

SECOND REGULAR SESSION

**HOUSE BILL NO. 2265**

**99TH GENERAL ASSEMBLY**

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INTRODUCED BY REPRESENTATIVE BERRY.

6103H.021

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal section 386.390, RSMo, and to enact in lieu thereof six new sections relating to public utilities.

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

Section A. Section 386.390, RSMo, is repealed and six new sections enacted in lieu thereof, to be known as sections 386.390, 393.1275, 393.1400, 393.1640, 393.1650, and 393.1655, to read as follows:

386.390. 1. Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility~~[-including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility,]~~ in violation, or claimed to be in violation, of any provision of law **subject to the commission's authority**, ~~[or]~~ of any rule **promulgated by the commission, of any utility tariff**, or of any order or decision of the commission; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

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.

17           2. All matters upon which complaint may be founded may be joined in one hearing, and  
18 no motion shall be entertained against a complaint for misjoinder of causes of action or  
19 grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or  
20 decisions of the commission the same rule shall apply with regard to the joinder of causes and  
21 parties as herein provided.

22           3. The commission shall not be required to dismiss any complaint because of the absence  
23 of direct damage to the complainant. Upon the filing of a complaint, the commission shall cause  
24 a copy thereof to be served upon the public utility, corporation or person complained of.

25           4. Service in all hearings, investigations and proceedings pending before the commission  
26 may be made upon any person upon whom summons may be served in accordance with the  
27 provisions of the code of civil procedure of this state, and may be made personally or by mailing  
28 in a sealed envelope with postage prepaid.

29           5. The commission shall fix the time when and the place where a hearing will be had  
30 upon the complaint and shall serve notice thereof, not less than ten days before the time set for  
31 such hearing, unless the commission shall find that the public necessity requires that such  
32 hearing be held at an earlier date.

**393.1275. 1. For purposes of this section, the following terms shall mean:**

2           **(1) "Commission", the public service commission;**

3           **(2) "Cyber and physical security expense", operations and maintenance expense**  
4 **incurred to protect the reliability and security of systems, software, equipment, and**  
5 **facilities connected to or controlling the electric system against physical or cyber-security**  
6 **threats including, but not limited to, generating stations, substations, and control centers;**

7           **(3) "Electrical corporation", the same as defined in section 386.020, but shall not**  
8 **include an electrical corporation as described in subsection 2 of section 393.110;**

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

14           **2. On and after the date an electrical corporation files a notice under subsection 4**  
15 **of this section, the electrical corporation shall defer to a regulatory asset or liability**  
16 **account any difference in the prudently incurred uncapitalized state and local property**  
17 **taxes actually incurred, and the uncapitalized state and local property taxes used to**  
18 **determine the electrical corporation's revenue requirement in its most recently completed**  
19 **general rate proceeding. If the notice filed under subsection 4 of this section is filed on a**  
20 **day other than January first, the dollar amount of taxes to be deferred for the calendar**

21 year during which such notice was given shall be equal to such difference multiplied by a  
22 fraction, the numerator of which is the number of days remaining in that calendar year  
23 after the date such notice is filed, and the denominator of which is the number of calendar  
24 days in that year. Such taxes used to determine the electrical corporation's revenue  
25 requirement in its last general rate proceeding shall be the amount of such taxes recorded  
26 on the electrical corporation's books for the twelve months ending on the rate base cutoff  
27 date in the electrical corporation's most recently completed general rate proceeding unless  
28 a different amount was used to set such revenue requirement as determined by the  
29 commission in its order resolving such proceeding or through a commission order  
30 approving a settlement respecting such taxes. The regulatory asset or liability account  
31 balances shall be included in the retail revenue requirement used to set rates through an  
32 amortization over a reasonable period in such corporation's subsequent general rate  
33 proceedings, without any offset, reduction, or adjustment based on consideration of any  
34 other factor. The commission shall also adjust the rate base used to establish the retail  
35 revenue requirement of such corporation to reflect the unamortized regulatory asset or  
36 liability account balances in such general rate proceedings.

