

SECOND REGULAR SESSION

# HOUSE BILL NO. 2816

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MILLER.

6892H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 386.266, RSMo, and to enact in lieu thereof eighteen new sections relating to ratemaking for public utilities, with an emergency clause.

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

Section A. Section 386.266, RSMo, is repealed and eighteen new sections enacted in lieu thereof, to be known as sections 386.266, 393.1500, 393.1505, 393.1510, 393.1515, 393.1520, 393.1525, 393.1530, 393.1535, 393.1540, 393.1545, 393.1550, 393.1555, 393.1560, 393.1565, 393.1570, 393.1575, and 393.1580, 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. **Such rate schedules shall also include and provide for adjustments reflecting all prudently incurred transmission charges not included in the costs covered by the immediately preceding sentence, and all transmission revenues, paid to or received from any transmission service provider.** 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

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.

16 environmental law, regulation, or rule. Any rate adjustment made under such rate schedules  
17 shall not exceed an annual amount equal to two and one-half percent of the electrical, gas, or  
18 water corporation's Missouri gross jurisdictional revenues, excluding gross receipts tax, sales tax  
19 and other similar pass-through taxes not included in tariffed rates, for regulated services as  
20 established in the utility's most recent general rate case or complaint proceeding. In addition to  
21 the rate adjustment, the electrical, gas, or water corporation shall be permitted to collect any  
22 applicable gross receipts tax, sales tax, or other similar pass-through taxes, and such taxes shall  
23 not be counted against the two and one-half percent rate adjustment cap.

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

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

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

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

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

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

51 adjustment mechanism is unlawful and all moneys collected thereunder are fully refunded, the  
52 utility shall be relieved of any obligation under that adjustment mechanism to file a rate case;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14

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

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

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

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

**30 (3) The participating electrical corporation's rates and cost of service used to set  
31 the electrical corporation's revenue requirement shall be based upon current financial**

32 information contained in the participating electrical corporation's certified FERC Form  
33 1, a document that contains annual financial information concerning the utility operations,  
34 and shall use actual data reported on the FERC Form 1 as the basis to set rates instead of  
35 relying upon hypothetical or normalized data that may be subject to dispute;

36 (4) After the performance-based rate tariffs are filed and approved, the  
37 participating electrical corporation shall make annual filings under section 393.1530 to  
38 update the rates calculated using protocols set forth in the performance-based rate tariffs,  
39 which include a reconciliation of costs for the historical rate year adjustments based upon  
40 the application of a revenue test, incorporation of performance penalties or incentives for  
41 key performance metrics set forth in section 393.1520, and annual rate increase limitations  
42 under section 393.1540;

43 (5) Performance-based rate tariffs shall include provisions that prevent over and  
44 under recovery of a participating electrical corporation's authorized return on equity. The  
45 purpose of the revenue test as provided in subdivision (3) of subsection 1 of section  
46 393.1530 is to mitigate the potential for over and under recoveries of a participating  
47 electrical corporation's revenue requirement, and return on equity, due to changes in load  
48 and electricity sales in any given year;

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

54 (7) Fuel related rate adjustment mechanisms for electrical corporations with more  
55 than two hundred thousand Missouri electric customers as of December 31, 2015, shall be  
56 suspended under sections 393.1525 and 393.1545 during the period when performance  
57 based-rates are in effect;

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

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

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

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

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

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

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

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

23           **(4) "Embedded class cost of service study", a study designed to determine the cost**  
24 **of service attributable to each class of electrical corporation customers based upon cost**  
25 **causation principles generally recognized by the public utility industry and state regulatory**  
26 **authorities;**

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

31           **(6) "Filing year", the calendar year in which an initial performance-based rate**  
32 **tariff filing is made under section 393.1525, or the year in which an annual update filing**  
33 **is made under section 393.1530;**

34 (7) "Force majeure event", an event or circumstance that occurs as a result of a  
35 weather event, an act of God, war or terrorism, or other uncontrollable event as  
36 determined by the commission that causes a reduction in revenues, an increase in the cost  
37 of providing electrical service, or some combination thereof, and the event has an  
38 associated fiscal impact on a participating electrical corporation's operations equal to one  
39 percent or greater of the total revenue requirement established under sections 393.1500 to  
40 393.1575. A force majeure event shall not preclude the commission from reviewing the  
41 prudence of any revenue reductions or costs incurred during any proceeding to set rates  
42 initiated under sections 393.1525 or 393.1530;

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

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

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

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

50 (d) Advertisements that convey innovations in the electrical corporation's  
51 operations;

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

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

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

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

61 (11) "Institutional advertising", advertising done solely to improve the  
62 participating electrical corporation's image with no benefit to the customer. "Institutional  
63 advertising" shall include political advertising;

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

67 (13) "Net fuel and purchased power", all fuel and purchased power acquired by  
68 the participating electrical corporation used to serve Missouri retail electric load reduced

69 by total wholesale or off-system power sales for the same period, and all other items eligible  
70 for inclusion in a rate adjustment mechanism under subsection 1 of section 386.266;

71 (14) "Operating expenses", FERC Account 401 "Operation Expenses", FERC  
72 Account 402 "Maintenance Expenses", and FERC Account 408.1 "Taxes Other Than  
73 Income Taxes, Utility Operating Income", excluding gross receipts taxes, for the purposes  
74 of applying the one percent per annum gross-up provided for under sections 393.1525 and  
75 393.1530;

76 (15) "Participating electrical corporation", an electrical corporation that  
77 voluntarily files performance-based rate tariffs under section 393.1525. A participating  
78 electrical corporation shall recover its cost of providing service through the ratemaking  
79 process set forth in sections 393.1500 to 393.1575, until such time as the effective operation  
80 of sections 393.1500 to 393.1575 terminates by electrical corporation voluntary withdrawal  
81 or operation of law. At such time as termination is effective an electrical corporation is no  
82 longer a participating electrical corporation for the purposes of sections 393.1500 to  
83 393.1575;

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

89 (17) "Rate year", the calendar year in which rates will be in effect under sections  
90 393.1500 to 393.1575;

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

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

98 (20) "Tariff", schedules of rates and terms and conditions of service for an  
99 electrical corporation that are open for public inspection under subdivision (11) of section  
100 393.140.

