

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1028

98TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 5, 2016, with recommendation that the Senate Committee Substitute do pass.

6293S.07C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 386.266 and 386.890, RSMo, and to enact in lieu thereof twenty-five new sections relating to ratemaking for public utilities, with an emergency clause.

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

Section A. Sections 386.266 and 386.890, RSMo, are repealed and twenty-
2 five new sections enacted in lieu thereof, to be known as sections 386.266,
3 386.890, 386.891, 393.1500, 393.1505, 393.1510, 393.1515, 393.1520, 393.1525,
4 393.1530, 393.1535, 393.1540, 393.1545, 393.1550, 393.1555, 393.1560, 393.1565,
5 393.1570, 393.1575, 393.1580, 393.1590, 393.1600, 393.1610, 393.1620, and
6 393.1630, to read as follows:

386.266. 1. Subject to the requirements of this section, any electrical
2 corporation may make an application to the commission to approve rate schedules
3 authorizing an interim energy charge, or periodic rate adjustments outside of
4 general rate proceedings to reflect increases and decreases in its prudently
5 incurred fuel and purchased-power costs, including transportation. **Such rate**
6 **schedules shall also include and provide for adjustments reflecting all**
7 **prudently incurred transmission charges not included in the costs**
8 **covered by the immediately preceding sentence, and all transmission**
9 **revenues, paid to or received from any transmission service**
10 **provider.** The commission may, in accordance with existing law, include in such
11 rate schedules features designed to provide the electrical corporation with
12 incentives to improve the efficiency and cost-effectiveness of its fuel and
13 purchased-power procurement activities.

14 2. Subject to the requirements of this section, any electrical, gas, or water

15 corporation may make an application to the commission to approve rate schedules
16 authorizing periodic rate adjustments outside of general rate proceedings to
17 reflect increases and decreases in its prudently incurred costs, whether capital
18 or expense, to comply with any federal, state, or local environmental law,
19 regulation, or rule. Any rate adjustment made under such rate schedules shall
20 not exceed an annual amount equal to two and one-half percent of the electrical,
21 gas, or water corporation's Missouri gross jurisdictional revenues, excluding gross
22 receipts tax, sales tax and other similar pass-through taxes not included in
23 tariffed rates, for regulated services as established in the utility's most recent
24 general rate case or complaint proceeding. In addition to the rate adjustment, the
25 electrical, gas, or water corporation shall be permitted to collect any applicable
26 gross receipts tax, sales tax, or other similar pass-through taxes, and such taxes
27 shall not be counted against the two and one-half percent rate adjustment cap.
28 Any costs not recovered as a result of the annual two and one-half percent
29 limitation on rate adjustments may be deferred, at a carrying cost each month
30 equal to the utilities net of tax cost of capital, for recovery in a subsequent year
31 or in the corporation's next general rate case or complaint proceeding.

32 3. Subject to the requirements of this section, any gas corporation may
33 make an application to the commission to approve rate schedules authorizing
34 periodic rate adjustments outside of general rate proceedings to reflect the nongas
35 revenue effects of increases or decreases in residential and commercial customer
36 usage due to variations in either weather, conservation, or both.

37 4. The commission shall have the power to approve, modify, or reject
38 adjustment mechanisms submitted under subsections 1 to 3 of this section only
39 after providing the opportunity for a full hearing in a general rate proceeding,
40 including a general rate proceeding initiated by complaint. The commission may
41 approve such rate schedules after considering all relevant factors which may
42 affect the costs or overall rates and charges of the corporation, provided that it
43 finds that the adjustment mechanism set forth in the schedules:

44 (1) Is reasonably designed to provide the utility with a sufficient
45 opportunity to earn a fair return on equity;

46 (2) Includes provisions for an annual true-up which shall accurately and
47 appropriately remedy any over- or under-collections, including interest at the
48 utility's short-term borrowing rate, through subsequent rate adjustments or
49 refunds;

50 (3) In the case of an adjustment mechanism submitted under subsections
51 1 and 2 of this section, includes provisions requiring that the utility file a general
52 rate case with the effective date of new rates to be no later than four years after
53 the effective date of the commission order implementing the adjustment
54 mechanism. However, with respect to each mechanism, the four-year period shall
55 not include any periods in which the utility is prohibited from collecting any
56 charges under the adjustment mechanism, or any period for which charges
57 collected under the adjustment mechanism must be fully refunded. In the event
58 a court determines that the adjustment mechanism is unlawful and all moneys
59 collected thereunder are fully refunded, the utility shall be relieved of any
60 obligation under that adjustment mechanism to file a rate case;

61 (4) In the case of an adjustment mechanism submitted under subsection
62 1 or 2 of this section, includes provisions for prudence reviews of the costs subject
63 to the adjustment mechanism no less frequently than at eighteen-month
64 intervals, and shall require refund of any imprudently incurred costs plus
65 interest at the utility's short-term borrowing rate.

66 5. Once such an adjustment mechanism is approved by the commission
67 under this section, it shall remain in effect until such time as the commission
68 authorizes the modification, extension, or discontinuance of the mechanism in a
69 general rate case or complaint proceeding.

70 6. Any amounts charged under any adjustment mechanism approved by
71 the commission under this section shall be separately disclosed on each customer
72 bill.

73 7. The commission may take into account any change in business risk to
74 the corporation resulting from implementation of the adjustment mechanism in
75 setting the corporation's allowed return in any rate proceeding, in addition to any
76 other changes in business risk experienced by the corporation.

77 8. In the event the commission lawfully approves an incentive- or
78 performance-based plan, such plan shall be binding on the commission for the
79 entire term of the plan. This subsection shall not be construed to authorize or
80 prohibit any incentive- or performance-based plan.

81 9. Prior to August 28, 2005, the commission shall have the authority to
82 promulgate rules under the provisions of chapter 536 as it deems necessary, to
83 govern the structure, content and operation of such rate adjustments, and the
84 procedure for the submission, frequency, examination, hearing and approval of

85 such rate adjustments. Such rules shall be promulgated no later than one
86 hundred fifty days after the initiation of such rulemaking proceeding. Any
87 electrical, gas, or water corporation may apply for any adjustment mechanism
88 under this section whether or not the commission has promulgated any such
89 rules.

90 10. Nothing contained in this section shall be construed as affecting any
91 existing adjustment mechanism, rate schedule, tariff, incentive plan, or other
92 ratemaking mechanism currently approved and in effect.

93 11. Each of the provisions of this section is severable. In the event any
94 provision or subsection of this section is deemed unlawful, all remaining
95 provisions shall remain in effect.

96 12. The provisions of this section shall take effect on January 1, 2006, and
97 the commission shall have previously promulgated rules to implement the
98 application process for any rate adjustment mechanism under this section prior
99 to the commission issuing an order for any rate adjustment.

100 13. The public service commission shall appoint a task force, consisting
101 of all interested parties, to study and make recommendations on the cost recovery
102 and implementation of conservation and weatherization programs for electrical
103 and gas corporations.

386.890. 1. This section shall be known and may be cited as the "Net
2 Metering and Easy Connection Act".

3 2. As used in this section, the following terms shall mean:

4 (1) "Avoided fuel cost", the current average cost of fuel for the entity
5 generating electricity, as defined by the governing body with jurisdiction over any
6 municipal electric utility, rural electric cooperative as provided in chapter 394,
7 or electrical corporation as provided in this chapter;

8 (2) "Commission", the public service commission of the state of Missouri;

9 (3) "Customer-generator", the owner or operator of a qualified electric
10 energy generation unit which:

11 (a) Is powered by a renewable energy resource;

12 (b) Has an electrical generating system with a capacity of not more than
13 one hundred kilowatts;

14 (c) Is located on a premises owned, operated, leased, or otherwise
15 controlled by the customer-generator;

16 (d) Is interconnected and operates in parallel phase and synchronization

17 with a retail electric supplier and has been approved by said retail electric
18 supplier;

19 (e) Is intended primarily to offset part or all of the customer-generator's
20 own electrical energy requirements;

21 (f) Meets all applicable safety, performance, interconnection, and
22 reliability standards established by the National Electrical Code, the National
23 Electrical Safety Code, the Institute of Electrical and Electronics Engineers,
24 Underwriters Laboratories, the Federal Energy Regulatory Commission, and any
25 local governing authorities; and

26 (g) Contains a mechanism that automatically disables the unit and
27 interrupts the flow of electricity back onto the supplier's electricity lines in the
28 event that service to the customer-generator is interrupted;

29 (4) "Department", the department of natural resources;

30 (5) "Net metering", using metering equipment sufficient to measure the
31 difference between the electrical energy supplied to a customer-generator by a
32 retail electric supplier and the electrical energy supplied by the
33 customer-generator to the retail electric supplier over the applicable billing
34 period;

35 (6) "Renewable energy resources", electrical energy produced from wind,
36 solar thermal sources, hydroelectric sources, photovoltaic cells and panels, fuel
37 cells using hydrogen produced by one of the above-named electrical energy
38 sources, and other sources of energy that become available after August 28, 2007,
39 and are certified as renewable by the department;

40 (7) "Retail electric supplier" or "supplier", any municipal utility, electrical
41 corporation regulated under this chapter, or rural electric cooperative under
42 chapter 394 that provides retail electric service in this state.

43 3. A retail electric supplier shall:

44 (1) Make net metering available to customer-generators on a first-come,
45 first-served basis until the total rated generating capacity of net metering
46 systems equals five percent of the utility's single-hour peak load during the
47 previous year, after which the commission for a public utility or the governing
48 body for other electric utilities may increase the total rated generating capacity
49 of net metering systems to an amount above five percent. However, in a given
50 calendar year, no retail electric supplier shall be required to approve any
51 application for interconnection if the total rated generating capacity of all

52 applications for interconnection already approved to date by said supplier in said
53 calendar year equals or exceeds one percent of said supplier's single-hour peak
54 load for the previous calendar year;

55 (2) Offer to the customer-generator a tariff or contract that is identical in
56 electrical energy rates, rate structure, and monthly charges to the contract or
57 tariff that the customer would be assigned if the customer were not an eligible
58 customer-generator but shall not charge the customer-generator any additional
59 standby, capacity, interconnection, or other fee or charge that would not
60 otherwise be charged if the customer were not an eligible customer-generator; and

61 (3) Disclose annually the availability of the net metering program to each
62 of its customers with the method and manner of disclosure being at the discretion
63 of the supplier.

64 4. A customer-generator's facility shall be equipped with sufficient
65 metering equipment that can measure the net amount of electrical energy
66 produced or consumed by the customer-generator. If the customer-generator's
67 existing meter equipment does not meet these requirements or if it is necessary
68 for the electric supplier to install additional distribution equipment to
69 accommodate the customer-generator's facility, the customer-generator shall
70 reimburse the retail electric supplier for the costs to purchase and install the
71 necessary additional equipment. At the request of the customer-generator, such
72 costs may be initially paid for by the retail electric supplier, and any amount up
73 to the total costs and a reasonable interest charge may be recovered from the
74 customer-generator over the course of up to twelve billing cycles. Any subsequent
75 meter testing, maintenance or meter equipment change necessitated by the
76 customer-generator shall be paid for by the customer-generator.

77 5. Consistent with the provisions in this section, the net electrical energy
78 measurement shall be calculated in the following manner:

79 (1) For a customer-generator, a retail electric supplier shall measure the
80 net electrical energy produced or consumed during the billing period in
81 accordance with normal metering practices for customers in the same rate class,
82 either by employing a single, bidirectional meter that measures the amount of
83 electrical energy produced and consumed, or by employing multiple meters that
84 separately measure the customer-generator's consumption and production of
85 electricity;

86 (2) If the electricity supplied by the supplier exceeds the electricity

87 generated by the customer-generator during a billing period, the
88 customer-generator shall be billed for the net electricity supplied by the supplier
89 in accordance with normal practices for customers in the same rate class;

90 (3) If the electricity generated by the customer-generator exceeds the
91 electricity supplied by the supplier during a billing period, the
92 customer-generator shall be billed for the appropriate customer charges for that
93 billing period in accordance with subsection 3 of this section and shall be credited
94 an amount at least equal to the avoided fuel cost of the excess kilowatt-hours
95 generated during the billing period, with this credit applied to the following
96 billing period;

97 (4) Any credits granted by this subsection shall expire without any
98 compensation at the earlier of either twelve months after their issuance or when
99 the customer-generator disconnects service or terminates the net metering
100 relationship with the supplier;

101 (5) For any rural electric cooperative under chapter 394, or municipal
102 utility, upon agreement of the wholesale generator supplying electric energy to
103 the retail electric supplier, at the option of the retail electric supplier, the credit
104 to the customer-generator may be provided by the wholesale generator.

105 6. (1) Each qualified electric energy generation unit used by a
106 customer-generator shall meet all applicable safety, performance, interconnection,
107 and reliability standards established by any local code authorities, the National
108 Electrical Code, the National Electrical Safety Code, the Institute of Electrical
109 and Electronics Engineers, and Underwriters Laboratories for distributed
110 generation. No supplier shall impose any fee, charge, or other requirement not
111 specifically authorized by this section or the rules promulgated under subsection
112 9 of this section unless the fee, charge, or other requirement would apply to
113 similarly situated customers who are not customer-generators, except that a retail
114 electric supplier may require that a customer-generator's system contain a switch,
115 circuit breaker, fuse, or other easily accessible device or feature located in
116 immediate proximity to the customer-generator's metering equipment that would
117 allow a utility worker the ability to manually and instantly disconnect the unit
118 from the utility's electric distribution system;

119 (2) For systems of ten kilowatts or less, a customer-generator whose
120 system meets the standards and rules under subdivision (1) of this subsection
121 shall not be required to install additional controls, perform or pay for additional

122 tests or distribution equipment, or purchase additional liability insurance beyond
123 what is required under subdivision (1) of this subsection and subsection 4 of this
124 section;

125 (3) For customer-generator systems of greater than ten kilowatts, the
126 commission for public utilities and the governing body for other utilities shall, by
127 rule or equivalent formal action by each respective governing body:

128 (a) Set forth safety, performance, and reliability standards and
129 requirements; and

130 (b) Establish the qualifications for exemption from a requirement to
131 install additional controls, perform or pay for additional tests or distribution
132 equipment, or purchase additional liability insurance.

133 7. (1) Applications by a customer-generator for interconnection of a
134 qualified electric energy generation unit meeting the requirements of subdivision
135 (3) of subsection 2 of this section to the distribution system shall be accompanied
136 by the plan for the customer-generator's electrical generating system, including
137 but not limited to a wiring diagram and specifications for the generating unit,
138 and shall be reviewed and responded to by the retail electric supplier within
139 thirty days of receipt for systems ten kilowatts or less and within ninety days of
140 receipt for all other systems. Prior to the interconnection of the qualified
141 generation unit to the supplier's system, the customer-generator will furnish the
142 retail electric supplier a certification from a qualified professional electrician or
143 engineer that the installation meets the requirements of subdivision (1) of
144 subsection 6 of this section. If the application for interconnection is approved by
145 the retail electric supplier and the customer-generator does not complete the
146 interconnection within one year after receipt of notice of the approval, the
147 approval shall expire and the customer-generator shall be responsible for filing
148 a new application.

149 (2) Upon the change in ownership of a qualified electric energy generation
150 unit, the new customer-generator shall be responsible for filing a new application
151 under subdivision (1) of this subsection.

