

FIRST REGULAR SESSION

# SENATE BILL NO. 214

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 20, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0487S.011

## AN ACT

To repeal sections 386.266 and 393.1075, RSMo, and to enact in lieu thereof nineteen new sections relating to ratemaking for public utilities, with an existing penalty provision.

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

Section A. Sections 386.266 and 393.1075, RSMo, are repealed and  
2 nineteen new sections enacted in lieu thereof, to be known as sections 386.266,  
3 393.1075, 393.1200, 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, and 393.1575, 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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

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.

393.1075. 1. This section shall be known as the "Missouri Energy  
2 Efficiency Investment Act".

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

4 (1) "Commission", the Missouri public service commission;

5 (2) "Demand response", measures that decrease peak demand or shift  
6 demand to off-peak periods;

7 (3) "Demand-side program", any program conducted by the utility to  
8 modify the net consumption of electricity on the retail customer's side of the  
9 electric meter, including but not limited to energy efficiency measures, load  
10 management, demand response, and interruptible or curtailable load;

11 (4) "Energy efficiency", measures that reduce the amount of electricity  
12 required to achieve a given end use;

13 (5) "Interruptible or curtailable rate", a rate under which a customer  
14 receives a reduced charge in exchange for agreeing to allow the utility to  
15 withdraw the supply of electricity under certain specified conditions;

16 (6) "Total resource cost test", a test that compares the sum of avoided  
17 utility costs and avoided probable environmental compliance costs to the sum of  
18 all incremental costs of end-use measures that are implemented due to the  
19 program, as defined by the commission in rules.

20 3. It shall be the policy of the state to value demand-side investments

21 equal to traditional investments in supply and delivery infrastructure and allow  
22 recovery of all reasonable and prudent costs of delivering cost-effective  
23 demand-side programs. In support of this policy, the commission shall:

24 (1) Provide timely cost recovery for utilities;

25 (2) Ensure that utility financial incentives are aligned with helping  
26 customers use energy more efficiently and in a manner that sustains or enhances  
27 utility customers' incentives to use energy more efficiently; and

28 (3) Provide timely earnings opportunities associated with cost-effective  
29 measurable and verifiable efficiency savings.

30 4. The commission shall permit electric corporations to implement  
31 commission-approved demand-side programs proposed pursuant to this section  
32 with a goal of achieving all cost-effective demand-side savings. Recovery for such  
33 programs shall not be permitted unless the programs are approved by the  
34 commission, result in energy or demand savings and are beneficial to all  
35 customers in the customer class in which the programs are proposed, regardless  
36 of whether the programs are utilized by all customers. The commission shall  
37 consider the total resource cost test a preferred cost-effectiveness test. Programs  
38 targeted to low-income customers or general education campaigns do not need to  
39 meet a cost-effectiveness test, so long as the commission determines that the  
40 program or campaign is in the public interest. Nothing herein shall preclude the  
41 approval of demand-side programs that do not meet the test if the costs of the  
42 program above the level determined to be cost-effective are funded by the  
43 customers participating in the program or through tax or other governmental  
44 credits or incentives specifically designed for that purpose.

45 5. To comply with this section the commission may develop cost recovery  
46 mechanisms to further encourage investments in demand-side programs  
47 including, in combination and without limitation: capitalization of investments  
48 in and expenditures for demand-side programs, rate design modifications,  
49 accelerated depreciation on demand-side investments, and allowing the utility to  
50 retain a portion of the net benefits of a demand-side program for its shareholders.  
51 In setting rates the commission shall fairly apportion the costs and benefits of  
52 demand-side programs to each customer class except as provided for in subsection  
53 6 of this section. Prior to approving a rate design modification associated with  
54 demand-side cost recovery, the commission shall conclude a docket studying the  
55 effects thereof and promulgate an appropriate rule.

56 6. The commission may reduce or exempt allocation of demand-side

57 expenditures to low-income classes, as defined in an appropriate rate proceeding,  
58 as a subclass of residential service.

59           7. Provided that the customer has notified the electric corporation that the  
60 customer elects not to participate in demand-side measures offered by an  
61 electrical corporation, none of the costs of demand-side measures of an electric  
62 corporation offered under this section or by any other authority, and no other  
63 charges implemented in accordance with this section, shall be assigned to any  
64 account of any customer, including its affiliates and subsidiaries, meeting one or  
65 more of the following criteria:

66           (1) The customer has one or more accounts within the service territory of  
67 the electrical corporation that has a demand of five thousand kilowatts or more;

68           (2) The customer operates an interstate pipeline pumping station,  
69 regardless of size; or

70           (3) The customer has accounts within the service territory of the electrical  
71 corporation that have, in aggregate, a demand of two thousand five hundred  
72 kilowatts or more, and the customer has a comprehensive demand-side or energy  
73 efficiency program and can demonstrate an achievement of savings at least equal  
74 to those expected from utility-provided programs.

75           8. Customers that have notified the electrical corporation that they do not  
76 wish to participate in demand-side programs under this section shall not  
77 subsequently be eligible to participate in demand-side programs except under  
78 guidelines established by the commission in rulemaking.

79           9. Customers who participate in demand-side programs initiated after  
80 August 1, 2009, shall be required to participate in program funding for a period  
81 of time to be established by the commission in rulemaking.

82           10. Customers electing not to participate in an electric corporation's  
83 demand-side programs under this section shall still be allowed to participate in  
84 interruptible or curtailable rate schedules or tariffs offered by the electric  
85 corporation.

86           11. The commission shall provide oversight and may adopt rules and  
87 procedures and approve corporation-specific settlements and tariff provisions,  
88 independent evaluation of demand-side programs, as necessary, to ensure that  
89 electric corporations can achieve the goals of this section. Any rule or portion of  
90 a rule, as that term is defined in section 536.010, that is created under the  
91 authority delegated in this section shall become effective only if it complies with  
92 and is subject to all of the provisions of chapter 536 and, if applicable, section

93 536.028. This section and chapter 536 are nonseverable and if any of the powers  
94 vested with the general assembly pursuant to chapter 536 to review, to delay the  
95 effective date, or to disapprove and annul a rule are subsequently held  
96 unconstitutional, then the grant of rulemaking authority and any rule proposed  
97 or adopted after August 28, 2009, shall be invalid and void.

98       12. Each [electric] **electrical** corporation shall submit an annual report  
99 to the commission describing the demand-side programs implemented by the  
100 utility in the previous year. The report shall document program expenditures,  
101 including incentive payments, peak demand and energy savings impacts and the  
102 techniques used to estimate those impacts, avoided costs and the techniques used  
103 to estimate those costs, the estimated cost-effectiveness of the demand-side  
104 programs, and the net economic benefits of the demand-side programs.

105       13. Charges attributable to demand-side programs under this section shall  
106 be clearly shown as a separate line item on bills to the electrical corporation's  
107 customers.

108       14. [(1) Any customer of an electrical corporation who has received a  
109 state tax credit under sections 135.350 to 135.362 or under sections 253.545 to  
110 253.561 shall not be eligible for participation in any demand-side program offered  
111 by an electrical corporation under this section if such program offers a monetary  
112 incentive to the customer, except as provided in subdivision (4) of this subsection.

113       (2) As a condition of participation in any demand-side program offered by  
114 an electrical corporation under this section when such program offers a monetary  
115 incentive to the customer, the commission shall develop rules that require  
116 documentation to be provided by the customer to the electrical corporation to  
117 show that the customer has not received a tax credit listed in subdivision (1) of  
118 this subsection.

119       (3) The penalty for a customer who provides false documentation under  
120 subdivision (2) of this subsection shall be a class A misdemeanor.

121       (4) The provisions of this subsection shall not apply to any low-income  
122 customer who would otherwise be eligible to participate in a demand-side  
123 program that is offered by an electrical corporation to low-income customers.

124       15.] The commission shall develop rules that provide for disclosure of  
125 participants in all demand-side programs offered by electrical corporations under  
126 this section when such programs provide monetary incentives to the  
127 customer. The disclosure required by this subsection may include, but not be  
128 limited to, the following: the name of the participant, or the names of the

129 [principles] **principals** if for a company, the property address, and the amount  
130 of the monetary incentive received.

393.1200. 1. The department of agriculture is authorized to  
2 negotiate and enter into agricultural impact mitigation agreements  
3 with the owners of electrical transmission lines located, or to be  
4 located, on private property in the state of Missouri. The agricultural  
5 impact mitigation agreements may outline construction and  
6 deconstruction standards and policies designed to preserve the  
7 integrity of agricultural land that is, or may be, impacted by  
8 transmission line construction and deconstruction.

