

CCS SS SCS HCS HB 734 -- UTILITIES

The bill modifies provisions relating to utilities.

Under this bill, no political subdivision shall adopt an ordinance, resolution, regulation, code or policy that prohibits, or has the effect of prohibiting, the connection or reconnection of a utility service based upon the type or source of energy to be delivered to an individual customer (Section 67.309, RSMo).

This section provides that in the event that a retail electric supplier is providing service to a structure located within a municipality that was previously a rural area, and the structure is demolished and replaced by a new structure, the retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure (Section 91.025).

Beginning January 1, 2022, for purposes of assessing all real property, excluding land, or tangible personal property associated with a project that uses wind energy directly to generate electricity, 37.5% of the original costs shall be the true property value beginning the year immediately following the year of construction of the property (Section 137.123).

Beginning January 1, 2022, this bill provides that any real and personal property owned by a public utility company that was constructed utilizing financing authorized under Chapter 100 financing shall, upon the transfer of such property to the public utility company, be assessed upon the local tax rolls. Any property consisting of land and buildings shall be assessed pursuant to current law relating to the assessment of such property in general, and all other business or personal property shall be assessed using the methodology provided under Section 137.122. For any real or tangible personal property associated with a generation project which was originally constructed utilizing financing authorized under Chapter 100 for construction, upon the transfer of ownership of such property to a public utility, such property shall be valued and taxed by local authorities having jurisdiction under the provisions of Chapter 137 and any other relevant provisions of law (Sections 153.030 and 153.034).

Currently when an unincorporated sewer subdistrict of a common sewer district has been formed, the board of trustees of the common sewer district shall have the power to issue bonds, and the issuance of such bonds shall require the assent of 4/7 of the voters of the subdistrict on the question. This bill states that as an alternative to such vote, if the subdistrict is a part of a common sewer district located in whole or in part in certain

counties, bonds may be issued for such subdistrict if the question receives the written assent of 3/4 of the customers, as such term is defined in the bill, of the subdistrict (Section 204.569).

Currently, the Public Service Commission can assess no more than 0.25% of the total gross intrastate operating revenues against all utilities subject to the jurisdiction of the Commission for the cost of regulating such utilities. This bill changes the assessment rate to no more than 0.315% of the total gross intrastate operating revenues of such utilities (Section 386.370).

This bill specifies that in the absence of an approved territorial agreement, the municipally owned utility shall apply to the Public Service Commission for an order assigning nonexclusive service territories and concurrently shall provide written notice of the application to other electric service suppliers with electric facilities located within one mile outside of the boundaries of the proposed expanded service territory. In granting the applicant's request, the Commission shall give due regard to territories previously served by the other electric service suppliers and the wasteful duplication of electric service facilities.

Any municipally owned electric utility may extend its electric service territory to include areas where another electric supplier currently is not providing permanent service to a structure. If a rural electric cooperative has existing electric service facilities in the area proposed to be annexed, the majority of the existing developers, landowners, or prospective electric customers may submit a written request to the governing body of the annexing municipality to invoke mandatory good faith negotiations as provided in the bill. These provisions shall also apply in the event an electrical corporation rather than a municipally owned electric utility is providing electric service in the municipality.

The bill changes the term "fair and reasonable compensation" to be 200%, rather than 400%, of gross revenues less gross receipts taxes received by the affected electric service supplier from the 12 month period preceding the approval of the municipality's governing body.

Nothing in this bill shall be construed as otherwise conferring upon the Public Service Commission jurisdiction over the service, rates, financing, or management of any rural electric cooperative or any municipally owned electric utility (Section 386.800).

The Public Service Commission is required to adopt rules for gas corporations to offer a voluntary renewable natural gas program. The Commission shall establish reporting requirements and a process for gas corporations to fully recover incurred costs that are

prudent, just, and reasonable associated with a renewable natural gas program. Such recovery shall not be permitted until the project is operational. Any costs incurred by a gas corporation that are prudent, just, and reasonable shall be recovered by means of an automatic adjustment clause. An affiliate of a gas corporation shall not be prohibited from making a capital investment in a biogas production project if the affiliate is not a public utility as defined in statute (Section 386.895).