37 **3. On and after the effective date of rates in an electrical corporation's next general**  
38 **rate proceeding concluding after the effective date of this section, an electrical corporation**  
39 **that has filed a notice under subsection 4 of this section shall defer to a regulatory asset or**  
40 **liability account any difference in the prudently incurred cyber and physical security**  
41 **expense actually incurred and the cyber and physical security expense for such protection**  
42 **used to determine the electrical corporation's revenue requirement in its most recently**  
43 **completed general rate proceeding, provided that the commission shall ensure that such**  
44 **difference to be included in the regulatory asset or liability does not include costs that were**  
45 **included in the sums used to determine the electrical corporation's revenue requirement**  
46 **upon which its base rates are set in a general rate proceeding. The regulatory asset or**  
47 **liability account balances shall be included in the retail revenue requirement used to set**  
48 **rates through an amortization over a reasonable period in such corporation's subsequent**  
49 **general rate proceedings, without any offset, reduction, or adjustment based on**  
50 **consideration of any other factor. The commission shall also adjust the rate base used to**  
51 **establish the retail revenue requirement of such corporation to reflect the unamortized**  
52 **regulatory asset or liability account balances in such general rate proceedings.**

53 **4. This section shall only apply to an electrical corporation that has filed a notice**  
54 **with the commission of the electrical corporation's election to make the deferrals for which**  
55 **this section provides.**

**393.1400. 1. For purposes of this section, the following terms shall mean:**

- 2           (1) "Commission", the public service commission;
- 3           (2) "Electrical corporation", the same as defined in section 386.020, but shall not  
4 include an electrical corporation as described in subsection 2 of section 393.110;
- 5           (3) "Qualifying electric plant", all rate base additions, except rate base additions  
6 for new coal-fired generating units, new nuclear generating units, or rate base additions  
7 that increase revenues by allowing service to new customer premises;
- 8           (4) "Rate base cutoff date", the date rate base additions are accounted for in a  
9 general rate proceeding. In the absence of a commission order that specifies the rate base  
10 cutoff date, such date as reflected in any jointly proposed procedural schedule submitted  
11 by the parties in the applicable general rate proceeding, or as otherwise agreed to by such  
12 parties, shall be used;
- 13           (5) "Weighted average cost of capital", the return on rate base used to determine  
14 the revenue requirement in the electrical corporation's most recently completed general  
15 rate proceeding; provided that in the absence of a commission determination of the return  
16 on rate base within the three-year period prior to the effective date of this section, the  
17 weighted average cost of capital shall be determined using the electrical corporation's  
18 actual capital structure as of December 31, 2017, excluding short-term debt, the electrical  
19 corporation's actual cost of long-term debt and preferred stock as of December 31, 2017,  
20 and a cost of common equity of nine and one-half percent.
- 21           2. (1) Notwithstanding any other provision of chapter 393 to the contrary,  
22 electrical corporations shall defer to a regulatory asset all depreciation expense and return  
23 associated with all qualifying electric plant recorded to plant-in-service on the utility's  
24 books commencing on or after the effective date of this section if the electrical corporation  
25 has made the election provided for by subsection 5 of this section by that date, or on the  
26 date such election is made if the election is made after the effective date of this section. In  
27 each general rate proceeding concluded after the effective date of this section, the balance  
28 of the regulatory asset as of the rate base cutoff date shall be included in the electrical  
29 corporation's rate base without any offset, reduction, or adjustment based upon  
30 consideration of any other factor, other than as provided for in subdivision (2) of this  
31 subsection, with the regulatory asset balance arising from deferrals associated with  
32 qualifying electric plant placed in service after the rate base cutoff date to be included in  
33 rate base in the next general rate proceeding. The expiration of this section shall not affect  
34 the continued inclusion in rate base and amortization of regulatory asset balances that  
35 arose under this section prior to such expiration.
- 36           (2) The regulatory asset balances arising under this section shall be adjusted to  
37 reflect any prudence disallowances ordered by the commission. The provisions of this

38 section shall not be construed to affect existing law respecting the burdens of production  
39 and persuasion in general rate proceedings for rate base additions.