393.1515. 1. No later than February twenty-eighth of each year after it elects to  
2 become a participating electrical corporation, each participating electrical corporation  
3 shall submit to the commission a five year capital investment plan setting forth the general  
4 categories of capital expenditures the electrical corporation will pursue in furtherance of

5 modernizing and securing its infrastructure and achieving the performance metrics set  
6 forth in section 393.1520. The plan shall also include a specific capital investment plan for  
7 the first year of the five year plan consistent with the level of specificity the participating  
8 electrical corporation has historically used for annual capital budgeting purposes. Project  
9 specific information is not required to be included for the five year period covered by the  
10 plan. No later than February twenty-eighth of each subsequent year, the participating  
11 electrical corporation shall submit to the commission an updated capital investment plan  
12 for the subsequent five years and a specific capital investment plan for the subsequent  
13 calendar year and report the capital investments for the prior calendar year. Within thirty  
14 days of the filing of any capital investment plan or annual update to an existing plan, the  
15 participating electrical corporation shall host a public stakeholder meeting to answer  
16 questions and receive feedback about the plan. Such participating electrical corporation  
17 shall provide public notice of the meeting to its customers on its website, and the meeting  
18 shall be located within the electrical corporation's service territory. After feedback is  
19 received, the participating electrical corporation shall file a notice with the commission of  
20 any modifications to the capital investment plan it has accepted. The plan, implementation  
21 of the plan, or schedule changes from year to year shall not constitute evidence of  
22 imprudence of the capital investment plan or the investments made under such plan. The  
23 fact that a participating electrical corporation invests more or less than the amounts  
24 specified in its initial or updated plans shall not constitute evidence of imprudence. The  
25 submission made under this section shall be made publicly available; however, portions of  
26 the submission may contain confidential and proprietary information and may be  
27 protected from public disclosure in a manner consistent with the rules or orders of the  
28 commission as applicable. Nothing in this section shall require a participating electrical  
29 corporation to publicly disclose confidential, proprietary, or financially sensitive  
30 information, any market sensitive information, or information that would otherwise violate  
31 rules promulgated by the Federal Energy Regulatory Commission designed to protect the  
32 integrity of wholesale power markets. The submission of a capital investment plan under  
33 this section shall not affect in any way the commission's authority with respect to the grant  
34 or denial of a certificate of convenience and necessity under section 393.170.

35       2. (1) Each participating electrical corporation shall establish a process to qualify  
36 third party vendors that bid to provide services, or may bid, on planned electrical  
37 distribution construction and maintenance projects based on the following criteria:

- 38       (a) Total evaluated value based on price;  
39       (b) Quality of work, services, and products furnished;  
40       (c) Scheduling needs and resources available to meet scheduling requirements;

41 (d) Safety policies, procedure, record, and experience;  
42 (e) Supplier diversity; and  
43 (f) Other relevant considerations for distribution system maintenance, construction,  
44 and modernization projects.

45 (2) A vendor qualification application process shall be established within nine  
46 months from the effective date of this section. Once established, the participating electrical  
47 corporation shall utilize a qualified vendor or a competitive bid process for any  
48 expenditures made to vendors for planned projects whose costs are estimated to be greater  
49 than one hundred thousand dollars. A qualified vendor need not be used in emergency  
50 situations.

51 (3) In any proceeding initiated under sections 393.1525 and 393.1530, the  
52 commission shall have the authority to review the participating electrical corporation's  
53 vendor qualification process. Adherence to the vendor qualification requirements of this  
54 section or use of a competitive bid process shall constitute evidence of prudence. If a  
55 participating electrical corporation does not properly qualify a vendor, the commission has  
56 the authority to disallow recovery of any costs that exceed the amount that would have  
57 otherwise been prudently incurred.

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

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

13 2. In proceedings to update rates annually consistent with section 393.1530, for  
14 purposes of the reconciliation of cost of service, the return on equity for a participating  
15 electrical corporation, calculated under subsection 1 of this section, shall be increased or

16 decreased, for the purpose of reconciling costs, to reflect its performance based on the  
17 following metrics:

18 (1) The System Average Interruption Duration Index, including the Institute for  
19 Electrical and Electronics Engineers major storm exclusion provision as defined by the  
20 Institute for Electrical and Electronics Engineers' publication "Guide for Electric Power  
21 Distribution System Indices" or its successor publication, but excluding major storm as  
22 defined in that guide;

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

28 (3) The percentage of customer calls answered by the participating electrical  
29 corporation's customer call centers within thirty seconds; and

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

32

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

38 3. Each participating electrical corporation shall track the performance metrics  
39 specified in subsection 2 of this section for each year that performance-based rate tariffs  
40 are in effect. In each year subsequent to the initial rate year, the participating electrical  
41 corporation shall include in its annual update filing a report that provides a description  
42 of how the participating electrical corporation performed under each metric in the  
43 previous year, and identify any extraordinary events that adversely impacted its  
44 performance. For each performance metric, as reported in the annual update filing of a  
45 participating electrical corporation, where the annual average performance actually  
46 achieved by the participating electrical corporation is superior to the rolling average for  
47 the five-year period ending the year preceding the historical rate year by fifteen percent  
48 or more, then the allowable return on equity shall be increased by five one-hundredths of  
49 one percentage point. For each performance metric, as reported in an annual update filing  
50 of a participating electrical corporation, where the annual average performance actually  
51 achieved is inferior to the rolling average for the five-year period ending the year

52 preceding the historical rate year by fifteen percent or more, then the allowable return on  
53 equity shall be reduced by five one-hundredths of one percentage point. The allowable  
54 return on equity shall not be otherwise adjusted on account of these or any other  
55 performance metrics. These performance metrics shall be calculated and reported by the  
56 participating electrical corporation in a manner consistent with the methodology that the  
57 participating electrical corporation used for the five-year period ending December 31,  
58 2015. At the conclusion of the performance-based rate proceeding initiated under section  
59 393.1530, the commission shall enter an order approving financial penalties or financial  
60 incentives in accordance with this subsection. The commission-approved financial  
61 penalties or incentives shall be applied as adjustments to the return on equity applicable  
62 to the historical rate year to be reflected in the reconciliation of costs provided for under  
63 section 393.1530. Nothing in this section shall authorize the commission to increase,  
64 reduce, or otherwise adjust the financial penalties or incentives established under this  
65 subsection. All financial penalties and incentives shall operate symmetrically and shall be  
66 expressed as an addition or subtraction of five one-hundredths of one percentage point to  
67 be applied to the return on equity for each of the respective categories identified subsection  
68 2 of this section. In no event shall the aggregate of the financial incentives or penalties  
69 affect a participating electrical corporation's authorized return by more than two-tenths  
70 of one percentage point in any year, and any penalty or incentive shall not be used or  
71 applied to periods beyond the historical rate year. No incentive or penalty, or portion  
72 thereof, may be carried over for application in future periods.

