

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1406

By: Glover and Benson

COMMITTEE SUBSTITUTE

An Act relating to the Corporation Commission; amending 17 O.S. 1991, Sections 152, 158.27 and 263, which relate to the Retail Electric Supplier Certified Territory Act and jurisdiction of the Corporation Commission; providing for findings and purposes; providing for construction of act; providing for certain application; providing for certain exemptions; specifying conditions for exception; providing for certain votes, elections and procedures; modifying and clarifying the authority and jurisdiction of the Corporation Commission; providing for apportionment of rates; prohibiting certain uses of rates and charges; requiring certain review and examination procedures; specifying time limitations; providing for public hearings; providing for certain refunds; modifying when certain investigations for certain facilities are to be conducted; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 17 O.S. 1991, Section 158.27, is amended to read as follows:

Section 158.27 A. The Commission shall have general supervision over all associations or cooperative corporations as defined herein with power to fix and establish rates and to prescribe rules, ~~requirements and regulations,~~ affecting their services, operation, and the management and conduct of their business. It shall have full visitorial and inquisitorial power to examine such associations or cooperative corporations and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the

provisions of ~~this act~~ the Retail Electric Supplier Certified Territory Act, and with the Constitution and laws of this state, and with the orders of the Commission. The provisions of this section shall not be applicable to generation and transmission associations or cooperative corporations, or transmission associations or cooperative corporations.

B. 1. An association or cooperative corporation shall be subject to rate investigations by the Commission pursuant to subsection A of this section unless a proposed increase in rates and charges does not exceed three percent (3%) based on the previous twelve (12) months revenue generated by the existing rates; provided however, that such association or cooperative corporation shall be subject to subsection A of this section if:

- a. the association or cooperative corporation elects, by action of its board of trustees, to be subject to rate investigation by the Commission,
- b. the percentage of members, that according to bylaws constitute a quorum not to exceed five percent (5%) of the membership for that particular association or cooperative have signed a petition requesting rate investigation pursuant to paragraphs 3 or 4 of this subsection, or
- c. the Commission declares that the association or cooperative corporation shall be subject to rate investigations by the Commission pursuant to paragraph 6 of this subsection.

2. Each such association or cooperative corporation not subject to rate investigation, at least ninety (90) days before the effective date of any proposed rate increase, shall notify the Commission and each of its member-consumers of the proposed rate increase. Notice to the Commission shall include a verified statement showing the then total number of member-consumers of the association or cooperative corporation.

Notice by the association or cooperative corporation to its member-consumers shall:

- a. be in a form prescribed by this ~~act~~ section,

- b. be by regular mail and may be included in regular member-consumer billings, and
- c. include a schedule of the proposed rate schedules, the effective date of the proposed rate increase and the procedure necessary for the member-consumers to petition the Commission to examine and determine the reasonableness of the proposed rate increase.

3. The member-consumers of an association or a cooperative corporation may petition the Commission to examine and determine the reasonableness of the rates and charges proposed by the association or cooperative corporation pursuant to subparagraph b of paragraph 1 of this subsection. The form of such a petition shall be substantially in compliance with subsection C of this section. A petition substantially in compliance with such form shall not be deemed invalid due to minor errors in its form.

4. If, by the effective date of this proposed increase in rates and charges, the Commission has received petitions from less than the number of member-consumers as set out in subparagraph b of paragraph 1 of this subsection, requesting that the Commission examine the proposed increase in rates and charges, the Commission shall immediately certify such fact to the association or cooperative corporation. If, on or before the effective date of the proposed increase in rates and charges, the Commission has received petitions from the number of member-consumers as set out in subparagraph b of paragraph 1 of this subsection or more, the Commission shall notify the association or cooperative corporation that it will examine and determine the reasonableness of the proposed increase in rates and charges. Rates and charges established by the Commission or by an association or a cooperative corporation pursuant to this section, shall be in force for not less than one (1) year and no further increases in rates and charges shall be permitted during said one-year period.

5. No cooperative corporation or association shall have the right to receive more than one rate increase per year for any reason or under any procedures.

6. In addition to the procedure for petition prior to any proposed increase in rates and charges pursuant to paragraphs 1 through 4 of this subsection, the member-consumers of an association or cooperative corporation may at any time petition the Commission to declare the association or cooperative corporation be subject to full scale rate investigation. If the Commission determines that a majority of the member-consumers of an association or a cooperative corporation have properly petitioned that the association or cooperative corporation be subject to full scale rate regulations, the Commission shall certify such fact to the association or cooperative corporation and thereafter the association or cooperative corporation shall be subject to full scale rate investigation by the Commission until at least a majority of the member-consumers of the association or cooperative corporation properly petition that the association or cooperative corporation shall no longer be subject to such full scale rate investigations by the Commission. The form of such a petition shall substantially comply with subsection C of this section.