9 2. The agricultural impact mitigation agreement may include,  
10 but is not limited to, standards and policies regarding restoration of  
11 agricultural lands affected by construction, deconstruction including  
12 upon abandonment, construction staging, or storage areas; support  
13 structures; above-ground facilities; guy wires and anchors;  
14 underground cabling depth; topsoil replacement; protection and repair  
15 of agricultural drainage tiles; rock removal; repair of compaction and  
16 rutting; land leveling; prevention of soil erosion; repair of damaged soil  
17 conservation practices; compensation for damages to private property;  
18 interference with irrigation systems; access roads; weed control;  
19 pumping of water from open excavations; advance notice of access to  
20 private property; indemnification of landowners; and deconstruction  
21 plans and financial assurance for deconstruction including upon  
22 abandonment.

23 3. The department of agriculture may adopt rules that are  
24 necessary and appropriate for implementation and administration of  
25 agricultural impact mitigation agreements as authorized under this  
26 section. Any rule or portion of a rule, as that term is defined in section  
27 536.010 that is created under the authority delegated in this section  
28 shall become effective only if it complies with and is subject to all of  
29 the provisions of chapter 536, and, if applicable, section 536.028. This  
30 section and chapter 536 are nonseverable and if any of the powers  
31 vested with the general assembly pursuant to chapter 536, to review, to  
32 delay the effective date, or to disapprove and annul a rule are  
33 subsequently held unconstitutional, then the grant of rulemaking  
34 authority and any rule proposed or adopted after August 28, 2017, shall  
35 be invalid and void.



36           4. This section shall not apply to municipal electric utilities,  
37 electrical corporations that are electric service providers to retail  
38 Missouri electric customers, rural electric cooperatives or transmission  
39 projects approved by regional transmission organizations, or through  
40 an interregional planning process approved by the Federal Energy  
41 Regulatory Commission.

          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 performance-based rate tariffs  
27 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's 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, and making such adjustments to FERC Form 1 data as necessary to  
46 ensure that only accurately recorded, prudently incurred, and properly  
47 allocated Missouri jurisdictional costs of providing electric service are  
48 used to set performance-based rates, and further ensuring that such  
49 books, records, and accounts are kept in accordance with the  
50 commission's requirements;

51 (4) After the performance-based rate tariffs are filed and  
52 approved, the participating electrical corporation shall make annual  
53 filings under section 393.1530 to update the rates calculated using  
54 protocols set forth in the performance-based rate tariffs, which include  
55 a reconciliation of costs for the historical rate year adjustments based  
56 upon the application of a revenue test, incorporation of performance  
57 penalties, or incentives for performance metrics set forth in section  
58 393.1520, and annual rate increase limitations under section 393.1540;

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

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

73           **(7) Rate adjustment mechanisms arising under subsection 1 of**  
74 **section 386.266 for electrical corporations with more than two hundred**  
75 **thousand Missouri electric customers shall be suspended under sections**  
76 **393.1525 and 393.1545 during the period when performance-based rates**  
77 **are in effect;**

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

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

88           **(10) The intent of subsection 1 of section 393.1520 is to timely**  
89 **reflect within rates any annual change, positive or negative, in the cost**  
90 **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 a**  
7 **participating electrical corporation to update the revenue requirement**  
8 **used to set prospective rates, including the reconciliation of costs for**  
9 **the historical rate year, application of the revenue test under section**  
10 **393.1530, application of any performance penalties or incentives under**  
11 **section 393.1520, and application of any increase limitation amount that**  
12 **has been carried forward under section 393.1540, after the participating**  
13 **electrical corporation has filed its initial performance-based rate**

14 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, and the Missouri jurisdictional portion of  
27 revenues from sources other than Missouri jurisdictional retail  
28 customers;

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

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

39       (6) "Filing year", the calendar year in which an initial  
40 performance-based rate tariff filing is made under section 393.1525, or  
41 the year in which an annual update filing is made under section  
42 393.1530;

43       (7) "Force majeure event", an event or circumstance that occurs  
44 as a result of a weather event, an act of God, war or terrorism, a change  
45 in federal or state statutes or regulations addressing requirements  
46 applicable to renewable energy resources as defined in section  
47 393.1025, or other uncontrollable event as determined by the  
48 commission that causes a reduction in revenues, an increase in the cost  
49 of providing electrical service, or some combination thereof, and the  
50 event has an associated fiscal impact on a participating electrical

51 corporation's operations equal to one percent or greater of the total  
52 revenue requirement established under sections 393.1500 to  
53 393.1575. Any force majeure event shall be subject to commission  
54 review and approval, and shall not preclude the commission from  
55 reviewing the prudence of any revenue reductions or costs incurred  
56 during any proceeding to set rates initiated under sections 393.1525 or  
57 393.1530;

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

59 (a) Advertisements which convey ways to safely use electricity  
60 and avoid accidents;

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

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

66 (d) Advertisements that convey innovations in the electrical  
67 corporation's operations;

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

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

73 (9) "Historical rate year", the calendar year immediately prior to  
74 the filing year in which changes in rates are proposed under sections  
75 393.1525 to 393.1530;

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

78 (11) "Institutional advertising", advertising done solely to  
79 improve the participating electrical corporation's image with no benefit  
80 to the customer. "Institutional advertising" shall include political  
81 advertising;

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

86 (13) "Net fuel and purchased-power", all fuel and purchased-  
87 power acquired by the participating electrical corporation used to

88 serve Missouri retail electric load reduced by total wholesale or off-  
89 system power sales for the same period, and all other items eligible for  
90 inclusion in a rate adjustment mechanism under subsection 1 of section  
91 386.266;

92 (14) "Operating expenses", FERC Account 401 "Operation  
93 Expenses", FERC Account 402 "Maintenance Expenses", and FERC  
94 Account 408.1 "Taxes Other Than Income Taxes, Utility Operating  
95 Income", excluding gross receipts taxes, for the purposes of applying  
96 the one percent per annum gross-up provided for under sections  
97 393.1525 and 393.1530;

98 (15) "Participating electrical corporation", an electrical  
99 corporation that voluntarily files performance-based rate tariffs under  
100 section 393.1525. A participating electrical corporation shall recover  
101 its cost of providing service through the ratemaking process set forth  
102 in sections 393.1500 to 393.1575, until such time as the effective  
103 operation of sections 393.1500 to 393.1575 terminates by the electrical  
104 corporation's voluntary withdrawal or operation of law. At such time  
105 as termination is effective an electrical corporation is no longer a  
106 participating electrical corporation for the purposes of sections  
107 393.1500 to 393.1575;

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

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

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

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

125 393.1540;

126 (20) "Tariff", schedules of rates and terms and conditions of  
127 service for an electrical corporation that are open for public inspection  
128 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 that contain confidential and proprietary information may  
35 be protected from public disclosure in a manner consistent with the  
36 rules or orders of the commission as applicable. Nothing in this section  
37 shall require a participating electrical corporation to publicly disclose  
38 confidential, proprietary, or financially sensitive information, any  
39 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) In order for an electrical corporation that has more than  
47 one million Missouri electric customers to be eligible to become a  
48 participating electrical corporation under sections 393.1500 to 393.1575,  
49 such corporation shall develop a qualification process for contractors  
50 seeking to provide construction and construction-related services for  
51 projects on the electrical corporation's distribution system. Under the  
52 qualification process, the electrical corporation may specify eligibility  
53 requirements typically accepted by the industry, including but not  
54 limited to, experience, performance criteria, safety policies, and  
55 insurance requirements to be met by any contractor seeking to  
56 participate in competitive bidding to provide construction and  
57 construction-related services for distribution system  
58 projects. Contractors that meet the eligibility requirements set by such  
59 electrical corporation shall be eligible to participate in the competitive  
60 bidding process for providing construction and construction-related  
61 services for distribution system projects, and the contractor making the  
62 lowest and best bid shall be awarded such contract.

63       (2) Prior to electing to become a participating electrical  
64 corporation, an electrical corporation that is required to comply with  
65 this subsection in order to elect to become a participating electrical  
66 corporation, as provided for in subdivision (1) of this subsection, shall  
67 file a verified statement with the commission confirming that it has in  
68 place a qualification process for the competitive bidding of  
69 construction and construction-related services for distribution system  
70 projects, and that such process conforms with the requirements of this



71 subsection. The commission shall have the authority to verify the  
72 statement to ensure compliance with this subsection. The electrical  
73 corporation shall submit with each filing to establish or change its  
74 performance-based rates under sections 393.1525 or 393.1530, a verified  
75 statement confirming that it is using a competitive bidding process for  
76 no less than ten percent of the combined external installation  
77 expenditures made by the electrical corporation's operating units in  
78 Missouri for construction and construction-related services for  
79 distribution system projects, and that such process conforms with the  
80 requirements set forth in this subsection. The commission shall have  
81 the authority to verify the statement to ensure compliance with this  
82 subsection.

