

FIRST REGULAR SESSION

SENATE BILL NO. 139

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BLACK.

0653S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 393.170 and 523.010, RSMo, and to enact in lieu thereof three new sections relating to electric utilities.

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

Section A. Sections 393.170 and 523.010, RSMo, are
2 repealed and three new sections enacted in lieu thereof, to be
3 known as sections 393.170, 393.172, and 523.010, to read as
4 follows:

393.170. 1. No gas corporation, electrical
2 corporation, water corporation or sewer corporation shall
3 begin construction of a gas plant, electric plant, water
4 system or sewer system, other than an energy generation unit
5 that has a capacity of one megawatt or less, without first
6 having obtained the permission and approval of the
7 commission.

8 2. No such corporation shall exercise any right or
9 privilege under any franchise hereafter granted, or under
10 any franchise heretofore granted but not heretofore actually
11 exercised, or the exercise of which shall have been
12 suspended for more than one year, without first having
13 obtained the permission and approval of the commission.
14 Before such certificate shall be issued a certified copy of
15 the charter of such corporation shall be filed in the office
16 of the commission, together with a verified statement of the
17 president and secretary of the corporation, showing that it

18 has received the required consent of the proper municipal
19 authorities.

20 3. The commission shall have the power to grant the
21 permission and approval herein specified whenever it shall
22 after due hearing determine that such construction or such
23 exercise of the right, privilege or franchise is necessary
24 or convenient for the public service. The commission may by
25 its order impose such condition or conditions as it may deem
26 reasonable and necessary. Unless exercised within a period
27 of two years from the grant thereof, authority conferred by
28 such certificate of convenience and necessity issued by the
29 commission shall be null and void.

30 **4. (1) The provisions of this subsection shall apply**
31 **when the permission and approval sought from the commission**
32 **under subsection 1 of this section is for the construction**
33 **of electric transmission facilities approved by a regional**
34 **transmission operator. To the greatest extent practical,**
35 **such electric transmission facilities shall be designed,**
36 **consistent with electric industry standards, to utilize a**
37 **multi-circuit configuration, be sited with or along existing**
38 **above-ground infrastructure, or replace or upgrade existing**
39 **above-ground infrastructure, whether or not the existing**
40 **electric transmission facility infrastructure utilized is**
41 **owned by an electrical corporation that owns in-service**
42 **electric transmission facilities in this state that are**
43 **under the functional control of a regional transmission**
44 **operator. Electric transmission facilities need not be**
45 **designed as provided in the immediately preceding sentence**
46 **if the commission determines in a proceeding pursuant to**
47 **which permission and approval is sought under subsection 1**
48 **of this section that such a design is inconsistent with**
49 **electric industry standards, is inconsistent with the**

50 reliability basis given for the electric transmission
51 facilities project, or is not in the best interest of the
52 electrical corporation's customers or, to the extent the
53 electrical corporation does not directly serve retail
54 customers, the interests of the electric customers whose
55 retail rates will reflect the majority of the costs of the
56 electric transmission facilities to-be-constructed. In
57 addition, to the extent such electric transmission
58 facilities will be sited with or along or will replace or
59 upgrade existing above-ground electrical infrastructure that
60 is not owned by an entity seeking permission and approval
61 pursuant to an application filed under subsection 1 of this
62 section or by its affiliate, the entity or entities that
63 will own the new electric transmission facilities subject to
64 the application shall obtain from the underlying fee owners
65 independent real estate rights necessary to accommodate the
66 installation and operation thereof. Nothing in this
67 subdivision shall relieve such entity or entities of the
68 obligations contained in sections 523.039 or 523.256, to the
69 extent those obligations would otherwise apply.

70 (2) In addition to the design requirements in
71 subdivision (1) of this subsection, each electrical
72 corporation seeking permission and approval under subsection
73 1 of this section shall competitively bid the major
74 construction components of each project for which permission
75 and approval is sought and shall utilize competitive
76 sourcing strategies for all related major materials.

77 (3) Only electrical corporations that own in-service
78 electric transmission facilities in this state that are
79 under the functional control of a regional transmission
80 operator and to which the electric transmission facilities
81 subject to the application will connect, either initially or

82 once construction of all electric transmission facilities
83 approved by the regional transmission operator as of the
84 time of the commission's approval of the application are
85 completed, may file applications with the commission for
86 permission and approval to construct the electric
87 transmission facilities described in this subsection.
88 Within ninety days following approval of the construction of
89 electric transmission facilities by the applicable regional
90 transmission operator, an electric corporation seeking
91 permission and approval for electric transmission facilities
92 under the provisions of this subsection may notify the
93 commission that it will not construct any or some portion of
94 the facilities approved. If such notice is given and
95 indicates the notifying electrical corporation will not
96 construct any of the facilities approved, the commission may
97 grant permission and approval for such facilities'
98 construction to any other electrical corporation. If such
99 notice indicates that it will assign all or a portion of the
100 facilities approved to another electrical corporation, the
101 commission may grant permission and approval for the
102 facilities that were assigned to the assignee electrical
103 corporation and such electrical corporation's construction
104 of the facilities will be subject to this subsection.