A petition substantially in compliance with the form pursuant to subsection C of this section shall not be deemed invalid due to minor errors in its form.

7. Paragraphs 1 through 6 of this subsection apply only to the rates and charges and shall have no effect on the Commission's jurisdiction over the associations or cooperative corporations or the rules and regulations governing the operations of electric utilities.

8. Each association or cooperative corporation, when determining how rates and charges, established under paragraph 2 of this subsection, are to be allocated to the different rate classes, shall apportion such rates and charges in a manner which reflects, as closely as practicable, the costs of providing service to that class.

9. In no event, and under no circumstances, shall the procedures herein provided be utilized for the purpose of establishing special competitive rates in any area in which a

cooperative corporation is in direct competition with another regulated retail electric supplier.

C. 1. A petition requesting the Commission to examine and determine the reasonableness of a proposed increase in rates and charges shall be in substantially the following form:

a. Form:

The petition shall be headed by a caption, which shall contain (1) the heading, "Before the Corporation Commission of the State of Oklahoma"; (2) the name of the association or cooperative corporation seeking an increase in rates and charges; (3) the relief sought.

b. Body:

The body of the petition shall consist of four numbered paragraphs, if applicable, as follows:

- (1) Allegations of Facts: The allegations of facts stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity,
- (2) Legal Authority: Retail Electric Supplier Certified Territory Act, ~~Sections 158.21 through 158.32 of Title 17 of the Oklahoma Statutes,~~
- (3) Relief Sought: A brief statement of the amount of the increase in rates and charges that is objected to or other relief sought, and
- (4) Petitioners: The name, address, telephone number and signature of each member-consumer.

2. A petition requesting rate regulation of an association or cooperative corporation shall be in substantially the following form:

a. Form:

The petition shall be headed by a caption, which shall contain (1) the heading, "Before the Corporation Commission of the State of Oklahoma"; (2) the name of the association or cooperative

corporation seeking an increase in rates and charges; (3) the relief sought.

b. Body:

The body of the petition shall consist of four numbered paragraphs, if applicable, as follows:

- (1) Allegations of Facts: The allegations of facts stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity,
- (2) Legal Authority: Retail Electric Supplier Certified Territory Act, Sections 158.21 through 158.32 of Title 17 of the Oklahoma Statutes,
- (3) Relief Sought: A brief statement of the reason the petitioners seek the Commission to regulate the rates and charges of the association or cooperative corporation or other relief sought, and
- (4) Petitioners: The name, address, telephone number and signature of each member-consumer.

3. Petitions may only be signed by the member-consumer of the association or cooperative corporation.

D. Upon proceedings brought by an interested person or by action of the Commission, the Commission shall have the jurisdiction to enforce compliance with ~~this act~~ the Retail Electric Supplier Certified Territory Act, and shall have jurisdiction to prohibit furnishing retail electric service by any retail electric supplier except in its certified territory or territories, or where lawfully serving, and in connection with such enforcement and prohibition to exercise all powers herein or otherwise granted to the Commission.

E. 1. Rural electric cooperatives, which are owned by the member-consumers they serve, are regulated by the member-consumers themselves acting through an elected governing board. It is declared that the regulation by the Commission under this section may be duplicative of the self-regulation by the rural electric cooperative and may be neither necessary nor cost-effective. It

is therefore the purpose of this subsection to determine the necessity of regulation of rates and charges by the Commission by allowing the member-consumers of a rural electric cooperative to exempt themselves from regulation by the Commission except as provided herein.

2. Except as otherwise provided in paragraphs 4, 5, 6 and 7 of this subsection, the provisions of this section shall not apply to rural electric cooperatives with less than seventeen thousand (17,000) meters which comply with paragraph 3 of this subsection.

3. To be exempt under paragraph 2 of this subsection, a cooperative shall poll its members as follows:

- a. an election under this subsection may be called by the Board of Trustees or shall be called not less than one hundred eighty (180) days after receipt of a valid petition signed by not less than five percent (5%) of the members of the cooperative,
- b. the proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than twenty-one (21) nor more than forty-five (45) days before the date of the meeting,
- c. if the cooperative mails information to its members regarding the proposition for deregulation other than notice of the election and the ballot, the cooperative shall also include in such mailing any information in opposition to the proposition that is submitted by petition signed by not less than one percent (1%) of the cooperative's members,
- d. if the proposition for deregulation is approved by the affirmative vote of not less than a majority of the members voting on the proposition, the cooperative shall notify the state Corporation Commission in writing of the results within ten (10) days after the date of the election, and

e. voting on the proposition for deregulation shall be by mail ballot.

