

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1992**  
**100TH GENERAL ASSEMBLY**

4058H.03C

DANA RADEMAN MILLER, Chief Clerk

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**AN ACT**

To repeal sections 393.1009, 393.1015, and 523.262, RSMo, and to enact in lieu thereof three new sections relating to utility projects.

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

Section A. Sections 393.1009, 393.1015, and 523.262, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 393.1009, 393.1015, and 523.262,  
3 to read as follows:

393.1009. As used in sections 393.1009 to 393.1015, the following terms mean:

2 (1) "Appropriate pretax revenues", the revenues necessary to produce net operating  
3 income equal to:

4 (a) The gas corporation's weighted cost of capital multiplied by the net original cost of  
5 eligible infrastructure system replacements, including recognition of accumulated deferred  
6 income taxes and accumulated depreciation associated with eligible infrastructure system  
7 replacements which are included in a currently effective ISRS; and

8 (b) Recover state, federal, and local income or excise taxes applicable to such income;  
9 and

10 (c) Recover all other ISRS costs;

11 (2) "Commission", the Missouri public service commission;

12 (3) "Eligible infrastructure system replacements", gas utility plant projects that:

13 (a) Do not increase revenues by directly connecting the infrastructure replacement to new  
14 customers;

15 (b) Are in service and used and useful;

16 (c) Were not included in the gas corporation's rate base in its most recent general rate  
17 case; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 18 (d) Replace or extend the useful life of an existing infrastructure;
- 19 (4) "Gas corporation", every corporation, company, association, joint stock company or  
20 association, partnership and person, their lessees, trustees or receivers appointed by any court  
21 whatsoever, owning, operating, controlling, or managing any gas plant operating for public use  
22 under privilege, license, or franchise now or hereafter granted by the state or any political  
23 subdivision, county, or municipality thereof as defined in section 386.020;
- 24 (5) "Gas utility plant projects" ~~may~~ **shall** consist only of the following:
- 25 (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system  
26 components installed to comply with state or federal safety requirements as replacements for  
27 existing facilities that have worn out or are in deteriorated condition **or that can no longer be**  
28 **installed under currently applicable safety requirements or any cast iron or steel facilities**  
29 **including any connected or associated facilities that, regardless of their material, age, or**  
30 **condition, are replaced as part of a qualifying replacement project in a manner that adds**  
31 **no incremental cost to a project compared to tying into or reusing existing facilities;**
- 32 (b) Main relining projects, service line insertion projects, joint encapsulation projects,  
33 and other similar projects extending the useful life or enhancing the integrity of pipeline system  
34 components undertaken to comply with state or federal safety requirements; and
- 35 (c) Facilities relocations required due to construction or improvement of a highway,  
36 road, street, public way, or other public work by or on behalf of the United States, this state, a  
37 political subdivision of this state, or another entity having the power of eminent domain provided  
38 that the costs related to such projects have not been reimbursed to the gas corporation;
- 39 (6) "ISRS", infrastructure system replacement surcharge;
- 40 (7) "ISRS costs", depreciation expense and property taxes that will be due within twelve  
41 months of the ISRS filing;
- 42 (8) "ISRS revenues", revenues produced through an ISRS exclusive of revenues from  
43 all other rates and charges.

393.1015. 1. (1) At the time that a gas corporation files a petition with the commission  
2 seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its  
3 supporting documentation regarding the calculation of the proposed ISRS with the petition, and  
4 shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules,  
5 and its supporting documentation.

6 (2) Upon the filing of a petition, and any associated rate schedules, seeking to establish  
7 or change an ISRS, the commission shall publish notice of the filing.

8 2. (1) When a petition, along with any associated proposed rate schedules, is filed  
9 pursuant to the provisions of sections 393.1009 to 393.1015, the commission shall conduct an  
10 examination of the proposed ISRS.

11 (2) The staff of the commission may examine information of the gas corporation to  
12 confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to  
13 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report  
14 regarding its examination to the commission not later than ~~sixty~~ **ninety** days after the petition  
15 is filed. No other revenue requirement or ratemaking issues may be examined in consideration  
16 of the petition or associated proposed rate schedules filed pursuant to the provisions of sections  
17 393.1009 to 393.1015.

