shall be included in the electrical corporation's rate base if the
5 commission finds that the electrical corporation was prudent and reasonable in incurring
6 such preconstruction costs. The electrical corporation's cost of tax capitalized interest shall
7 also be included in the electrical corporation's revenue requirement established in such a
8 general rate proceeding on preconstruction costs included in the electrical corporation's
9 rate base, in addition to the return on rate base applied to such preconstruction costs. The
10 electrical corporation shall be required to reduce its revenue requirement in any general
11 rate proceeding to reflect the reduction in tax liability the electrical corporation receives
12 from tax depreciation deductions attributable to the tax capitalized interest with respect
13 to the preconstruction costs that were included in rate base. The recovery of tax
14 capitalized interest with an income tax gross-up is intended to require ratepayers to pay

15 no more and no less than necessary to make the electrical corporation whole on an after-
16 tax cash basis.

17 **3. An electrical corporation may file a project development application with the**
18 **commission. The electrical corporation may combine the project development application**
19 **with an application for a certificate of public convenience and necessity under subsection**
20 **1 of section 393.170, a facility review order application, a revised rate order application,**
21 **a general rate proceeding, or any combination thereof. Where the same information is**
22 **required in different sections of the combined application, it may be set forth once and**
23 **cross referenced as appropriate.**

24 **4. In a project development application, the electrical corporation shall:**

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

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

27 **(b) The projected annual capacity factors or range of capacity factors of the**
28 **facility;**

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

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

34 **(4) In the case of a baseload generating plant to be powered by nuclear fuel,**
35 **provide information explaining the status of any application for a combined construction**
36 **and operating license filed with the United States Nuclear Regulatory Commission; and**

37 **(5) Provide such other information as may be required to establish that the decision**
38 **to incur preconstruction costs related to the potential facility is prudent considering the**
39 **information known to the electrical corporation at the time and considering the other**
40 **alternatives available to the electrical corporation for supplying its generation needs.**

41 **5. The commission shall issue a project development order affirming the prudence**
42 **of the electrical corporation's decision to incur preconstruction costs not already included**
43 **in the electrical corporation's rate base as provided for in subsection 2 of this section for**
44 **the facility specified in the application if the electrical corporation demonstrates by a**
45 **preponderance of the evidence that the decision to incur such preconstruction costs for the**
46 **facility is prudent. In issuing its project development order, the commission shall rule on**
47 **the prudence of the decision to incur preconstruction costs for the facility described in**
48 **subdivision (1) of subsection 3 of this section.**

49 **6. All such preconstruction costs may be reflected in rates unless a party proves by**
50 **a preponderance of the evidence that individual items of such preconstruction costs that**

51 the electrical corporation proposes to reflect in rates were imprudently incurred
52 considering the information available to the electrical corporation at the time they were
53 incurred.

54 7. To the extent that a party in a general rate proceeding establishes the
55 imprudence of specific items of preconstruction costs proposed for inclusion in the
56 electrical corporation's rate base as provided in subsection 2 of this section, then the
57 commission may disallow the costs, that would have been avoided by a prudent electrical
58 corporation with the same information.

59 8. If the electrical corporation decides to abandon the project after preconstruction
60 costs have been included in the utility's rate base, but before issuance of a facility review
61 order, then the preconstruction costs, whether incurred before or after the effective date
62 of sections 393.1250 to 393.1292, which are related to that project may be deferred, with
63 AFUDC being calculated on the balance, and shall nonetheless be recoverable through
64 rates, provided that as to the decision to abandon the project, the electrical corporation
65 shall bear the burden of proving by a preponderance of the evidence that the decision was
66 prudent.

67 9. Prudency determinations under subsection 5 of this section shall be final.

68 10. At any time after an initial project development order has been issued, an
69 electrical corporation may file an amended project development application seeking a
70 determination of the prudency of the electrical corporation's decision to continue to incur
71 preconstruction costs not already included in rate base considering changed circumstances
72 or changes in the type or location of the facility that the electrical corporation is pursuing
73 or considering other characteristics or decisions related to the facility.

74 11. The commission shall enter an order granting or denying an application for a
75 project development order or an application for an amended project development order,
76 collectively called a "project development order application", within six months of the
77 filing of the project development order application. If the project development order
78 application is combined with any other application, the deadline for granting or denying
79 the project development order application shall be the later of the applicable deadlines.
80 If the commission fails to issue an order respecting the project development order
81 application, and certificate application, if applicable, by the deadline established under this
82 section, a party may move that the commission issue an order granting or denying the
83 project development order application, and certificate application, if applicable. If the
84 commission fails to issue such an order within ten days after the motion to issue an order
85 is filed, the relief requested in the project development order application, and certificate
86 application, if applicable, will be considered granted.