152 8. Each commission-regulated supplier shall submit an annual net
153 metering report to the commission, and all other nonregulated suppliers shall
154 submit the same report to their respective governing body and make said report
155 available to a consumer of the supplier upon request, including the following
156 information for the previous calendar year:

- 157 (1) The total number of customer-generator facilities;
158 (2) The total estimated generating capacity of its net-metered
159 customer-generators; and
160 (3) The total estimated net kilowatt-hours received from
161 customer-generators.

162 9. The commission shall, within nine months of January 1, 2008,
163 promulgate initial rules necessary for the administration of this section for public
164 utilities, which shall include regulations ensuring that simple contracts will be
165 used for interconnection and net metering. For systems of ten kilowatts or less,
166 the application process shall use an all-in-one document that includes a simple
167 interconnection request, simple procedures, and a brief set of terms and
168 conditions. Any rule or portion of a rule, as that term is defined in section
169 536.010, that is created under the authority delegated in this section shall
170 become effective only if it complies with and is subject to all of the provisions of
171 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
172 nonseverable and if any of the powers vested with the general assembly under
173 chapter 536 to review, to delay the effective date, or to disapprove and annul a
174 rule are subsequently held unconstitutional, then the grant of rulemaking
175 authority and any rule proposed or adopted after August 28, 2007, shall be
176 invalid and void.

177 10. The governing body of a rural electric cooperative or municipal utility
178 shall, within nine months of January 1, 2008, adopt policies establishing a simple
179 contract to be used for interconnection and net metering. For systems of ten
180 kilowatts or less, the application process shall use an all-in-one document that
181 includes a simple interconnection request, simple procedures, and a brief set of
182 terms and conditions.

183 11. For any cause of action relating to any damages to property or person
184 caused by the generation unit of a customer-generator or the interconnection
185 thereof, the retail electric supplier shall have no liability absent clear and
186 convincing evidence of fault on the part of the supplier.

187 12. The estimated generating capacity of all net metering systems
188 operating under the provisions of this section shall count towards the respective
189 retail electric supplier's accomplishment of any renewable energy portfolio target
190 or mandate adopted by the Missouri general assembly.

191 13. The sale of qualified electric generation units to any

192 customer-generator shall be subject to the provisions of sections 407.700 to
193 407.720. The attorney general shall have the authority to promulgate in
194 accordance with the provisions of chapter 536 rules regarding mandatory
195 disclosures of information by sellers of qualified electric generation units.

196 Any interested person who believes that the seller of any electric generation unit
197 is misrepresenting the safety or performance standards of any such systems, or
198 who believes that any electric generation unit poses a danger to any property or
199 person, may report the same to the attorney general, who shall be authorized to
200 investigate such claims and take any necessary and appropriate actions.

201 14. Any costs incurred under this act by a retail electric supplier shall be
202 recoverable in that utility's rate structure.

203 15. No consumer shall connect or operate an electric generation unit in
204 parallel phase and synchronization with any retail electric supplier without
205 written approval by said supplier that all of the requirements under subdivision
206 (1) of subsection 7 of this section have been met. For a consumer who violates
207 this provision, a supplier may immediately and without notice disconnect the
208 electric facilities of said consumer and terminate said consumer's electric service.

209 16. The manufacturer of any electric generation unit used by a
210 customer-generator may be held liable for any damages to property or person
211 caused by a defect in the electric generation unit of a customer-generator.

212 17. The seller, installer, or manufacturer of any electric generation unit
213 who knowingly misrepresents the safety aspects of an electric generation unit
214 may be held liable for any damages to property or person caused by the electric
215 generation unit of a customer-generator.

216 18. **This section shall not be in effect beginning with the effective**
217 **date of section 386.891 through December 31, 2026.**

2 **386.891. 1. Notwithstanding section 386.890 to the contrary, this**
3 **section shall be known and may be cited as the "Net Metering and Easy**
4 **Connection Act".**

5 **2. As used in this section, the following terms shall mean:**

6 **(1) "Avoided fuel cost", the current average cost of fuel for the**
7 **entity generating electricity, as defined by the governing body with**
8 **jurisdiction over any municipal electric utility, rural electric**
9 **cooperative as provided in chapter 394, or electrical corporation as**
10 **provided in this chapter;**

10 **(2) "Commission", the public service commission of the state of**
11 **Missouri;**

12 **(3) "Customer-generator", the owner or operator of a qualified**
13 **electric energy generation unit which:**

14 **(a) Is powered by a renewable energy resource;**

15 **(b) Has an electrical generating system with a capacity of not**
16 **more than either:**

17 **a. Three hundred kilowatts if the customer-generator is served**
18 **by a participating electrical corporation; or**

19 **b. One hundred kilowatts in all other instances;**

20 **(c) Is located on a premises owned, operated, leased, or**
21 **otherwise controlled by the customer-generator;**

22 **(d) Is interconnected and operates in parallel phase and**
23 **synchronization with a retail electric supplier and has been approved**
24 **by said retail electric supplier;**

25 **(e) Is intended primarily to offset part or all of the customer-**
26 **generator's own electrical energy requirements;**

27 **(f) Meets all applicable safety, performance, interconnection, and**
28 **reliability standards established by the National Electrical Code, the**
29 **National Electrical Safety Code, the Institute of Electrical and**
30 **Electronics Engineers, Underwriters Laboratories, the Federal Energy**
31 **Regulatory Commission, and any local governing authorities; and**

32 **(g) Contains a mechanism that automatically disables the unit**
33 **and interrupts the flow of electricity back onto the supplier's**
34 **electricity lines in the event that service to the customer-generator is**
35 **interrupted;**

36 **(4) "Department", the department of natural resources;**

37 **(5) "Net metering", using metering equipment sufficient to**
38 **measure the difference between the electrical energy supplied to a**
39 **customer-generator by a retail electric supplier and the electrical**
40 **energy supplied by the customer-generator to the retail electric**
41 **supplier over the applicable billing period;**

42 **(6) "Participating electrical corporation", the same as defined in**
43 **section 393.1510;**

44 **(7) "Renewable energy resources", electrical energy produced**
45 **from wind, solar thermal sources, hydroelectric sources, photovoltaic**

46 cells and panels, fuel cells using hydrogen produced by one of the
47 above-named electrical energy sources, and other sources of energy
48 that become available after August 28, 2007, and are certified as
49 renewable by the department;

50 (8) "Retail electric supplier" or "supplier", any municipal utility,
51 electrical corporation regulated under this chapter, or rural electric
52 cooperative under chapter 394 that provides retail electric service in
53 this state.

54 3. A retail electric supplier shall:

55 (1) Make net metering available to customer-generators on a
56 first-come, first-served basis until the total rated generating capacity
57 of net metering systems equals five percent of the utility's single-hour
58 peak load during the previous year, after which the commission for a
59 public utility or the governing body for other electric utilities may
60 increase the total rated generating capacity of net metering systems to
61 an amount above five percent. However, in a given calendar year, no
62 retail electric supplier shall be required to approve any application for
63 interconnection if the total rated generating capacity of all applications
64 for interconnection already approved to date by said supplier in said
65 calendar year equals or exceeds one percent of said supplier's single-
66 hour peak load for the previous calendar year;

67 (2) Offer to the customer-generator a tariff or contract that is
68 identical in electrical energy rates, rate structure, and monthly charges
69 to the contract or tariff that the customer would be assigned if the
70 customer were not an eligible customer-generator but shall not charge
71 the customer-generator any additional standby, capacity,
72 interconnection, or other fee or charge that would not otherwise be
73 charged if the customer were not an eligible customer-generator; and

74 (3) Disclose annually the availability of the net metering
75 program to each of its customers with the method and manner of
76 disclosure being at the discretion of the supplier.

77 4. A customer-generator's facility shall be equipped with
78 sufficient metering equipment that can measure the net amount of
79 electrical energy produced or consumed by the customer-generator. If
80 the customer-generator's existing meter equipment does not meet these
81 requirements or if it is necessary for the electric supplier to install

82 additional distribution equipment to accommodate the customer-
83 generator's facility, the customer-generator shall reimburse the retail
84 electric supplier for the costs to purchase and install the necessary
85 additional equipment. At the request of the customer-generator, such
86 costs may be initially paid for by the retail electric supplier, and any
87 amount up to the total costs and a reasonable interest charge may be
88 recovered from the customer-generator over the course of up to twelve
89 billing cycles. Any subsequent meter testing, maintenance or meter
90 equipment change necessitated by the customer-generator shall be paid
91 for by the customer-generator.

92 5. Consistent with the provisions in this section, the net
93 electrical energy measurement shall be calculated in the following
94 manner:

95 (1) For a customer-generator, a retail electric supplier shall
96 measure the net electrical energy produced or consumed during the
97 billing period in accordance with normal metering practices for
98 customers in the same rate class, either by employing a single,
99 bidirectional meter that measures the amount of electrical energy
100 produced and consumed, or by employing multiple meters that
101 separately measure the customer-generator's consumption and
102 production of electricity;

103 (2) If the electricity supplied by the supplier exceeds the
104 electricity generated by the customer-generator during a billing period,
105 the customer-generator shall be billed for the net electricity supplied
106 by the supplier in accordance with normal practices for customers in
107 the same rate class;

108 (3) If the retail electric supplier is a participating electrical
109 corporation and the electricity generated by the customer-generator
110 exceeds the electricity supplied by the supplier during a billing period,
111 the customer-generator shall be billed for the appropriate customer
112 charges for that billing period in accordance with subsection 3 of this
113 section and shall be credited an amount equal to the participating
114 electrical corporation's rate applicable to the customer for the excess
115 kilowatt-hours generated during the billing period, with this credit
116 applied to the following billing period. If a customer of a participating
117 electrical corporation is a customer-generator whose electrical

118 generating system has a capacity of up to ten kilowatts is billed
119 monthly, credit amounts may be carried over month to month; provided
120 however, at the end of each annual period, any credit owed for excess
121 kilowatt-hours generated shall be credited to the customer on their
122 next bill equal to the avoided fuel cost of the participating electrical
123 corporation. If a customer of a participating electrical corporation is
124 a customer-generator whose electrical generating system has a capacity
125 greater than ten kilowatts but not more than three hundred kilowatts
126 is billed monthly, credit amounts may be carried over month to month;
127 provided however, at the end of each semi-annual period, any credit
128 owed for excess kilowatt-hours generated shall be credited to the
129 customer-generator on their next bill equal to the avoided fuel cost of
130 the participating electrical corporation. Any customer-generator that
131 is a customer of a participating electrical corporation that is credited
132 for excess kilowatt-hours generated at the avoided fuel cost rate shall
133 have its credit balance reset to zero. For all other retail electric
134 suppliers, and for their customers that are customer-generators that
135 are billed for periods greater than one month, at the end of each billing
136 period the customer shall be given a bill credit equal to the avoided
137 fuel cost of the retail electric supplier;

138 (4) Any credits granted by this subsection shall expire without
139 any compensation at the earlier of either twelve months after their
140 issuance or when the customer-generator disconnects service or
141 terminates the net metering relationship with the supplier;

142 (5) For any rural electric cooperative under chapter 394, or
143 municipal utility, upon agreement of the wholesale generator supplying
144 electric energy to the retail electric supplier, at the option of the retail
145 electric supplier, the credit to the customer-generator may be provided
146 by the wholesale generator.

147 6. (1) Each qualified electric energy generation unit used by a
148 customer-generator shall meet all applicable safety, performance,
149 interconnection, and reliability standards established by any local code
150 authorities, the National Electrical Code, the National Electrical Safety
151 Code, the Institute of Electrical and Electronics Engineers, and
152 Underwriters Laboratories for distributed generation. No supplier
153 shall impose any fee, charge, or other requirement not specifically

154 authorized by this section or the rules promulgated under subsection
155 9 of this section unless the fee, charge, or other requirement would
156 apply to similarly situated customers who are not customer-generators,
157 except that a retail electric supplier may require that a customer-
158 generator's system contain a switch, circuit breaker, fuse, or other
159 easily accessible device or feature located in immediate proximity to
160 the customer-generator's metering equipment that would allow a utility
161 worker the ability to manually and instantly disconnect the unit from
162 the utility's electric distribution system.

163 (2) For systems of ten kilowatts or less, a customer-generator
164 whose system meets the standards and rules under subdivision (1) of
165 this subsection shall not be required to install additional controls,
166 perform or pay for additional tests or distribution equipment, or
167 purchase additional liability insurance beyond what is required under
168 subdivision (1) of this subsection and subsection 4 of this section.

169 (3) For customer-generator systems of greater than ten kilowatts,
170 the public service commission and the governing body for other
171 utilities shall, by rule or equivalent formal action by each respective
172 governing body:

173 (a) Set forth safety, performance, and reliability standards and
174 requirements; and

175 (b) Establish the qualifications for exemption from a
176 requirement to install additional controls, perform or pay for
177 additional tests or distribution equipment, or purchase additional
178 liability insurance.

179 7. (1) Applications by a customer-generator for interconnection
180 of a qualified electric energy generation unit meeting the requirements
181 of subdivision (3) of subsection 2 of this section to the distribution
182 system shall be accompanied by the plan for the customer-generator's
183 electrical generating system, including but not limited to a wiring
184 diagram and specifications for the generating unit, and shall be
185 reviewed and responded to by the retail electric supplier within thirty
186 days of receipt for systems ten kilowatts or less and within sixty days
187 of receipt for all other systems. Prior to the interconnection of the
188 qualified generation unit to the supplier's system, the customer-
189 generator will furnish the retail electric supplier a certification from

190 a qualified professional electrician or engineer that the installation
191 meets the requirements of subdivision (1) of subsection 6 of this
192 section. If the application for interconnection is approved by the retail
193 electric supplier and the customer-generator does not complete the
194 interconnection within one year after receipt of notice of the approval,
195 the approval shall expire and the customer-generator shall be
196 responsible for filing a new application.

197 (2) Upon the change in ownership of a qualified electric energy
198 generation unit, the new customer-generator shall be responsible for
199 filing a new application under subdivision (1) of this subsection.

200 8. Each commission-regulated supplier shall submit an annual
201 net metering report to the commission, and all other nonregulated
202 suppliers shall submit the same report to their respective governing
203 body and make said report available to a consumer of the supplier upon
204 request, including the following information for the previous calendar
205 year:

206 (1) The total number of customer-generator facilities;

207 (2) The total estimated generating capacity of its net-metered
208 customer-generators; and

209 (3) The total estimated net kilowatt-hours received from
210 customer-generators.

211 9. The commission shall, within nine months of January 1, 2017,
212 promulgate initial rules necessary for the administration of this section
213 for public utilities, which shall include regulations ensuring that
214 simple contracts will be used for interconnection and net metering. For
215 systems of ten kilowatts or less, the application process shall use an all-
216 in-one document that includes a simple interconnection request, simple
217 procedures, and a brief set of terms and conditions. Any rule or
218 portion of a rule, as that term is defined in section 536.010 that is
219 created under the authority delegated in this section shall become
220 effective only if it complies with and is subject to all of the provisions
221 of chapter 536, and, if applicable, section 536.028. This section and
222 chapter 536 are nonseverable and if any of the powers vested with the
223 general assembly pursuant to chapter 536, to review, to delay the
224 effective date, or to disapprove and annul a rule are subsequently held
225 unconstitutional, then the grant of rulemaking authority and any rule

226 proposed or adopted after August 28, 2016, shall be invalid and void.

227 10. The governing body of a rural electric cooperative or
228 municipal utility shall, within nine months of January 1, 2017, adopt
229 policies establishing a simple contract to be used for interconnection
230 and net metering. For systems of ten kilowatts or less, the application
231 process shall use an all-in-one document that includes a simple
232 interconnection request, simple procedures, and a brief set of terms
233 and conditions.

