

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2555

By: Glover and Benson

AS INTRODUCED

An Act relating to the Corporation Commission;
amending 17 O.S. 1991, Sections 158.22, 158.23,
158.24, 158.25, 158.26, 158.27, as amended by
Section 1, Chapter 231, O.S.L. 1993 and 158.28 (17
O.S. Supp. 1993, Section 158.27), which relate to
the Retail Electric Supplier Certified Territory
Act; modifying definition of certain term; deleting
definition of certain terms; changing term used for
geographical areas; clarifying references;
modifying method of fixing boundaries of certified
territories; deleting procedure of certifying
territory; deleting protest and hearings
provisions; modifying application of certain
regulations for member consumer cooperatives;
deleting authorization for certain entities to
furnish electric lines; repealing 17 O.S. 1991,
Section 158.29, which relates to annexation of an
area to a city or town; and providing an effective
date.

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 158.22, is amended to read as follows:

Section 158.22 For the purposes of this act, the following terms shall have the meanings given them:

1. The term "retail electric supplier" means any person, firm, corporation, association or cooperative corporation, exclusive of municipal corporations or beneficial trusts thereof, engaged in the furnishing of retail electric service.

2. The term "certified territory" shall mean the ~~unincorporated~~ areas as certified by and pursuant to Section 158.24 of this title.

~~3. The term "existing distribution line" shall mean an electric line which on the effective date of this act~~

~~a. is located in an unincorporated area and~~

~~b. is being or has been substantially used for retail electric service.~~

4. The term "retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale.

~~5. The term "unincorporated area" shall mean geographical area outside the corporate limits of cities and towns.~~

~~6.~~ 4. The term "electric consuming facilities" means everything that utilizes electric energy from a central station source.

~~7.~~ 5. The term "Commission" shall mean "Corporation Commission of Oklahoma" or its successor.

~~8.~~ 6. The term "association or cooperative corporation" shall mean any association or cooperative corporation doing business under the Rural Electric Cooperative Act.

~~9.~~ 7. The term "hearing" shall mean a hearing by the Commission pursuant to reasonable notice to all affected retail electric suppliers.

~~10.~~ 8. The term "member consumer" shall mean the customer in whose name service of any association or cooperative corporation doing business under the Rural Electric Cooperative Act is being provided.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 158.23, is amended to read as follows:

Section 158.23 It is hereby declared to be in the public interest that, in order to encourage the orderly development of coordinated statewide retail electric service, to avoid wasteful duplication of distribution facilities, to avoid unnecessary encumbering of the landscape of the State of Oklahoma, to prevent the waste of materials and natural resources, for the public convenience and necessity and to minimize disputes between retail electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the consumer, the state be divided into geographical areas, establishing the ~~unincorporated~~ areas within which each retail electric supplier is to provide the retail electric service as provided in this act.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 158.24, is amended to read as follows:

Section 158.24 A. Except as otherwise provided, no retail electric supplier shall furnish retail electric service in the certified territory of another retail electric supplier.

B. Except as otherwise provided in this section, the boundaries of the certified territory of each retail electric supplier are hereby ~~set as a line or lines substantially equidistant between its existing distribution lines and the nearest existing distribution lines of any other retail electric supplier in every direction, with the result that there is hereby certified to each retail electric supplier such unincorporated area which in its entirety is located substantially in closer proximity to one of its existing distribution lines than to the nearest existing distribution line of~~

~~any other retail electric supplier established as said boundaries existed on the effective date of this act and as set out in maps filed with the Commission as of the effective date of this act.~~

~~C. (1) On or before ninety (90) days after the effective date of this act, or, when requested in writing by a retail electric supplier and for good cause shown, such further time as the Commission may fix by order, each retail electric supplier shall file with the Commission a map or maps showing all of its existing distribution lines. The Commission shall prepare or cause to be prepared within ninety (90) days thereafter a map or maps of uniform scale to show, accurately and clearly, the boundaries of the certified territory of each retail electric supplier as established under Section 4 B, and shall issue such map or maps of certified territory to each retail electric supplier. Any retail electric supplier or municipality or beneficial trust thereof engaged in the furnishing of electric service who feels itself aggrieved by reason of a certification of territory pursuant to this section may protest the certification of territory, not to exceed one township in a single protest, within a one hundred twenty-day period after issuance of the map of certified territory by the Commission; and the Commission shall have the power, after hearing, to revise or vacate such certified territories or portions thereof.~~

~~(2) In such hearing, the Commission shall be guided by the following conditions as they existed on the effective date of this act:~~

- ~~(a) The proximity of existing distribution lines to such certified territory.~~
- ~~(b) Which supplier was first furnishing retail electric service, and the age of existing facilities, in the area.~~
- ~~(c) Which supplier is the predominant retail electric supplier in the area.~~

~~(d) The adequacy and dependability of existing distribution lines and facilities to provide dependable high quality retail electric service at reasonable costs.~~

