

FIRST REGULAR SESSION

HOUSE BILL NO. 1335

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FRAKER.

2692H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 386.266, RSMo, and to enact in lieu thereof one new section relating to periodic rate adjustments for certain utilities.

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

Section A. Section 386.266, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 386.266, to read as follows:

386.266. 1. Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

2. Subject to the requirements of this section, any electrical, gas, or water corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule. Any rate adjustment made under such rate schedules shall not exceed an annual amount equal to two and one-half percent of the electrical, gas, or water corporation's Missouri gross jurisdictional revenues, excluding gross receipts tax, sales tax and other similar pass-through taxes not included in tariffed rates, for regulated services as established in the utility's most recent general rate case or complaint proceeding. In addition to the rate adjustment, the electrical, gas, or water corporation shall be permitted to collect any

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

18 applicable gross receipts tax, sales tax, or other similar pass-through taxes, and such taxes shall
19 not be counted against the two and one-half percent rate adjustment cap.

20 Any costs not recovered as a result of the annual two and one-half percent limitation on rate
21 adjustments may be deferred, at a carrying cost each month equal to the utilities net of tax cost
22 of capital, for recovery in a subsequent year or in the corporation's next general rate case or
23 complaint proceeding.

24 3. Subject to the requirements of this section, any gas, **water, or sewer** corporation may
25 make an application to the commission to approve rate schedules authorizing periodic rate
26 adjustments outside of general rate proceedings to [reflect the nongas] **prevent over and under**
27 **recoveries of the cost of providing utility service because of the** revenue effects of increases
28 or decreases in residential and commercial customer usage due to variations in either weather,
29 conservation, [or both] **or other factors the commission deems appropriate.**

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

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

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

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

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

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

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

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

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

67 9. Prior to August 28, 2005, the commission shall have the authority to promulgate rules
68 under the provisions of chapter 536 as it deems necessary, to govern the structure, content and
69 operation of such rate adjustments, and the procedure for the submission, frequency,
70 examination, hearing and approval of such rate adjustments. Such rules shall be promulgated
71 no later than one hundred fifty days after the initiation of such rulemaking proceeding. Any
72 electrical, gas, or water corporation may apply for any adjustment mechanism under this section
73 whether or not the commission has promulgated any such rules.

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

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

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

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

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