234 11. For any cause of action relating to any damages to property
235 or person caused by the generation unit of a customer-generator or the
236 interconnection thereof, the retail electric supplier shall have no
237 liability absent clear and convincing evidence of fault on the part of the
238 supplier.

239 12. The estimated generating capacity of all net metering systems
240 operating under the provisions of this section shall count towards the
241 respective retail electric supplier's accomplishment of any renewable
242 energy portfolio target or mandate adopted by the Missouri general
243 assembly.

244 13. The sale of qualified electric generation units to any
245 customer-generator shall be subject to the provisions of sections
246 407.700 to 407.720. The attorney general shall have the authority to
247 promulgate in accordance with the provisions of chapter 536 rules
248 regarding mandatory disclosures of information by sellers of qualified
249 electric generation units.

250 14. Any interested person who believes that the seller of any
251 electric generation unit is misrepresenting the safety or performance
252 standards of any such systems, or who believes that any electric
253 generation unit poses a danger to any property or person, may report
254 the same to the attorney general, who shall be authorized to investigate
255 such claims and take any necessary and appropriate actions.

256 15. Any costs incurred under this section by a retail electric
257 supplier shall be recoverable in that utility's rate structure.

258 16. No consumer shall connect or operate an electric generation
259 unit in parallel phase and synchronization with any retail electric
260 supplier without written approval by said supplier that all of the
261 requirements under subdivision (1) of subsection 7 of this section have

262 **been met. For a consumer who violates this provision, a supplier may**
263 **immediately and without notice disconnect the electric facilities of said**
264 **consumer and terminate said consumer's electric service.**

265 **17. The manufacturer of any electric generation unit used by a**
266 **customer-generator may be held liable for any damages to property or**
267 **person caused by a defect in the electric generation unit of a customer-**
268 **generator.**

269 **18. The seller, installer, or manufacturer of any electric**
270 **generation unit who knowingly misrepresents the safety aspects of an**
271 **electric generation unit may be held liable for any damages to property**
272 **or person caused by the electric generation unit of a customer-**
273 **generator.**

274 **19. This section shall expire on December 31, 2026.**

393.1500. Sections 393.1500 to 393.1575 shall be known as the
2 **"21st Century Grid Modernization and Security Act".**

393.1505. 1. It reflects the policy of the state of Missouri during
2 **a time of dynamic change in the electric service industry to modernize**
3 **the regulatory process for electrical corporations to more closely align**
4 **the interests of electrical corporations and the customers they serve by:**

5 **(1) Allowing for the imposition of earnings caps, rate caps,**
6 **performance standards and other customer protections in connection**
7 **with service provided by electrical corporations;**

8 **(2) Providing a meaningful opportunity for electrical**
9 **corporations to recover on a timely basis the actual, prudently incurred**
10 **costs of providing reliable electric service;**

11 **(3) Establishing policies that encourage investment in Missouri**
12 **electrical infrastructure; and**

13 **(4) Providing globally competitive electric power rates for**
14 **energy intensive customers.**

15 **The 21st century grid modernization and security act is intended to**
16 **create a performance-based regulatory construct for electrical**
17 **corporations that provides greater certainty to both customers and**
18 **electrical corporations, and fosters the provision of reliable and**
19 **affordable electric services for the benefit of customers.**

20 **2. The operation of sections 393.1500 to 393.1575 is intended to**
21 **reflect the following processes and features:**

22 **(1) There shall be an option for electrical corporations to initiate**
23 **performance-based ratemaking and to undertake certain specific**
24 **obligations as participating electrical corporations. The initiation of**
25 **performance-based ratemaking is voluntary and the requirements of**
26 **this section shall begin with the filing of a performance-based rate**
27 **tariffs consistent with section 393.1525;**

28 **(2) All participating electrical corporations shall be required to**
29 **make filings with the commission each year during the time**
30 **performance-based ratemaking is in effect, providing transparency into**
31 **the capital investment process initiated by the participating electrical**
32 **corporations to maintain, modernize, and secure infrastructure;**

33 **(3) The participating electrical corporation's rates and cost of**
34 **service used to set the electrical corporation's revenue requirement**
35 **shall be based upon current financial information contained in the**
36 **participating electrical corporation's certified FERC Form 1, a**
37 **document that contains annual financial information concerning the**
38 **utility operations, and shall use actual data reported on the FERC**
39 **Form 1 as the basis to set rates instead of relying upon hypothetical or**
40 **normalized data that may be subject to dispute; provided however, that**
41 **nothing in sections 393.1500 to 393.1575 is intended to limit the**
42 **commission's authority to review the books, records, and accounts of**
43 **the participating electrical corporation for the purpose of verifying the**
44 **amount and nature of the underlying costs reported in the FERC Form**
45 **1, ensuring that only the Missouri jurisdictional portion of costs**
46 **reported in the FERC Form 1 are used to set performance-based rates,**
47 **and further ensuring that such books, records, and accounts are kept**
48 **in accordance with the commission's requirements;**

49 **(4) After the performance-based rate tariffs are filed and**
50 **approved, the participating electrical corporation shall make annual**
51 **filings under section 393.1530 to update the rates calculated using**
52 **protocols set forth in the performance-based rate tariffs, which include**
53 **a reconciliation of costs for the historical rate year adjustments based**
54 **upon the application of a revenue test, incorporation of performance**
55 **penalties or incentives for key performance metrics set forth in section**
56 **393.1520, and annual rate increase limitations under section 393.1540;**

57 **(5) Performance-based rate tariffs shall include provisions that**

58 prevent over and under recovery of a participating electrical
59 corporation's authorized return on equity. The purpose of the revenue
60 test as provided in subdivision (3) of subsection 1 of section 393.1530 is
61 to mitigate the potential for over and under recoveries of a
62 participating electrical corporation's revenue requirement, and return
63 on equity, due to changes in load and electricity sales in any given
64 year;

65 (6) At the time annual rates are updated under section 393.1530,
66 a full commission review process is afforded, and rates shall continue
67 to reflect the participating electrical corporation's annual revenue
68 requirement based on the participating electrical corporation's actual
69 costs as generally reflected in the participating electrical corporation's
70 FERC Form 1 subject to adjustments under section 393.1525;

71 (7) Rate adjustment mechanisms arising under subsection 1 of
72 section 386.266 for electrical corporations with more than two hundred
73 thousand Missouri electric customers shall be suspended under sections
74 393.1525 and 393.1545 during the period when performance based-rates
75 are in effect;

76 (8) The commission shall continue to have the authority to
77 ensure that customers are being charged rates for electric services that
78 are just and reasonable and based only on prudently incurred costs. In
79 assessing the prudence of a participating electrical corporation's
80 expenditures, the commission shall employ the standards it has
81 historically used in proceedings under which a review of a general rate
82 increase is considered;

83 (9) Consumer protection and regulatory oversight processes are
84 provided for as part of the performance-based regulatory process to
85 ensure fair and consistent operation; and

86 (10) The intent of subsection 1 of section 393.1520 is to timely
87 reflect within rates any annual change, positive or negative, in the cost
88 of equity evidenced by a change in United States Treasury Bond yields.

393.1510. 1. The provisions of section 386.020 defining words,
2 phrases and terms, shall apply to and determine the meaning of all
3 such words, phrases or terms as used in sections 393.1500 to 393.1575.

4 2. As used in sections 393.1500 to 393.1575, the following terms
5 shall mean:

6 (1) "Annual update filing", the annual filing made by
7 participating electrical corporations to update the revenue
8 requirement used to set prospective rates, including the reconciliation
9 of costs for the historical rate year, application of the revenue test
10 under section 393.1530, application of any performance penalties or
11 incentives under section 393.1520, and application of any increase
12 limitation amount that has been carried forward under section
13 393.1540, after the participating electrical corporation has filed its
14 initial performance-based rate tariffs;

15 (2) "Average and excess methodology", the cost of service
16 methodology for allocating and assigning responsibility for production
17 demand costs to each customer rate class as set forth in Table 4-10A on
18 page 50 of the 1992 National Association of Regulatory Utility
19 Commissioners Manual, as it existed on January 1, 2015, using the four
20 non-coincident peak average and excess method, as it existed on
21 January 1, 2015;

22 (3) "Cost of service", the total cost of providing retail electric
23 utility service to Missouri electric customers, including but not limited
24 to operating expenses, depreciation, amortizations, taxes, rate base
25 items, and return on rate base, offset by revenues included in net fuel
26 and purchased power, revenues received from customers taking service
27 under section 393.1580, and the Missouri jurisdictional portion of
28 revenues from sources other than Missouri jurisdictional retail
29 customers;

30 (4) "Embedded class cost of service study", a study designed to
31 determine the cost of service attributable to each class of electrical
32 corporation customers based upon cost causation principles generally
33 recognized by the public utility industry and state regulatory
34 authorities;

35 (5) "FERC Form 1", the Annual Report of Major Electric Utilities,
36 Licensees and Others that electrical corporations are required to file
37 with the Federal Energy Regulatory Commission under Sections 3, 4(a),
38 209, and 304 of the Federal Power Act, or successor provisions of law,
39 adjusted to Missouri electric jurisdictional operations, as applicable;

40 (6) "Filing year", the calendar year in which an initial
41 performance-based rate tariff filing is made under section 393.1525, or

42 the year in which an annual update filing is made under section
43 393.1530;

44 (7) "Force majeure event", an event or circumstance that occurs
45 as a result of a weather event, an act of God, war or terrorism, or other
46 uncontrollable event as determined by the commission that causes a
47 reduction in revenues, an increase in the cost of providing electrical
48 service, or some combination thereof, and the event has an associated
49 fiscal impact on a participating electrical corporation's operations
50 equal to one percent or greater of the total revenue requirement
51 established under sections 393.1500 to 393.1575. Any force majeure
52 event shall be subject to commission review and approval, and shall not
53 preclude the commission from reviewing the prudence of any revenue
54 reductions or costs incurred during any proceeding to set rates
55 initiated under sections 393.1525 or 393.1530;

56 (8) "General advertising", any of the following:

57 (a) Advertisements which convey ways to safely use electricity
58 and avoid accidents;

59 (b) Advertisements which provide factual information about how
60 the electrical corporation generates or delivers, or plans to generate or
61 deliver, safe and adequate service;

62 (c) Advertisements that contain information regarding federal
63 and state laws and how they affect the electric business;

64 (d) Advertisements that convey innovations in the electrical
65 corporation's operations;

66 (e) Advertisements that help identify the electrical corporation's
67 presence to its customers; and

68 (f) Advertisements that help electric customers manage or
69 understand the service and programs in place to help them manage
70 their accounts and service the electrical corporation provides;

71 (9) "Historical rate year", the calendar year immediately prior to
72 the filing year in which changes in rates are proposed under sections
73 393.1525 to 393.1530;

74 (10) "Initial rate year", the first calendar year in which
75 performance-based rate tariffs are in effect;

76 (11) "Institutional advertising", advertising done solely to
77 improve the participating electrical corporation's image with no benefit

78 to the customer. "Institutional advertising" shall include political
79 advertising;

80 (12) "Large power service rate schedule", the rate schedule of a
81 participating electrical corporation that sets forth rates applicable to
82 the largest industrial consumers and other customers in that customer
83 class;

84 (13) "Net fuel and purchased power", all fuel and purchased
85 power acquired by the participating electrical corporation used to
86 serve Missouri retail electric load reduced by total wholesale or off-
87 system power sales for the same period, and all other items eligible for
88 inclusion in a rate adjustment mechanism under subsection 1 of section
89 386.266;

90 (14) "Operating expenses", FERC Account 401 "Operation
91 Expenses", FERC Account 402 "Maintenance Expenses", and FERC
92 Account 408.1 "Taxes Other Than Income Taxes, Utility Operating
93 Income", excluding gross receipts taxes, for the purposes of applying
94 the one percent per annum gross-up provided for under sections
95 393.1525 and 393.1530;

96 (15) "Participating electrical corporation", an electrical
97 corporation that voluntarily files performance-based rate tariffs under
98 section 393.1525. A participating electrical corporation shall recover
99 its cost of providing service through the ratemaking process set forth
100 in sections 393.1500 to 393.1575, until such time as the effective
101 operation of sections 393.1500 to 393.1575 terminates by electrical
102 corporation voluntary withdrawal or operation of law. At such time as
103 termination is effective an electrical corporation is no longer a
104 participating electrical corporation for the purposes of sections
105 393.1500 to 393.1575;

106 (16) "Rate base", the investment in net plant, inventories,
107 accumulated deferred income taxes, and other items consistent with
108 established ratemaking practices recognized in proceedings in which
109 a general change in rates was approved by the commission prior to the
110 adoption of the effective date of this section. The return reflected in
111 cost of service is calculated on this investment;

112 (17) "Rate year", the calendar year in which rates will be in effect
113 under sections 393.1500 to 393.1575;

114 **(18) "Retail electric services", the services, and rates and terms**
115 **for service, provided by an electrical corporation and subject to the**
116 **jurisdiction of the commission;**

117 **(19) "Revenue requirement", the total amount recoverable**
118 **through retail electric rates necessary to allow a participating**
119 **electrical corporation the opportunity to recover its full cost of service,**
120 **and shall also include, without limitation, any amount associated with**
121 **a reconciliation balance under section 393.1530, or an increase**
122 **limitation amount that has been carried forward under section**
123 **393.1540;**

124 **(20) "Tariff", schedules of rates and terms and conditions of**
125 **service for an electrical corporation that are open for public inspection**
126 **under subdivision (11) of section 393.140.**

393.1515. 1. No later than February twenty-eighth of each year
2 **after it elects to become a participating electrical corporation, each**
3 **participating electrical corporation shall submit to the commission a**
4 **five year capital investment plan setting forth the general categories**
5 **of capital expenditures the electrical corporation will pursue in**
6 **furtherance of modernizing and securing its infrastructure and**
7 **achieving the performance metrics set forth in section 393.1520. The**
8 **plan shall also include a specific capital investment plan for the first**
9 **year of the five year plan consistent with the level of specificity the**
10 **participating electrical corporation has historically used for annual**
11 **capital budgeting purposes. Project specific information is not**
12 **required to be included for the five year period covered by the plan. No**
13 **later than February twenty-eighth of each subsequent year, the**
14 **participating electrical corporation shall submit to the commission an**
15 **updated capital investment plan for the subsequent five years, a**
16 **specific capital investment plan for the subsequent calendar year, and**
17 **report the capital investments for the prior calendar year. Within**
18 **thirty days of the filing of any capital investment plan or annual**
19 **update to an existing plan, the participating electrical corporation**
20 **shall host a public stakeholder meeting to answer questions and receive**
21 **feedback about the plan. Such participating electrical corporation**
22 **shall provide public notice of the meeting to its customers on its**
23 **website, and the meeting shall be located within the electrical**

24 corporation's service territory. After feedback is received, the
25 participating electrical corporation shall file a notice with the
26 commission of any modifications to the capital investment plan it has
27 accepted. The plan, implementation of the plan, or schedule changes
28 from year to year shall not constitute evidence of imprudence of the
29 capital investment plan or the investments made under such plan. The
30 fact that a participating electrical corporation invests more or less
31 than the amounts specified in its initial or updated plans shall not
32 constitute evidence of imprudence. The submission made under this
33 section shall be made publicly available; however, portions of the
34 submission may contain confidential and proprietary information and
35 may be protected from public disclosure in a manner consistent with
36 the rules or orders of the commission as applicable. Nothing in this
37 section shall require a participating electrical corporation to publicly
38 disclose confidential, proprietary, or financially sensitive information,
39 any market sensitive information, or information that would otherwise
40 violate rules promulgated by the Federal Energy Regulatory
41 Commission designed to protect the integrity of wholesale power
42 markets. The submission of a capital investment plan under this
43 section shall not affect in any way the commission's authority with
44 respect to the grant or denial of a certificate of convenience and
45 necessity under section 393.170.