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

46 3. (1) Depreciation expense deferred under this section shall account for all  
47 qualifying electric plant placed into service less retirements of plant replaced by such  
48 qualifying electric plant;

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

55 4. Beginning February 28, 2019, and by each February twenty-eighth thereafter  
56 while the electrical corporation is allowed to make the deferrals provided for by subsection  
57 2 of this section, electrical corporations that defer depreciation expense and return  
58 authorized under this section shall submit to the commission a five-year capital investment  
59 plan setting forth the general categories of capital expenditures the electrical corporation  
60 will pursue in furtherance of replacing, modernizing, and securing its infrastructure. The  
61 plan shall also include a specific capital investment plan for the first year of the five-year  
62 plan consistent with the level of specificity used for annual capital budgeting purposes.  
63 Project specific information shall not be included for the five-year period covered by the  
64 plan. Within thirty days of the filing of any capital investment plan or annual update to  
65 an existing plan, the electrical corporation shall host a public stakeholder meeting to  
66 answer questions and receive feedback about the plan. After feedback is received, the  
67 electrical corporation shall file a notice with the commission of any modifications to the  
68 capital investment plan it has accepted. Changes to the plan, its implementation, or the  
69 level of investments made shall not constitute evidence of imprudence of the investments  
70 made under such plan. The submission of a capital investment plan under this section  
71 shall not affect in any way the commission's authority with respect to the grant or denial  
72 of a certificate of convenience and necessity under section 393.170.

73           **5. This section shall only apply to any electrical corporation that has filed a notice**  
74 **with the commission of the electrical corporation's election to make the deferrals for which**  
75 **this section provides. An electrical corporation's election shall allow it to make the**  
76 **deferrals provided for by subsection 2 of this section until December 31, 2023, unless the**  
77 **electrical corporation requests and the commission approves the continuation of such**  
78 **deferrals beyond that date and approves continuation of the discounts authorized by**  
79 **section 393.1640 beyond that date as hereinafter provided. An electrical corporation that**  
80 **wishes to continue to make the deferrals provided for by subsection 2 of this section from**  
81 **January 1, 2024, through December 31, 2028, shall obtain the commission's approval to do**  
82 **so, shall be subject to the compound annual growth rate limitations set forth under section**  
83 **393.1655, and shall also obtain the commission's approval to continue to provide the**  
84 **discounts authorized by section 393.1640 in a commission order issued on or before**  
85 **December 31, 2023. The commission shall have the authority to grant or deny such**  
86 **approval but shall not be authorized to condition such approval or otherwise modify the**  
87 **deferrals authorized by subsection 2 of this section or the discounts authorized by section**  
88 **393.1640. Failure to obtain such commission approval shall not affect deferrals made**  
89 **through December 31, 2023, or the regulatory and ratemaking treatment of the regulatory**  
90 **assets arising from such deferrals as provided for by this section.**

91           **6. This section shall expire on December 31, 2028, except that the amortization of**  
92 **the regulatory asset balances arising under this section shall continue to be reflected in the**  
93 **electrical corporation's rates and remaining regulatory asset balances shall be included in**  
94 **the electrical corporation's rate base.**

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

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

11           **(2) The customer receives local, regional, or state economic development incentives**  
12 **in conjunction with the incremental load.**

13

14 **The discount shall be a percentage applied to all base rate components of the bill. The**  
15 **percentage shall be fixed for each year of service under the discount for a period of up to**  
16 **five years. The average of the annual discount percentages shall equal forty percent and**  
17 **shall not be less than thirty percent nor more than fifty percent in any year. The discount**  
18 **shall be applied to such incremental load from the date when the meter has been**  
19 **permanently set until the date that such incremental load no longer meets the criteria**  
20 **required to qualify for the discount, as determined under the provisions of subsection 2 of**  
21 **this section. An eligible customer shall also receive a ten percent discount of all base rate**  
22 **components of the bill applied to such incremental load for one year after the initial**  
23 **discount period ends if the electrical corporation determines that the customer is taking**  
24 **service from an under-utilized circuit. In no event shall a customer receive a discount**  
25 **under this subsection after the date this section expires. The electrical corporation may**  
26 **include in its tariff additional or alternative terms and conditions to a customer's**  
27 **utilization of the discount, subject to approval of such terms and conditions by the**  
28 **commission. The customer, on forms supplied by the electrical corporation, shall apply for**  
29 **the discount provided for by this subsection at least ninety days prior to the date the**  
30 **customer requests that the incremental demand receive the discounts provided for by this**  
31 **subsection. If the incremental demand is not separately metered, the electrical**  
32 **corporation's determination of the incremental demand shall control.**