393.1525. 1. Notwithstanding any provision of chapter 386 or chapter 393 to the  
2 contrary, an electrical corporation may become a participating electrical corporation  
3 seeking to recover its cost of service through performance-based rate tariffs by filing such  
4 tariffs with the commission. Such tariffs shall be approved by the commission, subject to  
5 the rate limitations set forth under section 393.1540. The commission order approving the  
6 performance-based rate tariff and initial rates shall specify the cost and revenue  
7 components that form the basis for establishing just and reasonable rates charged to  
8 customers with sufficient specificity to operate in a standardized, formulaic manner and  
9 be updated annually with transparent information that reflects the electrical corporation's  
10 actual, prudently incurred cost of service to be recovered during the applicable rate year.  
11 The commission shall have authority to approve adjustments to such performance-based  
12 rate tariffs only upon finding, after a hearing supported by competent and substantial  
13 evidence, that such performance-based rate tariffs do not meet the requirements of sections  
14 393.1500 to 393.1575, or that such performance-based rate tariffs seek to recover  
15 imprudently incurred costs. A participating electrical corporation that serves two hundred

16 thousand or more Missouri electric customers, as of December 31, 2015, and recovers fuel  
17 and purchased power costs through the use of a rate adjustment mechanism established  
18 under subsection 1 of section 386.266, shall be required to recover costs previously  
19 recoverable under that rate adjustment mechanism through its performance-based rate  
20 tariffs consistent with the requirements of section 393.1545, and the rate adjustment  
21 mechanism shall be suspended while the participating electrical corporation's  
22 performance-based rates are in effect. A participating electrical corporation that serves  
23 fewer than two hundred thousand Missouri electric customers and recovers fuel and  
24 purchased power costs through the use of a rate adjustment mechanism established under  
25 subsection 1 of section 386.266 shall have the option of continuing to utilize that rate  
26 adjustment mechanism in addition to the performance-based rate mechanism provided for  
27 in this section; and, starting with its initial performance-based rate tariff filing under this  
28 section, it shall be relieved of its obligation imposed under subsection 1 of section 386.266  
29 to make periodic general rate filings in order to retain its rate adjustment mechanism until  
30 the expiration of five years following the termination of its participating electrical  
31 corporation status. A participating electrical corporation may elect to suspend the  
32 operation of any other rate adjustment mechanisms and include associated recoveries  
33 within its performance base rate, but shall not be required to suspend any rate adjustment  
34 mechanisms other than those operating under subsection 1 of section 386.266 in accordance  
35 with this section. If a participating electrical corporation maintains an existing rate  
36 adjustment mechanism and does not elect to suspend such a mechanism while  
37 performance-based rates are in effect, then the commission shall ensure that all costs and  
38 revenues associated with such rate adjustment mechanism remain unbundled and are  
39 excluded from performance-based rate calculations.

40 2. If the participating electrical corporation, prior to the effective date of this  
41 section, filed tariffs with the commission under section 393.150 requesting a general  
42 increase in rates, and commission approval of the tariffs is still pending when the  
43 participating electrical corporation makes its initial performance-based rate tariff filing,  
44 the tariffs filed under section 393.150 shall be deemed withdrawn by the participating  
45 electrical corporation upon its initial filing under this section, and the commission shall  
46 dismiss with prejudice any docket that had been initiated to investigate such proposed  
47 tariffs and rates, and such tariffs and the record related to such tariffs shall not be the  
48 subject of any further hearing, investigation, or proceeding of any kind. Performance-  
49 based rates established under this section shall be applicable to all customers, except  
50 customers charged rates established under section 393.1580. When a participating  
51 electrical corporation files its performance-based rate tariffs, the commission shall conduct

52 an investigation of the proposed tariffs as provided for in this section. Upon approval, the  
53 performance-based rate tariffs shall remain in effect at the discretion of the participating  
54 electrical corporation subject to the requirements of section 393.1555. The performance-  
55 based rate tariffs approved by the commission shall adhere to the following requirements:

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

60 (2) Reflect the participating electrical corporation's actual year-end capital  
61 structure for the historical rate year. A participating electrical corporation shall not be  
62 obligated to utilize a more highly leveraged capital structure, or otherwise be penalized,  
63 for its ability to recover costs through performance-based rates. So long as the electrical  
64 corporation maintains a capital structure that includes equity capital of no greater than  
65 fifty-three percent and no lower than forty-seven percent of total capitalization, the  
66 participating electrical corporation's capital structure shall be presumed prudent and used  
67 to set rates for all purposes set forth in this section. If the capital structure falls outside of  
68 a range of fifty-three percent to forty-seven percent equity, the commission may investigate  
69 the prudence of the capital structure and adjust it, as applicable, for the purposes of  
70 establishing cost of service in a manner consistent with the standard it has historically used  
71 to assess utility management prudence. The fact that a participating electrical  
72 corporation's equity capital is higher than fifty-three percent or lower than forty-seven  
73 percent of total capitalization shall not constitute evidence of imprudence;

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

76 (4) Include the following ratemaking adjustments for the purpose of setting  
77 prospective rates:

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

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

81 (c) Establishment of rates based on actual billing determinants, as generally  
82 reflected in the electrical corporation's FERC Form 1 for the historical rate year; provided  
83 however, that a participating electrical corporation shall be permitted to adjust billing  
84 units used to set rates for the rate year based on weather-normalized billing determinants  
85 using a weather normalization methodology consistent with the approach previously relied  
86 upon by the commission to set rates for the participating electrical corporation in its most  
87 recent general rate proceeding prior to the filing of performance-based rate tariffs. If a

88 participating electrical corporation uses weather-normalized billing units, it shall also  
89 adjust net fuel and purchased power to reflect net purchase and sales volumes, in  
90 megawatt-hours, equal to the amount of the retail volume weather normalization amount;  
91 this volume adjustment to net purchases and sales shall be priced at the average price for  
92 the unadjusted net purchases and sales as calculated based on data reported in the  
93 electrical corporation's FERC Form 1 for the historical rate year;

94 (d) Recovery of nuclear refueling costs, including all outage related costs, provided  
95 a participating electrical corporation may elect to recover nuclear refueling costs over a  
96 period equal to the anticipated interval between refueling outages; or, if the participating  
97 electrical corporation utilizes the deferral method to account for operations and  
98 maintenance expenses incurred in support of nuclear refueling outages, the participating  
99 electrical corporation may recover such costs by amortizing them evenly on a monthly  
100 basis over the unit's operating cycle until the next scheduled outage;

101 (e) Interest accrued on customer deposits using the commission approved interest  
102 rate;

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

112 (g) Recovery of any foregone margin experienced by the participating electrical  
113 corporation during the period between the effective date of rates set under section 393.1580  
114 and the effective date of rates established under this section. For the purposes of this  
115 section, the forgone margin shall be measured as the difference between:

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

121 b. The revenue actually received from those customers, during the period between  
122 the effective date of rates set under section 393.1580 and the effective date of the rates  
123 established under this section adjusted to reflect any differences in net energy costs

124 allocated to other customers directly resulting from the reduction in load. Recovery under  
125 this paragraph shall begin at the time initial performance-based rates under this section  
126 become effective, and an estimate shall be used to set initial rates in order provide for  
127 recovery during the first period rates are in effect. Any remainder or over-collection shall  
128 be recovered or credited as part of the first reconciliation under section 393.1530;

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

136 (i) For a participating electrical corporation whose FERC Form 1 does not reflect  
137 cost of service information that is specific solely to Missouri electric jurisdictional  
138 operations, adjustments to such FERC Form 1 information shall be made consistent with  
139 the approach adopted by the commission in the electrical corporation's most recently  
140 completed general rate proceeding under section 393.150, as necessary to conform the  
141 FERC Form 1 information to Missouri electric jurisdictional operations. Adjustments  
142 made under this paragraph shall be consistent with the intended operation of performance-  
143 based rates as set forth in subdivision (3) of subsection 2 of section 393.1505;