18 (3) The commission may hold a hearing on the petition and any associated rate schedules  
19 and shall issue an order to become effective not later than one hundred ~~twenty~~ **eighty** days after  
20 the petition is filed.

21 (4) If the commission finds that a petition complies with the requirements of sections  
22 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose  
23 an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the  
24 commission pursuant to the provisions of sections 393.1009 to 393.1015.

25 3. A gas corporation may effectuate a change in its rate pursuant to the provisions of this  
26 section no more often than two times every twelve months.

27 4. In determining the appropriate pretax revenue, the commission shall consider only the  
28 following factors:

29 (1) The current state, federal, and local income tax or excise rates;

30 (2) The gas corporation's actual regulatory capital structure as determined during the  
31 most recent general rate proceeding of the gas corporation;

32 (3) The actual cost rates for the gas corporation's debt and preferred stock as determined  
33 during the most recent general rate proceeding of the gas corporation;

34 (4) The gas corporation's cost of common equity as determined during the most recent  
35 general rate proceeding of the gas corporation;

36 (5) The current property tax rate or rates applicable to the eligible infrastructure system  
37 replacements;

38 (6) The current depreciation rates applicable to the eligible infrastructure system  
39 replacements; and

40 (7) In the event information pursuant to subdivisions (2), (3), and (4) of this subsection  
41 is unavailable and the commission is not provided with such information on an agreed-upon  
42 basis, the commission shall refer to the testimony submitted during the most recent general rate  
43 proceeding of the gas corporation and use, in lieu of any such unavailable information, the  
44 recommended capital structure, recommended cost rates for debt and preferred stock, and  
45 recommended cost of common equity that would produce the average weighted cost of capital  
46 based upon the various recommendations contained in such testimony.

47           5. (1) The monthly ISRS charge may be calculated based on a reasonable estimate of  
48 billing units in the period in which the charge will be in effect, which shall be conclusively  
49 established by dividing the appropriate pretax revenues by the customer numbers reported by the  
50 gas corporation in the annual report it most recently filed with the commission pursuant to  
51 subdivision (6) of section 393.140, and then further dividing this quotient by twelve. Provided,  
52 however, that the monthly ISRS may vary according to customer class and may be calculated  
53 based on customer numbers as determined during the most recent general rate proceeding of the  
54 gas corporation so long as the monthly ISRS for each customer class maintains a proportional  
55 relationship equivalent to the proportional relationship of the monthly customer charge for each  
56 customer class.

57           (2) At the end of each twelve-month calendar period the ISRS is in effect, the gas  
58 corporation shall reconcile the differences between the revenues resulting from an ISRS and the  
59 appropriate pretax revenues as found by the commission for that period and shall submit the  
60 reconciliation and a proposed ISRS adjustment to the commission for approval to recover or  
61 refund the difference, as appropriate, through adjustments of an ISRS charge.

62           6. (1) A gas corporation that has implemented an ISRS pursuant to the provisions of  
63 sections 393.1009 to 393.1015 shall file revised rate schedules to reset the ISRS to zero when  
64 new base rates and charges become effective for the gas corporation following a commission  
65 order establishing customer rates in a general rate proceeding that incorporates in the utility's  
66 base rates subject to subsections 8 and 9 of this section eligible costs previously reflected in an  
67 ISRS.

68           (2) Upon the inclusion in a gas corporation's base rates subject to subsections 8 and 9  
69 of this section of eligible costs previously reflected in an ISRS, the gas corporation shall  
70 immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to  
71 ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax  
72 revenues as found by the commission for that period.

73           7. A gas corporation's filing of a petition or change to an ISRS pursuant to the provisions  
74 of sections 393.1009 to 393.1015 shall not be considered a request for a general increase in the  
75 gas corporation's base rates and charges.