105 (4) This subsection shall not limit the right of any
106 electrical corporation to seek permission and approval from
107 the commission to construct, operate, and maintain electric
108 transmission facilities in this state that will not
109 initially connect to electric transmission facilities in
110 this state that are not under the functional control of a
111 regional transmission operator. This subsection shall also
112 not limit the right of any electrical corporation, any
113 municipal utility operating under chapter 91, any joint

114 electric utility commission operating under chapter 393, any
115 rural electric cooperative organized or operating under
116 chapter 394, any corporation organized on a nonprofit or a
117 cooperative basis as described in subsection 1 of section
118 394.200, or any electrical corporation operating under the
119 not-for-profit cooperative business plan as described in
120 subsection 2 of section 393.110 to construct, operate, and
121 maintain electric transmission facilities in this state that
122 are not under the functional control of a regional
123 transmission operator.

124 (5) In considering applications under this subsection,
125 the commission shall take into account the importance of
126 construction of electric transmission facilities in the
127 state needed to support Missouri's economy, the benefits of
128 electric transmission facility construction to Missouri
129 customers, and the importance of transmission facility
130 construction in ensuring reliable electric service in the
131 state in the twenty-first century and beyond.

132 (6) For the purposes of this subsection, the following
133 terms shall mean:

134 (a) "Electric transmission facilities", a transmission
135 line that is designed and constructed with the capability of
136 being safely and reliably energized at one hundred kilovolts
137 or more and associated transmission facilities, including
138 substations;

139 (b) "Regional transmission operator", a regional
140 transmission organization, independent system operator, or
141 equivalent entity approved by the Federal Energy Regulatory
142 Commission or its successor agency that exercises functional
143 control over electric transmission facilities located within
144 this state.

393.172. By March 31, 2026, the commission shall adopt
2 rules applicable to electrical corporations that require the
3 entity constructing an electric transmission line under
4 subsection 1 of section 393.170 for which permission is
5 sought from the commission on or after the effective date of
6 this section to adhere to standards to be adopted by such
7 rules relating to construction activities occurring
8 partially or wholly on privately owned agricultural land.
9 Such standards shall address, at a minimum, landowner
10 communication expectations, expectations with respect to
11 transmission structure design and placement, wet weather
12 construction and remediation practices, agricultural
13 mitigation and restoration practices, construction-related
14 tree and brush clearing, expectations concerning the use and
15 restoration of field entrances and temporary roads, and best
16 practices with respect to erosion prevention.

523.010. 1. In case land, or other property, is
2 sought to be appropriated by any road, railroad, street
3 railway, telephone, telegraph or any electrical corporation
4 organized for the manufacture or transmission of electric
5 current for light, heat or power, including the
6 construction, when that is the case, of necessary dams and
7 appurtenant canals, flumes, tunnels and tailraces and
8 including the erection, when that is the case, of necessary
9 electric steam powerhouses, hydroelectric powerhouses and
10 electric substations or any oil, pipeline or gas corporation
11 engaged in the business of transporting or carrying oil,
12 liquid fertilizer solutions, or gas by means of pipes or
13 pipelines laid underneath the surface of the ground, or
14 other corporation created under the laws of this state for
15 public use, and such corporation and the owners cannot agree
16 upon the proper compensation to be paid, or in the case the

17 owner is incapable of contracting, be unknown, or be a
18 nonresident of the state, such corporation may apply to the
19 circuit court of the county of this state where such land or
20 any part thereof lies by petition setting forth the general
21 directions in which it is desired to construct its road,
22 railroad, street railway, telephone, or telegraph line or
23 electric line, including, when that is the case, the
24 construction and maintenance of necessary dams and
25 appurtenant canals, tunnels, flumes and tailraces and, when
26 that is the case, the appropriation of land submerged by the
27 construction of such dam, and including the erection and
28 maintenance, when that is the case, of necessary electric
29 steam powerhouses, hydroelectric powerhouses and electric
30 substations, or oil, pipeline, liquid fertilizer solution
31 pipeline, or gas line over or underneath the surface of such
32 lands, a description of the real estate, or other property,
33 which the company seeks to acquire; the names of the owners
34 thereof, if known; or if unknown, a pertinent description of
35 the property whose owners are unknown and praying the
36 appointment of three disinterested residents of the county,
37 as commissioners, or a jury, to assess the damages which
38 such owners may severally sustain in consequence of the
39 establishment, erection and maintenance of such road,
40 railroad, street railway, telephone, telegraph line, or
41 electrical line including damages from the construction and
42 maintenance of necessary dams and the condemnation of land
43 submerged thereby, and the construction and maintenance of
44 appurtenant canals, flumes, tunnels and tailraces and the
45 erection and maintenance of necessary electric steam
46 powerhouses, hydroelectric powerhouses and electric
47 substations, or oil, pipeline, or gas line over or
48 underneath the surface of such lands; to which petition the