144 (j) Adjustments necessary to recognize established regulatory accounting treatment  
145 adopted in the electrical corporation's most recently concluded general rate proceeding  
146 prior to the adoption of sections 393.1500 to 393.1575 for participating electrical  
147 corporations by the commission for pension expense, other post-employment benefits, and  
148 Financial Accounting Standards Board Interpretation Number 48. Any established cost  
149 tracker, or similar accounting treatment, established by the commission for a participating  
150 electrical corporation prior to the adoption of sections 393.1500 to 393.1575 for the specific  
151 accounting items identified in this paragraph shall continue to be recognized during the  
152 operation of sections 393.1500 to 393.1575;

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

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

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

160 (n) Adjustments necessary to correct errors or accounting mistakes in FERC Form  
161 1 or the proposed revenue requirement;

162 (5) Exclude from recovery the following:

163 (a) All lobbying, charitable donations, and institutional advertising expenses;  
164 provided however, that dues or contributions to industry or academic associations and  
165 institutions that provide educational, research, and informational services concerning  
166 energy policy, technology, and best practices shall be recoverable to the extent reasonable  
167 in amount and prudently incurred. For the purposes of this paragraph, institutional  
168 advertising shall not include general advertising, and the expenses associated with general  
169 advertising and other non-institutional advertising are recoverable so long as they are  
170 prudently incurred;

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

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

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

178 (6) Provide for the reconciliations described in section 393.1530.

179 3. The electrical corporation shall file, together with its tariff, final data based on  
180 its FERC Form 1 for the historical rate year which is the basis of its initial performance-  
181 based rate tariff filing that shall set the revenue requirement used to set initial  
182 performance-based tariff rates. Nothing in this section is intended to allow costs that are  
183 not otherwise recoverable to be recoverable by virtue of inclusion in FERC Form 1.

184 4. After the participating electrical corporation files its proposed initial  
185 performance-based rate tariffs under this section, the commission shall initiate a docket  
186 to review the filing. The participating electrical corporation shall submit prefiled direct  
187 testimony supporting its proposed performance-based rate tariffs. The participating  
188 electrical corporation shall explain in its direct testimony why any rate increase or decrease  
189 is reasonable and appropriate, and further provide an explanation of how FERC 1 values  
190 are reflected in the performance-based rate tariffs and proposed revenue requirement.  
191 The participating electrical corporation shall submit with its initial direct testimony, and  
192 make available to the commission, its staff, and intervenors schedules and workpapers in  
193 native format to assist parties with reviewing the proposed revenue requirement and  
194 operation of the tariffs. The filing of a performance-based rate tariff shall not limit the  
195 commission's authority to inspect the books and records of the participating electrical

196 corporation. The commission shall enter an order approving, or approving as modified,  
197 the initial performance-based tariffs, including the initial rates, within two hundred and  
198 forty-four days after the date on which the tariff was filed. The commission shall approve  
199 the performance-based rate tariffs upon its review of the filing and finding that such  
200 performance-based rate tariffs meet the requirements of sections 393.1500 to 393.1575.  
201 The commission may approve adjustments to such performance-based rate tariffs only  
202 upon finding, after hearing and supported by competent and substantial evidence, that  
203 such performance-based rate tariffs do not meet the requirements of sections 393.1500 to  
204 393.1575, or that such performance-based rate tariffs seek to recover costs that have been  
205 imprudently incurred. In assessing prudence, the commission shall employ the standards  
206 it has historically used in proceedings under which a review of a general rate increase is  
207 considered. The commission shall establish a procedural schedule that requires all parties  
208 objecting to any portion of the participating electrical corporation's filing to file prefiled  
209 rebuttal testimony and other documentary evidence. The commission shall also allow  
210 parties other than the participating electrical corporation to respond to each other through  
211 prefiled cross-rebuttal testimony, and the participating electrical corporation shall be  
212 permitted to respond to all other parties' prefiled testimony through the filing of prefiled  
213 surrebuttal testimony. Notwithstanding the two hundred and forty-four day limitation,  
214 if a participating electrical corporation makes its initial performance-based rate tariff  
215 filing after April first but before May first, the commission shall expedite consideration of  
216 the application to ensure that initial rates are in effect no later than January first of the  
217 year following the filing year, and adjust the procedural schedule as necessary. Recovery  
218 of the participating electrical corporation's prudently incurred expenses related to the  
219 commission proceedings initiated under this section and section 393.1530 shall be  
220 permitted, and all prudently incurred regulatory, expert, legal, and other expenses  
221 associated with these commission proceedings shall be recoverable absent a showing of  
222 imprudence, after hearing, on the basis of competent and substantial evidence. The  
223 commission may conduct any hearings in a manner consistent with established commission  
224 practice and procedure. Aside from corrections to mistakes in earlier-filed testimony, after  
225 the participating electrical corporation files surrebuttal testimony, no further prefiled  
226 testimony shall be received. Once approved, performance-based rate tariffs shall be  
227 updated annually consistent with the requirements set forth in section 393.1530, and a  
228 participating electrical corporation shall not adjust rates without approval by the  
229 commission.

230           5. To the extent that the participating electrical corporation's rates set in its most  
231 recently concluded general rate proceeding under section 393.150 are not based on the

232 average and excess methodology, the performance-based rates resulting from the  
233 participating electrical corporation's revenue requirement shall be calculated in a manner  
234 that limits increases to customers receiving service under the participating electrical  
235 corporation's large power service rate schedule to no more than the class cost of service  
236 indicated by allocating production costs consistent with the average and excess allocation  
237 methodology. Further, where any participating electrical corporation's existing large  
238 power service rate design is based on hours of use energy rate components, and where the  
239 last energy rate block for the summer and winter rate periods is higher than the parallel  
240 generation rate for the electrical corporation as adjusted for losses, the last energy rate  
241 block for both summer and winter rate periods shall be set at the parallel generation rate  
242 for the electrical corporation, adjusted for losses specific to the service provided. In  
243 addition, where any participating electrical corporation's existing large power service rate  
244 design is based on other than hours of use rate components, the energy rate for both  
245 summer and winter rate periods shall be reduced by ten percent of the difference between  
246 such rates and the parallel generation rate for the electrical corporation, adjusted for losses  
247 specific to the service provided. After calculating the impact of rate design changes as it  
248 applies to large power service customers, any difference in large power service customers'  
249 revenue determination due to the application of the provisions of this subsection shall be  
250 allocated equally to all customer classes other than large power service and allocated  
251 equally among all rate elements within each class. For the purposes of this subsection, the  
252 participating electrical corporation shall utilize the billing determinants and other cost of  
253 service information from the participating electrical corporation's most recently concluded  
254 general rate proceeding to calculate the change in class cost of service responsibility  
255 applicable to all other classes resulting from the implementation of the average and excess  
256 methodology. Incorporation of the average and excess methodology, and the operation of  
257 the rate established under section 393.1580, shall be implemented in a manner that is  
258 revenue neutral to the participating electrical corporation. The resulting rate design shall  
259 then be utilized as the base on which the revenue requirement increase or decrease shall  
260 be allocated equally to all customer classes and allocated equally among all rate elements  
261 within each class. Rates applicable to customer classes under section 393.1580 shall be set  
262 in accordance with that section.