83 (3) Nothing in this subsection shall be construed as requiring  
84 any electrical corporation, subject to the requirements of this  
85 subsection, to use a qualified contractor or competitive bidding process  
86 in the case of an emergency project, or to terminate any existing  
87 contract with a contractor prior to its expiration; provided however,  
88 that the use of any pre-existing contract for construction or  
89 construction-related services for distribution system projects shall not  
90 qualify as fulfilling the ten percent requirement set forth in this  
91 subsection.

92 (4) By December 31, 2019, and annually thereafter, the  
93 commission shall submit a report to the general assembly on the effects  
94 of this subsection, including electrical corporation compliance,  
95 potential legislative action regarding this subsection, the costs of  
96 constructing distribution system projects prior to the implementation  
97 of this subsection compared to after the implementation of this  
98 subsection, and any other information regarding the processes  
99 established under this subsection that the commission deems necessary.

393.1520. 1. (1) In proceedings to set rates under sections  
2 393.1500 to 393.1575, the return on equity for a participating electrical  
3 corporation shall be nine and thirty-three-hundredths percent, adjusted  
4 to reflect an increase or decrease equal to the difference between the  
5 average of thirty-year United States Treasury Bond yields for the  
6 applicable historical rate year and the average of thirty-year United  
7 States Treasury Bond yields for the three months ending March 31,  
8 2016, as published by the Board of Governors of the Federal Reserve

9 System in its weekly H.15 Statistical Release or any successor  
10 publication, with that difference to be adjusted by the following  
11 correlation factors:

12 (a) For that part of the difference up to one percentage point, the  
13 correlation factor shall be one hundred percent;

14 (b) For that part of the difference, if any, above one percentage  
15 point, the correlation factor shall be seventy percent.

16 (2) At such time as the board of governors of the Federal Reserve  
17 System ceases to include the average yields of thirty-year United States  
18 Treasury Bonds in its weekly H.15 Statistical Release or successor  
19 publication, the average yields of the United States Treasury Bonds  
20 then having the longest duration published by the Board of Governors  
21 in its weekly H.15 Statistical Release or successor publication shall  
22 instead be used for purposes of this subsection.

23 2. (1) In proceedings to update rates annually consistent with  
24 section 393.1530, for purposes of the reconciliation of cost of service,  
25 the return on equity for a participating electrical corporation,  
26 calculated under subsection 1 of this section, may be decreased to  
27 reflect its performance based on the following metrics:

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

34 (b) The System Average Interruption Frequency Index, including  
35 the Institute for Electrical and Electronics Engineers major storm  
36 exclusion provision as defined by the Institute for Electrical and  
37 Electronics Engineers' publication "Guide for Electrical Power  
38 Distribution System Indices" or its successor publication, but excluding  
39 major storms as defined in that guide.

40 (2) Starting with the second proceeding to update rates annually  
41 consistent with section 393.1530, for purposes of the reconciliation of  
42 cost of service, the return on equity for a participating electrical  
43 corporation, calculated under subsection 1 of this section, may also be  
44 decreased to reflect its performance on the following additional  
45 metrics:

46           **(a) If less than eighty-five percent of the capital projects listed**  
47 **in the electrical corporation's one-year capital investment plan**  
48 **submitted under subsection 1 of section 393.1515 were completed**  
49 **during the historical rate year being reconciled, the return on equity**  
50 **shall be decreased five one-hundredths of one percentage point; and**

51           **(b) If less than eighty-five percent of the capital projects listed**  
52 **in the electrical corporation's one-year capital investment plan**  
53 **submitted under subsection 1 of section 393.1515 were completed on**  
54 **time or early and on or under budget during the historical rate year**  
55 **being reconciled, the return on equity shall be decreased five one-**  
56 **hundredths of one percentage point.**

57 **The commission shall have the authority to replace one of the metrics**  
58 **set forth in this subsection for application to a specific participating**  
59 **electrical corporation by issuing an order under section 393.1525 or**  
60 **393.1530. The new metric shall be applied prospectively and may result**  
61 **in a change in the return on equity equal to no more than five one-**  
62 **hundredths of one percentage point.**

63           **3. Each participating electrical corporation shall track the**  
64 **performance metrics specified in subsection 2 of this section for each**  
65 **year that performance-based rate tariffs are in effect. In each year**  
66 **subsequent to the initial rate year, the participating electrical**  
67 **corporation shall include in its annual update filing a report that**  
68 **provides a description of how the participating electrical corporation**  
69 **performed under each metric in the previous year, and identify any**  
70 **extraordinary events that adversely impacted its performance. For**  
71 **performance metrics specified in paragraphs (a) and (b) of subdivision**  
72 **(1) of subsection 2 of this section, as reported in the annual update**  
73 **filing of a participating electrical corporation, where the annual**  
74 **average performance actually achieved by the participating electrical**  
75 **corporation is superior to the rolling average for the five-year period**  
76 **ending the year preceding the historical rate year by fifteen percent or**  
77 **more, then the allowable return on equity shall not be decreased by five**  
78 **one-hundredths of one percentage point. For performance metrics**  
79 **specified in paragraphs (a) and (b) of subdivision (1) of subsection 2 of**  
80 **this section, as reported in an annual update filing of a participating**  
81 **electrical corporation, where the annual average performance actually**  
82 **achieved is inferior to the rolling average for the five-year period**

83 ending the year preceding the historical rate year by fifteen percent or  
84 more, then the allowable return on equity shall be decreased by five  
85 one-hundredths of one percentage point. The allowable return on  
86 equity shall not be otherwise adjusted on account of these or any other  
87 performance metrics specified in paragraphs (a) and (b) of subdivision  
88 (1) of subsection 2 of this section. These performance metrics shall be  
89 calculated and reported by the participating electrical corporation in  
90 a manner consistent with the methodology that participating electrical  
91 corporation used for the five-year period ending December 31, 2016. At  
92 the conclusion of the performance-based rate proceeding initiated  
93 under section 393.1530, the commission shall enter an order approving  
94 financial penalties in accordance with subsection 2 of this section and  
95 this subsection. The commission-approved financial penalties shall be  
96 applied as adjustments to the return on equity applicable to the  
97 historical rate year to be reflected in the reconciliation of costs  
98 provided for under section 393.1530. Nothing in this section shall  
99 authorize the commission to increase, reduce, or otherwise adjust the  
100 financial penalties established under subsection 2 of this section and  
101 this subsection. All financial penalties shall operate symmetrically and  
102 shall be expressed as a subtraction of five one-hundredths of one  
103 percentage point to be applied to the return on equity for each of the  
104 respective categories identified subsection 2 of this section. In no  
105 event shall the aggregate of the financial penalties affect a  
106 participating electrical corporation's authorized return by more than  
107 two-tenths of one percentage point in any year, and any penalty shall  
108 not be used or applied to periods beyond the historical rate year. No  
109 penalty, or portion thereof, may be carried over for application in  
110 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-based rates, 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. When a participating electrical corporation  
65 files its performance-based rate tariffs, the commission shall conduct  
66 an investigation of the proposed tariffs as provided for in this  
67 section. Upon approval, the performance-based rate tariffs shall  
68 remain in effect at the discretion of the participating electrical  
69 corporation subject to the requirements of section 393.1555. The  
70 performance-based rate tariffs approved by the commission shall  
71 adhere to the following requirements:

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

77       (2) Reflect the participating electrical corporation's actual year-  
78 end capital structure for the historical rate year. A participating  
79 electrical corporation shall not be obligated to utilize a more highly  
80 leveraged capital structure, or otherwise be penalized, for its ability to  
81 recover costs through performance-based rates. So long as the  
82 electrical corporation maintains a capital structure that includes  
83 equity capital of no greater than fifty-three percent and no less than

