

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 2ND CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1739

By: Johnson (Rob) and Watson of
the House

and

Bingman of the Senate

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10 2ND CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to the Corporation Commission;
12 creating the Retail Electric Consumer Cost Reduction,
13 Safety and Service Efficiency Act; stating purpose of
14 the act; providing procedures for division of
15 affected area by retail electric suppliers; requiring
16 notification by certain retail electric supplier of
17 intention to negotiate division; specifying process
18 for notification; requiring good-faith negotiations;
19 limiting the number of negotiations a retail electric
20 supplier is required to participate in at any one
21 time; setting time frame for negotiations; providing
22 for execution of a contract for certain retail
23 electric suppliers; directing Corporation Commission
24 to issue order approving division for certain retail
electric suppliers; stating presumption; providing
for approval of a contract by certain governing body
when a municipal electric supplier is a party; making
contracts effective upon certain approval; limiting
construction of the act; specifying jurisdiction for
certain contract disputes; limiting application of
certain provisions; directing the Commission to
divide affected area if certain suppliers are unable
to agree; specifying criteria for division;
prohibiting the Commission to consider certain
economic benefits; allowing the Commission to
contract with a consultant for certain services;
providing for the sharing of costs of a consultant;

1 directing the Commission to issue an order dividing
2 the territory; directing that the order divide the
3 affected area in a certain manner; limiting affect of
4 the order on service to existing customers; allowing
5 certain retail electric suppliers to continue
6 electric service during certain time period;
7 authorizing the governing body of a municipality to
8 assess an annual municipal fee upon approval of
9 certain agreement; providing for collection and
10 remittance of a municipal fee on certain gross
11 receipts by certain suppliers; providing for the
12 amount of the municipal fee; providing for collection
13 of a municipal fee from certain customers; limiting
14 authority of two or more suppliers to negotiate for
15 an affected area only if certain conditions are met;
16 granting retail electric suppliers right to continue
17 and extend certain services in incorporated or
18 annexed areas in certain circumstances; making grant
19 subject to the act; requiring compliance with certain
20 safety requirements; making certain declarations;
21 amending 17 O.S. 2001, Section 158.29, which relates
22 to the Retail Electric Supplier Certified Territory
23 Act; updating statutory language; making provision
24 relating to annexation of territory subject to the
act; making the act nonseverable; providing for
codification; providing for noncodification; and
providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 158.41 of Title 17, unless there
is created a duplication in numbering, reads as follows:

Sections 2 through 5 of this act shall be known and may be cited
as the "Retail Electric Consumer Cost Reduction, Safety and Service
Efficiency Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 158.42 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 The purposes of the Retail Electric Consumer Cost Reduction,
5 Safety and Service Efficiency Act are to encourage the orderly
6 development of coordinated statewide retail electric service,
7 conserve natural resources and materials, minimize unnecessary use
8 of the public rights-of-way, avoid needless and wasteful duplication
9 of electric distribution facilities within the State of Oklahoma and
10 provide safe, economical and cost-efficient electric service to
11 retail electric consumers.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 158.43 of Title 17, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Notwithstanding any other provision of law to the contrary,
16 when as a result of annexation by a municipality, two or more retail
17 electric suppliers, excluding the Grand River Dam Authority but
18 including investor-owned utilities, rural electric cooperatives,
19 municipalities that provide electricity either directly or through a
20 trust, authority or other political entity and any other retail
21 supplier of electricity, have been authorized to serve consumers in
22 that annexed area, the area to be defined herein as the "affected
23 area", the following procedure shall apply:

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1 1. Any retail electric supplier authorized to serve consumers,
2 as described in subsection C of this section, in the affected area
3 which intends to negotiate a division of the affected area among the
4 affected retail electric suppliers shall notify all other retail
5 electric suppliers authorized to serve consumers in the same
6 affected area. Notification shall be performed by certified mail to
7 the chief executive officer of a privately owned retail electric
8 supplier, including investor-owned utilities and rural electric
9 cooperatives, or to the mayor of a municipality or chief executive
10 officer of any other governmental entity, and a copy of the
11 notification shall be transmitted simultaneously to the Corporation
12 Commission. All affected retail electric suppliers shall negotiate
13 in good faith to divide the affected area by mutual agreement,
14 consistent with the purposes of the Retail Electric Consumer Cost
15 Reduction, Safety and Service Efficiency Act as set out in Section 2
16 of this act. No retail electric supplier shall be required to
17 participate in negotiations for more than five affected areas at one
18 time. Any retail electric supplier that is engaged in, or has
19 received notice for, negotiations in five affected areas, may, upon
20 receipt of an additional notice or notices, advise the retail
21 electric supplier providing the additional notice or notices of that
22 fact, in which case the requirements of this subsection to negotiate
23 shall not begin until at least one of the previous negotiations is

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1 completed or the parties are unable to agree after six (6) months of
2 negotiation;

3 2. Within six (6) months of the date of notification, the
4 affected retail electric suppliers may attempt to negotiate a
5 division of the affected area. Upon successful negotiation, the
6 affected retail electric suppliers shall execute a contract that
7 recites with specificity the precise division of the affected area.
8 An executed copy of the contract shall be filed with the Corporation
9 Commission by and for the investor-owned utility or the rural
10 electric cooperative. The Corporation Commission, within ninety
11 (90) days of receipt of an executed copy of the contract, shall
12 issue an order approving the division of the affected area as
13 specified in the contract for the investor-owned utility or the
14 rural electric cooperative unless the Corporation Commission
15 determines, after hearing, that the contract does not comply with
16 provisions of the Retail Electric Consumer Cost Reduction, Safety
17 and Service Efficiency Act or that it is not in the public interest.
18 There shall be a presumption that a contract that complies with
19 provisions of this act is in the public interest. If a municipal
20 electric supplier is a party to the contract dividing the affected
21 area, the contract shall be approved for the municipal electric
22 supplier by the governing body of the municipality that is providing
23 electricity either directly or through a trust, authority or other
24 political entity within ninety (90) days unless the governing body

1 of the municipality determines that the contract does not comply
2 with the provisions of the Retail Electric Consumer Cost Reduction,
3 Safety and Service Efficiency Act or that it is not in the public
4 interest. No contract executed under provisions of this act shall
5 become effective until the contract is approved by the Corporation
6 Commission for the investor-owned utility or the rural electric
7 cooperative and the governing body of the municipality in the case
8 of a municipal electric provider. Nothing in this act shall be
9 construed to authorize, create or imply any regulation of or
10 authority over any municipal electric provider by the Corporation
11 Commission for any purpose, whether or not an agreement under this
12 act is entered into by the municipal electric provider. To the
13 extent that a dispute arises after the execution and approval of an
14 agreement made pursuant to this act between an investor-owned
15 utility or a rural electric cooperative with a municipal electric
16 provider, then the Oklahoma district courts shall have exclusive
17 jurisdiction in the contract dispute;

18 3. The provisions of this paragraph shall not be applicable:

- 19 a. to a municipal electric provider, or
- 20 b. where one of the retail electric suppliers is a
21 municipal electric supplier and the municipal electric
22 supplier or any retail electric supplier are unable to
23 reach an agreement regarding the division of an
24 affected area, as defined in this act.