This bill states that auxiliary power may be purchased on a wholesale basis, under the applicable tariffs of a regional transmission organization instead of under retail service tariffs filed with the Public Service Commission by an electrical corporation, for use at an electric generation facility located in Cass County, which commenced commercial operations prior to August 28, 2021, and which is operated as an independent power producer. The bill also creates definitions for "auxiliary power" and "independent power producer" (Section 393.106).

Currently, the Public Service Commission may approve a special rate, outside of a general rate proceeding, not based on the cost of service for electrical services provided to certain facilities if the Commission determines that but for the special rate the facility would not commence operations and that the special rate is in the best interest of the state. This bill changes the facilities that qualify for the special rates to include a facility whose primary industry is the processing of primary metals (Section 393.355).

This section specifies that when determining the allocation of an electrical corporation's total revenue requirement among the electrical corporation's customer classes for the ultimate purpose of setting base rates for each customer class, the Public Service Commission shall only consider class cost of service study results that allocate the electrical corporation's production plant costs from nuclear and fossil generating units using the average and excess method or one of the methods of assignment or allocation contained within the National Association of Regulatory Utility Commissioners 1992 manual or a subsequent manual.

This provision expires on August 28, 2031 (Section 393.1620).

The bill allows an electrical corporation to petition the Public Service Commission for a financing order, which is an order from the Commission that authorizes the issuance of securitized utility tariff bonds; the imposition, collection, and periodic adjustments of a securitized utility tariff charge; the creation of securitized utility tariff property; and the sale, assignment, or transfer of securitized utility tariff property to an assignee. A securitized

utility tariff charge shall be used to repay, finance, or refinance energy transition costs or qualified extraordinary costs and financing costs that are charges imposed on and part of all retail customer bills.

The time frame for proceedings on a petition for a financing order are specified in the bill. Judicial review may be had as set forth in law for Commission decisions.

A financing order issued by the Commission shall include elements outlined in the bill.

A financing order issued to an electrical corporation may provide that the creation of the electrical corporation's securitized utility tariff property is conditioned upon, and simultaneous with, the sale or other transfer of the securitized utility tariff property to an assignee and the pledge of the securitized utility tariff property to secure securitized utility tariff bonds.

If a financing order is issued, the electrical corporation shall file a petition or letter at least annually applying the formula-based true-up mechanism requesting administrative approval to make applicable adjustments. The Commission has 30 days from receiving the petition or letter to approve the request or inform the electrical corporation of any mathematical or clerical errors in its calculation.

Once securitized utility tariff bonds are authorized the Commission may not amend, modify, or terminate the financing order by any subsequent action or make changes to securitized utility tariff charges approved in the financing order.

A financing order remains in effect, and securitized utility tariff property under the financing order continues to exist, until securitized utility tariff bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such securitized utility tariff bonds have been covered in full.

The securitized utility tariff bonds issued pursuant to a financing order shall not be considered to be debt of the electrical corporation other than for federal and state income taxes.

No electrical corporation is required to file a petition for a financing order. A decision not to file for a financing order shall not be admissible in any Commission proceeding or otherwise utilized or relied on by the Commission in certain proceedings.

Debt reflected by the securitized utility tariff bonds shall not be

utilized or considered in establishing the electrical corporation's capital structure used to determine any regulatory matter.

The Commission may not, directly or indirectly, consider the existence of securitized utility tariff bonds or the potential use of securitized utility tariff bond financing proceeds in determining the electrical corporation's authorized rate of return used to determine the electrical corporation's revenue requirement used to set rates.

Electric bills of an electrical corporation that has obtained a financing order and caused securitized utility tariff bonds to be issued shall include specific information specified in the bill.

Securitized utility tariff property specified in a financing order exists until securitized utility tariff bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such securitized utility tariff bonds have been recovered in full.

If an electrical corporation defaults on any required remittance of securitized utility tariff charges arising from securitized utility tariff property specified in a financing order, a court, upon application by an interested party, shall order the sequestration and payment of the revenues arising from the securitized utility tariff property to the financing parties or their assignees.

Any successor to an electrical corporation shall perform and satisfy all obligations of, and have the same rights under a financing order as, the electrical corporation under the financing order.