46 2. (1) Each participating electrical corporation shall establish
47 a process to qualify third party vendors that bid to provide services, or
48 may bid, on planned electrical distribution construction and
49 maintenance projects based on the following criteria:

- 50 (a) Total evaluated value based on price;
- 51 (b) Quality of work, services, and products furnished;
- 52 (c) Scheduling needs and resources available to meet scheduling
53 requirements;
- 54 (d) Safety policies, procedure, record, and experience;
- 55 (e) Supplier diversity; and
- 56 (f) Other relevant considerations for distribution system
57 maintenance, construction, and modernization projects.

58 (2) A vendor qualification application process shall be
59 established within nine months from the effective date of this

60 section. Once established, the participating electrical corporation shall
61 utilize a qualified vendor or a competitive bid process for any
62 expenditures made to vendors for planned projects whose costs are
63 estimated to be greater than one hundred thousand dollars. A qualified
64 vendor need not be used in emergency situations.

65 (3) In any proceeding initiated under sections 393.1525 and
66 393.1530, the commission shall have the authority to review the
67 participating electrical corporation's vendor qualification
68 process. Adherence to the vendor qualification requirements of this
69 section or use of a competitive bid process shall constitute evidence of
70 prudence. If a participating electrical corporation does not properly
71 qualify a vendor, the commission has the authority to disallow recovery
72 of any costs that exceed the amount that would have otherwise been
73 prudently incurred.

74 (4) The commission shall submit a report to the general assembly
75 after the first twelve months of the program, and ninety days prior to
76 the expiration of this subsection, the commission shall provide another
77 report to the general assembly providing an analysis of the effects of
78 the utility vendor program.

393.1520. 1. In proceedings used to set rates under sections
2 393.1500 to 393.1575, the return on equity for a participating electrical
3 corporation shall be 9.45 percent, adjusted to reflect an increase or
4 decrease equal to the difference between the average of thirty-year
5 United States Treasury Bond yields for the applicable historical rate
6 year and the average of thirty-year United States Treasury Bond yields
7 for the twelve months ending December 31, 2015, as published by the
8 Board of Governors of the Federal Reserve System in its weekly H.15
9 Statistical Release or any successor publication. At such time as the
10 board of governors of the Federal Reserve System ceases to include the
11 average yields of thirty-year United States Treasury Bonds in its
12 weekly H.15 Statistical Release or successor publication, the average
13 yields of the United States Treasury Bonds then having the longest
14 duration published by the Board of Governors in its weekly H.15
15 Statistical Release or successor publication shall instead be used for
16 purposes of this subsection.

17 2. In proceedings to update rates annually consistent with

18 section 393.1530, for purposes of the reconciliation of cost of service,
19 the return on equity for a participating electrical corporation,
20 calculated under subsection 1 of this section, shall be increased or
21 decreased, for the purpose of reconciling costs, to reflect its
22 performance based on the following metrics:

23 (1) The System Average Interruption Duration Index, including
24 the Institute for Electrical and Electronics Engineers major storm
25 exclusion provision as defined by the Institute for Electrical and
26 Electronics Engineers' publication "Guide for Electric Power
27 Distribution System Indices" or its successor publication, but excluding
28 major storm as defined in that guide;

29 (2) The System Average Interruption Frequency Index, including
30 the Institute for Electrical and Electronics Engineers major storm
31 exclusion provision as defined by the Institute for Electrical and
32 Electronics Engineers' publication "Guide for Electrical Power
33 Distribution System Indices" or its successor publication, but excluding
34 major storm as defined in that guide;

35 (3) The percentage of customer calls answered by the
36 participating electrical corporation's customer call centers within
37 thirty seconds;

38 (4) The average speed of answer by the participating electrical
39 corporation's call centers;

40 The commission shall have the authority to replace one of the metrics
41 set forth in this subsection for application to a specific participating
42 electrical corporation by issuing an order under section 393.1525 or
43 393.1530. The new metric shall be applied prospectively and may result
44 in a change in the return on equity equal to no more than five one-
45 hundredths of one percentage point.

46 3. Each participating electrical corporation shall track the
47 performance metrics specified in subsection 2 of this section for each
48 year that performance-based rate tariffs are in effect. In each year
49 subsequent to the initial rate year, the participating electrical
50 corporation shall include in its annual update filing a report that
51 provides a description of how the participating electrical corporation
52 performed under each metric in the previous year, and identify any
53 extraordinary events that adversely impacted its performance. For

54 each performance metric, as reported in the annual update filing of a
55 participating electrical corporation, where the annual average
56 performance actually achieved by the participating electrical
57 corporation is superior to the rolling average for the five-year period
58 ending the year preceding the historical rate year by fifteen percent or
59 more, then the allowable return on equity shall be increased by five
60 one-hundredths of one percentage point. For each performance metric,
61 as reported in an annual update filing of a participating electrical
62 corporation, where the annual average performance actually achieved
63 is inferior to the rolling average for the five-year period ending the
64 year preceding the historical rate year by fifteen percent or more, then
65 the allowable return on equity shall be reduced by five one-hundredths
66 of one percentage point. The allowable return on equity shall not be
67 otherwise adjusted on account of these or any other performance
68 metrics. These performance metrics shall be calculated and reported
69 by the participating electrical corporation in a manner consistent with
70 the methodology that participating electrical corporation used for the
71 five-year period ending December 31, 2015. At the conclusion of the
72 performance-based rate proceeding initiated under section 393.1530,
73 the commission shall enter an order approving financial penalties or
74 financial incentives in accordance with this subsection. The
75 commission-approved financial penalties or incentives shall be applied
76 as adjustments to the return on equity applicable to the historical rate
77 year to be reflected in the reconciliation of costs provided for under
78 section 393.1530. Nothing in this section shall authorize the
79 commission to increase, reduce, or otherwise adjust the financial
80 penalties or incentives established under this subsection. All financial
81 penalties and incentives shall operate symmetrically and shall be
82 expressed as an addition or subtraction of five one-hundredths of one
83 percentage point to be applied to the return on equity for each of the
84 respective categories identified subsection 2 of this section. In no
85 event shall the aggregate of the financial incentives or penalties affect
86 a participating electrical corporation's authorized return by more than
87 two-tenths of one percentage point in any year, and any penalty or
88 incentive shall not be used or applied to periods beyond the historical
89 rate year. No incentive or penalty, or portion thereof, may be carried

90 over for application in future periods.

393.1525. 1. Notwithstanding any provision of chapter 386 or
2 chapter 393 to the contrary, an electrical corporation may become a
3 participating electrical corporation seeking to recover its cost of
4 service through performance-based rate tariffs by filing such tariffs
5 with the commission. Such tariffs shall be approved by the commission,
6 subject to the rate limitations set forth under section 393.1540. The
7 commission order approving the performance-based rate tariff and
8 initial rates shall specify the cost and revenue components that form
9 the basis for establishing just and reasonable rates charged to
10 customers with sufficient specificity to operate in a standardized,
11 formulaic manner and be updated annually with transparent
12 information that reflects the electrical corporation's actual, prudently
13 incurred cost of service to be recovered during the applicable rate
14 year. The commission shall have authority to approve adjustments to
15 such performance-based rate tariffs only upon finding, after a hearing
16 supported by competent and substantial evidence, that such
17 performance-based rate tariffs do not meet the requirements of sections
18 393.1500 to 393.1575, or that such performance-based rate tariffs seek
19 to recover imprudently incurred costs. A participating electrical
20 corporation that serves more than two hundred thousand Missouri
21 electric customers at the time it files tariffs under section 393.1525, and
22 recovers fuel and purchased power costs through the use of a rate
23 adjustment mechanism established under subsection 1 of section
24 386.266, shall be required to recover costs previously recoverable under
25 that rate adjustment mechanism through its performance-based rate
26 tariffs consistent with the requirements of section 393.1545, and the
27 rate adjustment mechanism shall be suspended through December 31
28 of the last year to which sections 393.1500 to 393.1555 apply as provided
29 for in section 393.1575. A participating electrical corporation that
30 serves fewer than two hundred thousand Missouri electric customers
31 and recovers fuel and purchased power costs through the use of a rate
32 adjustment mechanism established under subsection 1 of section
33 386.266 shall have the option of continuing to utilize that rate
34 adjustment mechanism in addition to the performance-based rate
35 mechanism provided for in this section; and, starting with its initial

36 performance-based rate tariff filing under this section, it shall be
37 relieved of its obligation imposed under subsection 4 of section 386.266
38 to make periodic general rate filings in order to retain its rate
39 adjustment mechanism until the expiration of five years following the
40 termination of its participating electrical corporation status. A
41 participating electrical corporation may elect to suspend the operation
42 of any other rate adjustment mechanisms and include associated
43 recoveries within its performance base rate, but shall not be required
44 to suspend any rate adjustment mechanisms other than those operating
45 under subsection 1 of section 386.266 in accordance with this section.
46 If a participating electrical corporation maintains an existing rate
47 adjustment mechanism and does not elect to suspend such a mechanism
48 while performance-based rates are in effect, then the commission shall
49 ensure that all costs and revenues associated with such rate adjustment
50 mechanism remain unbundled and are excluded from performance-
51 based rate calculations.

52 2. If the participating electrical corporation, prior to the
53 effective date of this section, filed tariffs with the commission under
54 section 393.150 requesting a general increase in rates, and commission
55 approval of the tariffs is still pending when the participating electrical
56 corporation makes its initial performance-based rate tariff filing, the
57 tariffs filed under section 393.150 shall be deemed withdrawn by the
58 participating electrical corporation upon its initial filing under this
59 section, and the commission shall dismiss with prejudice any docket
60 that had been initiated to investigate such proposed tariffs and rates,
61 and such tariffs and the record related to such tariffs shall not be the
62 subject of any further hearing, investigation, or proceeding of any
63 kind. Performance-based rates established under this section shall be
64 applicable to all customers, except customers charged rates established
65 under section 393.1580. When a participating electrical corporation
66 files its performance-based rate tariffs, the commission shall conduct
67 an investigation of the proposed tariffs as provided for in this
68 section. Upon approval, the performance-based rate tariffs shall
69 remain in effect at the discretion of the participating electrical
70 corporation subject to the requirements of section 393.1555. The
71 performance-based rate tariffs approved by the commission shall

72 **adhere to the following requirements:**

73 **(1) Establish the cost of service for the rate year based on the**
74 **participating electrical corporation's actual costs of providing electric**
75 **utility services, as generally reflected in its FERC Form 1 for the**
76 **historical rate year, except as set forth in subdivisions (2) to (6) of this**
77 **subsection;**

78 **(2) Reflect the participating electrical corporation's actual year-**
79 **end capital structure for the historical rate year. A participating**
80 **electrical corporation shall not be obligated to utilize a more highly**
81 **leveraged capital structure, or otherwise be penalized, for its ability to**
82 **recover costs through performance-based rates. So long as the**
83 **electrical corporation maintains a capital structure that includes**
84 **equity capital of no greater than fifty-three percent and no lower than**
85 **forty-seven percent of total capitalization, the participating electrical**
86 **corporation's capital structure shall be presumed prudent and used to**
87 **set rates for all purposes set forth in this section. If the capital**
88 **structure falls outside of a range of fifty-three percent to forty-seven**
89 **percent equity, the commission may investigate the prudence of the**
90 **capital structure and adjust it, as applicable, for the purposes of**
91 **establishing cost of service in a manner consistent with the standard**
92 **it has historically used to assess utility management prudence. The**
93 **fact that a participating electrical corporation's equity capital is higher**
94 **than fifty-three percent or lower than forty-seven percent of total**
95 **capitalization shall not constitute evidence of imprudence;**

96 **(3) Include a cost of equity consistent with the requirements of**
97 **subsection 1 of section 393.1520;**

98 **(4) Include the following ratemaking adjustments for the purpose**
99 **of setting prospective rates:**

100 **(a) Recovery of regulatory assets and return of regulatory**
101 **liabilities over the periods authorized by the commission;**

102 **(b) Recovery of amortizations authorized under sections 393.1500**
103 **to 393.1575;**

104 **(c) Establishment of rates based on actual billing determinants,**
105 **as generally reflected in the electrical corporation's FERC Form 1 for**
106 **the historical rate year; provided however, that a participating**
107 **electrical corporation shall be permitted to adjust billing units used to**

108 set rates for the rate year based on weather-normalized billing
109 determinants using a weather normalization methodology consistent
110 with the approach previously relied upon by the commission to set
111 rates for the participating electrical corporation in its most recent
112 general rate proceeding prior to the filing of performance-based rate
113 tariffs. If a participating electrical corporation uses weather-
114 normalized billing units, it shall also adjust net fuel and purchased
115 power to reflect net purchase and sales volumes, in megawatt-hours,
116 equal to the amount of the retail volume weather normalization
117 amount; this volume adjustment to net purchases and sales shall be
118 priced at the average price for the unadjusted net purchases and sales
119 as calculated based on data reported in the electrical corporation's
120 FERC Form 1 for the historical rate year;

121 (d) Recovery of nuclear refueling costs, including all outage
122 related costs, provided a participating electrical corporation may elect
123 to recover nuclear refueling costs over a period equal to the
124 anticipated interval between refueling outages; or, if the participating
125 electrical corporation utilizes the deferral method to account for
126 operations and maintenance expenses incurred in support of nuclear
127 refueling outages, the participating electrical corporation may recover
128 such costs by amortizing them evenly on a monthly basis over the unit's
129 operating cycle until the next scheduled outage;

130 (e) Interest accrued on customer deposits using the commission
131 approved interest rate;

132 (f) An estimate of the revenue to be received from customers
133 served under rates established under section 393.1580 to be treated as
134 a revenue credit offsetting the revenue requirement established by the
135 operation of this section. In order to minimize the impact on future
136 reconciliation balances due to a change, anticipated or realized, in
137 revenue collected from customers receiving service under section
138 393.1580, the revenue contribution estimate used to set rates for the
139 rate year may be adjusted for good cause by the participating electrical
140 corporation during any open proceeding under this section or section
141 393.1530 upon notice to the commission and all parties no less than
142 thirty days prior to any scheduled evidentiary hearing;

143 (g) Recovery of any foregone margin experienced by the

144 participating electrical corporation during the period between the
145 effective date of rates set under section 393.1580 and the effective date
146 of rates established under this section. For the purposes of this
147 section, the forgone margin shall be measured as the difference
148 between:

149 a. The rates previously established by commission order under
150 the electrical corporation's most recent general rate proceeding prior
151 to implementation of performance-based rates for any customer or
152 customers qualifying for service under section 393.1580, multiplied by
153 the normalized billing units for the same customer or customers used
154 in setting rates in that general rate proceeding; and