393.1530. 1. Beginning on or before May first of the year subsequent to the year  
2 in which the performance-based rates are first filed with the commission under section  
3 393.1525, and continuing annually thereafter, the participating electrical corporation shall  
4 make an annual filing with the commission to update the inputs for the performance-based  
5 rate tariffs established under section 393.1525 in order to establish new performance-based

6 rates for the upcoming rate year. The first update of performance-based rates shall be  
7 filed notwithstanding the fact that a participating electrical corporation may have filed for  
8 approval of tariffs under section 393.1525 and the commission has not yet issued a final  
9 order approving the filed tariffs; provided however, that the participating electrical  
10 corporation shall be permitted to make changes as necessary to reflect in its subsequent  
11 performance-based rate tariff filing actions and decisions made by the commission in its  
12 initial performance-based rate tariff filing. Annual update filings shall continue each year  
13 until such time as a participating electrical corporation's performance-based rate tariffs  
14 terminate. The annual update filing shall also include the reconciliation of the cost of  
15 service, performance-related metric adjustments, if any, under subsection 3 of section  
16 393.1520, the revenue test provided for in this section, and the updated return on equity  
17 calculated under subsection 1 section 393.1520, and shall be subject to the operation of the  
18 rate increase limitations imposed under section 393.1540. The annual update filing shall  
19 conform to the following:

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

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

42 between the revenue requirement for the period in which performance-based rates were  
43 in effect and, for the portion of the year prior to effective performance-based rates, the  
44 most recently established revenue requirement resulting from a general rate proceeding  
45 approved by the commission in effect under section 393.150, excluding any portion of  
46 revenue requirement allocated to customers eligible for service under section 393.1580.  
47 The first reconciliation occurring under this section is not intended to provide for the  
48 recovery of costs previously excluded from rates based on a prior commission order finding  
49 of imprudence. Each reconciliation shall be certified by the participating electrical  
50 corporation management.

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

53 (a) If the participating electrical corporation's actual earned rate of return on  
54 equity for the historical rate year, after taxes, is two-tenths of one percentage point above  
55 the rate of return on equity calculated under section 393.1520, including the effect of any  
56 performance metrics as applicable, for the period subject to reconciliation, then the  
57 participating electrical corporation shall apply a credit through the performance-based  
58 rates that reflects an amount equal to the value of that portion of the earned rate of return  
59 on equity that is higher than two-tenths of one percentage point above the rate of return  
60 on equity calculated under section 393.1520. If the participating electrical corporation  
61 earned rate of return on equity for the historical rate year, after taxes, is lower than two-  
62 tenths of one percentage point below the return on equity calculated under section  
63 393.1520, including the effect of any performance metrics as applicable, then the  
64 participating electrical corporation shall apply a charge through the performance-based  
65 rate that reflects an amount equal to the value of that portion of the earned rate of return  
66 on equity that is lower than two-tenths of one percentage point below the rate of return on  
67 equity calculated under section 393.1520. For the purposes of this paragraph, the actual  
68 return on equity shall be calculated using historical rate year data and will be equal to the  
69 actual return divided by the actual average equity. For purposes of this paragraph, the  
70 actual return shall be calculated by adding actual billed retail customer revenues for the  
71 historical rate year to the reconciliation amount calculated in subdivision (2) of this  
72 subsection, and then subtracting the actual costs based on FERC Form 1 for the historical  
73 rate year, including the same accounting adjustments to FERC Form 1 costs used to  
74 establish the revenue requirement and set rates under the operation of this section and  
75 section 393.1525; provided however, no weather normalization adjustments shall apply.  
76 Actual retail customer revenues shall include the amortizations used to set rates under this  
77 section for the historical rate year. Revenues received from customers taking service under

78 section 393.1580 shall be excluded from the calculation of actual retail customer revenues  
79 for purposes of this paragraph. For purposes of this paragraph, the actual average equity  
80 shall be calculated as the product of the average rate base and equity percentage used for  
81 the reconciliation amount in subdivision (2) of this subsection; and

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

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

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

93 2. In the proceeding to review a participating electrical corporation's annual  
94 update filing, the commission shall have the authority to review the prudence of the actual  
95 costs incurred by the participating electrical corporation to be used in the reconciliation  
96 of cost of service as prescribed by subdivision (2) of subsection 1 of this section. The  
97 commission shall further have the authority to make any adjustments necessary to correct  
98 accounting mistakes and errors that may appear in the FERC Form 1 or the participating  
99 electrical corporation's proposed revenue requirement. The commission shall have the  
100 authority to receive evidence concerning prudence of the actual cost of service and  
101 accuracy of revenue requirement calculations consistent with the tariffs and protocols  
102 established in accordance with section 393.1525, and hold an evidentiary hearing to  
103 consider evidence from interested parties consistent with the time requirements provided  
104 for under this section. The commission may approve adjustments to such performance-  
105 based rates filed by the participating electrical corporation only upon finding, after  
106 hearing and supported by competent and substantial evidence, that such performance-  
107 based rates do not meet the requirements sections 393.1500 to 393.1575 or that such  
108 performance-based rates seek to recover costs that have been imprudently incurred. In  
109 assessing prudence, the commission shall employ the standard it has historically used in  
110 proceedings under which a review of a general rate increase is considered. The commission  
111 may also approve adjustments to reflect the approved financial penalties or incentives for  
112 the performance metrics provided for under section 393.1520. The commission shall  
113 provide reasonable notice of any procedural schedule and evidentiary hearing to interested

114 parties. The participating electrical corporation shall have the opportunity to rebut the  
115 evidence in prefiled surrebuttal testimony and exhibits. Discovery shall be allowed  
116 consistent with the commission's rules governing the conduct of commission proceedings.  
117 The commission shall not, however, have the authority in a proceeding under this section  
118 to consider or order any changes to the structure or protocols of the performance-based  
119 rate approved under section 393.1535. In a proceeding under this section, the commission  
120 shall enter its order no later than the earlier of two hundred ten days after the  
121 participating electrical corporation's filing of its annual update of cost inputs to the  
122 performance-based rate or December first, with rates to be effective on the first billing day  
123 of the calendar year after the year in which the filing was made. The commission shall  
124 establish a procedural schedule that requires all parties objecting to any portion of the  
125 applicant's proposal to file prefiled rebuttal testimony and other documentary evidence.  
126 The commission shall also allow parties, other than the participating electrical corporation,  
127 to respond to each other through prefiled cross-rebuttal testimony, and the participating  
128 electrical corporation shall be permitted to respond to all parties' prefiled testimony  
129 through the filing of prefiled surrebuttal testimony. Aside from corrections of mistakes in  
130 earlier-filed testimony, after the participating electrical corporation files surrebuttal  
131 testimony, no further prefiled testimony shall be received. If no objection to the  
132 participating electrical corporation's annual update filing is received, the commission may  
133 dispense with the remainder of the procedural schedule and enter an order approving the  
134 updated rates. The rates approved by the commission for an applicable rate year shall be  
135 final upon entry of the commission's order and shall not be subject to reopening,  
136 reexamination, or collateral attack in any other proceeding before the commission or the  
137 courts; provided however, that nothing in this section shall prohibit a party from seeking  
138 rehearing and judicial review upon compliance with sections 386.500 and 386.510.