49 owners of any or all as the plaintiff may elect of such
50 parcels as lie within the county or circuit may be made
51 parties defendant by names if the names are known, and by
52 the description of the unknown owners of the land therein
53 described if their names are unknown.

54 2. If the proceedings seek to affect the lands of
55 persons under conservatorship, the conservators must be made
56 parties defendant. If the present owner of any land to be
57 affected has less estate than a fee, the person having the
58 next vested estate in remainder may at the option of the
59 petitioners be made party defendant; but if such
60 remaindermen are not made parties, their interest shall not
61 be bound by the proceedings.

62 3. It shall not be necessary to make any persons party
63 defendants in respect to their ownership unless they are
64 either in actual possession of the premises to be affected
65 claiming title or having a title of the premises appearing
66 of record upon the proper records of the county.

67 4. Except as provided in subsection 5 of this section,
68 nothing in this chapter shall be construed to give a public
69 utility, as defined in section 386.020, or a rural electric
70 cooperative, as provided in chapter 394, the power to
71 condemn property which is currently used by another provider
72 of public utility service, including a municipality or a
73 special purpose district, when such property is used or
74 useful in providing utility services, if the public utility
75 or cooperative seeking to condemn such property, directly or
76 indirectly, will use or proposes to use the property for the
77 same purpose, or a purpose substantially similar to the
78 purpose for which the property is being used by the provider
79 of the public utility service.

80 5. A public utility or a rural electric cooperative
81 may only condemn the property of another provider of public
82 utility service, even if the property is used or useful in
83 providing utility services by such provider, if the
84 condemnation is necessary for the public purpose of
85 acquiring a nonexclusive easement or right-of-way across the
86 property of such provider and only if the acquisition will
87 not materially impair or interfere with the current use of
88 such property by the utility or cooperative and will not
89 prevent or materially impair such provider of public utility
90 service from any future expansion of its facilities on such
91 property.

92 6. If a public utility or rural electric cooperative
93 seeks to condemn the property of another provider of public
94 utility service, and the conditions in subsection 4 of this
95 section do not apply, this section does not limit the
96 condemnation powers otherwise possessed by such public
97 utility or rural electric cooperative.

98 7. Suits in inverse condemnation or involving
99 dangerous conditions of public property against a municipal
100 corporation established under Article VI, Section 30(a) of
101 the Missouri Constitution shall be brought only in the
102 county where such land or any part thereof lies.

103 8. For purposes of this chapter, the authority for an
104 electrical corporation as defined in section 386.020, except
105 for an electrical corporation operating under a cooperative
106 business plan as described in section 393.110, to condemn
107 property for purposes of constructing an electric plant
108 subject to a certificate of public convenience and necessity
109 under subsection 1 of section 393.170 shall not extend to
110 the construction of a merchant transmission line with
111 Federal Energy Regulatory Commission negotiated rate

112 authority unless such line has a substation or converter
113 station located in Missouri which is capable of delivering
114 an amount of its electrical capacity to electrical customers
115 in this state that is greater than or equal to the
116 proportionate number of miles of the line that passes
117 through the state. The provisions of this subsection shall
118 not apply to applications filed pursuant to section 393.170
119 prior to August 28, 2022.

120 **9. For the purposes of this chapter, the authority of**
121 **any corporation set forth in subsection 1 of this section to**
122 **condemn property shall not extend to:**

123 (1) The construction or erection of any plant, tower,
124 panel, or facility that utilizes, captures, or converts wind
125 or air currents to generate or manufacture electricity; or

126 (2) The construction or erection of any plant, tower,
127 panel, or facility that utilizes, captures, or converts the
128 light or heat generated by the sun to generate or
129 manufacture electricity.

130 **10. Subject to subsection 8 of this section, but**
131 **notwithstanding subsection 9 of this section, the authority**
132 **of any corporation set forth in subsection 1 of this section**
133 **to condemn property shall extend to acquisition of rights**
134 **needed to construct, operate, and maintain collection lines,**
135 **distribution lines, transmission lines, communications**
136 **lines, substations, switchyards, and other facilities needed**
137 **to collect and deliver energy generated or manufactured by**
138 **the facilities described in subsection 9 of this section to**
139 **the distribution or transmission grid.**

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