155 b. The revenue actually received from those customers, during
156 the period between the effective date of rates set under section 393.1580
157 and the effective date of the rates established under this section
158 adjusted to reflect any differences in net energy costs allocated to other
159 customers directly resulting from the reduction in load. Recovery
160 under this paragraph shall begin at the time initial performance-based
161 rates under this section become effective, and an estimate shall be used
162 to set initial rates in order to provide for recovery during the first
163 period rates are in effect. Any remainder or over-collection shall be
164 recovered or credited as part of the first reconciliation under section
165 393.1530;

166 (h) Any adjustments necessary to effectuate an allocation of
167 common costs reported on FERC Form 1 that are shared among
168 operating affiliates, subsidiaries, or operating divisions of a
169 participating electrical corporation. The commission shall permit the
170 participating electrical corporation to use the most recent of either a
171 commission-approved cost allocation manual, or the most recent
172 allocation methodology used to set rates as a part of a general
173 proceeding to change electric rates under section 393.150 prior to the
174 adoption of sections 393.1500 to 393.1575;

175 (i) For a participating electrical corporation whose FERC Form
176 1 does not reflect cost of service information that is specific solely to
177 Missouri electric jurisdictional operations, adjustments to such FERC
178 Form 1 information shall be made consistent with the approach
179 adopted by the commission in the electrical corporation's most recently

180 completed general rate proceeding under section 393.150, as necessary
181 to conform the FERC Form 1 information to Missouri electric
182 jurisdictional operations. Adjustments made under this paragraph
183 shall be consistent with the intended operation of performance-based
184 rates as set forth in subdivision (3) of subsection 2 of section 393.1505;

185 (j) Adjustments necessary to recognize established regulatory
186 accounting treatment adopted in the electrical corporation's most
187 recently concluded general rate proceeding prior to the adoption of
188 sections 393.1500 to 393.1575 for participating electrical corporations
189 by the commission for pension expense, other post-employment
190 benefits, and Financial Accounting Standards Board Interpretation
191 Number 48. Any established cost tracker, or similar accounting
192 treatment, established by the commission for a participating electrical
193 corporation prior to the adoption of sections 393.1500 to 393.1575 for
194 the specific accounting items identified in this paragraph shall
195 continue to be recognized during the operation of this sections 393.1500
196 to 393.1575;

197 (k) An additive adjustment of one percent per annum applied to
198 operating expenses;

199 (l) Adjustments necessary to reflect the announced closure of a
200 generating plant scheduled to occur during either the filing year or the
201 rate year;

202 (m) Adjustments necessary to reflect return on rate base,
203 depreciation and amortization expense and current and deferred
204 income taxes calculated based on year end FERC Form 1 plant balances
205 for the historical rate year; and

206 (n) Adjustments necessary to correct errors or accounting
207 mistakes in FERC Form 1 or the proposed revenue requirement;

208 (5) Exclude from recovery the following:

209 (a) All lobbying, charitable donations, and institutional
210 advertising expenses; provided however, that dues or contributions to
211 industry or academic associations and institutions that provide
212 educational, research, and informational services concerning energy
213 policy, technology, and best practices shall be recoverable to the extent
214 reasonable in amount and prudently incurred. For the purposes of this
215 paragraph, institutional advertising shall not include general

216 advertising, and the expenses associated with general advertising, and
217 other non-institutional advertising, are recoverable so long as they are
218 prudently incurred;

219 (b) Incentive compensation expenses only to the extent they are
220 based on earnings metrics; however, metrics that are designed to
221 provide an incentive for management cost control and budget
222 management are recoverable;

223 (c) Pass-through taxes, such as gross receipts or similar taxes,
224 from both revenues and expenses; and

225 (d) Any costs found to be imprudent by the commission in a
226 proceeding to set rates under sections 393.1500 to 393.1575; and

227 (6) Provide for the reconciliations described in section 393.1530;

228 (7) Include protocols for prospective termination of the
229 application of performance-based ratemaking consistent with sections
230 393.1560 to 393.1575.

231 3. The electrical corporation shall file, together with its tariff,
232 final data based on its FERC Form 1 for the historical rate year which
233 is the basis of its initial performance-based rate tariff filing that shall
234 set the revenue requirement used to set initial performance-based tariff
235 rates. Nothing in this section is intended to allow costs that are not
236 otherwise recoverable to be recoverable by virtue of inclusion in FERC
237 Form 1. Nothing in this section is intended to prevent the commission
238 from reviewing a participating electrical corporation's books, records,
239 and accounts in order to ensure that only prudently incurred costs of
240 providing retail electric service to Missouri customers are recovered
241 through its performance-based rate tariffs.

242 4. After the participating electrical corporation files its proposed
243 initial performance-based rate tariffs under this section, the
244 commission shall initiate a docket to review the filing. The
245 participating electrical corporation shall submit prefiled direct
246 testimony supporting its proposed performance-based rate tariffs. The
247 participating electrical corporation shall explain in its direct testimony
248 why any rate increase or decrease is reasonable and appropriate, and
249 further provide an explanation of how FERC 1 values are reflected in
250 the performance-based rate tariffs and proposed revenue
251 requirement. The participating electrical corporation shall submit with

252 its initial direct testimony, and make available to the commission, its
253 staff, and intervenors schedules and workpapers in native format to
254 assist parties with reviewing the proposed revenue requirement and
255 operation of the tariffs. The filing of a performance-based rate tariff
256 shall not limit the commission's authority to inspect the books and
257 records of the participating electrical corporation. The commission
258 shall enter an order approving, or approving as modified, the initial
259 performance-based tariffs, including the initial rates, within two
260 hundred and forty-four days after the date on which the tariff was
261 filed. The commission shall approve the performance-based rate tariffs
262 upon its review of the filing and finding that such performance-based
263 rate tariffs meet the requirements of sections 393.1500 to 393.1575. The
264 commission may approve adjustments to such performance-based rate
265 tariffs only upon finding, after hearing and supported by competent
266 and substantial evidence, that such performance-based rate tariffs do
267 not meet the requirements of sections 393.1500 to 393.1575, or that such
268 performance-based rate tariffs seek to recover costs that have been
269 imprudently incurred. In assessing prudence, the commission shall
270 employ the standards it has historically used in proceedings under
271 which a review of a general rate increase is considered. The
272 commission shall establish a procedural schedule that requires all
273 parties objecting to any portion of the participating electrical
274 corporation's filing to file prefiled rebuttal testimony and other
275 documentary evidence. The commission shall also allow parties other
276 than the participating electrical corporation to respond to each other
277 through prefiled cross-rebuttal testimony, and the participating
278 electrical corporation shall be permitted to respond to all other parties'
279 prefiled testimony through the filing of prefiled surrebuttal
280 testimony. Notwithstanding the two hundred and forty-four day
281 limitation, if a participating electrical corporation makes its initial
282 performance-based rate tariff filing after April first but before May
283 first, the commission shall expedite consideration of the application to
284 ensure that initial rates are in effect no later than January first of the
285 year following the filing year, and adjust the procedural schedule as
286 necessary. Recovery of the participating electrical corporation's
287 prudently incurred expenses related to the commission proceedings

288 initiated under this section and section 393.1530 shall be permitted, and
289 all prudently incurred regulatory, expert, legal, and other expenses
290 associated with these commission proceedings shall be recoverable
291 absent a showing of imprudence, after hearing, on the basis of
292 competent and substantial evidence. The commission may conduct any
293 hearings in a manner consistent with established commission practice
294 and procedure. Aside from corrections to mistakes in earlier-filed
295 testimony, after the participating electrical corporation files
296 surrebuttal testimony, no further prefiled testimony shall be
297 received. Once approved, performance-based rate tariffs shall be
298 updated annually consistent with the requirements set forth in section
299 393.1530, and a participating electrical corporation shall not adjust
300 rates without approval by the commission.

301 5. To the extent that the participating electrical corporation's
302 rates set in its most recently concluded general rate proceeding under
303 section 393.150 are not based on the average and excess methodology,
304 the performance-based rates resulting from the participating electrical
305 corporation's revenue requirement shall be calculated in a manner that
306 limits increases to customers receiving service under the participating
307 electrical corporation's large power service rate schedule to no more
308 than the class cost of service indicated by allocating production costs
309 consistent with the average and excess allocation
310 methodology. Further, where any participating electrical corporation's
311 existing large power service rate design is based on hours of use energy
312 rate components, and where the last energy rate block for the summer
313 and winter rate periods is higher than the parallel generation rate for
314 the electrical corporation as adjusted for losses, the last energy rate
315 block for both summer and winter rate periods shall be set at the
316 parallel generation rate for the electrical corporation, adjusted for
317 losses specific to the service provided. In addition, where any
318 participating electrical corporation's existing large power service rate
319 design is based on other than hours of use rate components, the energy
320 rate for both summer and winter rate periods shall be reduced by ten
321 percent of the difference between such rates and the parallel
322 generation rate for the electrical corporation, adjusted for losses
323 specific to the service provided. After calculating the impact of rate

324 design changes as it applies to large power service customers, any
325 difference in large power service customers' revenue determination due
326 to the application of the provisions of this subsection shall be allocated
327 equally to all customer classes other than large power service and
328 allocated equally among all rate elements within each class. For the
329 purposes of this subsection, the participating electrical corporation
330 shall utilize the billing determinants and other cost of service
331 information from the participating electrical corporation's most
332 recently concluded general rate proceeding to calculate the change in
333 class cost of service responsibility applicable to all other classes
334 resulting from the implementation of the average and excess
335 methodology. Incorporation of the average and excess methodology,
336 and the operation of the rate established under section 393.1580, shall
337 be implemented in a manner that is revenue neutral to the
338 participating electrical corporation. The resulting rate design shall
339 then be utilized as the base on which the revenue requirement increase
340 or decrease shall be allocated equally to all customer classes and
341 allocated equally among all rate elements within each class. Rates
342 applicable to customer classes under section 393.1580 shall be set in
343 accordance with that section.

393.1530. 1. Beginning on or before May first of the year
2 subsequent to the year in which the performance-based rates are first
3 filed with the commission under section 393.1525, and continuing
4 annually thereafter, the participating electrical corporation shall make
5 an annual filing with the commission to update the inputs for the
6 performance-based rate tariffs established under section 393.1525 in
7 order to establish new performance-based rates for the upcoming rate
8 year. The first update of performance-based rates shall be filed
9 notwithstanding the fact that a participating electrical corporation may
10 have filed for approval of tariffs under section 393.1525 and the
11 commission has not yet issued a final order approving the filed tariffs;
12 provided however, that the participating electrical corporation shall be
13 permitted to make changes as necessary to reflect in its subsequent
14 performance-based rate tariff filing actions and decisions made by the
15 commission in its initial performance-based rate tariff filing. Annual
16 update filings shall continue each year until such time as a

17 participating electrical corporation's performance-based rate tariffs
18 terminate. The annual update filing shall also include the
19 reconciliation of the cost of service, performance-related metric
20 adjustments, if any, under subsection 3 of section 393.1520, the revenue
21 test provided for in this section, and the updated return on equity
22 calculated under subsection 1 section 393.1520, and shall be subject to
23 the operation of the rate increase limitations imposed under section
24 393.1540. The annual update filing shall conform to the following:

25 (1) The inputs to the performance-based rate tariff used to
26 calculate the cost of service used to set the revenue requirement and
27 rates for the upcoming rate year shall be based on final historical data
28 reflected in the participating electrical corporation's annual FERC
29 Form 1 for the historical rate year, except as set forth in subdivisions
30 (2) to (6) of subsection 2 of section 393.1525;

31 (2) The filing shall also include a reconciliation of the cost of
32 service that, taking into account the effect of any amounts associated
33 with the operation of section 393.1540, was used to set rates for the
34 historical rate year with the actual cost of service for that year based
35 upon the FERC Form 1 for that historical rate year. The reconciliation
36 shall be calculated in a manner that permits the participating electrical
37 corporation to recover its actual cost of service and any amortizations
38 recoverable under performance-based rate tariffs. For purposes of the
39 reconciliation calculation, an average value of the rate base for the
40 historical rate year shall be used. Any over-collection or under-
41 collection indicated by such reconciliation shall reduce or increase the
42 final revenue requirement that, but for the reconciliation, would have
43 been used to set rates for the upcoming rate year. Carrying costs shall
44 be included on any over or under-collection resulting from
45 reconciliation of costs under this subdivision at a rate equal to the
46 weighted average cost of capital for the participating electrical
47 corporation. The first reconciliation used to set rates shall occur after
48 the completion of a calendar year in which performance-based rates are
49 in effect for the entire year or a part of a year. If performance-based
50 rates under this section are first initiated after January first of a
51 calendar year, the reconciliation shall be based upon actual costs of
52 service for that year compared to a revenue requirement that is

53 prorated between the revenue requirement for the period in which
54 performance-based rates were in effect and, for the portion of the year
55 prior to effective performance-based rates, the most recently
56 established revenue requirement resulting from a general rate
57 proceeding approved by the commission in effect under section 393.150,
58 excluding any portion of revenue requirement allocated to customers
59 eligible for service under section 393.1580. The first reconciliation
60 occurring under this section is not intended to provide for the recovery
61 of costs previously excluded from rates based on a prior commission
62 order finding of imprudence. Each reconciliation shall be certified by
63 the participating electrical corporation management.

64 (3) The revenue requirement included in the annual update filing
65 shall also include an adjustment to reflect the results of a revenue test
66 calculated as follows:

67 (a) If the participating electrical corporation's actual earned rate
68 of return on equity for the historical rate year, after taxes, is two-
69 tenths of one percentage point above the rate of return on equity
70 calculated under section 393.1520, including the effect of any
71 performance metrics as applicable, for the period subject to
72 reconciliation, then the participating electrical corporation shall apply
73 a credit through the performance-based rates that reflects an amount
74 equal to the value of that portion of the earned rate of return on equity
75 that is higher than two-tenths of one percentage point above the rate
76 of return on equity calculated under section 393.1520. If the
77 participating electrical corporation earned rate of return on equity for
78 the historical rate year, after taxes, is lower than two-tenths of one
79 percentage point below the return on equity calculated under section
80 393.1520, including the effect of any performance metrics as applicable,
81 then the participating electrical corporation shall apply a charge
82 through the performance-based rate that reflects an amount equal to
83 the value of that portion of the earned rate of return on equity that is
84 lower than two-tenths of one percentage point below the rate of return
85 on equity calculated under section 393.1520. For the purposes of this
86 paragraph, the actual return on equity shall be calculated using
87 historical rate year data and will be equal to the actual return divided
88 by the actual average equity. For purposes of this paragraph, the

89 actual return shall be calculated by adding actual billed retail customer
90 revenues for the historical rate year to the reconciliation amount
91 calculated in subdivision (2) of this subsection, and then subtracting
92 the actual costs based on FERC Form 1 for the historical rate year,
93 including the same accounting adjustments to FERC Form 1 costs used
94 to establish the revenue requirement and set rates under the operation
95 of this section and section 393.1525; provided however, no weather
96 normalization adjustments shall apply. Actual retail customer revenues
97 shall include the amortizations used to set rates under this section for
98 the historical rate year. Revenues received from customers taking
99 service under section 393.1580 shall be excluded from the calculation
100 of actual retail customer revenues for purposes of this paragraph. For
101 purposes of this paragraph, the actual average equity shall be
102 calculated as the product of the average rate base and equity
103 percentage used for the reconciliation amount in subdivision (2) of this
104 subsection;

105 (b) The revenue test adjustment provided for under this
106 subdivision shall not become operative until the electrical corporation's
107 first reconciliation occurs. For years in which a partial period of
108 performance-based rates are in effect, the return on equity shall be
109 measured consistent with a proration, by month, between the return on
110 equity consistent with section 393.1520 and the last commission
111 authorized return used to set rates for the participating electrical
112 corporation in a commission proceeding effectuating a general change
113 in rates;

114 (4) The new charges shall take effect January first each year
115 after an annual update filing has been made; and

116 (5) The annual update filing shall include supporting prefiled
117 direct testimony and exhibits offered by the participating electrical
118 corporation.