139 3. Performance-based rate tariffs approved under this section shall provide for  
140 equal percentage changes in customer rates, positive or negative, consistent with the rate  
141 design used in the participating electrical corporation's initial performance-based rate  
142 tariffs approved under section 393.1525, with the exception of customers qualifying for  
143 rates under section 393.1580, until such time as a new rate design is approved by the  
144 commission consistent with the requirements of section 393.1535.

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

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

393.1540. 1. Performance-based rates shall be subject to both an annual increase  
2 limitation, and also an average annual increase limitation in determining revenue  
3 requirement increases for all customers in the aggregate whose rates are set under sections  
4 393.1500 to 393.1575, which shall be determined exclusive of revenue neutral rate design  
5 changes. For the purposes of this section, the annual percentage increases shall be  
6 calculated by comparing the revenue requirement, including any reconciliation amount  
7 included in rates under section 393.1530, in effect for the filing year, with what the revenue  
8 requirement, including any reconciliation amount included in rates under section 393.1530,  
9 used to calculate rates for the rate year absent the applicability of any increase limitation.  
10 For each year in which performance-based rates are in effect, the participating electrical  
11 corporation shall adhere to the increase limitations provided for under this section, and to  
12 the extent a revenue requirement increase would exceed the limitations for the rate year,  
13 the participating corporation shall reduce the revenue requirement in order to bring

14 prospective revenue requirement increases under the increase limitations set forth in this  
15 section. Any amount excluded from a participating electrical corporation's revenue  
16 requirement due to a rate increase limitation applied to a rate year shall be carried  
17 forward and recovered in the subsequent rate year by inclusion of such amount in the  
18 participating electrical corporation's revenue requirement in the annual update filing  
19 made during the rate year affected by the limitation.

20       2. Upon the filing of the initial performance-based rate tariffs under section  
21 393.1525, the participating electrical corporation's filing with the commission shall reflect  
22 the limitations and related requirements set forth in this section. Thereafter, each  
23 participating electrical corporation shall file an annual report with the commission in its  
24 annual update filing that sets forth the annual and average annual increase in the revenue  
25 requirement used to set retail electric service rates for customers subject to performance-  
26 based rates on an aggregated basis. Annual increases of the revenue requirement used to  
27 set rates shall be limited to no more than two percent for first two calendar years during  
28 which performance-based rates are in effect. Thereafter, until the operation of this section  
29 is terminated by operation of law or voluntary termination election of a participating  
30 electrical corporation, the annual increase limitation shall equal four and seventy-five-  
31 hundredths percent. In calculating the annual increase limitation applicable to the initial  
32 performance-based rate tariffs and rates, the participating electrical corporation shall  
33 utilize the revenue requirement used to set retail electric service rates pursuant to the last  
34 general change in rates approved by the commission together with net fuel and purchased  
35 power collected under subsection 1 of section 386.266 during the twelve months following  
36 the effective date of the change in rates as base revenue requirement. If at the time initial  
37 performance-based rate tariffs are filed under section 393.1525, a full twelve months since  
38 the last change in rates has not yet occurred, the participating electrical corporation may  
39 project the net fuel and purchased power for the purpose of establishing the base revenue  
40 requirement used in calculating the increase limitation, to be updated with actual net fuel  
41 and purchased power recoveries prior the commission's final order. If the exclusion set  
42 forth in subdivision (2) of subsection 3 of this section applies, the participating electrical  
43 corporation shall not include net fuel and purchased power in the base revenue  
44 requirement used to calculate any increase limitation. Additionally, the average annual  
45 increase over the duration of the participating electrical corporation performance-based  
46 rate tariff shall not exceed an average annual increase of three and one-half percent. The  
47 average annual increase calculation shall be calculated and reported annually by the  
48 participating electrical corporation. For the purposes of calculating an average annual  
49 increase under this section, the annual periods included in the average shall begin with the

50 effective date of the last general change in rates approved by the commission prior to the  
51 adoption of performance-based rates, and shall utilize the revenue requirement used to set  
52 retail electric service rates pursuant to the last general change in rates approved by the  
53 commission together with net fuel and purchased power collected under section 386.266  
54 during the twelve months following the effective date of the change in rates as the base  
55 revenue requirement, and include each revenue requirement used to set performance-  
56 based rates for retail electric service under this section in effect for all years in which  
57 performance-based rates are in effect as well as the upcoming rate year. If at the time  
58 initial performance-based rate tariffs are filed under section 393.1525, a full twelve months  
59 since the last change in rates has not yet occurred, the participating electrical corporation  
60 may project the net fuel and purchased power for the purpose of establishing the base  
61 revenue requirement utilized in calculating the average annual increase limitation, to be  
62 updated with actual net fuel and purchased power recoveries prior the commission's final  
63 order. If the exclusion set forth in subdivision (2) of subsection 3 of this section applies, the  
64 participating electrical corporations shall not include net fuel and purchased power in the  
65 calculation of the average annual increase limitation for any period included in the  
66 calculation.

67       **3. At the time of a participating electrical corporation's initial performance-based**  
68 **rate filing or any subsequent annual update filing, the participating electrical corporation**  
69 **shall analyze the revenue requirement increase to be proposed and determine if the**  
70 **increase exceeds the limitations set forth in this section, and to the extent the limitation is**  
71 **exceeded, the participating electrical corporation shall reduce the revenue requirement in**  
72 **an amount sufficient to bring any increase under the applicable increase limitation**  
73 **consistent with this section. Notwithstanding the application of an increase limitation, all**  
74 **costs are subject to a prudence review in the year in which they are incurred, and after the**  
75 **commission enters a final order for any change in rates made pursuant to this section, the**  
76 **determination of the prudence of the deferred or amortized costs shall be final and shall**  
77 **not be subject to reopening, reexamining, or collateral attack in any other proceeding;**  
78 **provided however, that nothing in this section shall prohibit a party from seeking**  
79 **rehearing and judicial review upon compliance with sections 386.500 and 386.510. Upon**  
80 **the issuance of a final order by the commission in a rate proceeding, the participating**  
81 **electrical corporation shall calculate the final revenue requirement reduction required to**  
82 **meet any applicable increase limitations set forth in this section, and disclose the results**  
83 **of that calculation in a notice filed with the commission within seven days of receipt of**  
84 **service by a participating electrical corporation of the commission's final order. Carrying**  
85 **costs at a rate equal to the participating electrical corporation's cost of short term debt**

86 shall be applied to any balance carried forward by operation of this subsection. For  
87 purposes of this subsection, the following exclusions shall apply to the calculation of any  
88 revenue requirement increase limitation:

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

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

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

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

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

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

103 (f) Amounts associated with force majeure events; and

104 (2) For participating electrical corporations with less than two hundred thousand  
105 Missouri electric customers, as of December 31, 2015, the total amount paid for electric  
106 service shall not include any costs that are recovered through in a rate adjustment  
107 mechanism approved under subsection 1 of section 386.266.