~~(e) The elimination and prevention of duplication of electric lines and facilities supplying such territory.~~

~~In its determination of such protest, the Commission hearing shall be de novo; and neither supplier shall bear the burden of proof.~~

~~D. In each unincorporated area, where the Commission shall determine that the existing distribution lines of two or more retail electric suppliers are so intertwined or located that Section 4B cannot reasonably be applied, the Commission shall, after hearing, certify the service territory or territories for the retail electric suppliers under the provisions of Section 4C(2) hereof.~~

SECTION 4. AMENDATORY 17 O.S. 1991, Section 158.25, is amended to read as follows:

Section 158.25 A. Except as otherwise provided herein, each retail electric supplier shall have the exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier; provided that any retail electric supplier may extend its facilities through the certified territory of another retail electric supplier, if such extension is necessary for such supplier to connect any of its facilities or to serve its consumers within its own certified territory.

B. Except as provided in ~~Section 5~~ subsections C and Section 5 E of this section, any new electric-consuming facility located in an ~~unincorporated~~ area which has not as yet been included in a map

issued by the Commission, ~~pursuant to Section 4C(1)~~, or certified, ~~pursuant to Section 4-D~~, shall be furnished retail electric service by the retail electric supplier which has an existing distribution line in closer proximity to such electric-consuming facility than is the nearest existing distribution line of any other retail electric supplier. Any disputes under this ~~Section 5-B~~ subsection shall be resolved by the Commission.

C. If the Commission, after hearing, shall determine that the retail electric service being furnished or proposed to be furnished by a retail electric supplier to an electric-consuming facility is inadequate and is not likely to be made adequate, the Commission may authorize another retail electric supplier to furnish retail electric service to such facility.

D. Except as provided in ~~Section 5~~ subsection C of this section, no retail electric supplier shall furnish, make available, render or extend retail electric service to any electric-consuming facility to which such service is being lawfully furnished by another retail electric supplier on the effective date of this act, or to which retail electric service is lawfully commenced thereafter in accordance with this section by another retail electric supplier.

E. The provisions of this act shall not preclude any retail electric supplier from extending its service after the effective date of this act (1) to its own property and facilities, in an ~~unincorporated~~ area, and (2) subject to ~~Section 5~~ subsection D of this section, to an electric-consuming facility requiring electric service, in an ~~unincorporated~~ area, if the connected load for initial full operation of such electric-consuming facility is to be 1,000 kw or larger.

SECTION 5. AMENDATORY 17 O.S. 1991, Section 158.26, is amended to read as follows:

Section 158.26 Notwithstanding the effectuation of certified territories established by or pursuant to this act, and the

exclusive right to service within such territory, a retail electric supplier may contract with another retail electric supplier for the purpose of allocating territories and consumers between such retail electric suppliers and designating which territories and consumers are to be served by which of said retail electric suppliers.

Notwithstanding any other provisions of law, a contract between retail electric suppliers as herein provided when approved by the Commission shall be valid and enforceable. The Commission shall approve such contract if it finds that the contract will promote the purposes of Section ~~3~~ 158.23 of this title and will provide adequate and reasonable service to all areas and consumers affected thereby.

SECTION 6. AMENDATORY 17 O.S. 1991, Section 158.27, as amended by Section 1, Chapter 231, O.S.L. 1993 (17 O.S. Supp. 1993, 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 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 the Retail Electric Supplier Certified Territory Act, Section 158.21 et seq of this title, 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 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,
- (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 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, provided, members attending the meeting provided for in subparagraph b of this paragraph ~~3~~ of ~~this subsection~~ may execute and deliver their ballot to the cooperative during or at the conclusion of said meeting.

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 twelve (12) months 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 paragraph 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 utility 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. for 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 7. AMENDATORY 17 O.S. 1991, Section 158.28, is amended to read as follows:

Section 158.28 The provisions of this act shall not be applicable to municipal corporations, or beneficial trusts thereof,

~~owning or operating electric lines or generating facilities, or the financing of a rural electric cooperative or association; and nothing in this act shall prohibit or shall ever be construed to prohibit any municipal corporation, or beneficial trusts thereof, owning or operating electric lines, from furnishing electric service to any territory thereafter annexed to and incorporated into the corporate limits of said municipal corporation, or from acquiring the electric distribution facilities of any association or cooperative corporation as now provided in Title 18, Section 437.2. Provided further that it shall not be necessary for any such municipal corporation, or beneficial trusts thereof, to secure the prior order, consent or authorization of the Commission to proceed under said Title 18, Section 437.2, but after the acquisition of any such electric distribution facilities of any association or cooperative corporation, the Commission shall be notified by such municipal corporation as to the description of the territory annexed and incorporated into the corporate limits in order that the Commission may adjust its required maps.~~

SECTION 8. REPEALER 17 O.S. 1991, Section 158.29, is hereby repealed.

SECTION 9. This act shall become effective September 1, 1994.

44-2-8636 KB