119 2. In the proceeding to review a participating electrical
120 corporation's annual update filing, the commission shall have the
121 authority to review the prudence of the actual costs incurred by the
122 participating electrical corporation to be used in the reconciliation of
123 cost of service as prescribed by subdivision (2) of subsection 1 of this
124 section, and nothing in this section is intended to prevent the

125 commission from reviewing a participating electrical corporation's
126 books, records, and accounts in order to ensure that only prudently
127 incurred costs of providing retail electric service to Missouri customers
128 are recovered through its performance-based rate tariffs. The
129 commission shall further have the authority to make any adjustments
130 necessary to correct accounting mistakes and errors that may appear
131 in the FERC Form 1 or the participating electrical corporation's
132 proposed revenue requirement. The commission shall have the
133 authority to receive evidence concerning prudence of the actual cost
134 of service and accuracy of revenue requirement calculations consistent
135 with the tariffs and protocols established in accordance with section
136 393.1525, and hold an evidentiary hearing to consider evidence from
137 interested parties consistent with the time requirements provided for
138 under this section. The commission may approve adjustments to such
139 performance-based rates filed by the participating electrical
140 corporation only upon finding, after hearing and supported by
141 competent and substantial evidence, that such performance-based rates
142 do not meet the requirements sections 393.1500 to 393.1575 or that such
143 performance-based rates seek to recover costs that have been
144 imprudently incurred. In assessing prudence, the commission shall
145 employ the standard it has historically used in proceedings under
146 which a review of a general rate increase is considered. The
147 commission may also approve adjustments to reflect the approved
148 financial penalties or incentives for the performance metrics provided
149 for under section 393.1520. The commission shall provide reasonable
150 notice of any procedural schedule and evidentiary hearing to interested
151 parties. The participating electrical corporation shall have the
152 opportunity to rebut the evidence in prefiled surrebuttal testimony and
153 exhibits. Discovery shall be allowed consistent with the commission's
154 rules governing the conduct of commission proceedings. The
155 commission shall not, however, have the authority in a proceeding
156 under this section to consider or order any changes to the structure or
157 protocols of the performance-based rate approved under section
158 393.1535. In a proceeding under this section, the commission shall
159 enter its order no later than the earlier of two hundred ten days after
160 the participating electrical corporation's filing of its annual update of

161 cost inputs to the performance-based rate or December first, with rates
162 to be effective on the first billing day of the calendar year after the
163 year in which the filing was made. The commission shall establish a
164 procedural schedule that requires all parties objecting to any portion
165 of the applicant's proposal to file prefiled rebuttal testimony and other
166 documentary evidence. The commission shall also allow parties, other
167 than the participating electrical corporation, to respond to each other
168 through prefiled cross-rebuttal testimony, and the participating
169 electrical corporation shall be permitted to respond to all parties'
170 prefiled testimony through the filing of prefiled surrebuttal
171 testimony. Aside from corrections of mistakes in earlier-filed
172 testimony, after the participating electrical corporation files
173 surrebuttal testimony, no further prefiled testimony shall be received.
174 If no objection to the participating electrical corporation's annual
175 update filing is received, the commission may dispense with the
176 remainder of the procedural schedule and enter an order approving the
177 updated rates. The rates approved by the commission for an applicable
178 rate year shall be final upon entry of the commission's order and shall
179 not be subject to reopening, reexamination, or collateral attack in any
180 other proceeding before the commission or the courts; provided
181 however, that nothing in this section shall prohibit a party from
182 seeking rehearing and judicial review upon compliance with sections
183 386.500 and 386.510.

184 3. Performance-based rate tariffs approved under this section
185 shall provide for equal percentage changes in customer rates, positive
186 or negative, consistent with the rate design used in the participating
187 electrical corporation's initial performance-based rate tariffs approved
188 under section 393.1525, with the exception of customers qualifying for
189 rates under section 393.1580, until such time as a new rate design is
190 approved by the commission consistent with the requirements of
191 section 393.1535.

 393.1535. A participating electrical corporation shall make a
2 filing with the commission within five years of filing performance-
3 based rate tariffs under section 393.1525 that proposes revenue-neutral
4 rate design changes or proposes to leave rate design unchanged. The
5 participating electrical corporation shall rely upon the average and

6 excess methodology for the allocation of fixed production related costs
7 to customers taking service under the large power service rate
8 schedule as the basis for its proposed rate design changes, if any. In
9 the event the participating electrical corporation proposes no changes,
10 it shall report to the commission, as part of its filing made under this
11 section, the results of an embedded class cost of service study using the
12 average and excess methodology for, at a minimum, customers served
13 under the large power service rate schedule, and submit the impact the
14 adoption of such a methodology would have on rates for each
15 respective customer class. If the participating electrical corporation
16 elects to rely upon the average and excess methodology as defined in
17 section 393.1510 as the basis to set rates for some or all other customer
18 classes in addition to those served under the large power service rate
19 schedule, such election shall be binding on the commission. The
20 participating electrical corporation shall make proposed rate design
21 changes under this section, or request no changes be made, during an
22 annual update filing prior to the expiration of the five-year period. All
23 changes shall be implemented prospectively, and implemented at the
24 same time new annual rates are made effective. In the event that rate
25 design changes are approved and cannot be implemented because the
26 provisions of sections 393.1500 to 393.1555 no longer apply as provided
27 for by section 393.1575, the commission may implement rate design
28 changes effective upon the conclusion of the first general rate
29 proceeding occurring after termination. A participating electrical
30 corporation may submit a depreciation study for approval at any time;
31 provided however, it must submit a depreciation study, or revised
32 study, no later than the time when it submits its proposed rate design
33 changes, or requests no changes be made. If approved by the
34 commission, revised depreciation rates shall be used to set rates
35 prospectively pursuant to a participating electrical corporation's
36 annual update filing.

393.1540. 1. Performance-based rates shall be subject to both an
2 annual increase limitation, and also an average annual increase
3 limitation in determining revenue requirement increases for all
4 customers in the aggregate whose rates are set under sections 393.1500
5 to 393.1575, which shall be determined exclusive of revenue neutral

6 rate design changes. For the purposes of this section, the annual
7 percentage increases shall be calculated by comparing the revenue
8 requirement, including any reconciliation amount included in rates
9 under section 393.1530, in effect for the filing year, with what the
10 revenue requirement, including any reconciliation amount included in
11 rates under section 393.1530, used to calculate rates for the rate year
12 would have been absent the applicability of any increase
13 limitation. For each year that sections 393.1500 to 393.1555 apply, the
14 participating electrical corporation shall adhere to the increase
15 limitations provided for under this section, and to the extent a revenue
16 requirement increase would exceed the limitations for the rate year,
17 the participating corporation shall reduce the revenue requirement in
18 order to bring prospective revenue requirement increases under the
19 increase limitations set forth in this section. Any amount excluded
20 from a participating electrical corporation's revenue requirement due
21 to a rate increase limitation applied to a rate year shall be carried
22 forward and recovered in the subsequent rate year by inclusion of such
23 amount in the participating electrical corporation's revenue
24 requirement in the annual update filing made during the rate year
25 affected by the limitation.

26 2. Upon the filing of the initial performance-based rate tariffs
27 under section 393.1525, the participating electrical corporation's filing
28 with the commission shall reflect the limitations and related
29 requirements set forth in this section. Thereafter, each participating
30 electrical corporation shall file an annual report with the commission
31 in its annual update filing that sets forth the annual and average
32 annual increase in the revenue requirement used to set retail electric
33 service rates for customers subject to performance-based rates on an
34 aggregated basis. Annual increases of the revenue requirement used
35 to set rates shall be limited to no more than two percent for first two
36 calendar years during which performance-based rates are in
37 effect. Thereafter, until the operation of this section is terminated
38 under section 393.1575 or by voluntary termination election of a
39 participating electrical corporation under section 393.1560, the annual
40 increase limitation shall equal four and seventy-five-hundredths
41 percent. In calculating the annual increase limitation applicable to the

42 initial performance-based rate tariffs and rates, the participating
43 electrical corporation shall utilize the revenue requirement used to set
44 retail electric service rates pursuant to the last general change in rates
45 approved by the commission together with net fuel and purchased
46 power collected under subsection 1 of section 386.266 during the twelve
47 months following the effective date of the change in rates as base
48 revenue requirement. If at the time initial performance-based rate
49 tariffs are filed under section 393.1525, a full twelve months since the
50 last change in rates has not yet occurred, the participating electrical
51 corporation may project the net fuel and purchased power for the
52 purpose of establishing the base revenue requirement used in
53 calculating the increase limitation, to be updated with actual net fuel
54 and purchased power recoveries prior the commission's final order. If
55 the exclusion set forth in subdivision (2) of subsection 3 of this section
56 applies, the participating electrical corporation shall not include net
57 fuel and purchased power in the base revenue requirement used to
58 calculate any increase limitation. Additionally, the average annual
59 increase over the duration of the participating electrical corporation
60 performance-based rate tariff shall not exceed an average annual
61 increase of three and one-half percent. The average annual increase
62 calculation shall be calculated and reported annually by the
63 participating electrical corporation. For the purposes of calculating an
64 average annual increase under this section, the annual periods
65 included in the average shall begin with the effective date of the last
66 general change in rates approved by the commission prior to the
67 adoption of performance-based rates, and shall utilize the revenue
68 requirement used to set retail electric service rates pursuant to the last
69 general change in rates approved by the commission together with net
70 fuel and purchased power collected under section 386.266 during the
71 twelve months following the effective date of the change in rates as the
72 base revenue requirement, and include each revenue requirement used
73 to set performance-based rates for retail electric service under this
74 section in effect for all years in which performance-based rates are in
75 effect as well as the upcoming rate year. If at the time initial
76 performance-based rate tariffs are filed under section 393.1525, a full
77 twelve months since the last change in rates has not yet occurred, the

78 participating electrical corporation may project the net fuel and
79 purchased power for the purpose of establishing the base revenue
80 requirement utilized in calculating the average annual increase
81 limitation, to be updated with actual net fuel and purchased power
82 recoveries prior the commission's final order. If the exclusion set forth
83 in subdivision (2) of subsection 3 of this section applies, the
84 participating electrical corporations shall not include net fuel and
85 purchased power in the calculation of the average annual increase
86 limitation for any period included in the calculation.

87 3. At the time of a participating electrical corporation's initial
88 performance-based rate filing or any subsequent annual update filing,
89 the participating electrical corporation shall analyze the revenue
90 requirement increase to be proposed and determine if the increase
91 exceeds the limitations set forth in this section, and to the extent the
92 limitation is exceeded, the participating electrical corporation shall
93 reduce the revenue requirement in an amount sufficient to bring any
94 increase under the applicable increase limitation consistent with this
95 section. Notwithstanding the application of an increase limitation, all
96 costs are subject to a prudence review in the year in which they are
97 incurred, and after the commission enters a final order for any change
98 in rates made under this section, the determination of the prudence of
99 the deferred or amortized costs shall be final and shall not be subject
100 to reopening, reexamining, or collateral attack in any other proceeding;
101 provided however, that nothing in this section shall prohibit a party
102 from seeking rehearing and judicial review upon compliance with
103 sections 386.500 and 386.510. Upon the issuance of a final order by the
104 commission in a rate proceeding, the participating electrical
105 corporation shall calculate the final revenue requirement reduction
106 required to meet any applicable increase limitations set forth in this
107 section, and disclose the results of that calculation in a notice filed
108 with the commission within seven days of receipt of service by a
109 participating electrical corporation of the commission's final
110 order. Carrying costs at a rate equal to the participating electrical
111 corporation's cost of short-term debt shall be applied to any balance
112 carried forward by operation of this section and section 393.1560. For
113 purposes of this section and section 393.1560, the following exclusions

114 shall apply to the calculation of any revenue requirement increase
115 limitation:

116 (1) All costs, expenses, accounting balances, and variable
117 revenue items that may affect the revenue requirement used to set
118 rates under performance-based rate tariffs shall be excluded, as
119 follows:

120 (a) Any fiscal effects realized by a participating electrical
121 corporation, including compliance costs or any foregone wholesale
122 power sales or off-system power sales, as a result of any new and
123 existing federal and state environmental regulations, laws, civil
124 judgments, regulatory actions, or executive orders;

125 (b) All costs to comply with state or federal renewable energy
126 mandates or standards;

127 (c) Charges associated with rates established under section
128 393.1075, or energy efficiency related charges generally including
129 provision for the financial impact of sales reductions attributable to
130 energy efficiency programs;

131 (d) Variability in revenue and net fuel and purchased power
132 costs due to weather;

133 (e) Local add-on taxes or franchise fees; and

134 (f) Amounts associated with force majeure events;

135 (2) For a participating electrical corporation with two hundred
136 thousand Missouri electric customers or less as of the date it files
137 performance-based rate tariffs under section 393.1525, any costs that
138 are recovered in a rate adjustment mechanism approved under
139 subsection 1 of section 386.266 shall be excluded.

393.1545. 1. Any rate adjustment mechanism authorized under
2 subsection 1 of section 386.266 shall be suspended by a participating
3 electrical corporation consistent with the requirements set forth in
4 section 393.1525, provided that the mechanism shall survive until such
5 time as any costs and revenues accumulated prior to the effective date
6 of the performance-based rates are fully recovered over a transition
7 period not to exceed twenty-four months. During the transition period,
8 the participating electrical corporation shall account for all revenues
9 and costs and make all necessary ratemaking adjustments to prevent
10 any over or under recovery of any net fuel and purchased power costs

11 prudently incurred during any period affected by the suspension of the
12 rate adjustment mechanism. Accumulation of costs and revenues to be
13 included in a rate adjustment mechanism operating under subsection
14 1 of section 386.266 shall be suspended as of December thirty-first of
15 the year prior to the initial rate year. Any increase limitation
16 calculated under section 393.1540 shall include any charges that are
17 recovered through a rate adjustment mechanism during the transition
18 period. If for any reason performance-based rate tariffs are withdrawn
19 or otherwise do not become effective, the accumulation periods shall
20 resume and include any net fuel and purchase power cost that would
21 have accumulated during the period of suspension. Upon approval of
22 the performance-based rate tariffs, all costs and revenues that would
23 have otherwise been accumulated for recovery under the suspended
24 rate adjustment mechanism shall thereafter be included for recovery
25 pursuant to the operation of performance-based rate tariffs approved
26 by the commission in accordance with the provisions of sections
27 393.1500 to 393.1575 and reconciled to actual expenses incurred for the
28 same period under section 393.1530. At the time initial rates are filed
29 under section 393.1525, the participating electrical corporation shall
30 reflect, to the extent applicable, an adjustment or adjustments, if
31 needed, in order to ensure timely recovery and to prevent any double
32 recovery of any costs from occurring during the rate year, or rate
33 years, a transition period is in effect. After the transition period
34 terminates, any remaining costs or revenues shall be included in the
35 reconciliation balance approved under section 393.1530. For any costs
36 previously recovered under a rate adjustment mechanism approved
37 under subsection 1 of section 386.266, one hundred percent of all such
38 costs shall be fully incorporated in performance-based rates, without
39 any sharing or other division between the participating electrical
40 corporation and customers. Participating electrical corporation
41 transmission charges and revenues of any kind shall be fully reflected
42 in performance-based rates, provided such charges or revenues were
43 prudently incurred. Nothing in this section shall be interpreted to
44 require a participating electrical corporation to forgo, or permit the
45 commission to disallow, recovery of any prudently incurred costs as a
46 result of the suspension of a rate adjustment mechanism and cost

47 recovery transition to performance-based rate recovery.