393.1545. 1. Any rate adjustment mechanism authorized under subsection 1 of  
2 section 386.266 shall be suspended by a participating electrical corporation consistent with  
3 the requirements set forth in section 393.1525, provided that the mechanism shall survive  
4 until such time as any costs and revenues accumulated prior to the effective date of the  
5 performance-based rates are fully recovered over a transition period not to exceed twenty-  
6 four months. During the transition period, the participating electrical corporation shall  
7 account for all revenues and costs and make all necessary ratemaking adjustments to  
8 prevent any over or under recovery of any net fuel and purchased power costs prudently  
9 incurred during any period affected by the suspension of the rate adjustment mechanism.  
10 Accumulation of costs and revenues to be included in a rate adjustment mechanism  
11 operating under subsection 1 of section 386.266 shall be suspended as of December thirty-  
12 first of the year prior to the initial rate year. Any increase limitation calculated under  
13 section 939.1540 shall include any charges that are recovered through a rate adjustment  
14 mechanism during the transition period. If for any reason performance-based rate tariffs

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

38       2. Any rate adjustment mechanism that is suspended by voluntary election of a  
39 participating electrical corporation under section 393.1525, other than those operating  
40 under subsection 1 of section 386.266, shall be transitioned into performance-based rate  
41 recovery in a manner that provides for complete recovery of costs and prevents double  
42 recovery of costs from customers. If a participating electrical corporation proposes  
43 suspension of any rate adjustment mechanism, other than those operating under subsection  
44 1 of section 386.266, the electrical corporation shall submit a transition plan with its initial  
45 performance-based rate tariffs that provides for cost recovery transition substantially  
46 consistent with requirements subsection 1 of this section.

47       3. Regulatory trackers adopted or used by the commission in the participating  
48 electrical corporation's most recently concluded general rate proceeding prior to the  
49 initiation of performance-based rate tariffs for the participating electric utility with respect  
50 to pension expense, other post-employment benefits, and costs related to Financial

51 **Accounting Standards Board Interpretation No. 48 shall continue to be recognized for**  
52 **ratemaking purposes pursuant to performance-based rate tariffs for participating**  
53 **electrical corporations. The prospective operation of all other commission approved**  
54 **regulatory trackers shall be suspended with the effective date of the initial performance-**  
55 **based rate tariff for a participating electrical corporation that filed the performance-based**  
56 **rate tariff. Thereafter, all costs and revenues that would have been included previously**  
57 **in the suspended trackers shall be included in the determination of the cost of service used**  
58 **to set rates under sections 393.1500 to 393.1575. Any historical balances remaining from**  
59 **a suspended regulatory tracker shall continue to be recognized and recovered in a**  
60 **participating electrical corporation's performance-based rate tariffs consistent with the**  
61 **amortization period previously approved by the commission in the participating electrical**  
62 **corporation's most recently concluded general rate proceeding. If special regulatory**  
63 **accounting authority has been requested but not approved in a general rate proceeding**  
64 **prior to the adoption of performance-based rates, the participating electrical corporation**  
65 **may request inclusion of any associated balances or amounts at the time it makes its initial**  
66 **filing under section 393.1525; provided however, the commission has the discretion to**  
67 **approve or deny the request for good cause. Upon termination of any performance-based**  
68 **rate tariffs, any trackers, rate adjustment mechanisms including those effective under**  
69 **section 386.266, regulatory assets or liabilities, and accounting authority authorization, or**  
70 **other special regulatory accounting treatment existing prior to approval of the effective**  
71 **date of the participating electrical corporation's initial performance-based rate tariffs shall**  
72 **be automatically reactivated and the electrical corporation shall account for them in the**  
73 **same manner as was previously approved by the commission in the participating electrical**  
74 **corporation's most recently concluded general rate proceeding prior to the adoption of**  
75 **performance-based rate tariffs; provided however, that such commission action shall be**  
76 **consistent with the provisions of section 386.266 in effect at the time of reactivation.**

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

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

393.1555. 1. Sections 393.1500 to 393.1575 may be implemented by electrical  
2 corporations on and after its effective date regardless of whether the commission has  
3 enacted any rules related to it. The deadlines and time periods under sections 393.1500 to  
4 393.1575 are mandatory, and any tariffs filed, rates proposed, or regulatory relief  
5 requested shall take effect by operation of law if not acted upon by the commission within  
6 the time periods specified. Participating electrical corporations are required to adhere to  
7 the time periods and procedural requirements under sections 393.1500 to 393.1575, and  
8 any change in effective tariffs or rates shall reflect an effective date consistent with the time  
9 limits set forth in sections 393.1500 to 393.1575. The commission is not required to issue  
10 an order suspending any tariffs or rates filed under sections 393.1500 to 393.1575 during  
11 the pendency of review. A failure to act on any tariff, rate, or regulatory relief requested  
12 shall result in the tariff, rate, or regulatory relief requested becoming effective by operation  
13 of law and the commission shall no longer retain authority to suspend or otherwise  
14 interfere with the operation of the effective tariffs. The commission may waive review or  
15 audit of any tariff filing or change in any performance-based rate tariffs if the commission  
16 determines that such action is in the interest of the public; provided however, that any  
17 annual update filing effectuating changes to performance-based rates under section  
18 393.1530 shall not take effect until January first following an update filing. In reviewing

19 any application, petition, or tariff filed under sections 393.1500 to 393.1575, the  
20 commission shall only have the authority to act upon such filing in a manner consistent  
21 with the requirements and intent of such sections.