84 forty-seven percent of total capitalization, the participating electrical  
85 corporation's capital structure shall be presumed prudent and used to  
86 set rates for all purposes set forth in this section and in section  
87 393.1530; provided that if the participating electrical corporation's  
88 senior secured debt rating issued by a national credit ratings agency  
89 declines to a rating weaker than the participating electrical  
90 corporation's senior secured debt rating as of the effective date of this  
91 section, or if a national credit ratings agency issues a corporate credit  
92 rating for the participating electrical corporation's ultimate parent  
93 company that is below investment grade, the presumption created by  
94 this section shall not apply. For purposes of this subdivision, "national  
95 credit ratings agency" shall mean Moody's Investors Service and  
96 Standard and Poor's Ratings Services, or successor agencies, and  
97 "below investment grade" shall mean Baa3 for Moody's Investors Service  
98 and BBB- for Standard and Poor's Ratings Services, or equivalent  
99 ratings in the case of successor agencies. If the capital structure falls  
100 outside of a range of fifty-three percent to forty-seven percent equity,  
101 the commission may investigate the prudence of the capital structure  
102 and adjust it, as applicable, for the purposes of establishing cost of  
103 service in a manner consistent with the standard it has historically  
104 used to assess utility management prudence. The fact that a  
105 participating electrical corporation's equity capital is higher than fifty-  
106 three percent or lower than forty-seven percent of total capitalization  
107 shall not constitute evidence of imprudence;

108 (3) Include a cost of equity consistent with the requirements of  
109 subsection 1 of section 393.1520;

110 (4) Include the following ratemaking adjustments for the purpose  
111 of setting prospective rates:

112 (a) Recovery of regulatory assets and return of regulatory  
113 liabilities over the periods authorized by the commission;

114 (b) Recovery of amortizations authorized under sections 393.1500  
115 to 393.1575;

116 (c) Establishment of rates based on actual billing determinants,  
117 as generally reflected in the electrical corporation's FERC Form 1 for  
118 the historical rate year; provided however, that a participating  
119 electrical corporation shall be permitted to adjust billing units used to  
120 set rates for the rate year based on weather-normalized billing

121 determinants using a weather normalization methodology consistent  
122 with the approach previously relied upon by the commission to set  
123 rates for the participating electrical corporation in its most recent  
124 general rate proceeding prior to the filing of performance-based rate  
125 tariffs. If a participating electrical corporation uses weather-  
126 normalized billing units, it shall also adjust net fuel and purchased-  
127 power to reflect net purchase and sales volumes, in megawatt-hours,  
128 equal to the amount of the retail volume weather normalization  
129 amount; this volume adjustment to net purchases and sales shall be  
130 priced at the average price for the unadjusted net purchases and sales  
131 as calculated based on data reported in the electrical corporation's  
132 FERC Form 1 for the historical rate year;

133 (d) Recovery of nuclear refueling costs, including all outage  
134 related costs, provided a participating electrical corporation may elect  
135 to recover nuclear refueling costs over a period equal to the  
136 anticipated interval between refueling outages; or, if the participating  
137 electrical corporation utilizes the deferral method to account for  
138 operations and maintenance expenses incurred in support of nuclear  
139 refueling outages, the participating electrical corporation may recover  
140 such costs by amortizing them evenly on a monthly basis over the unit's  
141 operating cycle until the next scheduled outage;

142 (e) Interest accrued on customer deposits using the commission  
143 approved interest rate;

144 (f) An estimate of the revenue to be received from customers  
145 served under rates established under section 393.1580 to be treated as  
146 a revenue credit offsetting the revenue requirement established by the  
147 operation of this section. In order to minimize the impact on future  
148 reconciliation balances due to a change, anticipated or realized, in  
149 revenue collected from customers receiving service under section  
150 393.1580, the revenue contribution estimate used to set rates for the  
151 rate year may be adjusted for good cause by the participating electrical  
152 corporation during any open proceeding under this section or section  
153 393.1530 upon notice to the commission and all parties no less than  
154 thirty days prior to any scheduled evidentiary hearing;

155 (g) Any adjustments necessary to effectuate an allocation of  
156 common costs reported on FERC Form 1 that are shared among  
157 operating affiliates, subsidiaries, or operating divisions of a



158 participating electrical corporation. The commission shall permit the  
159 participating electrical corporation to use the most recent of either a  
160 commission-approved cost allocation manual, or the most recent  
161 allocation methodology used to set rates as a part of a general  
162 proceeding to change electric rates under section 393.150 prior to the  
163 adoption of sections 393.1500 to 393.1575;

164 (h) For a participating electrical corporation whose FERC Form  
165 1 does not reflect cost of service information that is specific solely to  
166 Missouri electric jurisdictional operations, adjustments to such FERC  
167 Form 1 information shall be made consistent with the approach  
168 adopted by the commission in the electrical corporation's most recently  
169 completed general rate proceeding under section 393.150, as necessary  
170 to conform the FERC Form 1 information to Missouri electric  
171 jurisdictional operations. Adjustments made under this paragraph  
172 shall be consistent with the intended operation of performance-based  
173 rates as set forth in subdivision (3) of subsection 2 of section 393.1505;

174 (i) Adjustments necessary to recognize established regulatory  
175 accounting treatment adopted in the electrical corporation's most  
176 recently concluded general rate proceeding prior to the adoption of  
177 sections 393.1500 to 393.1575 for participating electrical corporations  
178 by the commission for pension expense, other post-employment  
179 benefits, and Financial Accounting Standards Board Interpretation  
180 Number 48. Any established cost tracker, or similar accounting  
181 treatment, established by the commission for a participating electrical  
182 corporation prior to the adoption of sections 393.1500 to 393.1575 for  
183 the specific accounting items identified in this paragraph shall  
184 continue to be recognized during the operation of sections 393.1500 to  
185 393.1575;

186 (j) An additive adjustment of one percent per annum applied to  
187 operating expenses;

188 (k) Adjustments necessary to reflect the announced closure of a  
189 generating plant scheduled to occur during either the filing year or the  
190 rate year;

191 (l) Adjustments necessary to reflect return on rate base,  
192 depreciation and amortization expense and current and deferred  
193 income taxes calculated based on year end FERC Form 1 plant balances  
194 for the historical rate year; and

195 (m) Adjustments necessary to correct errors or accounting  
196 mistakes in FERC Form 1 or the proposed revenue requirement;

197 (5) Exclude from recovery the following:

198 (a) All lobbying, charitable donations, and institutional  
199 advertising expenses; provided however, that dues, including dues or  
200 contributions to industry or academic associations and institutions that  
201 provide educational, research, and informational services concerning  
202 energy policy, technology, and best practices shall be recoverable to the  
203 extent reasonable in amount and prudently incurred. For the purposes  
204 of this paragraph, institutional advertising shall not include general  
205 advertising, and the expenses associated with general advertising, and  
206 other non-institutional advertising, are recoverable so long as they are  
207 prudently incurred;

208 (b) Incentive compensation expenses only to the extent they are  
209 based on earnings metrics; however, metrics that are designed to  
210 provide an incentive for management cost control and budget  
211 management are recoverable;

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

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

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

217 (7) Include protocols for prospective termination of the  
218 application of performance-based ratemaking consistent with sections  
219 393.1560 and 393.1575.

220 3. The electrical corporation shall file, together with its tariff,  
221 final data based on its FERC Form 1 for the historical rate year which  
222 is the basis of its initial performance-based rate tariff filing that shall  
223 establish the revenue requirement used to set initial performance-  
224 based tariff rates. Nothing in this section is intended to allow costs  
225 that are not otherwise recoverable to be recoverable by virtue of  
226 inclusion in FERC Form 1. Nothing in this section is intended to  
227 prevent the commission from reviewing a participating electrical  
228 corporation's books, records, and accounts and making such  
229 adjustments to FERC Form 1 data as necessary to ensure that only  
230 accurately recorded, prudently incurred, and properly allocated  
231 Missouri jurisdictional costs of providing retail electric service are

232 recovered through its performance-based rate tariffs.