48 **2. Any rate adjustment mechanism that is suspended by**
49 **voluntary election of a participating electrical corporation under**
50 **section 393.1525, other than those operating under subsection 1 of**
51 **section 386.266, shall be transitioned into performance-based rate**
52 **recovery in a manner that provides for complete recovery of costs and**
53 **prevents double recovery of costs from customers. If a participating**
54 **electrical corporation proposes suspension of any rate adjustment**
55 **mechanism, other than those operating under subsection 1 of section**
56 **386.266, the electrical corporation shall submit a transition plan with**
57 **its initial performance-based rate tariffs that provides for cost recovery**
58 **transition substantially consistent with requirements subsection 1 of**
59 **this section.**

60 **3. Regulatory trackers adopted or used by the commission in the**
61 **participating electrical corporation's most recently concluded general**
62 **rate proceeding prior to the initiation of performance-based rate tariffs**
63 **for the participating electric utility with respect to pension expense,**
64 **other post-employment benefits, and costs related to Financial**
65 **Accounting Standards Board Interpretation No. 48 shall continue to be**
66 **recognized for ratemaking purposes pursuant to performance-based**
67 **rate tariffs for participating electrical corporations. The prospective**
68 **operation of all other commission approved regulatory trackers shall**
69 **be suspended with the effective date of the initial performance-based**
70 **rate tariff for a participating electrical corporation that filed the**
71 **performance-based rate tariff. Thereafter, all costs and revenues that**
72 **would have been included previously in the suspended trackers shall**
73 **be included in the determination of the cost of service used to set rates**
74 **under sections 393.1500 to 393.1575. Any historical balances remaining**
75 **from a suspended regulatory tracker shall continue to be recognized**
76 **and recovered in a participating electrical corporation's performance-**
77 **based rate tariffs consistent with the amortization period previously**
78 **approved by the commission in the participating electrical**
79 **corporation's most recently concluded general rate proceeding. If**
80 **special regulatory accounting authority has been requested but not**
81 **approved in a general rate proceeding prior to the adoption of**
82 **performance-based rates, the participating electrical corporation may**

83 request inclusion of any associated balances or amounts at the time it
84 makes its initial filing under section 393.1525; provided however, the
85 commission has the discretion to approve or deny the request for good
86 cause. Upon termination of any performance-based rate tariffs, any
87 trackers, rate adjustment mechanisms including those effective under
88 section 386.266, regulatory assets or liabilities, and accounting
89 authority authorization, or other special regulatory accounting
90 treatment existing prior to approval of the effective date of the
91 participating electrical corporation's initial performance-based rate
92 tariffs shall be automatically reactivated and the electrical corporation
93 shall account for them in the same manner as was previously approved
94 by the commission in the participating electrical corporation's most
95 recently concluded general rate proceeding prior to the adoption of
96 performance-based rate tariffs; provided however, that such
97 commission action must be consistent with the provisions of section
98 386.266 in effect at the time of reactivation.

99 4. Any amount excluded from rates due to the limitations
100 provided for under this section in the last year to which sections
101 393.1500 to 393.1555 apply as provided for in section 393.1575 shall be
102 carried forward with interest at the participating electrical
103 corporation's short-term borrowing rate and recovered consistent with
104 the provisions of section 393.1560; provided however, that any such
105 amount carried forward shall not exceed four and three-fourths percent
106 of the revenue requirement used to set the participating corporation's
107 performance-based rates in the last year to which sections 393.1500 to
108 393.1555 apply.

393.1550. A participating electrical corporation may petition the
2 commission to allow for deferral and amortization of any significant
3 balance or amount, over multiple years, in order to prevent
4 unnecessary volatility in performance-based rates. For an expense, the
5 commission shall allow the participating electrical corporation to
6 spread the deferred and amortized amount over a period not to exceed
7 five years. The participating electrical corporation shall demonstrate
8 that the amount subject to the proposed deferral and amortization is
9 significant and would cause volatility in rate recovery under
10 performance-based rate tariffs. Any deferral or amortization shall

11 include carrying costs at a rate equal to the weighted average cost of
12 capital of the participating electrical corporation, and the amortization
13 shall be included and recovered as part of the reconciliation balance
14 under section 393.1530. A participating electrical corporation may
15 request deferred rate recognition of reconciliation amounts or balances
16 resulting from fluctuations in revenue due to anomalous events that
17 would cause a one-time or sudden reduction in rates in a manner that
18 interferes with the participating electrical corporation's ability to
19 maintain rate stability during the effective date of operation of sections
20 393.1500 to 393.1575; provided however, that the petition must
21 specifically state the rationale for the requested relief and the specific
22 circumstances justifying multi-year recognition in rates and provide
23 customers the benefit of any carrying costs at a rate equal to the
24 weighted average cost of capital of the participating electrical
25 corporation. The commission shall grant or deny the request within
26 one hundred twenty days from the date that the petition was filed. If
27 the participating electrical corporation demonstrates, by a
28 preponderance of the evidence, that absent the amortization being
29 granted, the significant balance or amount would increase or decrease
30 annual revenue requirement by greater than one percent, the
31 commission shall grant approval of the amortization requested. If the
32 significant balance or amount would increase or decrease revenue
33 requirement by less than a one percent, a participating electrical
34 corporation may file a petition; provided however, that the commission
35 has the discretion to grant or deny the petition for good cause based
36 upon the evidence presented.

393.1555. 1. Sections 393.1500 to 393.1575 may be implemented
2 by electrical corporations on and after its effective date regardless of
3 whether the commission has enacted any rules related to it. The
4 deadlines and time periods under sections 393.1500 to 393.1575 are
5 mandatory, and any tariffs filed, rates proposed, or regulatory relief
6 requested shall take effect by operation of law if not acted upon by the
7 commission within the time periods specified. Participating electrical
8 corporations are required to adhere to the time periods and procedural
9 requirements under sections 393.1500 to 393.1575, and any change in
10 effective tariffs or rates shall reflect an effective date consistent with

11 the time limits set forth in sections 393.1500 to 393.1575. The
12 commission is not required to issue an order suspending any tariffs or
13 rates filed under sections 393.1500 to 393.1575 during the pendency of
14 review. A failure to act on any tariff, rate, or regulatory relief
15 requested shall result in the tariff, rate, or regulatory relief requested
16 becoming effective by operation of law and the commission shall no
17 longer retain authority to suspend or otherwise interfere with the
18 operation of the effective tariffs. The commission may waive review or
19 audit of any tariff filing or change in any performance-based rate
20 tariffs if the commission determines that such action is in the interest
21 of the public; provided however, that any annual update filing
22 effectuating changes to performance-based rates under section 393.1530
23 shall not take effect until January first following an update filing. In
24 reviewing any application, petition, or tariff filed under sections
25 393.1500 to 393.1575, the commission shall only have the authority to
26 act upon such filing in a manner consistent with the requirements and
27 intent of such sections.

28 2. If a participating electrical corporation is acquired, merged
29 with, or otherwise subject to a change in corporate control or
30 ownership, the operation of performance-based rate tariffs shall remain
31 in effect. In no event shall the commission require a participating
32 electrical corporation to withdraw from participating in performance-
33 based rates as a condition of approval for an acquisition, merger, or
34 other change in corporate ownership or control.

35 3. A participating electrical corporation shall be permitted to
36 propose changes to the performance-based rate structure or protocols
37 subsequent to the approval of the initial tariffs and rates, and the
38 review of the proposed changes shall be consistent with the
39 commission's practice for approving electrical corporation
40 tariffs. Nothing in sections 393.1500 to 393.1575 is intended to limit the
41 commission's authority under chapter 386 and chapter 393 to review or
42 investigate a participating electrical corporation's performance-based
43 rate tariff in order to ensure that the tariff is operating in a manner
44 that provides for just and reasonable recovery of only prudently
45 incurred costs of providing retail electric service, provided that any
46 investigation, changes, or other exercise of authority shall be

47 consistent with the requirements of sections 393.1500 to 393.1580. Any
48 change in performance-based rate tariffs shall be prospective, and any
49 change in rates resulting from a tariff change ordered by the
50 commission shall be made at the same time new rates take effect
51 following the commission's next order issued under section 393.1530.

52 4. Nothing in sections 393.1500 to 393.1575 shall be interpreted
53 to restrict an individual consumer from filing a complaint with the
54 commission under section 386.390.

55 5. A participating electrical corporation shall be permitted to
56 request approval of a new service or tariff and associated rate
57 schedules. If a new service or tariff is proposed and approved by the
58 commission, the commission's final order issued addressing the
59 proposed tariffs shall address the method of recognizing any
60 anticipated or actual revenue contributed to the participating
61 electrical corporation's cost of service. A participating electrical
62 corporation shall be permitted to request commission approval of the
63 cancellation of a service or rate schedule associated with a service that
64 will no longer be provided. If the commission approves the
65 cancellation of a tariff or service or rate schedule associated with a
66 service to no longer be provided, the commission shall address the
67 appropriate method for adjusting performance-based rates to reflect
68 any revenue to no longer be received from the cancelled service. In the
69 event of a new service being added or an existing service or rate
70 schedule being cancelled, the commission shall ensure prudently
71 incurred costs are recovered and that no double recovery occurs, and
72 shall have the authority to make associated adjustments in a
73 proceeding initiated under sections 393.1525 and 393.1530.

74 6. The commission shall retain its existing authority to hold
75 public hearings seeking comment from members of the public
76 concerning any change in tariff rates and services proposed by a
77 participating electrical corporation.

393.1560. 1. (1) Rates set under sections 393.1500 to 393.1555
2 shall continue in effect after the last year to which sections 393.1500 to
3 393.1555 apply, except that such rates shall be changed effective
4 January first of the year following the last year to which sections
5 393.1500 to 393.1555 apply through the annual update filing made in the

6 last year to which sections 393.1500 to 393.1555 apply, in order to
7 exclude reconciliation balances and carry forward amounts that have
8 been recovered, and to include reconciliation balances arising from the
9 year immediately prior to the last year to which sections 393.1500 to
10 393.1555 apply and carry forward amounts arising from the last year to
11 which sections 393.1500 to 393.1555 apply; provided however, and
12 subject to application of the surcharge and credit provisions of
13 subsection 4 of this section, such rates shall terminate when superseded
14 by rates set in a general rate proceeding completed under section
15 393.150.

16 (2) If the rates continued in subdivision (1) of this subsection
17 have not been superseded by rates set in a general rate proceeding
18 completed under section 393.150, such rates shall be changed effective
19 January first of the second year following the last year to which
20 sections 393.1500 to 393.1555 apply, in order to exclude reconciliation
21 balances and carry forward amounts that have been recovered, and to
22 include reconciliation balances arising from the last year to which
23 sections 393.1500 to 393.1555 apply. A final annual update filing,
24 regardless of whether rates have become effective as the result of a
25 general rate proceeding under section 393.150, shall be made on or
26 before May first of the year following the last year to which sections
27 393.1500 to 393.1555 apply. The reconciliation balance arising from the
28 last year to which sections 393.1500 to 393.1555 apply is recoverable in
29 the second year following the last year to which sections 393.1500 to
30 393.1555 apply, either as a continuation of the rates described in
31 subdivision (1) of this subsection if such rates were continued, or
32 through a surcharge or credit as provided for in subsection 4 of this
33 section.

34 (3) All reconciliation balances arising from the last two years to
35 which sections 393.1500 to 393.1555 apply shall include interest at the
36 participating electrical corporation's short-term borrowing rate.

37 2. Any amount excluded from the rates set for the last year to
38 which sections 393.1500 to 393.1555 apply, due to the limitations
39 provided in section 393.1540, shall be carried forward, included in the
40 annual update filing made during the last year to which sections
41 393.1500 to 393.1555 apply and recovered in the year following the last

42 year to which sections 393.1500 to 393.1555 apply.

43 3. If the net adjustment to rates described in subdivision (1) of
44 subsection 1 of this section produces a reduction in rates as compared
45 to the rates that were effective during the last year to which sections
46 393.1500 to 393.1555 apply, the entire reduction shall be reflected in
47 those rates. If the net adjustment to rates described in subdivision (1)
48 of subsection 1 of this section produces an increase in the rates as
49 compared to the rates that were effective during the last year to which
50 sections 393.1500 to 393.1555 apply, the increase shall not exceed four
51 and three-fourths percent of the revenue requirement used to set rates
52 for the participating electrical corporation in the last year to which
53 sections 393.1500 to 393.1555 apply. If the net adjustment to rates
54 described in subdivision (2) of subsection 1 of this section produces a
55 reduction in rates as compared to the rates that were effective during
56 the year following the last year to which sections 393.1500 to 393.1555
57 apply, the entire reduction shall be reflected in those rates. If the net
58 adjustment to rates described in subdivision (2) of subsection 1 of this
59 section produces an increase in the rates as compared to the rates that
60 were effective during the year following the last year to which sections
61 393.1500 to 393.1555 apply, the rates described in subdivision (2) of
62 subsection 1 of this section shall not change.

63 4. A participating electrical corporation may file a general rate
64 proceeding seeking to implement new rates pursuant to section 393.150,
65 with the rates to be effective on or after January first of the year
66 following the last year to which sections 393.1500 to 393.1555
67 apply. The rates set under section 393.150 shall replace the rates set
68 under sections 393.1500 to 393.1575; provided however, that in addition
69 to the new rates set in such general rate proceeding, the regulatory
70 asset or liability associated with any reconciliation balances or carry
71 forward amounts recoverable under the provisions of subsections 1 to
72 3 of this section that have not yet been recovered or credited at the
73 time such new rates take effect, shall be recovered or credited through
74 a surcharge or credit on customer bills. The surcharge or credit shall
75 continue until the regulatory asset or liability balance is fully
76 recovered or credited to customers, and shall be calculated so that the
77 regulatory asset or liability balance is fully recovered or credited to

78 customers within twenty-four months after January first of the year
79 following the last year to which sections 393.1500 to 393.1555 apply. In
80 any general rate proceeding initiated under section 393.150 that results
81 in new rates effective within twenty-four months after January first of
82 the last year to which sections 393.1500 to 393.1555 apply, the
83 commission shall have the authority to adjust the rates set in that
84 general rate proceeding in order to prevent double recovery or under
85 recovery of any prudently incurred costs.

86 5. A participating electrical corporation whose rate adjustment
87 mechanism under subsection 1 of section 386.266 was suspended under
88 section 393.1525 shall be reinstated effective January first of the year
89 following the last year specified in subsection 1 of section 393.1575,
90 provided that it shall be reinstated with any modifications necessary
91 to make it consistent with the provisions of section 386.266 in effect on
92 that date, and provided further that if January first of that year is in
93 the middle of an accumulation period provided for by the formerly
94 suspended rate adjustment mechanism's tariff sheets, the first
95 accumulation period prior to filing an adjustment under such rate
96 adjustment mechanism shall be a partial one. The base against which
97 the net costs tracked in such an adjustment mechanism are compared
98 for purposes of making the adjustment shall be the level of costs and
99 revenues covered by the adjustment mechanism according to the terms
100 of the tariff sheets reflecting it, together with any other costs and
101 revenues that are to be included in the mechanism under the terms of
102 subsection 1 of section 386.266 then in effect, for the last year specified
103 in subsection 1 of this section. A participating electrical corporation
104 whose rate adjustment mechanism was reinstated as under this
105 subsection shall be relieved of the obligation to make a general rate
106 proceeding filing every four years as otherwise provided for in
107 subsection 4 of section 386.266 in order to retain its rate adjustment
108 mechanism and instead must file such a general rate proceeding no
109 later than four years after the last year to which sections 393.1500 to
110 393.1555 applied.