1 If the affected retail electric suppliers, excluding municipal
2 electric providers, are unable to agree to a division of the
3 affected area within the applicable six-month period, either retail
4 electric supplier shall have sixty (60) days in which to notify the
5 Corporation Commission of the inability of the retail electric
6 suppliers to negotiate a division of the affected area. Upon
7 receipt of the notice, the Corporation Commission shall, within six
8 (6) months, divide the affected area among the affected retail
9 electric suppliers based upon projected sales and other criteria so
10 that each affected retail electric supplier shall have, as nearly as
11 is reasonable, an approximately equal share of the projected
12 economic benefits associated with the extension of retail electric
13 service to new electric-consuming facilities in the affected area.
14 When dividing the affected area so as to achieve equal shares of the
15 future growth in projected economic benefit of providing retail
16 electric service in the affected area, the Corporation Commission
17 shall not consider the economic benefits associated with serving
18 retail electric customers existing prior to the order dividing the
19 affected area between retail electric suppliers. The Corporation
20 Commission shall consider economic projections provided by the
21 affected retail electric suppliers. The Corporation Commission may
22 choose to employ or contract with an independent consultant to
23 provide economic projections, in which case the reasonable, ordinary
24 and necessary costs of the consultant shall be borne equally by the

1 affected retail electric suppliers. In all cases, criteria upon
2 which the Corporation Commission makes its determination shall
3 include public safety, current and projected population, existing
4 electric service, current and anticipated municipal zoning,
5 potential customer revenue, quality of electric service, cost to
6 provide electric service, growth potential over a ten-year period,
7 conservation of natural resources and materials and efficient use of
8 public rights-of-way. After making its determination, the
9 Corporation Commission shall issue an order dividing the territory
10 among the affected retail electric suppliers. An order by the
11 Commission, dividing the affected area between the affected retail
12 electric suppliers, shall provide each retail electric supplier, as
13 nearly as is reasonable, an equal share of the future growth in
14 projected economic benefit of providing retail electric service in
15 the affected area. In no event, however, shall the Corporation
16 Commission issue an order that affects the right of a retail
17 electric supplier to continue serving existing customers in the
18 affected area that the retail electric supplier was serving prior to
19 the effective date of the Commission order except as otherwise
20 provided by law; and

21 4. During the time beginning when two or more retail electric
22 suppliers are authorized to serve consumers in an affected area and
23 ending when a contract is approved under this act, the affected
24 retail electric suppliers shall be entitled to continue to provide

1 and extend electric service to retail consumers within the affected
2 area. Nothing in this act shall be construed to affect the right of
3 a retail electric supplier to continue serving existing customers in
4 the affected area that the retail electric supplier was serving
5 prior to the effective date of approval by the Corporation
6 Commission.

7 B. Upon the approval by the Corporation Commission of an
8 agreement dividing an affected area as specified in the Retail
9 Electric Consumer Cost Reduction, Safety and Service Efficiency Act,
10 the governing body of a municipality may, at its sole discretion,
11 collect, by municipal ordinance, an annual municipal fee upon the
12 gross receipt from all retail sales of power, light, or electricity,
13 in the affected area of the municipality. An investor-owned utility
14 or rural electric cooperative that enters into a contract with
15 another retail electric supplier in an affected area, or that is
16 assigned territory by the Corporation Commission under subsection A
17 of this section, beginning thirty (30) days after the effective date
18 of the municipal ordinance, shall collect and remit to the
19 municipality in the affected area the municipal fee specified in the
20 municipal ordinance, upon the gross receipts from all retail sales
21 of power, light, or electricity, in the affected area of the
22 municipality. The municipal fee shall not exceed the cumulative
23 amount of any current or future municipal sales tax as applied to
24 each consumer plus the greater amount of any voter-approved

1 franchise fee or annual tax on gross receipts levied as a result of
2 a municipal ordinance enacted pursuant to Section 2601 of Title 68
3 of the Oklahoma Statutes less any current or future municipal sales
4 tax, franchise fee or gross receipts fee paid by the retail electric
5 service provider or its customers to the municipality. The
6 municipal fee amount shall be collected from the customers of the
7 retail electric supplier on the gross receipts from all retail sales
8 in the affected area within the municipal corporate limits and be
9 remitted by the retail electric supplier to the municipality in the
10 affected area.