22 **2. If a participating electrical corporation is acquired, merged with, or otherwise**  
23 **subject to a change in corporate control or ownership, the operation of performance-based**  
24 **rate tariffs shall remain in effect. In no event shall the commission require a participating**  
25 **electrical corporation to withdraw from participating in performance-based rates as a**  
26 **condition of approval for an acquisition, merger, or other change in corporate ownership**  
27 **or control.**

28 **3. A participating electrical corporation shall be permitted to propose changes to**  
29 **the performance-based rate structure or protocols subsequent to the approval of the initial**  
30 **tariffs and rates, and the review of the proposed changes shall be consistent with the**  
31 **commission's practice for approving electrical corporation tariffs. Nothing in this section**  
32 **is intended to limit the commission's authority under chapter 386 and chapter 393 to**  
33 **review or investigate a participating electrical corporation's performance-based rate tariff,**  
34 **provided that any investigation, changes or other exercise of authority shall be consistent**  
35 **with the requirements of sections 393.1500 to 393.1580. Any change in performance-based**  
36 **rate tariffs shall be prospective, and any change in rates resulting from a tariff change**  
37 **ordered by the commission shall be made at the same time new rates take effect following**  
38 **the commission's next order issued under section 393.1530.**

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

41 **5. A participating electrical corporation shall be permitted to request approval of**  
42 **a new service or tariff and associated rate schedules. If a new service or tariff is proposed**  
43 **and approved by the commission, the commission's final order issued addressing the**  
44 **proposed tariffs shall address the method of recognizing any anticipated or actual revenue**  
45 **contributed to the participating electrical corporation's cost of service. A participating**  
46 **electrical corporation shall be permitted to request commission approval of the**  
47 **cancellation of a service or rate schedule associated with a service that will no longer be**  
48 **provided. If the commission approves the cancellation of a tariff or service or rate**  
49 **schedule associated with a service to no longer be provided, the commission shall address**  
50 **the appropriate method for adjusting performance-based rates to reflect any revenue to**  
51 **no longer be received from the cancelled service. In the event of a new service being added**  
52 **or an existing service or rate schedule being cancelled, the commission shall ensure**  
53 **prudently incurred costs are recovered and that no double recovery occurs, and shall have**

54 the authority to make associated adjustments in a proceeding initiated under sections  
55 393.1525 and 393.1530.

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

393.1560. 1. In the event the electrical corporation ceases to be a participating  
2 electrical corporation for any reason, the rates established while the electrical corporation  
3 was a participating electrical corporation shall remain in effect until such time as new rates  
4 are established under a general change in rates under section 393.150, except as otherwise  
5 provided in this section. All obligations imposed upon a participating electrical  
6 corporation shall cease effective at any time an electrical corporation ceases to be a  
7 participating electrical corporation. At the time the electrical corporation ceases to be a  
8 participating electrical corporation, the electrical corporation shall record a regulatory  
9 asset or liability associated with any reconciliation balance that would have been used in  
10 accordance with sections 393.1500 to 393.1575 to reconcile rates in the event termination  
11 had not occurred through the period ending at the conclusion of the applicable rate year  
12 in which the termination became effective. All unamortized balances shall be included  
13 together with the final reconciliation balance, and included in the associated regulatory  
14 asset or liability by the electrical corporation formerly charging customers rates under  
15 sections 393.1500 to 393.1575. The total outstanding regulatory asset or liability associated  
16 with the final reconciliation shall be recovered or refunded by the electrical corporation  
17 over a twenty-four month period through a bill credit or surcharge, as applicable. During  
18 the twenty-four month period in which any bill credit or surcharge is applied to customer  
19 bills, carrying costs at a rate equal to the participating electrical corporation's cost of short  
20 term debt shall be included. A participating electrical corporation may voluntarily  
21 terminate its performance-based rates at any time, provided that if the participating  
22 electrical corporation voluntarily terminates its performance-based rates, that electrical  
23 corporation shall no longer be permitted to file tariffs under sections 393.1500 to 393.1575.  
24 Upon termination, whether it occurs by operation of law, voluntary action of a  
25 participating electrical corporation, or for any other reason, the rates established under  
26 sections 393.1500 to 393.1575 shall remain in effect until such time as new rates are set  
27 under section 393.150. In addition, if an electrical corporation whose performance-based  
28 rates terminated utilized a rate adjustment mechanism operating under section 386.266  
29 prior to implementing performance-based rates, and if its use of that rate adjustment  
30 mechanism was suspended under subsection 1 of section 393.1525, then the commission  
31 shall approve tariffs reinstating the rate adjustment mechanism, consistent with the

32 provisions of section 386.266 in effect at the time of reinstatement, effective upon  
33 termination of the performance-based rates. In the event of such reinstatement, the  
34 electrical corporation's obligation under subsection 1 of section 386.266 to make periodic  
35 general rate filings in order to retain its rate adjustment mechanism shall require a general  
36 rate proceeding filing no later than forty-eight months following reinstatement of the rate  
37 adjustment mechanism.

38 2. This section shall expire on December 31, 2031.

393.1565. No later than December 31, 2023, the commission shall prepare and file  
2 with the general assembly a report on the impact of performance-based rates on electrical  
3 corporations and their customers. Participating electrical corporations shall cooperate in  
4 good faith to provide the data necessary for the preparation of the report.

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

393.1575. Sections 393.1500 to 393.1555 and sections 393.1565 to 393.1570 shall  
2 expire on December 31, 2026.

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

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

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

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

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

17           (4) "Standard industrial classification", the standard industrial classification as  
18 such classifications are defined in the 1987 edition of the Standard Industrial Classification  
19 Manual as prepared by the Executive Office of the President, Office of Management and  
20 Budget.

21           3. (1) Notwithstanding any other provision of law to the contrary, an aluminum  
22 smelting facility, and the electrical corporation providing electric service to such aluminum  
23 smelting facility, may jointly submit an application to the commission for approval of an  
24 aluminum smelter rate. If the proposed aluminum smelter rate agreed upon by the  
25 electrical corporation and the aluminum smelting facility complies with the requirements  
26 set forth in this section, it shall be deemed a just and reasonable rate.

27           (2) Any such application shall include an executed contract between the aluminum  
28 smelting facility and the electrical corporation that sets forth the rates, duration, and terms  
29 and conditions for service to the aluminum smelting facility subject to the following  
30 requirements:

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

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

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

41           a. The transmission or retail wheeling charges or rates assessed by a third party  
42 service provider; or

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

44           (d) The initial rate per megawatt-hour shall increase by one percent each year, with  
45 the first one percent increase becoming effective beginning with the billing cycle that starts  
46 twelve months after the effective date of the initial tariff; and

47           (e) If the duration of the aluminum smelter rate is longer than five years, beginning  
48 with the first billing cycle in year six after the effective date of the initial tariff and for each  
49 year thereafter, the rate shall be reset to the global average price. If any aluminum

50 smelting facility continues to incur transmission or retail wheeling charges or rates  
51 assessed by a third party service provider, the aluminum smelter rate shall be discounted  
52 to be lower than the global average price in an amount equal to the lesser of:

53       a. The transmission or retail wheeling charges or rates assessed by a third party  
54 service provider; or

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

56

57 However, in any event such rate shall not increase or decrease by more than six percent in  
58 any such annual adjustment; and

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

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

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

72       6. This section shall expire on December 31, 2026.

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

Section C. Notwithstanding the provisions of section 1.140 to the contrary, the  
2 provisions of sections 393.1500 to 393.1580 shall be nonseverable, and if any provision is for  
3 any reason held to be invalid, such decision shall invalidate all of the remaining provisions of  
4 sections 393.1500 to 393.1580.

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