

SECOND REGULAR SESSION

SENATE BILL NO. 983

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time February 22, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5145S.011

AN ACT

To amend chapter 393, RSMo, by adding thereto seven new sections relating to the Missouri energy efficiency performance standard, with penalty provisions.

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

Section A. Chapter 393, RSMo, is amended by adding thereto seven new sections, to be known as sections 393.1080, 393.1083, 393.1086, 393.1089, 393.1092, 393.1095, and 393.1098, to read as follows:

393.1080. 1. Sections 393.1080 to 393.1098 shall be known as the "Missouri Energy Efficiency Performance Standard".

2. As used in sections 393.1080 to 393.1098, the following terms shall mean:

(1) "Baseline":

(a) For electric energy savings, the average of the total kilowatt-hours the electric utility delivered in the preceding two calendar years to customers in this state; or

(b) For gas energy savings, the average of the total cubic feet of natural gas delivered by the natural gas utility in the preceding two calendar years to customers in this state; or

(c) For peak demand reduction, the average of the annual peak demand of the electric utility in the preceding two calendar years;

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

(3) "Corporation", an electrical or gas corporation as defined in section 386.020;

(4) "Total resource cost test", the test defined under subdivision (6) of subsection 2 of section 393.1075;

(5) "Utility", an electrical or gas corporation, municipal utility, or rural electric cooperative, unless otherwise specified.

393.1083. 1. Beginning January 1, 2011, an electrical corporation shall implement energy efficiency programs that annually achieve electric energy savings equivalent to at least five-tenths of one percent of the baseline. The annual savings amount to be achieved shall increase to one and three-tenths percent of the baseline beginning January 1, 2015, and then to two percent of the baseline beginning January 1, 2019, and each year thereafter.

2. Beginning January 1, 2011, a gas corporation shall implement energy efficiency programs that annually achieve natural gas energy savings equivalent to at least two-tenths of one percent of the baseline. The annual savings amount to be achieved shall increase to five-tenths of one percent of the baseline beginning January 1, 2014, to one percent beginning January 1, 2016, and then to one and one-half percent of the baseline beginning January 1, 2019, and each year thereafter.

3. By January 1, 2020, the commission shall decide whether to maintain or increase the annual savings requirements. The commission may reduce the requirement for a corporation only if, upon application by the corporation, the commission determines that the utility cannot continue to achieve the target due to regulatory, economic or technological reasons beyond the utility's or the commission's reasonable control.

4. If an electrical or gas corporation's incremental energy savings in any year exceeds the applicable performance standard established in this section, those extra savings may be carried forward and credited to the next year's standard, subject to the following provisions:

(1) The amount of any savings carried forward shall not exceed one-third of the next year's standard; and

(2) Any savings carried forward shall not be used toward claiming any utility incentive under section 393.1075 or sections 393.1080 to 393.1098 outside the year in which the savings were realized, however, any such savings carried forward may be applied in the consideration of any penalties under section 393.1095.

5. Beginning January 1, 2011, on an annual basis, electrical corporations shall implement additional or expanded peak demand reduction programs that achieve incremental peak demand savings,

38 beyond any peak demand reduction programs existing at the time of
39 the effective date of sections 393.1080 to 393.1098, equivalent to at least
40 three-quarters of one percent of the baseline for peak demand
41 savings. Beginning January 1, 2018, the savings amount shall increase
42 to one percent of the baseline annually. By December 31, 2020, the
43 commission shall make recommendations to the general assembly
44 regarding future peak demand reduction targets.

393.1086. 1. Within nine months of the effective date of sections
2 393.1080 to 393.1098, the commission shall promulgate rules to
3 implement sections 393.1080 to 393.1098 and to specify the procedure
4 for electrical and gas corporations to develop and submit energy
5 efficiency plans to meet the energy efficiency performance standard. To
6 the extent applicable, the commission shall follow the provisions of
7 section 393.1075, except that in the event of a conflict between section
8 393.1075 and sections 393.1080 to 393.1098, the provisions of sections
9 393.1080 to 393.1098 shall prevail.