2 **393.1259. The application for a facility review order under sections 393.1259 to**
3 **393.1274 shall include:**

4 (1) Information showing the anticipated construction schedule for the facility;

5 (2) Information showing the anticipated components of capital costs and the
6 anticipated schedule for incurring the costs;

7 (3) Information showing the projected effect of investment in the facility on the
8 electrical corporation's overall revenue requirement for each year during the construction
9 period;

10 (4) Information identifying:

11 (a) The specific type of units selected for the facility;

12 (b) The suppliers of the major components of the facility; and

13 (c) The basis for selecting the type of units, major components, and suppliers;

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

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

20 (7) Information required by section 393.1265;

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

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

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

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

30 (12) Information demonstrating that the method or combination of methods used
31 to finance the facility constitutes the lowest feasible cost financing method or feasible
32 combination of methods that will allow the electrical corporation adequate access to
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) That the changes are not the result of imprudence on the part of the electrical
38 corporation; and

39 (2) That any changes in the class allocation factors or rate designs are just and
40 reasonable.

41 6. The commission shall enter an order granting or denying an application for a
42 facility review order or for an amended facility review order, collectively called a "facility
43 review order application", within twelve months of the filing of the facility review order
44 application or within thirty days after the United States Nuclear Regulatory Commission
45 issues any required combined construction and operating license, whichever is later. The
46 commission shall enter an order granting or denying the certificate by the deadline
47 established under this section for granting or denying the facility review order application.
48 If the commission fails to issue an order respecting the facility review order application,
49 and certificate application, if applicable, by the deadline established under this section, a
50 party may move that the commission issue an order granting or denying the facility review
51 order application, and certificate application, if applicable. If the commission fails to issue
52 such an order within ten days after the motion to issue an order is filed, the relief requested
53 in the facility review order application, and certificate application, if applicable, will be
54 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 the facility review order.

5 2. If any provision of section 393.135 or sections 393.1250 to 393.1292 that affects
6 an electrical corporation's ability to recover capital costs, including AFUDC thereon, for
7 a project involving a baseload generating plant or a generating facility is abrogated,
8 repealed, materially amended, or materially limited by subsequent action of the general
9 assembly, by initiative petition, by constitutional amendment, or by judicial decision before
10 a facility review order has been issued, then the electrical corporation may abandon the
11 project and recover the capital costs incurred by the electrical corporation and AFUDC

12 thereon that were incurred in reliance on the provisions of section 393.135 or sections
13 393.1250 to 393.1292. Recovery of the capital costs incurred by the electrical corporation
14 in order to complete such a project and the electrical corporation's cost of capital and cost
15 of tax capitalized interest associated therewith shall be permitted to be recovered through
16 such electrical corporation's rates as if no abrogation, repeal, material amendment, or
17 material limitation had occurred.

393.1271. 1. After issuance of a facility review order approving rate recovery for
2 capital costs related to the facility, the electrical corporation shall file reports with the
3 commission staff semiannually until the facility begins commercial operation. Such reports
4 shall be filed no later than forty-five days after the close of the period covered by the
5 report, shall not be combined with any other filing, and shall contain the following
6 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
12 the facility and expenditure of capital through review and audit of the semiannual reports
13 under this section, and shall have the right to inspect the books and records regarding the
14 plant and the physical progress of construction.

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

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

- 12 (1) Its weighted average cost of capital applied to the outstanding balance of
13 construction work in progress, including construction work in progress arising from
14 preconstruction costs that have not previously been included in the electrical corporation's
15 rate base; and
- 16 (2) Its cost of tax capitalized interest.

17 The commission shall prescribe how these expenses shall be stated on customers' bills.

18 **3. Initial revised rates approved under subsection 3 of section 393.1265 as part of**
19 **the issuance of the facility review order, and revised rates filed under subsection 1 of this**
20 **section, shall become effective ten days after the filing of rate schedules reflecting the new**
21 **rates to be charged to each rate class. Such rates may be collected by the electrical**
22 **corporation on an interim basis subject to refund as provided for in subsection 6 of this**
23 **section. Any construction work in progress for which the weighted average cost of capital**
24 **is not being recovered through revised rates shall continue to earn AFUDC and may be**
25 **included in rates through future filings. Revised rates filings under subsection 1 of this**
26 **section shall include the most recent monitoring report filed under subsection 1 of section**
27 **393.1271 updated to reflect information current as of the date specified in the filing. For**
28 **revised rates filings under subsection 1 of this section, the commission shall provide notice**
29 **of the revised rates filings to all parties to the electrical corporation's facility review**
30 **application proceeding and permit the intervention of any party filing an application for**
31 **intervention within two weeks of the filing if such a party meets the standard for**
32 **intervention contained in the commission's rules. Late interventions may be approved in**
33 **appropriate circumstances, but shall not result in the extension of any other dates**
34 **contained herein.**

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

43 **5. Written comments related to the report may be filed with the commission by**
44 **parties to the docket within one month from the date of the filing of the report. Comments**
45 **shall be served on the commission staff and simultaneously mailed or electronically**
46 **transmitted to the electrical corporation and to all parties of record. The commission staff**
47 **may revise its report considering comments filed.**