233           4. After the participating electrical corporation files its proposed  
234 initial performance-based rate tariffs under this section, the  
235 commission shall initiate a docket to review the filing. The  
236 participating electrical corporation shall submit prefiled direct  
237 testimony supporting its proposed performance-based rate tariffs. The  
238 participating electrical corporation shall explain in its direct testimony  
239 why any rate increase or decrease is reasonable and appropriate, and  
240 further provide an explanation of how FERC Form 1 values are  
241 reflected in the performance-based rate tariffs and proposed revenue  
242 requirement. The participating electrical corporation shall submit  
243 direct testimony with its performance-based rate tariff, and make  
244 available to the commission, its staff, and intervenors, schedules and  
245 workpapers in native format to assist parties with reviewing the  
246 proposed revenue requirement and operation of the tariffs. The filing  
247 of a performance-based rate tariff shall not limit the commission's  
248 authority to inspect the books and records of the participating  
249 electrical corporation. The commission shall enter an order approving,  
250 or approving as modified, the initial performance-based tariffs,  
251 including the initial rates, within two hundred and forty-four days after  
252 the date on which the tariff was filed. The commission shall approve  
253 the performance-based rate tariffs upon its review of the filing and  
254 finding that such performance-based rate tariffs meet the requirements  
255 of sections 393.1500 to 393.1575. The commission may approve  
256 adjustments to such performance-based rate tariffs only upon finding,  
257 after hearing and supported by competent and substantial evidence,  
258 that such performance-based rate tariffs do not meet the requirements  
259 of sections 393.1500 to 393.1575, or that such performance-based rate  
260 tariffs seek to recover costs that have been imprudently incurred. In  
261 assessing prudence, the commission shall employ the standards it has  
262 historically used in proceedings under which a review of a general rate  
263 increase is considered. The commission shall establish a procedural  
264 schedule that requires all parties objecting to any portion of the  
265 participating electrical corporation's filing to file prefiled rebuttal  
266 testimony and other documentary evidence. The commission shall also  
267 allow parties other than the participating electrical corporation to  
268 respond to each other through prefiled cross-rebuttal testimony, and

269 the participating electrical corporation shall be permitted to respond  
270 to all other parties' prefiled testimony through the filing of prefiled  
271 surrebuttal testimony. Notwithstanding the two hundred and forty-four  
272 day limitation, if a participating electrical corporation makes its initial  
273 performance-based rate tariff filing after April first but before May  
274 first, the commission shall expedite consideration of the application to  
275 ensure that initial rates are in effect no later than January first of the  
276 year following the filing year, and adjust the procedural schedule as  
277 necessary. Recovery of the participating electrical corporation's  
278 prudently incurred expenses related to the commission proceedings  
279 initiated under this section and section 393.1530 shall be permitted, and  
280 all prudently incurred regulatory, expert, legal, and other expenses  
281 associated with these commission proceedings shall be recoverable  
282 absent a commission finding of imprudence, after hearing, on the basis  
283 of competent and substantial evidence. The commission may conduct  
284 any hearings in a manner consistent with established commission  
285 practice and procedure. Aside from corrections to mistakes in earlier-  
286 filed testimony, after the participating electrical corporation files  
287 surrebuttal testimony, no further prefiled testimony shall be  
288 received. Once approved, performance-based rate tariffs shall be  
289 updated annually consistent with the requirements set forth in section  
290 393.1530, and a participating electrical corporation shall not adjust  
291 rates without approval by the commission.

292 5. To the extent that the participating electrical corporation's  
293 rates set in its most recently concluded general rate proceeding under  
294 section 393.150 are not based on the average and excess methodology,  
295 the performance-based rates resulting from the participating electrical  
296 corporation's revenue requirement shall be calculated in a manner that  
297 limits increases to customers receiving service under the participating  
298 electrical corporation's large power service rate schedule to no more  
299 than the class cost of service indicated by allocating production costs  
300 consistent with the average and excess allocation  
301 methodology. Further, where any participating electrical corporation's  
302 existing large power service rate design is based on hours of use energy  
303 rate components, and where the last energy rate block for the summer  
304 and winter rate periods is higher than the parallel generation rate for  
305 the electrical corporation as adjusted for losses, the last energy rate

306 block for both summer and winter rate periods shall be set at the  
307 parallel generation rate for the electrical corporation, adjusted for  
308 losses specific to the service provided. In addition, where any  
309 participating electrical corporation's existing large power service rate  
310 design is based on other than hours of use rate components, the energy  
311 rate for both summer and winter rate periods shall be reduced by ten  
312 percent of the difference between such rates and the parallel  
313 generation rate for the electrical corporation, adjusted for losses  
314 specific to the service provided. After calculating the impact of rate  
315 design changes as applied to large power service customers, any  
316 difference in large power service customers' revenue determination due  
317 to the application of the provisions of this subsection shall be allocated  
318 equally to all customer classes other than large power service and  
319 allocated equally among all rate elements within each class beginning  
320 with rates established through the electrical corporation's second  
321 performance-based rate filing or, thereafter, through rates established  
322 under section 393.150. For the period between the effective date of this  
323 section until rates become effective through the electrical corporation's  
324 second performance-based rate filing, any difference in large power  
325 service customers' revenue determination due to the application of the  
326 provisions of this subsection shall be deferred, with interest applied at  
327 the participating electrical corporation's short-term borrowing rate,  
328 which deferred amounts shall be recoverable through performance-  
329 based rates or rates set under section 393.150. For the purposes of this  
330 subsection, the participating electrical corporation shall utilize the  
331 billing determinants and other cost of service information from the  
332 participating electrical corporation's most recently concluded general  
333 rate proceeding to calculate the change in class cost of service  
334 responsibility applicable to all other classes resulting from the  
335 implementation of the average and excess methodology. Incorporation  
336 of the average and excess methodology and rate design changes  
337 prescribed by this subsection shall be implemented in the manner  
338 prescribed in this subsection through the first two performance-based  
339 rate filings of the participating electrical corporation. Thereafter, the  
340 resulting rate design shall then be utilized as the base on which the  
341 revenue requirement increase or decrease shall be allocated equally to  
342 all customer classes and allocated equally among all rate elements

343 within each class.

344           **6. (1) Subject to the limitations provided for in subdivision (4)**  
345 **of this subsection, an electrical corporation shall make available an**  
346 **economic development rider to customers served under its large power**  
347 **service rate schedule that add incremental demand of at least five**  
348 **hundred kilowatts after November 1, 2015, and that meet either of the**  
349 **following criteria:**

350           **(a) Demand at a single premises greater than fifteen megawatts**  
351 **and an annual load factor of at least fifty-five percent; or**

352           **(b) Aggregated large power service demands of greater than**  
353 **thirty megawatts at up to five separate premises.**

354 **The rider shall provide that the incremental increases in electric**  
355 **service billing units by any such customer related to such incremental**  
356 **demand shall qualify for a discount of twenty percent on all rate**  
357 **elements of the electric bill related to such incremental load from the**  
358 **date when the meter has been permanently set until the earlier of the**  
359 **date that the customer's incremental load no longer exceeds the**  
360 **minimum incremental demand or no longer meets the fifty-five percent**  
361 **annual load factor, if applicable, or the last day of the customer's one**  
362 **hundred twentieth monthly billing period to which such discount has**  
363 **been applied.**

364           **(2) Subject to the limitations provided for in subdivision (4) of**  
365 **this subsection, a large power service account that is new to the**  
366 **electrical corporation's system after November 1, 2015, with demand**  
367 **greater than fifteen megawatts and an annual load factor of at least**  
368 **fifty-five percent, shall qualify for a discount of twenty percent on all**  
369 **rate elements of the electric bill from the date when the meter has been**  
370 **permanently set until the earlier of the date that the customer's load**  
371 **no longer exceeds the minimum fifteen megawatts demand or no longer**  
372 **meets the fifty-five percent annual load factor, or the last day of the**  
373 **customer's one hundred twentieth billing period to which such discount**  
374 **has been applied.**

375           **(3) Subject to the limitations provided for in subdivision (4) of**  
376 **this subsection, an electrical corporation shall make available an**  
377 **economic development rider to customers served under its large power**  
378 **service rate schedule that added incremental demand of at least five**  
379 **hundred kilowatts on or prior to November 1, 2015, are being served**

380 under an existing economic development rider on the effective date of  
381 this section and that meet either of the following criteria:

382 (a) Demand at a single premises greater than fifteen megawatts  
383 and an annual load factor of at least fifty-five percent; or

384 (b) Aggregated large power service demands of greater than  
385 thirty megawatts at up to five separate premises.

386 The rider shall provide that the incremental increases in electric  
387 service billing units by any such customer related to such incremental  
388 demand taken under an existing economic development rider on the  
389 effective date of this section shall qualify for a discount of twenty  
390 percent on all rate elements of the electric bill related to such  
391 incremental load from the effective date of this section until the earlier  
392 of the date that the customer's incremental load no longer exceeds the  
393 minimum incremental demand or no longer meets the fifty-five percent  
394 annual load factor, if applicable, or the last day of the customer's one  
395 hundred and twentieth monthly billing period after the effective date  
396 of this section. The rider shall also provide that the discount provided  
397 under the existing economic development rider shall terminate  
398 effective with the effectiveness of the discount provided under this  
399 subdivision.