11 C. Two or more retail electric suppliers shall be eligible to
12 initiate or participate in the negotiations provided by subsection A
13 of this section if, and only if, one of the following conditions is
14 met:

15 1. When a retail electric supplier has a franchise agreement
16 with a municipality, and the municipality annexes or has annexed
17 prior to the effective date of this act territory completely or
18 partially certified to one or more other retail electric suppliers
19 under the Retail Electric Supplier Certified Territory Act;

20 2. When a municipality or beneficial trust or authority thereof
21 provides retail electric distribution service from a municipally
22 owned or trust- or authority-owned electric distribution system, and
23 the municipality annexes or has annexed prior to the effective date
24 of this act territory completely or partially certified to one or

1 more other retail electric suppliers under the Retail Electric
2 Supplier Certified Territory Act;

3 3. When two or more retail electric suppliers are, upon the
4 effective date of this act, lawfully providing retail electric
5 service in an area that is not included within any other certified
6 territory of a retail electric supplier, as defined in the Retail
7 Electric Supplier Certified Territory Act; or

8 4. When by virtue of annexation by a municipality two or more
9 retail electric suppliers are authorized by franchise, state statute
10 or court order to provide retail electric service in such annexed
11 area.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 158.44 of Title 17, unless there
14 is created a duplication in numbering, reads as follows:

15 Subject to the provisions of the Retail Electric Consumer Cost
16 Reduction, Safety and Service Efficiency Act, any retail electric
17 supplier shall be entitled to continue and extend the furnishing of
18 electricity, including the right to construct, maintain and operate
19 electric transmission and distribution lines and related facilities
20 along, upon, under and across all existing and future public
21 thoroughfares in an area that has been or shall be included, as a
22 result of incorporation or annexation, within the boundaries of a
23 municipality if the retail electric supplier was furnishing
24 electricity or was constructing or operating electric facilities in

1 the area prior to its incorporation or annexation without obtaining
2 the consent, franchise, license, permit or other authority of the
3 municipality, subject, however, to compliance with the lawful safety
4 requirements of the municipality as to the matter of constructing
5 and maintaining facilities along, upon, under and across
6 thoroughfares.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 158.45 of Title 17, unless there
9 is created a duplication in numbering, reads as follows:

10 If the Retail Electric Consumer Cost Reduction, Safety and
11 Service Efficiency Act, or any provision hereof is, or may be deemed
12 to be, in conflict or inconsistent with any of the provisions of
13 Sections 18 through 34, inclusive, of Article IX of the Constitution
14 of the State of Oklahoma, then, to the extent of any such conflicts
15 or inconsistencies, it is hereby expressly declared this entire act
16 and this section are amendments to and alterations of said sections
17 of the Constitution, as authorized by Section 35 of Article IX of
18 said Constitution.

19 SECTION 6. AMENDATORY 17 O.S. 2001, Section 158.29, is
20 amended to read as follows:

21 Section 158.29 When an area, which is included in whole or in
22 part in any territory or territories certified to a retail electric
23 supplier or suppliers under this act, is annexed to and becomes a
24 part of an incorporated city or town, the certification of ~~such~~ the

1 territory or territories ~~hereunder~~ under this act shall be ~~null and~~
2 ~~void.~~ In such event, the Commission shall be notified and the
3 ~~appropriate maps be corrected accordingly~~ subject to the provisions
4 of the Retail Electric Consumer Cost Reduction, Safety and Service
5 Efficiency Act.

6 SECTION 7. NEW LAW A new section of law not to be
7 codified in the Oklahoma Statutes reads as follows:

8 It is the intent of the Legislature that no provisions of this
9 act shall be considered severable, that all provisions of this act
10 shall be considered connected and dependent upon all other
11 provisions of this act and that no provision of this act shall be
12 enacted without the enactment of all other provisions of this act,
13 so that should any provision of this act be declared
14 unconstitutional then the whole act must be declared invalid.

15 SECTION 8. This act shall become effective January 1, 2009.

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