33 **2. In each general rate proceeding concluded after the effective date of this section,**  
34 **the reduced level of revenues arising from the application of discounted rates provided for**  
35 **by subsection 1 of this section shall be allocated to all the electrical corporation's customer**  
36 **classes, including the classes with customers that qualify for discounts under this section.**  
37 **This increase shall be implemented through the application of a uniform percentage**  
38 **adjustment to the revenue requirement responsibility of all customer classes. To qualify**  
39 **for the discounted rates provided for in this section, if incremental load is separately**  
40 **metered, customers shall meet the applicable criteria within twenty-four months after the**  
41 **date the meter is permanently set based on metering data for calendar months thirteen**  
42 **through twenty-four and annually thereafter. If such data indicates that the customer did**  
43 **not meet the criteria for any applicable twelve-month period, it shall thereafter no longer**  
44 **qualify for the discounted rate. The provisions of this section do not supersede or limit the**  
45 **ability of an electrical corporation to continue to utilize economic development or retention**  
46 **tariffs previously approved by the commission that are in effect on the effective date of this**  
47 **section. If, however, a customer is receiving any economic development or retention-**  
48 **related discounts as of the date it would otherwise qualify for a discount provided for by**  
49 **this section, the customer shall agree to relinquish the prior discount concurrently with the**

50 date it begins to receive a discount under this section; otherwise, the customer shall not be  
51 eligible to receive any discount under this section. Customer demand existing at the time  
52 the customer begins to receive discounted rates under this section shall not constitute  
53 incremental demand. The discounted rates provided for by this section apply only to base  
54 rate components, with the charges or credits arising from any rate adjustment mechanism  
55 authorized by law to be applied to customers qualifying for discounted rates under this  
56 section in the same manner as such rate adjustments would apply in the absence of this  
57 section.

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

61 4. This section shall expire on December 31, 2028, provided, that unless the  
62 electrical corporation has timely obtained the order provided for by subsection 5 of section  
63 393.1400, the electrical corporation's customers shall, after December 31, 2023, no longer  
64 receive the discounts provided under this section.

393.1650. 1. For purposes of this section, the following terms shall mean:

2 (1) "Commission", the Missouri public service commission established under  
3 section 386.040;

4 (2) "Electrical corporation", a corporation with more than one million Missouri  
5 retail electric customers in the year in which this section becomes effective and that  
6 otherwise meets the definition of "electrical corporation" in section 386.020.

7 2. Electrical corporations shall develop a qualification process and make such  
8 process open to all contractors seeking to provide construction and construction-related  
9 services for projects on the electrical corporation's distribution system. Contractors shall  
10 have the opportunity to register on the electrical corporation's vendor registration site and  
11 be evaluated for bid opportunities. Under the qualification process, electrical corporations  
12 may specify eligibility requirements typically accepted by the industry including, but not  
13 limited to, experience, performance criteria, safety policies, and insurance requirements  
14 to be met by any contractor seeking to participate in competitive bidding to provide  
15 construction and construction-related services for distribution system projects, and the  
16 electrical corporation shall not weight any contractor favorably or unfavorably due to  
17 affiliation with a labor organization or union, except if the work is being performed  
18 pursuant to a union-only project labor agreement which requires that participating  
19 contractors use union represented labor. Contractors that meet the eligibility  
20 requirements set by electrical corporations shall be eligible to participate in the competitive  
21 bidding process for providing construction and construction-related services for



22 **distribution system projects, and the contractor making the lowest and best bid shall be**  
23 **awarded such contract.**

24 **3. Within thirty days after the effective date of this section, electrical corporations**  
25 **shall file a verified statement with the commission confirming that they have established**  
26 **a qualification process for the competitive bidding of construction and construction-related**  
27 **services for distribution system projects, and that such process conforms with the**  
28 **requirements of this section. The commission shall have the authority to verify the**  
29 **statement to ensure compliance with this section. Whenever the electrical corporation files**  
30 **a general rate proceeding, it shall submit concurrently with its submission of the rate**  
31 **schedules that initiate such general rate proceeding a verified statement confirming that**  
32 **it is using the qualification process for the competitive bidding of construction and**  
33 **construction-related services for distribution system projects required by this section for**  
34 **no less than ten percent of the combined external installation expenditures made by the**  
35 **electrical corporation's operating units in Missouri for construction and**  
36 **construction-related services for distribution system projects, and that such process**  
37 **conforms with the requirements set forth in this section to ensure compliance with this**  
38 **subsection.**