400 (4) The reduced revenues arising from the discounts provided by  
401 subdivisions (1), (2), or (3) of this subsection shall be borne by the  
402 electrical corporation's customer classes other than its large power  
403 service class by allocating the impact of the reduced revenues equally  
404 to such other customer classes and equally among all rate elements  
405 within each such class, and recovered from such other classes through  
406 the electrical corporation's rates beginning with rates established  
407 through the electrical corporation's second performance-based rate  
408 filing or, thereafter, through rates established under section  
409 393.150. For the period between the effective date of this section until  
410 rates become effective through the electrical corporation's second  
411 performance-based rate filing, the reduced revenues arising from the  
412 discounts provided by subdivisions (1), (2), or (3) of this subsection  
413 shall be deferred, with interest at the electrical corporation's short-  
414 term borrowing rate, which deferred amounts shall be recoverable  
415 through performance-based rates or rates set under section 393.150. In  
416 no event shall any customer's premises served under this subsection

417 qualify for any additional economic development offerings of the  
418 electrical corporation. To qualify for the discounted rates provided for  
419 in this section, customers must meet the applicable criteria at the time  
420 the meter is permanently set, and annually thereafter. Whether the  
421 customer continues to meet the applicable criteria annually thereafter  
422 shall be determined at the end of each calendar year based on metering  
423 data for such calendar year. If such data indicates that the customer  
424 did not meet the criteria for such calendar year, it shall thereafter no  
425 longer qualify for the discounted rate.

426 (5) For purposes of this section, "electrical corporation" does not  
427 include an electrical corporation regulated under chapters 386 and 393  
428 but not subject to the commission's jurisdiction over its rates,  
429 financing, accounting, or management under subsection 2 of section  
430 393.110. Electrical corporations shall not be required to offer the riders  
431 and discounts after December 31, 2027; provided, that for customers  
432 receiving discounts under this section as of that date the discounts  
433 shall continue for the duration provided for by this section.

434 7. (1) In the first year that an electrical corporation elects to  
435 become a participating electrical corporation, and continuously  
436 thereafter, such participating electrical corporation shall make  
437 available an application for residential customers to apply to seek a  
438 Senior Assistance Fair Energy (SAFE) rate. Such applications for a  
439 SAFE rate made available to all residential customers of the  
440 participating electrical corporation beginning in the participating  
441 electrical corporation's first year that it elects to become a  
442 participating electrical corporation shall be processed by the  
443 participating electrical corporation in order for the SAFE rate to be in  
444 effect at the time that rates established under the participating  
445 electrical corporation's first annual update filing made under section  
446 393.1530 go into effect. Thereafter, any customer applications for a  
447 SAFE rate shall be processed so that such customer receives the SAFE  
448 rate in the following calendar year. Any customer granted a SAFE rate  
449 shall not have their electric utility rate from the participating  
450 electrical corporation increase by more than the same percent allocated  
451 in the cost of living adjustment for Social Security and Supplemental  
452 Security Income for any given calendar year. If no cost of living  
453 adjustment is provided under Social Security and Supplemental



454 Security Income for any given year, such customers' rates shall not  
455 increase for that year.

456 (2) In order to qualify for a SAFE rate, such customer shall be at  
457 least sixty-seven years of age, and have income under two hundred  
458 percent of the federal poverty guidelines. If such person makes a SAFE  
459 rate application, and provides documentation proving that they meet  
460 the criteria, such person shall be granted a SAFE rate with such SAFE  
461 rate being in effect during the following calendar year; provided  
462 however, that the participating electrical corporation may rely upon a  
463 third party or community or government agency to verify any  
464 eligibility requirements set forth in this subdivision.

465 (3) Any costs not recovered due to the implementation of this  
466 subsection shall be borne by the participating electrical corporation's  
467 customer classes equally, but any rate increase due to the  
468 implementation of this subsection shall not cause the limitations set  
469 forth in section 393.1540 to be exceeded.

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 decisions made by the commission  
15 in its initial performance-based rate tariff filing. Annual update filings  
16 shall continue each year until such time as a participating electrical  
17 corporation's performance-based rate tariffs terminate. The annual  
18 update filing shall also include the applicable reconciliation of the cost  
19 of service, performance-related metric adjustments, if any, under  
20 subsection 3 of section 393.1520 including the impact of any  
21 performance metrics, the revenue test provided for in this section, and

22 the updated return on equity calculated under subsection 1 of section  
23 393.1520, and shall be subject to the operation of the rate increase  
24 limitations imposed under section 393.1540. The annual update filing  
25 shall conform to the following:

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

32 (2) The filing shall also include a reconciliation of the cost of  
33 service that, taking into account the effect of any amounts associated  
34 with the operation of section 393.1540, was used to set rates for the  
35 historical rate year with the actual cost of service for that year based  
36 upon the FERC Form 1 for that historical rate year. The reconciliation  
37 shall be calculated in a manner that permits the participating electrical  
38 corporation to recover its actual cost of service and any amortizations  
39 recoverable under performance-based rate tariffs. For purposes of the  
40 reconciliation calculation, an average value of the rate base for the  
41 historical rate year shall be used. Any over-collection or under-  
42 collection indicated by such reconciliation shall reduce or increase the  
43 final revenue requirement that, but for the reconciliation, would have  
44 been used to set rates for the upcoming rate year. Carrying costs shall  
45 be included on any over or under-collection resulting from  
46 reconciliation of costs under this subdivision at a rate equal to the  
47 weighted average cost of capital for the participating electrical  
48 corporation. The first reconciliation used to set rates shall occur after  
49 the completion of a calendar year in which performance-based rates are  
50 in effect for the entire year or a part of a year. If performance-based  
51 rates under this section are first initiated after January first of a  
52 calendar year, the reconciliation shall be based upon actual costs of  
53 service for that year compared to a revenue requirement that is  
54 prorated between the revenue requirement for the period in which  
55 performance-based rates were in effect and, for the portion of the year  
56 prior to effective performance-based rates, the most recently  
57 established revenue requirement resulting from a general rate  
58 proceeding approved by the commission in effect under section 393.150,

59 excluding any portion of the revenue requirement allocated to  
60 customers eligible for service under section 393.1580. The first  
61 reconciliation occurring under this section is not intended to provide  
62 for the recovery of costs previously excluded from rates based on a  
63 prior commission order finding imprudence. Each reconciliation shall  
64 be certified by the participating electrical corporation's management.

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

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

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

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

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

121 (5) The annual update filing shall include supporting prefiled  
122 direct testimony and exhibits offered by the participating electrical  
123 corporation.

124 2. In the proceeding to review a participating electrical  
125 corporation's annual update filing, the commission shall have the  
126 authority to review the prudence of the actual costs incurred by the  
127 participating electrical corporation to be used in the reconciliation of  
128 cost of service as prescribed by subdivision (2) of subsection 1 of this  
129 section, and nothing in this section is intended to prevent the  
130 commission from reviewing a participating electrical corporation's  
131 books, records, and accounts and making such adjustments to FERC  
132 Form 1 data as necessary to ensure that only accurately recorded,

133 prudently incurred, and properly allocated Missouri jurisdictional costs  
134 of providing retail electric service are recovered through its  
135 performance-based rate tariffs. The commission shall further have the  
136 authority to make any adjustments necessary to correct accounting  
137 mistakes and errors that may appear in the FERC Form 1 or the  
138 participating electrical corporation's proposed revenue  
139 requirement. The commission shall have the authority to receive  
140 evidence concerning prudence of the actual cost of service and  
141 accuracy of revenue requirement calculations consistent with the  
142 tariffs and protocols established in accordance with section 393.1525,  
143 and hold an evidentiary hearing to consider evidence from interested  
144 parties consistent with the time requirements provided for under this  
145 section. The commission may approve adjustments to such  
146 performance-based rates filed by the participating electrical  
147 corporation only upon finding, after hearing and supported by  
148 competent and substantial evidence, that such performance-based rates  
149 do not meet the requirements sections 393.1500 to 393.1575 or that such  
150 performance-based rates seek to recover costs that have been  
151 imprudently incurred. In assessing prudence, the commission shall  
152 employ the standard it has historically used in proceedings under  
153 which a review of a general rate increase is considered. The  
154 commission may also approve adjustments to reflect the approved  
155 financial penalties or incentives for the performance metrics provided  
156 for under section 393.1520. The commission shall provide reasonable  
157 notice of any procedural schedule and evidentiary hearing to interested  
158 parties. Discovery shall be allowed consistent with the commission's  
159 rules governing the conduct of commission proceedings. The  
160 commission shall not, however, have the authority in a proceeding  
161 under this section to consider or order any changes to the structure or  
162 protocols of the performance-based rate approved under section  
163 393.1535. In a proceeding under this section, the commission shall  
164 enter its order no later than the earlier of two hundred ten days after  
165 the participating electrical corporation's filing of its annual update of  
166 cost inputs to the performance-based rate or December first, with rates  
167 to be effective on the first billing day of the calendar year after the  
168 year in which the filing was made. The commission shall establish a  
169 procedural schedule that requires all parties objecting to any portion

170 of the applicant's proposal to file prefiled rebuttal testimony and other  
171 documentary evidence. The commission shall also allow parties, other  
172 than the participating electrical corporation, to respond to each other  
173 through prefiled cross-rebuttal testimony, and the participating  
174 electrical corporation shall be permitted to respond to all parties'  
175 prefiled testimony through the filing of prefiled surrebuttal  
176 testimony. Aside from corrections of mistakes in earlier-filed  
177 testimony, after the participating electrical corporation files  
178 surrebuttal testimony, no further prefiled testimony shall be received.  
179 If no objection to the participating electrical corporation's annual  
180 update filing is received, the commission may dispense with the  
181 remainder of the procedural schedule and enter an order approving the  
182 updated rates. The rates approved by the commission for an applicable  
183 rate year shall be final upon entry of the commission's order and shall  
184 not be subject to reopening, reexamination, or collateral attack in any  
185 other proceeding before the commission or the courts; provided  
186 however, that nothing in this section shall prohibit a party from  
187 seeking rehearing and judicial review upon compliance with sections  
188 386.500 and 386.510.