10 2. The commission's rules under this section shall:

11 (1) Require corporations to provide customers, upon request,
12 with two years' worth of energy consumption data in an accessible
13 form;

14 (2) Specify procedures and standards for measuring eligible
15 electricity savings and natural gas savings;

16 (3) Specify procedures and standards for third-party verification,
17 to be reported to the commission and the utilities, of utility-reported
18 electricity savings or natural gas savings; and

19 (4) Provide for the ability of a corporation to earn a financial
20 incentive, on an annual basis, for exceeding the energy efficiency
21 performance standard under section 393.1083.

22 3. Any rules developed under subdivision (2) of subsection 2 of
23 this section shall:

24 (1) Require that energy savings estimates for customer facilities
25 or portions of facilities be adjusted, as appropriate, to account for
26 changes in weather, level of production, and building area so that only
27 energy savings attributable to energy efficiency investments are
28 counted toward the performance standard;

29 (2) Account for the useful life of electricity and natural gas
30 saving measures;

31 **(3) Allow for the use of deemed savings values, where justified,**
32 **for specific, commonly-used efficiency measures;**

33 **(4) Allow for savings from a program to be estimated based on a**
34 **statistical sample of participating customers and extrapolated to all**
35 **participating customers; and**

36 **(5) Exclude savings that are not properly attributable to**
37 **measures carried out by the entity seeking the credit for such savings,**
38 **or a designated agent of the entity, or have already been credited**
39 **under sections 393.1080 to 393.1098 to another entity or to the same**
40 **entity.**

41 **4. Any rule or portion of a rule, as that term is defined in section**
42 **536.010 that is created under the authority delegated in this section**
43 **shall become effective only if it complies with and is subject to all of**
44 **the provisions of chapter 536, and, if applicable, section 536.028. This**
45 **section and chapter 536 are nonseverable and if any of the powers**
46 **vested with the general assembly pursuant to chapter 536, to review, to**
47 **delay the effective date, or to disapprove and annul a rule are**
48 **subsequently held unconstitutional, then the grant of rulemaking**
49 **authority and any rule proposed or adopted after August 28, 2010, shall**
50 **be invalid and void.**

393.1089. 1. Within six months of the effective date of the
2 **regulations promulgated by the commission under sections 393.1080 to**
3 **393.1098, and biennially thereafter, an electrical or gas corporation**
4 **shall file an energy efficiency plan with the commission.**

5 **2. An energy efficiency plan filed with the commission under this**
6 **section shall do all of the following:**

7 **(1) Propose a set of energy efficiency programs and a set of peak**
8 **demand reduction programs that include offerings for each customer**
9 **class, including low income residential. Training and educational**
10 **programs, and emerging technology pilot programs, may count towards**
11 **the standards;**

12 **(2) Specify necessary funding levels for proposed programs, and**
13 **ensure that no less than five percent of program funding go to**
14 **evaluation, measurement and verification;**

15 **(3) Describe how costs will be recovered;**

16 **(4) Ensure, to the extent feasible, that charges collected from a**
17 **particular customer rate class are spent on programs for that rate**

18 class;

19 (5) Demonstrate that the proposed programs and funding are
20 sufficient to ensure the achievement of applicable energy efficiency
21 performance standards under section 393.1083;

22 (6) Demonstrate that the corporation's energy efficiency and
23 demand reduction portfolios will be cost-effective, using the total
24 resource cost test;

25 (7) Provide for the practical and effective administration of the
26 proposed programs. The commission shall allow corporations
27 flexibility in designing their programs and administrative approaches.
28 A corporation's programs, or any part thereof, may be administered, at
29 the corporation's option, by the corporation alone or jointly with other
30 utilities, by a state agency, or by an appropriate, experienced
31 organization selected after a competitive bid process. The commission
32 may allow for the coordination of programs among consenting utilities
33 where feasible, if doing so would help to maximize energy savings on
34 a statewide basis. However, money spent by a utility to comply with
35 sections 393.1080 to 393.1098 shall only be used to fund programs that
36 provide services in that utility's service territory; and

37 (8) Include a process for measurement and verification of
38 incremental energy savings from each program. All such evaluations
39 shall be subject to public review and commission oversight.

40 3. An energy efficiency plan may provide for the corporation to
41 facilitate third party loans to customers to finance energy efficiency
42 and demand reduction measures.

43 4. Within one hundred twenty days of receiving an energy
44 efficiency plan from a corporation and after an opportunity for public
45 comment, the commission shall approve, approve with changes
46 consented to by the corporation, or reject the plan.