 393.1565. No later than December 31, 2023, the commission shall
2 prepare and file with the general assembly a report on the impact of
3 performance-based rates on electrical corporations and their

4 customers. Participating electrical corporations shall cooperate in
5 good faith to provide the data necessary for the preparation of the
6 report.

393.1570. In order to carry out the provisions of sections 393.1500
2 to 393.1575, the commission shall have the authority to promulgate
3 rules. Any rule or portion of a rule, as that term is defined in section
4 536.010 that is created under the authority delegated in this section
5 shall become effective only if it complies with and is subject to all of
6 the provisions of chapter 536, and, if applicable, section 536.028. This
7 section and chapter 536 are nonseverable and if any of the powers
8 vested with the general assembly under chapter 536, to review, to delay
9 the effective date, or to disapprove and annul a rule are subsequently
10 held unconstitutional, then the grant of rulemaking authority and any
11 rule proposed or adopted after the effective date of this act shall be
12 invalid and void.

393.1575. No electrical corporation shall become a participating
2 electrical corporation by filing a performance-based rate tariff under
3 section 393.1525 after December 31, 2025. No participating electrical
4 corporation shall file an annual update with the commission under
5 section 393.1530 after May 1, 2027. Sections 393.1500 to 393.1575 shall
6 expire on December 31, 2028.

393.1580. 1. The provisions of section 386.020 defining words,
2 phrases, and terms shall apply to and determine the meaning of all
3 such words, phrases, or terms as used in this section.

4 2. For purposes of this section, the following terms shall mean:

5 (1) "Aluminum smelter rate", a contractual per megawatt-hour
6 rate consistent with this section for retail electric energy, including
7 production, transmission, and distribution, to a point of delivery at the
8 interconnection between the electrical corporation transmission or
9 distribution system and an aluminum smelting facility, or the point at
10 which the electrical corporation interconnects with a third party retail
11 or transmission provider serving the aluminum smelting facility, as
12 applicable;

13 (2) "Aluminum smelting facility", a facility whose primary
14 industry is the smelting of aluminum and primary metals and is subject
15 to Standard Industrial Classification code 3334;

16 **(3) "Global average price", the global weighted average delivered**
17 **cost of electricity, inclusive of transmission costs, for aluminum**
18 **smelters, excluding those located in China, for the most recent**
19 **complete calendar year, as reported by CRU, or its successor;**

20 **(4) "Standard industrial classification", the standard industrial**
21 **classification as such classifications are defined in the 1987 edition of**
22 **the Standard Industrial Classification Manual as prepared by the**
23 **Executive Office of the President, Office of Management and Budget;**

24 **3. (1) Notwithstanding any other provision of law to the**
25 **contrary, an aluminum smelting facility, and the electrical corporation**
26 **providing electric service to such aluminum smelting facility, may**
27 **jointly submit an application to the commission for approval of an**
28 **aluminum smelter rate. If the proposed aluminum smelter rate agreed**
29 **upon by the electrical corporation and the aluminum smelting facility**
30 **complies with the requirements set forth in this section, it shall be**
31 **deemed a just and reasonable rate.**

32 **(2) Any such application shall include an executed contract**
33 **between the aluminum smelting facility and the electrical corporation**
34 **that sets forth the rates, duration, and terms and conditions for service**
35 **to the aluminum smelting facility subject to the following requirements:**

36 **(a) The aluminum smelter rate shall not be seasonably variable;**

37 **(b) For rates effective prior to January 1, 2017, the initial**
38 **aluminum smelter rate shall be set not more than thirty-one dollars and**
39 **fifty cents per megawatt-hour, provided that the rate shall be**
40 **discounted by an amount not less than one dollar and fifty cents per**
41 **megawatt-hour to the extent that the aluminum smelting facility incurs**
42 **transmission or retail wheeling charges or rates assessed by a third**
43 **party service provider;**

44 **(c) For rates effective after December 31, 2016, the initial**
45 **aluminum smelter rate shall be set at the global average price,**
46 **provided that if the aluminum smelting facility incurs transmission or**
47 **retail wheeling charges or rates assessed by a third party service**
48 **provider, the rate shall be discounted by the lesser of:**

49 **a. The transmission or retail wheeling charges or rates assessed**
50 **by a third party service provider; or**

51 **b. One dollar and seventy-five cents per megawatt-hour;**

52 **(d) The initial rate per megawatt-hour shall increase by one**
53 **percent each year, with the first one percent increase becoming**
54 **effective beginning with the billing cycle that starts twelve months**
55 **after the effective date of the initial tariff;**

56 **(e) If the duration of the aluminum smelter rate is longer than**
57 **five years, beginning with the first billing cycle in year six after the**
58 **effective date of the initial tariff and for each year thereafter, the rate**
59 **shall be reset to the global average price. If any aluminum smelting**
60 **facility continues to incur transmission or retail wheeling charges or**
61 **rates assessed by a third party service provider, the aluminum smelter**
62 **rate shall be discounted to be lower than the global average price in an**
63 **amount equal to the lesser of:**

64 **a. The transmission or retail wheeling charges or rates assessed**
65 **by a third party service provider; or**

66 **b. One dollar and seventy-five cents per megawatt-hour.**

67 **However, in any event such rate shall not increase or decrease by more**
68 **than six percent in any such annual adjustment.**

69 **(3) Within thirty days of filing the application, the commission**
70 **shall issue an order directing the electrical corporation to file tariffs**
71 **containing the rates, terms, and conditions set forth in the application,**
72 **and authorizing the electrical corporation to create a regulatory asset**
73 **for the difference between the revenues that would have been collected**
74 **under the previously applicable rate and the newly applicable**
75 **aluminum smelter rate in a manner consistent with the requirements**
76 **set forth in paragraph (g) of subdivision (4) of subsection 2 of section**
77 **393.1525. Such order shall be effective thirty days after its issuance.**

78 **4. An aluminum smelting facility shall only be eligible for the**
79 **aluminum smelter rate established under this section if it maintains a**
80 **number of full-time employees that equals not less than one and one-**
81 **half times its megawatt demand.**

82 **5. If an aluminum smelting facility becomes ineligible for service**
83 **using the aluminum smelter rate established under this section, it shall**
84 **be served at the rate that would otherwise be applicable to a customer**
85 **of its size and load characteristics.**

86 **6. Nothing in this section shall be construed as granting the**
87 **commission jurisdiction over any third party transmission provider**

88 organized under chapter 394, or over any transmission or wheeling
89 contract to which such third party transmission provider is a party,
90 and the commission's approval of any aluminum smelter rate or
91 discount otherwise allowed under this section shall not constitute or be
92 deemed to be a filed rate under the filed rate doctrine for purposes of
93 any such third party transmission contract.

94 7. This section shall expire on December 31, 2026.

393.1590. 1. It is the policy of the state to encourage
2 participating electrical corporations to make investments in, or
3 contract for purchased power from, physical renewable energy
4 resources located near their customer load.

5 2. For purposes of this section, "participating electrical
6 corporation" shall mean the same as defined in section 393.1510. For
7 purposes of this section, "renewable energy resources" shall mean the
8 same as defined in section 393.1025.

9 3. Concurrently with the first due date occurring after the
10 effective date of this section for filing an annual report as required
11 under subsection 12 of section 393.1075, or 180 days after it files a
12 performance-based rate tariff and initial rates under section 393.1525,
13 whichever is later, a participating electrical corporation shall file a
14 renewable investment plan with the commission for approval. The
15 renewable investment plan may be included as part of the annual
16 report required under subsection 12 of section 393.1075. A
17 participating electrical corporation's renewable investment plan shall
18 seek to meet a target of thirty percent of the electricity required to be
19 sold under subsection 1 of section 393.1030 be purchased or generated
20 from renewable energy resources, and it shall call for such electricity
21 to be generated using physical renewable energy resources. If the
22 target set forth in this subsection cannot be reasonably attained, the
23 participating electrical corporation's renewable investment plan may
24 propose a lower target and shall articulate the reasons that only the
25 lower target can be reasonably obtained.

26 4. At the discretion of the participating electrical corporation,
27 the physical renewable energy resources shall either be owned by the
28 participating electrical corporation or owned by a third party that will
29 sell the electricity from the resource to the participating electrical

30 corporation. A participating electrical corporation's renewable
31 investment plan required under this section shall specify the location
32 of the physical renewable energy resource units, and whether they are
33 to be owned by the participating electrical corporation or owned by a
34 third party. The physical renewable energy resource units shall be
35 located in Missouri, or in a state contiguous to Missouri.

36 5. Upon receipt of a participating electrical corporation's
37 renewable investment plan, the commission shall issue an order either
38 approving or denying such plan within one hundred eighty days. If the
39 commission denies a participating electrical corporation's renewable
40 investment plan, the commission shall explicitly state the deficiencies
41 relied upon as the basis for such denial. A participating electrical
42 corporation's purchase of renewable energy credits in order to comply
43 with portfolio requirements set forth under subsection 1 of section
44 393.1030 shall not be a basis for denying a renewable investment plan
45 filed under this section. Upon denial of any renewable investment plan
46 filed under this section, a participating electrical corporation may file
47 a revised plan.

48 6. A participating electrical corporation's decision to invest in,
49 or purchase from, the physical renewable energy resources specified in
50 an approved renewable investment plan shall be deemed to be prudent
51 so long as the decision was substantially consistent with the approved
52 plan. However, the commission shall retain the authority to review the
53 specific costs incurred to construct and own the physical renewable
54 energy resources included in a participating electrical corporation's
55 renewable investment plan in any proceeding in which a change in
56 rates is considered in order to ensure that rates are based only on
57 prudently incurred costs.

58 7. Nothing in this section shall preclude a participating
59 electrical corporation from investing in or purchasing electricity from
60 additional physical renewable energy resources not specified in the
61 renewable investment plan provided for under this section. Failure to
62 include such additional physical renewable resources in such a plan
63 shall not imply or otherwise be evidence of imprudence in investing in
64 or purchasing electricity from such additional resources.

65 8. This section shall expire on December 31, 2026.

393.1600. 1. Notwithstanding the provisions of subsection 1 of
2 section 393.1030 to the contrary, a participating electrical corporation
3 may comply with renewable energy standard portfolio requirements
4 after January 1, 2017, by purchasing renewable energy credits to cover
5 the part of such renewable energy standard portfolio requirements not
6 met by utilizing physical renewable energy resources under a
7 renewable investment plan approved under section 393.1590, or by
8 utilizing other physical renewable energy resources from which the
9 participating electrical corporation acquires energy. For purposes of
10 this section, "participating electrical corporation" shall mean the same
11 as defined in section 393.1510.

12 2. This section shall expire on December 31, 2026.

393.1610. 1. Notwithstanding the provisions of subdivision (1) of
2 subsection 2 of section 393.1030 and section 393.1045 to the contrary, an
3 electrical corporation serving more than two hundred thousand
4 Missouri electric customers shall make solar rebates available in the
5 amounts specified in subsection 3 of section 393.1030, except that new
6 or expanded solar electric systems up to a maximum of twenty five
7 kilowatts per system for residential customers and up to one hundred
8 kilowatts per system sited on non-residential customers' premises shall
9 be eligible for such rebates. However, no such electrical corporation
10 shall be required to make total solar rebate payments from the effective
11 date of this section through June 30, 2020, that in the aggregate exceed
12 two percent of the annual revenue requirement used to establish the
13 electrical corporation's rates in effect on the effective date of this
14 section; provided however, that no such electrical corporation shall be
15 required to make total solar rebate payments for the twelve-month
16 period immediately after the effective date of this section that exceed
17 eight-tenths of one percent of the annual revenue requirement used to
18 establish the electrical corporation's rates in effect on the effective
19 date of this section; provided further and subject to the aggregate two
20 percent limitation provided for in this section above, that no such
21 electrical corporation shall be required to make total solar rebate
22 payments for any twelve-month period beginning one year following the
23 effective date of this section through June 30, 2020, that exceed one-
24 half of one percent of the annual revenue requirement used to establish

25 the electrical corporation's rates in effect on the effective date of this
26 section. At its election, the electrical corporation shall be permitted to
27 recover the cost of solar rebate payments it has made through either
28 base rates, whether set under sections 393.1500 to 393.1575 or under
29 section 393.150, or through a rate adjustment mechanism through which
30 a surcharge is imposed on customers' bills in addition to base rates,
31 and shall be permitted to amortize the recovery of such costs through
32 either base rates or a surcharge over a period of the electrical
33 corporation's choice not to exceed five years.

34 2. This section shall expire on December 31, 2026.

393.1620. 1. Subject to compliance with the requirements of
2 sections 393.1525 and 393.1530, as applicable, the commission shall
3 permit a participating electrical corporation to recover costs incurred
4 for projects to deploy electrical generation, distribution, or
5 transmission technology or equipment with which the participating
6 electrical corporation has little or no operational experience without
7 demonstrating that such technology or equipment represents the least
8 cost alternative, provided that any such project:

9 (1) Is designed to advance the participating electrical
10 corporation's operational knowledge about the impact on the electrical
11 system of deploying such technology or equipment or otherwise
12 produces beneficial knowledge or experience;

13 (2) Is executed in a prudent manner; and

14 (3) Increases the participating electrical corporation's rate base
15 by no more than one percent.

16 2. The requirements of section 393.170 shall not apply to the
17 construction of a renewable energy resource by a participating
18 electrical corporation that has a nameplate capacity of 1 megawatt or
19 less. For purposes of this section, "participating electrical corporation"
20 shall mean the same as defined in section 393.1510.

21 3. This section shall expire on December 31, 2026.

393.1630. 1. For participating electrical corporations, programs
2 that utilize combined heat and power technology to generate electricity
3 from waste heat and assist customers with reducing the amount of
4 electricity delivered by such participating electrical corporation shall
5 qualify as demand-side programs to be offered by utilities under

6 **section 393.1075, notwithstanding that they may not modify**
7 **consumption of energy on the customer's side of the meter. For**
8 **purposes of this section, "participating electrical corporation" shall**
9 **mean the same as defined in section 393.1510.**

10 **2. This section shall expire on December 31, 2026.**

Section B. Because immediate action is necessary to sustain Missouri's
2 aluminum smelting industry, which is a vital part of Missouri's economy, and to
3 continue providing hundreds of jobs to hardworking Missourians in an area where
4 job availability is otherwise limited, section A of this act is deemed necessary for
5 the immediate preservation of the public health, welfare, peace and safety, and
6 is hereby declared to be an emergency act within the meaning of the constitution,
7 and section A of this act shall be in full force and effect upon its passage and
8 approval.

Section C. Notwithstanding the provisions of section 1.140 to the contrary,
2 the provisions of sections 393.1500 to 393.1630 shall be nonseverable, and if any
3 provision is for any reason held to be invalid, such decision shall invalidate all
4 of the remaining provisions of sections 393.1500 to 393.1630.

Bill ✓

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