189 3. Except as provided in subsections 5 and 6 of section 393.1525,  
190 performance-based rate tariffs approved under this section shall  
191 provide for equal percentage changes in customer rates, positive or  
192 negative, consistent with the rate design used in the participating  
193 electrical corporation's initial performance-based rate tariffs approved  
194 under section 393.1525, until such time as a new rate design is  
195 approved by the commission consistent with the requirements of  
196 section 393.1535.

2 393.1535. A participating electrical corporation shall make a  
3 filing with the commission concurrently with its fifth filing required by  
4 subsection 1 of section 393.1530 that proposes revenue-neutral rate  
5 design changes or proposes to leave rate design unchanged. The  
6 participating electrical corporation shall rely upon the average and  
7 excess methodology for the allocation of fixed production related costs  
8 to customers taking service under the large power service rate  
9 schedule as the basis for its proposed rate design changes, if any. In  
10 the event the participating electrical corporation proposes no changes,  
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. All changes  
20 shall be implemented prospectively, and implemented at the same time  
21 new annual rates are made effective. In the event that rate design  
22 changes are approved and cannot be implemented because the  
23 provisions of sections 393.1500 to 393.1555 no longer apply as provided  
24 for by section 393.1575, the commission may implement rate design  
25 changes effective upon the conclusion of the first general rate  
26 proceeding occurring after termination. A participating electrical  
27 corporation may submit a depreciation study for approval at any time;  
28 provided however, it must submit a depreciation study, or revised  
29 study, no later than the time when it submits its proposed rate design  
30 changes, or requests no changes be made. If approved by the  
31 commission, revised depreciation rates shall be used to set rates  
32 prospectively under the participating electrical corporation's annual  
33 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 to which sections 393.1500 to 393.1555 apply,  
14 the 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 electrical corporation shall reduce the revenue  
18 requirement in order to bring the prospective revenue requirement  
19 increase under the increase limitations set forth in this section. Any  
20 amount excluded from a participating electrical corporation's revenue  
21 requirement due to a rate increase limitation applied to a rate year  
22 shall be carried forward and recovered in the subsequent rate year by  
23 inclusion of such amount in the participating electrical corporation's  
24 revenue requirement in the annual update filing made during the rate  
25 year affected by the limitation.

26       2. The participating electrical corporation's filing of the initial  
27 performance-based rate tariffs under section 393.1525 shall reflect the  
28 limitations and related requirements set forth in this  
29 section. Thereafter, each participating electrical corporation shall file  
30 an annual report with the commission in its annual update filing that  
31 sets forth the annual and average annual increase in the revenue  
32 requirement used to set retail electric service rates for customers  
33 subject to performance-based rates on an aggregated basis. Annual  
34 increases of the revenue requirement used to set rates shall be limited  
35 to no more than one percent and three percent, respectively, for the  
36 first two rate adjustments approved by the commission under sections  
37 393.1500 to 393.1575. Thereafter, until the operation of this section is  
38 terminated under section 393.1575 or by voluntary termination election  
39 of a participating electrical corporation under section 393.1560, the  
40 annual increase limitation shall equal four and one-half percent. In  
41 calculating the annual increase limitation applicable to the initial  
42 performance-based rate tariffs and rates, the participating electrical  
43 corporation shall utilize the revenue requirement used to set retail  
44 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 to the commission's final order.  
55 If the exclusion set forth in subdivision (2) of subsection 3 of this  
56 section applies, the participating electrical corporation shall not  
57 include net fuel and purchased-power in the base revenue requirement  
58 used to calculate any increase limitation. Additionally, the average  
59 annual revenue requirement increase over the duration of the  
60 participating electrical corporation's performance-based rate tariff  
61 shall not exceed an average annual increase of three and fifteen-  
62 hundredths percent, compounded annually using the number of annual  
63 periods between the effective date of the last general change in rates  
64 approved by the commission prior to the adoption of performance-  
65 based rates for the participating electrical corporation and the first  
66 day of January for the upcoming rate year. Every month subsequent  
67 to the effective date of the last general change in rates approved by the  
68 commission for the participating electrical corporation shall constitute  
69 one-twelfth of an annual period. The average annual increase  
70 calculation shall be calculated and reported annually by the  
71 participating electrical corporation. For the purposes of calculating an  
72 average annual increase under this section, the first day of the annual  
73 periods included in the annual average shall be the day immediately  
74 after the effective date of the last general change in rates approved by  
75 the commission prior to the adoption of performance-based rates for  
76 the participating electrical corporation, and shall utilize the revenue  
77 requirement used to set retail electric service rates pursuant to the last  
78 general change in rates approved by the commission together with net  
79 fuel and purchased-power collected under section 386.266 during the  
80 twelve months following the effective date of the change in rates as the  
81 base revenue requirement, and include each revenue requirement used  
82 to set performance-based rates for retail electric service under this  
83 section in effect for all years in which performance-based rates are in  
84 effect as well as the upcoming rate year. If at the time initial  
85 performance-based rate tariffs are filed under section 393.1525, a full  
86 twelve months since the last change in rates has not yet occurred, the  
87 participating electrical corporation may project the net fuel and  
88 purchased-power for the purpose of establishing the base revenue

89 requirement utilized in calculating the average annual increase  
90 limitation, to be updated with actual net fuel and purchased-power  
91 recoveries prior the commission's final order. If the exclusion set forth  
92 in subdivision (2) of subsection 3 of this section applies, the  
93 participating electrical corporations shall not include net fuel and  
94 purchased-power in the calculation of the average annual increase  
95 limitation for any period included in the calculation.

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

125       (1) All costs, expenses, accounting balances, and variable

126 revenue items that may affect the revenue requirement used to set  
127 rates under performance-based rate tariffs shall be excluded, as  
128 follows:

129       (a) Any fiscal effects, whether capital or expense, experienced by  
130 a participating electrical corporation, including compliance costs or  
131 any foregone wholesale power sales or off-system power sales, arising  
132 primarily from complying with any new and existing federal and state  
133 environmental regulations, laws, civil judgments, regulatory actions, or  
134 executive orders addressing carbon dioxide, coal combustion residuals,  
135 nitrogen oxides, sulfur dioxides, mercury, particulates, water issues or  
136 other environmental matters; however, for any participating electrical  
137 corporation serving more than one million Missouri electric customers  
138 on the date that it elects to become a participating electrical  
139 corporation, aggregate capital costs which would otherwise qualify for  
140 this exclusion during the entire period during which the electrical  
141 corporation is a participating electrical corporation equal to nine  
142 percent of the participating electrical corporation's net plant in service  
143 used to set its rates in its last general rate proceeding prior to  
144 becoming a participating electrical corporation shall not qualify for  
145 this exclusion; and provided further, for any participating electrical  
146 corporation serving one million Missouri electric customers or fewer  
147 on the date that it elects to become a participating electrical  
148 corporation, aggregate capital costs which would otherwise qualify for  
149 this exclusion during the entire period during which the electrical  
150 corporation is a participating electrical corporation equal to five  
151 percent of the participating electrical corporation's net plant in service  
152 used to set its rates in its last general rate proceeding prior to  
153 becoming a participating electrical corporation shall not qualify for  
154 this exclusion;

155       (b) Charges associated with rates established under section  
156 393.1075, or energy efficiency related charges generally including  
157 provision for the financial impact of sales reductions attributable to  
158 energy efficiency programs;

159       (c) Variability in revenue and net fuel and purchased-power costs  
160 due to weather;