39 **4. Nothing in this section shall be construed as requiring any electrical corporation**  
40 **to use a qualified contractor or competitive bidding process in the case of an emergency**  
41 **project, or to terminate any existing contract with a contractor prior to its expiration,**  
42 **provided that the use of any pre-existing contract for construction or construction-related**  
43 **services for distribution system projects shall not qualify as fulfilling the ten percent**  
44 **requirement set forth in subsection 3 of this section. For contractors not qualifying**  
45 **through the competitive bid process, the electrical corporation, upon request from the**  
46 **contractor, shall provide information from the process in which the contractor can be**  
47 **informed as to how to be better positioned to qualify for such bid opportunities in the**  
48 **future.**

49 **5. By December 31, 2020, and annually thereafter, the commission shall submit a**  
50 **report to the general assembly on the effects of this section, including electrical corporation**  
51 **compliance, potential legislative action regarding this section, the costs of constructing**  
52 **distribution system projects prior to the implementation of this section compared to after**  
53 **the implementation of this section, and any other information regarding the processes**  
54 **established under this section that the commission deems necessary.**

**393.1655. 1. This section applies to electrical corporations that have elected to**  
2 **exercise any option under section 393.1275 or 393.1400 and that have more than two**  
3 **hundred thousand Missouri retail customers in the year in which this section becomes**

4 effective, and shall continue to apply to such electrical corporation until December 31,  
5 2023, if the commission has not issued an order approving continuation of the deferral  
6 authorized by subsection 2 of section 393.1400 and continuation of the discounts authorized  
7 by section 393.1640 as authorized by subsection 5 of section 393.1400 with respect to an  
8 electrical corporation, or until December 31, 2028, if the commission has issued such an  
9 order with respect to an electrical corporation.

10       2. Notwithstanding any other provision of law and except as otherwise provided for  
11 by this section, an electrical corporation's base rates shall be held constant for a period  
12 starting on the date new base rates were established in the electrical corporation's last  
13 general rate proceeding concluded prior to the date the electrical corporation gave notice  
14 under either subsection 4 of section 393.1275 or subsection 5 of section 393.1400 and  
15 ending on the third anniversary of that date, unless a force majeure event as determined  
16 by the commission occurs. Whether a force majeure event has occurred shall be subject  
17 to commission review and approval in a general rate proceeding, and shall not preclude  
18 the commission from reviewing the prudence of any revenue reductions or costs incurred  
19 during any proceeding to set rates. This subsection shall not affect the electrical  
20 corporation's ability to adjust its non-base rates during the three-year period provided for  
21 in this subsection as authorized by its commission-approved rate adjustment mechanisms  
22 arising under sections 386.266, 393.1030, or 393.1075, or as authorized by any other rate  
23 adjustment mechanism authorized by law.

24       3. If the difference between the electrical corporation's average overall rate at any  
25 point in time while this section applies to the electrical corporation, and the electrical  
26 corporation's average overall rate as of the date new base rates are set in the electrical  
27 corporation's most recent general rate proceeding concluded prior to the date the electrical  
28 corporation gave notice under either subsection 4 of section 393.1275 or subsection 5 of  
29 section 393.1400, reflects a compound annual growth rate of more than three percent, the  
30 electrical corporation shall establish a regulatory liability in the amounts specified in  
31 subsection 4 of this section. The regulatory liability shall be amortized over a reasonable  
32 period as determined by the commission. A separate regulatory liability is required for  
33 each general rate proceeding covered by this subsection for which the three percent  
34 threshold provided by this subsection is exceeded.

35       4. A regulatory liability provided in subsection 3 of this section shall be twenty-five  
36 million dollars for an electrical corporation with more than one million Missouri retail  
37 customers in the year in which this section becomes effective and six million dollars for an  
38 electrical corporation with more than two hundred thousand but not more than one million  
39 Missouri retail customers in the year in which this section becomes effective.