4. In the event the member-consumers have voted, pursuant to paragraph 3 of this subsection, to exempt themselves from regulation by the Commission, any such cooperative may vote no more than once every three (3) years to place said cooperative under the regulation of the Commission, as provided in this section. Said question shall be submitted to the member-consumers of the rural electric cooperative if at least five percent (5%) of the members of the cooperative sign a petition requesting such an election. Such petition shall be submitted to the membership in the same manner as provided for in paragraphs 3 of this subsection.

5. Each rural electric cooperative which has voted to exempt itself from Commission regulation under this section, when determining how rates and charges established after such exemption are to be allocated to the different rate classes, shall apportion such rates and charges in a manner which reflects, as closely as practicable, the costs of providing service to that class. Each cooperative which has exempted itself from Commission regulation under this section shall file and maintain a copy of all current rates and charges with the Oklahoma Corporation Commission.

6. In no event, and under no circumstances, shall rates and charges established hereunder be utilized for the purpose of establishing special competitive rates in any area in which a cooperative is in direct competition with another regulated retail electric supplier.

7. Notwithstanding the provisions of this section, the Commission shall retain jurisdiction over all cooperatives who have voted to exempt themselves from Commission regulation under this section:

- a. for all purposes relating to certified territories established under the Retail Electric Supplier Certified Territory Act, and
- b. proceedings brought by a regulated utility relating to alleged discriminatory or anti-competitive rates

established by an exempt cooperative, or relating to actions to acquire existing customers of a regulated utility using such rates.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 152, is amended to read as follows:

Section 152. The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted; provided, however, that when any public utility subject to general supervision pursuant to this section or to Section 158.27 of this title shall file with the Commission a request for review of its rates and charges, such request shall be given immediate attention. In the exercise of this responsibility, the Commission shall complete any examination of such request for a review of its rates and charges within one hundred twenty (120) days from the date such application for review of its rates and charges is filed. Public hearings on such matter must commence with thirty (30) days of the end of such examination to be conducted by the Commission and in no event shall the conclusion of such examination of the rates and charges and the hearing conducted by the Commission exceed one hundred eighty (180) days from the date the request was filed. If such request for review of the applicant's rates and charges has not been completed within one hundred eighty (180) days from the date of filing of such application, the request for changes in the rates, charges, and regulations made in such application are deemed to have been acceptable to the Commission and shall be immediately placed into effect. Notwithstanding the provisions of this subsection, the Commission shall, if it determines that the review of said application can not be completed within one hundred eighty (180) days from the date of filing of said application for review, require that the applicant to implement any changes in its rates and charges which are a part of the application, subject to

refund, should the Commission determine upon the completion of its examination and public hearings that a refund is appropriate and necessary. It shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and with the Constitution and laws of this state, and with the orders of the Commission.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 263, is amended to read as follows:

Section 263. A. In order to assure that the rates charged to their customers by public utilities and electric distribution cooperatives which utilize fuel adjustment clauses or purchased power adjustment clauses are just and reasonable, the Commission shall periodically conduct detailed rate investigations of such utilities and cooperatives.

~~B. In the case of such utilities and cooperatives having annual gross utility revenues greater than Two Million Five Hundred Thousand Dollars (\$2,500,000.00), such investigations shall be conducted at least every five (5) years. The provisions of this subsection shall not prohibit or otherwise restrict the authority of the Corporation Commission to conduct, whenever necessary, an investigation or review of any such utility or electric distribution cooperative. In addition, this section shall not limit or restrict such utility from requesting and receiving a rate review upon proper application to the Commission.~~

~~C.~~ Such investigations shall include public hearings. In such rate investigations or proceedings, income, expenses and investments of affiliated persons, subsidiaries, firms or corporations and emergency and off-system sales of electricity or gas shall be given appropriate consideration by the Commission in

determining the financial requirements of the utility or cooperative.

~~D.~~ C. However, nothing in this section shall be interpreted to require any public utility or electric cooperative to submit itself to the authority of the Commission for ratemaking purposes if it is not so required by other statutory or constitutional provisions.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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