161       (d) Local add-on taxes or franchise fees; and

162       (e) Amounts associated with force majeure events;

163           **(2) For a participating electrical corporation with two hundred**  
164 **thousand Missouri electric customers or less as of the date it files**  
165 **performance-based rate tariffs under section 393.1525 the following**  
166 **shall be excluded:**

167           **(a) Any costs that are recovered in a rate adjustment mechanism**  
168 **approved under subsection 1 of section 386.266; and**

169           **(b) Capital or other costs incurred to build, produce or acquire**  
170 **renewable energy resources, as defined in subsection 1 of section**  
171 **393.1025, to the extent those costs are incurred to replace electric**  
172 **energy or capacity from a renewable energy resource as defined in**  
173 **section 393.1025, the cost of which was previously recovered through**  
174 **a rate adjustment mechanism approved under subsection 1 of section**  
175 **386.266.**

176           **4. Any amount excluded from rates due to the limitations**  
177 **provided for under this section in the last year to which sections**  
178 **393.1500 to 393.1555 apply as provided for in section 393.1575 shall be**  
179 **carried forward with interest at the participating electrical**  
180 **corporation's short-term borrowing rate and recovered consistent with**  
181 **the provisions of section 393.1560; provided however, that any such**  
182 **amount carried forward shall not exceed four and one-half percent of**  
183 **the revenue requirement used to set the participating corporation's**  
184 **performance-based rates in the last year to which sections 393.1500 to**  
185 **393.1555 apply.**

**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 purchased-power costs 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 the requirements of subsection  
59 1 of 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 under performance-based rate  
67 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 prior to the adoption of performance-based rates, the  
82 participating electrical corporation may request inclusion of any  
83 associated balances or amounts at the time it makes its initial filing  
84 under section 393.1525; provided however, the commission has the  
85 discretion to approve or deny the request for good cause. Upon  
86 termination of any performance-based rate tariffs, any trackers, rate  
87 adjustment mechanisms including those effective under section 386.266,  
88 regulatory assets or liabilities, and accounting authority authorization,

89 or other special regulatory accounting treatment existing prior to  
90 approval of the effective date of the participating electrical  
91 corporation's initial performance-based rate tariffs shall be  
92 automatically reactivated and the electrical corporation shall account  
93 for them in the same manner as was previously approved by the  
94 commission in the participating electrical corporation's most recently  
95 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.

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. The commission  
5 shall allow the participating electrical corporation to spread the  
6 deferred and amortized amount over a period not to exceed five  
7 years. The participating electrical corporation shall demonstrate that  
8 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 balance or amount would increase or decrease annual  
30 revenue requirement by greater than one percent, the commission shall  
31 grant approval of the amortization requested. If the significant balance  
32 or amount would increase or decrease revenue requirement by less  
33 than one percent, a participating electrical corporation may file a  
34 petition; provided however, that the commission has the discretion to  
35 grant or deny the petition for good cause based upon the evidence  
36 presented.

393.1555. 1. Sections 393.1500 to 393.1575 may be implemented  
2 by electrical corporations on and after their effective date regardless  
3 of whether the commission has enacted any rules related to these  
4 sections. The deadlines and time periods under sections 393.1500 to  
5 393.1575 are mandatory, and any tariffs filed, rates proposed, or  
6 regulatory relief requested shall take effect by operation of law if not  
7 acted upon by the commission within the time periods  
8 specified. Participating electrical corporations are required to adhere  
9 to the time periods and procedural requirements under sections  
10 393.1500 to 393.1575, and any change in effective tariffs or rates shall  
11 reflect an effective date consistent with the time limits set forth in  
12 sections 393.1500 to 393.1575. The commission is not required to issue  
13 an order suspending any tariffs or rates filed under sections 393.1500  
14 to 393.1575 during the pendency of review. A failure to act on any  
15 tariff, rate, or regulatory relief requested shall result in the tariff, rate,  
16 or regulatory relief requested becoming effective by operation of law  
17 and the commission shall no longer retain authority to suspend or  
18 otherwise interfere with the operation of the effective tariffs. The  
19 commission may waive review or audit of any tariff filing or change in  
20 any performance-based rate tariffs if the commission determines that  
21 such action is in the interest of the public; provided however, that any  
22 annual update filing effectuating changes to performance-based rates  
23 under section 393.1530 shall not take effect until January first  
24 following an update filing. In reviewing any application, petition, or  
25 tariff filed under sections 393.1500 to 393.1575, the commission shall  
26 only have the authority to act upon such filing in a manner consistent  
27 with the requirements and 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 rates based on recovery of only  
45 prudently incurred costs of providing retail electric service, provided  
46 that any 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 that will no longer be received from the cancelled service.  
69 In the 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 by 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 one-half percent of the revenue requirement used to set rates for  
52 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 under section 393.150, with  
65 the rates to be effective on or after January first of the year following  
66 the last year to which sections 393.1500 to 393.1555 apply. The rates set  
67 under section 393.150 shall replace the rates set under sections 393.1500  
68 to 393.1555; provided however, that in addition to the new rates set in  
69 such general rate proceeding, the regulatory asset or liability  
70 associated with any reconciliation balances or carry forward amounts  
71 recoverable under the provisions of subdivisions (1) through (3) of  
72 subsection 1 of this section that have not yet been recovered or  
73 credited at the time such new rates take effect, shall be recovered or  
74 credited through a surcharge or credit on customer bills. The  
75 surcharge or credit shall continue until the regulatory asset or liability  
76 balance is fully recovered or credited to customers within twenty-four  
77 months after January first of the year following the last year to which  
78 sections 393.1500 to 393.1555 apply. In any general rate proceeding  
79 initiated under section 393.150 that results in new rates effective within  
80 twenty-four months after January first of the last year to which  
81 sections 393.1500 to 393.1555 apply, the commission shall have the  
82 authority to adjust the rates set in that general rate proceeding in  
83 order to prevent double recovery or under recovery of any prudently  
84 incurred costs.

85           5. A participating electrical corporation whose rate adjustment  
86 mechanism under subsection 1 of section 386.266 was suspended under  
87 section 393.1525 shall be reinstated effective January first of the year  
88 following the last year specified in subsection 1 of section 393.1575,  
89 provided that it shall be reinstated with any modifications necessary  
90 to make it consistent with the provisions of section 386.266 in effect on  
91 that date, and provided further that if January first of that year is in  
92 the middle of an accumulation period provided for by the formerly  
93 suspended rate adjustment mechanism's tariff sheets, the first  
94 accumulation period prior to filing an adjustment under such rate  
95 adjustment mechanism shall be a partial one. The base against which  
96 the net costs tracked in such an adjustment mechanism are compared  
97 for purposes of making the adjustment shall be the level of costs and  
98 revenues covered by the adjustment mechanism according to the terms  
99 of the tariff sheets reflecting it, together with any other costs and

100 revenues that are to be included in the mechanism under the terms of  
101 subsection 1 of section 386.266 then in effect, for the last year specified  
102 in subsection 1 of this section. A participating electrical corporation  
103 whose rate adjustment mechanism was reinstated under this subsection  
104 shall be relieved of the obligation to make a general rate proceeding  
105 filing every four years as otherwise provided for in subsection 4 of  
106 section 386.266 in order to retain its rate adjustment mechanism and  
107 instead shall file such a general rate proceeding no later than four  
108 years after the last year to which sections 393.1500 to 393.1555 applied.

393.1565. No later than December 31, 2024, 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 data necessary for the preparation of the 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. The last year to which sections 393.1500 to 393.1555  
2 apply is 2027, or such earlier year as specified by the participating  
3 electrical corporation in a notice filed with the commission no later  
4 than twelve months prior to the end of that year. A participating  
5 electrical corporation filing notice under the immediately preceding  
6 sentence may not thereafter elect to have the provisions of sections  
7 393.1500 to 393.1555 applied to it during any additional year. No  
8 electrical corporation shall become a participating electrical  
9 corporation by filing a performance-based rate tariff under section  
10 393.1525 after December 31, 2026. No participating electrical  
11 corporation shall file an annual update with the commission under

12 **section 393.1530 after May 1, 2028. Except as provided for in subsection**  
13 **2 of section 393.1555, nothing in sections 393.1500 to 393.1575 shall**  
14 **affect the commission's authority under sections 393.190 or**  
15 **393.250. Sections 393.1500 to 393.1575 shall expire on December 31,**  
16 **2029.**

Section B. Notwithstanding the provisions of section 1.140 to the contrary,  
2 the provisions of sections 393.1500 to 393.1575 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 393.1575.

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