48 **6. The commission shall enter an order affirming that the revised rates are in**
49 **accordance with the facility review order, or specifying any variance between the revised**
50 **rates and the facility review order, within four months of the revised rates filing. The**
51 **revised rates shall be deemed final, and no longer subject to refund, subject, however, to**
52 **the final audit provisions of subsection 12 of this section. If the commission determines**

53 that the revised rates put into effect by the electrical corporation resulted in a recovery of
54 revenues above those authorized by the facility review order, the electrical corporation
55 shall credit customer's bills for the excess recovery over the following four monthly billing
56 cycles, with interest at the electrical corporation's short-term borrowing rate. If the
57 commission determines that the revised rates put into effect by the electrical corporation
58 resulted in a recovery of revenues less than those authorized by the facility review order,
59 the electrical corporation shall add the under recovery to customer's bills over the
60 following four monthly billing cycles, with interest at the electrical corporation's
61 short-term borrowing rate.

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

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

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

71 10. Other provisions of this section notwithstanding:

72 (1) The electrical corporation may file a final set of revised rates for the facility to
73 go into effect upon commercial operation of the facility, the filing to be made no sooner
74 than seven months before the projected date that the facility is to commence commercial
75 operations. Rate adjustments to reflect the revenue requirement related to in-service
76 expenses shall be included in the final revised rates and shall be based on the electrical
77 corporation's most current budget estimates of those expenses for the succeeding twelve-
78 month period at the time the final revised rates are filed or actual expenses, if available.
79 The final revised rates filing shall be processed in the same manner and fashion as other
80 revised rates filings made under subsection 1 of this section;

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

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

88 **11. If the electrical corporation decides to abandon the project after a facility**
89 **review order approving rate recovery for the project has been issued, then the capital costs**
90 **related to the project, whether incurred before or after the effective date of sections**
91 **393.1250 to 393.1292, shall nonetheless be recoverable, provided that as to the decision to**
92 **abandon the project, the electrical corporation shall bear the burden of proving by a**
93 **preponderance of the evidence that the decision was prudent and that the cost to**
94 **ratepayers of abandoning the project as of the time the abandonment decision is made are**
95 **projected to be less than the cost to ratepayers of completing the project. Recovery of**
96 **capital costs may be disallowed as a result of abandoning a facility only to the extent that**
97 **the failure by the electrical corporation to avoid the allegedly imprudent costs, or to**
98 **minimize the magnitude of the costs, was imprudent. Capital costs shall be fully amortized**
99 **within a period not to exceed one and one-half times the period during which the costs that**
100 **are the subject of the amortization were incurred. If a portion of the project that is**
101 **abandoned is owned by a person, firm, or entity other than the electrical corporation or**
102 **by a subsidiary of an electrical corporation as contemplated by subsection 2 of section**
103 **393.1250, only that portion of the construction costs (with AFUDC thereon) that are**
104 **associated with the electrical corporation's or its subsidiary's ownership interest in the**
105 **project shall be recovered by the electrical corporation hereunder.**

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

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 baseload generating plant or generating facility that
9 is abandoned without having sought a project development order or facility review order.

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

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

11 **3. In proceedings under sections 393.1250 to 393.1292, the electrical corporation**
12 **shall have the burden of proving that the prudence of its decision to incur preconstruction**
13 **costs under section 393.1256 and to establish the appropriateness of a facility review order**
14 **under section 393.1268.**

15 **4. Determinations under sections 393.1256 and 393.1268 shall not be challenged,**
16 **reopened, or reviewed in any subsequent commission proceeding, including in any general**
17 **rate proceeding, except that, the public counsel or any corporation or person or public**
18 **utility interested therein and shall have the right to challenge such determinations via an**
19 **application for rehearing of the order making such determinations under section 386.500.**
20 **Determinations under sections 393.1265 and 393.1274 may be reviewed only under section**
386.500.

2 **393.1289. Courts of this state shall have the power to review commission**
3 **determinations made under sections 393.1256 and 393.1268 in proceedings under sections**
4 **386.510 and 386.540; provided that no court of this state shall stop or delay the**
5 **construction, operation, or maintenance of a baseload generating plant or generating**
6 **facility, except to require compliance with any unmet requirements of subsection 1 of**
7 **section 393.170, or prohibit cost recoveries previously approved in public service**
8 **commission proceedings.**

2 **393.1292. Notwithstanding any other provision of law, no state or regional agency,**
3 **or political subdivision or other local government may require any approval, consent,**
4 **permit, certificate or other condition for the construction, operation, or maintenance of a**
5 **baseload generating plant or other generating facility authorized by a certificate of public**
6 **convenience and necessity issued by the commission, except that the department of natural**
7 **resources may issue required permits in accordance with applicable state statutes, rules,**
8 **regulations, or standards promulgated within its authority and within its delegated federal**

8 authority; provided, that nothing herein shall prevent the application of state laws for the
9 protection of employees engaged in the construction, operation, or maintenance of such
10 facility; provided further that agencies of the state of Missouri shall continue to have
11 authority to enforce compliance with applicable state statutes, rules, regulations, or
12 standards promulgated within their authority.

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