40           **5. If the difference between the electrical corporation's average overall rate while**  
41 **this section applies to the electrical corporation, and the electrical corporation's average**  
42 **overall rate as of the date new base rates are set in the electrical corporation's most recent**  
43 **general rate proceeding concluded prior to the date the electrical corporation gave notice**  
44 **under either subsection 4 of section 393.1275 or subsection 5 of section 393.1400, reflects**  
45 **a compound annual growth rate of more than three and three-quarters percent, the**  
46 **electrical corporation shall, in addition to establishing the regulatory liability as specified**  
47 **in subsections 3 and 4 of this section, starting with the effective date of its revised base rates**  
48 **that exceed the three and three-quarters percent threshold provided for in this subsection,**  
49 **cease further deferrals under sections 393.1275 and 393.1400, with prior deferrals to be**  
50 **treated as provided in such sections.**

51           **6. If a change in any rates charged under a rate adjustment mechanism approved**  
52 **by the commission under sections 386.266 and 393.1030 would cause an electrical**  
53 **corporation's average overall rate to exceed the compound annual growth rate limitation**  
54 **set forth in subsection 3 of this section, the electrical corporation shall reduce the rates**  
55 **charged under that rate adjustment mechanism in an amount sufficient to ensure that the**  
56 **compound annual growth rate limitation set forth in subsection 3 is not exceeded due to**  
57 **the application of the rate charged under such mechanism and the penalty under**  
58 **subsection 4 is not triggered. Sums not recovered under any such mechanism because of**  
59 **any reduction in rates under such a mechanism pursuant to this subsection shall be**  
60 **deferred to and included in the regulatory asset arising under section 393.1400 or, if**  
61 **applicable, under the regulatory and ratemaking treatment ordered by the commission**  
62 **under subsection 6 of section 393.1400 and subsection 4 of section 393.1640, and recovered**  
63 **through an amortization in base rates in the same manner as deferrals under that section**  
64 **or order are recovered in base rates.**

65           **7. If the difference between the electrical corporation's class average overall rate**  
66 **while this section applies to the electrical corporation, and the electrical corporation's class**  
67 **average overall rate as of the date rates are set in the electrical corporation's most recent**  
68 **general rate proceeding concluded prior to the date the electrical corporation gave notice**  
69 **under either subsection 4 of section 393.1275 or subsection 5 of section 393.1400, reflects**  
70 **a compound annual growth rate of more than two percent for large power service rate**  
71 **class customers, the class average overall rate shall increase by an amount so that the**  
72 **increase shall equal a compound annual growth rate of two percent over such period for**  
73 **such large power service rate class customers, with the reduced revenues arising from**  
74 **limiting the large power service class average overall rate increase to two percent to be**  
75 **allocated to all the electrical corporation's other customer classes through the application**

76 of a uniform percentage adjustment to the revenue requirement responsibility of all the  
77 other customer classes.

78 **8. For purposes of this section, the following terms shall mean:**

79 **(1) "Average base rate", a rate calculated by dividing the total retail revenue**  
80 **requirement for all the electrical corporation's rate classes by the total sales volumes stated**  
81 **in kilowatt-hours for all such rate classes used to set rates in the applicable general rate**  
82 **proceeding, exclusive of gross receipts tax, sales tax, and other similar pass-through taxes;**

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

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

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

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

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

104 **(7) "Force majeure event", an event or circumstance that occurs as a result of a**  
105 **weather event, an act of God, war, or terrorism, or other uncontrollable event as**  
106 **determined by the commission that causes a reduction in revenues, an increase in the cost**  
107 **of providing electrical service, or some combination thereof, and the event has an**  
108 **associated fiscal impact on the electrical corporation's operations equal to three percent**  
109 **or greater of the total revenue requirement established in the electrical corporation's last**  
110 **general rate proceeding concluded prior to the date the electrical corporation gave a notice**  
111 **under either subsection 4 of section 393.1275 or subsection 5 of section 393.1400;**

112           **(8) "Large power service rate class", the rate class of each corporation that**  
113 **requires the highest minimum monthly billing demand of all of the electrical corporation's**  
114 **rate classes in order to qualify as a member of such rate class, and that applies to**  
115 **qualifying customers only if they utilize the electrical corporation's distribution system.**

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