76           8. Commission approval of a petition, and any associated rate schedules, to establish or  
77 change an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall in no way be  
78 binding upon the commission in determining the ratemaking treatment to be applied to eligible  
79 infrastructure system replacements during a subsequent general rate proceeding when the  
80 commission may undertake to review the prudence of such costs. In the event the commission  
81 disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible

82 infrastructure system replacements previously included in an ISRS, the gas corporation shall  
83 offset its ISRS in the future as necessary to recognize and account for any such overcollections.

84 9. Nothing in this section shall be construed as limiting the authority of the commission  
85 to review and consider infrastructure system replacement costs along with other costs during any  
86 general rate proceeding of any gas corporation.

87 10. Nothing contained in sections 393.1009 to 393.1015 shall be construed to impair in  
88 any way the authority of the commission to review the reasonableness of the rates or charges of  
89 a gas corporation, including review of the prudence of eligible infrastructure system  
90 replacements made by a gas corporation, pursuant to the provisions of section 386.390.

91 11. The commission shall have authority to promulgate rules for the implementation of  
92 sections 393.1009 to 393.1015, but only to the extent such rules are consistent with, and do not  
93 delay the implementation of, the provisions of sections 393.1009 to 393.1015. Any rule or  
94 portion of a rule, as that term is defined in section 536.010, that is created under the authority  
95 delegated in this section shall become effective only if it complies with and is subject to all of  
96 the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536  
97 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter  
98 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held  
99 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after  
100 August 28, 2003, shall be invalid and void.

523.262. 1. Except as set forth in subsection 2 of this section, the power of eminent  
2 domain shall only be vested in governmental bodies or agencies whose governing body is elected  
3 or whose governing body is appointed by elected officials or in an urban redevelopment  
4 corporation operating pursuant to a redevelopment agreement with the municipality for a  
5 particular redevelopment area, which agreement was executed prior to or on December 31, 2006.

6 2. A private utility company, public utility, rural electric cooperative, municipally owned  
7 utility, pipeline, railroad or common carrier shall have the power of eminent domain as may be  
8 granted pursuant to the provisions of other sections of the revised statutes of Missouri. For the  
9 purposes of this section, the term "common carrier" shall not include motor carriers, contract  
10 carriers, or express companies. Where a condemnation by such an entity results in a displaced  
11 person, as defined in section 523.200, the provisions of subsections 3 and 6 to 10 of section  
12 523.205 shall apply unless the condemning entity is subject to the relocation assistance  
13 provisions of the federal Uniform Relocation Assistance Act.

14 3. Any entity with the power of eminent domain and pursuing the acquisition of property  
15 for the purpose of constructing a power generation facility after December 31, 2006, after  
16 providing notice in a newspaper of general circulation in the county where the facility is to be  
17 constructed, shall conduct a public meeting disclosing the purpose of the proposed facility prior

18 to making any offer to purchase property in pursuit thereof or, alternatively, shall provide the  
19 property owner with notification of the identity of the condemning authority and the proposed  
20 purpose for which the condemned property shall be used at the time of making the initial offer.

21 **4. (1) Notwithstanding the provisions of subsection 2 of this section, no entity shall**  
22 **have the power of eminent domain under the provisions of this section for the purpose of**  
23 **constructing above-ground merchant lines.**

24 **(2) For the purpose of this subsection, the following terms mean:**

25 **(a) "Merchant line", a high-voltage direct current electric transmission line that**  
26 **does not provide for the erection of electric substations at intervals of less than fifty miles,**  
27 **which substations are necessary to accommodate both the purchase and sale to persons**  
28 **located in this state of electricity generated or transmitted by such entity; and**

29 **(b) "Entity", a utility company that does not provide service to end-use customers**  
30 **or provide retail service in Missouri, or does not collect its costs to provide service under**  
31 **a regional transmission organization tariff, regardless of whether it has received a**  
32 **certificate of convenience and necessity from the public service commission under section**  
33 **393.170.**

34 **(3) This subsection shall not apply to any rural electric cooperative organized or**  
35 **operating under the provisions of chapter 394, or to any corporation organized on a**  
36 **nonprofit or a cooperative basis as described in subsection 1 of section 394.200, or to any**  
37 **electrical corporation operating under a cooperative business plan as described in**  
38 **subsection 2 of section 393.110.**

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