47 (1) If the commission rejects the plan, the commission shall state
48 the reasons for its action.

49 (2) Within thirty days after the commission rejects a plan, the
50 corporation shall submit a revised plan that addresses the reasons for
51 rejection cited by the commission.

52 (3) Within thirty days after receiving a revised plan and after an
53 opportunity for public comment, the commission shall approve, approve
54 with changes consented to by the corporation, or reject the revised

55 **plan. If the commission rejects the revised plan, the commission shall**
56 **state the reasons for the rejection.**

57 **(4) Any delay caused by the failure of a corporation to file an**
58 **acceptable revised plan shall not be used as a reason to avoid penalties**
59 **under section 393.1095.**

60 **(5) The procedure for rejected plans under this subsection shall**
61 **be repeated until a revised plan is approved or approved with changes**
62 **consented to by the corporation. The commission's action under this**
63 **section does not affect the applicability of the requirements of section**
64 **393.1083 or 393.1095.**

393.1092. 1. By a date determined by the commission, each
2 **corporation shall submit to the commission an annual report that**
3 **provides information relating to the actions taken by the corporation**
4 **to comply with the energy efficiency performance standards under**
5 **section 393.1083. By that same date, a municipally-owned utility or a**
6 **cooperative utility shall submit a similar report to its governing body.**

7 **2. An annual report under subsection 1 of this section shall**
8 **include all of the following information:**

9 **(1) The estimated annual electricity or natural gas savings**
10 **achieved by the corporation through energy efficiency programs**
11 **provided during the reporting period;**

12 **(2) An estimate of the annual and life-cycle carbon dioxide**
13 **emissions avoided by the energy efficiency programs implemented**
14 **during the reporting period;**

15 **(3) The estimated incremental peak reduction achieved through**
16 **peak demand reduction programs during the reporting period;**

17 **(4) Expenditures made on energy efficiency and peak demand**
18 **reduction programs during the reporting period and anticipated future**
19 **expenditures to comply with sections 393.1080 to 393.1098;**

20 **(5) The cost-effectiveness of implemented portfolios; and**

21 **(6) Any other information that the commission determines**
22 **necessary.**

23 **3. Five years after the effective date of sections 393.1080 to**
24 **393.1098, and every five years thereafter, the commission shall produce**
25 **a report that includes all of the following information:**

26 **(1) A summary of data collected under sections 393.1080 to**
27 **393.1098;**

- 28 **(2) The status of energy efficiency in this state;**
29 **(3) For the total portfolio of energy efficiency programs, a**
30 **comparison of the cost of the energy efficiency versus the cost of**
31 **electricity from a new conventional coal-fired electric generating**
32 **facility;**
33 **(4) An evaluation of whether the Missouri energy efficiency**
34 **performance standard has been cost-effective;**
35 **(5) A description of the impact of the Missouri energy efficiency**
36 **performance standard on employment in this state;**
37 **(6) Any recommendations the commission may have concerning**
38 **amendments to sections 393.1080 to 393.1098, including changes in the**
39 **performance standard percentage minimums.**

393.1095. If a gas or electrical corporation fails to demonstrate
2 **compliance with an applicable performance standard under section**
3 **393.1083, the commission shall assess a civil penalty for each such**
4 **failure in an amount equal to:**

- 5 **(1) One hundred dollars per megawatt-hour of electricity savings**
6 **that the electrical corporation failed to achieve; or**
7 **(2) Ten dollars per million Btu of natural gas savings that the gas**
8 **corporation failed to achieve. The commission may annually adjust the**
9 **amounts based on the rate of inflation according to the consumer price**
10 **index. The amounts assessed shall be paid to the department of natural**
11 **resources and used solely for its energy efficiency programs.**

393.1098. Each distribution cooperative utility and municipal
2 **utility shall be subject to section 393.1083 and subsections 1 and 2 of**
3 **section 393.1092. A generation and transmission cooperative that**
4 **provides energy services to distribution cooperatives may act on behalf**
5 **of the cooperatives it serves. A joint municipal utility commission may**
6 **act on behalf of its contracting municipalities. Cooperative and**
7 **municipal utilities may, jointly or severally, contract with third-party**
8 **administrators in fulfilling the terms of sections 393.1080 to 393.1098.**

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