The bill contains several provisions related to security interests in securitized utility tariff property.

A security interest in securitized utility tariff property is created, valid, and binding and perfected at the later of the time:

- (1) The financing order is issued;
- (2) A security agreement is executed and delivered by the debtor granting such security interest;
- (3) The debtor has rights in such securitized utility tariff property or the power to transfer rights in such securitized utility tariff property; or
- (4) Value is received for the securitized utility tariff property.

The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any securitized utility tariff property shall be the laws of Missouri.

The bill lists entities that may legally invest any sinking funds, moneys, or other funds in securitized utility tariff bonds (Section 393.1700).

This bill allows an electrical corporation to file a petition concurrently with a petition filed for a financing order for investment in replacement resources, as such term is defined in the bill, and the Commission shall approve such investment as set forth in the bill. Such approval shall constitute an affirmative and binding determination by the Commission, to be applied in all subsequent proceedings respecting the rates of the electrical corporation, that such investment is prudent and reasonable, that the replacement resource is necessary for the electrical corporation's provision of electric service to its customers, and that such investment shall be reflected in the revenue requirement used to set the electrical corporation's base rates. The approval is subject only to the Commission's authority to determine that the electrical corporation did not manage or execute the project in a reasonable and prudent manner in some respect and the Commission's authority to disallow for ratemaking purposes only that portion of the investment that would not have been incurred had the unreasonable or imprudent management or execution of the project not occurred.

The changes in the electrical corporation's revenue requirement that shall be deferred to a regulatory asset or liability shall only consist of items listed in the bill.

The time frame for proceedings on a petition to have investment in replacement resources approved are outlined in the bill (Section 393.1705).

An electrical corporation may petition the Commission for a determination of the ratemaking principles and treatment, as proposed by the corporation, that will apply to the reflection in base rates of the electrical corporation's capital and noncapital costs associated with one or more of the corporation's coal-fired facilities.

If the Commission fails to issue a determination within 215 days that a petition for a determination of ratemaking principles and treatment is filed, the ratemaking principles and treatment proposed by the petitioning electrical corporation shall be deemed

to have been approved by the Commission.

The factors and circumstances to which such principles and treatment apply are listed in the bill. If the electrical corporation determines that one or more major factor or circumstance has changed in a manner that warrants a change in the approved ratemaking principles and treatment, then it shall file a notice in the docket within 45 days of such determination.

A party that has concerns about the proposed changes in principles and treatment shall file a notice of its concerns within 30 days of the electrical corporation's filing. If a party believes that one or more factor or circumstance warrants a change in the approved principles and treatment and the electrical corporation does not agree, such party shall file a notice within 45 days, and such notice shall include information as listed in the bill.

An electrical corporation shall be permitted to retain coal-fired generating assets in rate base and recover costs associated with operating the coal-fired assets that remain in service to provide greater certainty that generating capacity will be available to provide essential service to customers, including during extreme weather events, and the Commission may allow any portion of such cost recovery on the basis that such coal-fired generating assets operate at a low capacity factor, or are off-line and providing capacity only, during normal operating conditions (Section 393.1715).

This section modifies the definition of the population of a "rural area" from 1500 to 1600 inhabitants to be increased by 6% every 10 years after each census beginning in 2030 (Section 394.020).

The section allows the board of directors of a rural electric cooperative to set the time and place of the annual meeting and also to provide for voting by proxy, electronic means, by mail, or any combination thereof, and to prescribe the conditions under which such voting shall be exercised. The meeting requirement may be satisfied through virtual means. The provisions expire on August 28, 2022 (Section 394.120).

This section changes "a rural electric cooperative" to an "electric supplier" in the definition of "structure" or "structures". In the event that a retail electric supplier is providing service to a structure located within a city, town, or village that is no longer a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure (Section 394.315).

This section specifies that Article 9 of the Uniform Commercial Code relating to secured transactions shall not apply to the creation, perfection, priority, or enforcement of any sale, assignment of, pledge of, security interest in, or other transfer of, any interest or right or portion of any interest or right in any securitized utility tariff property, except as expressly provided in the bill (Section 400.9-109).