

1 STATE OF OKLAHOMA

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

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

By: Adkins and Watson of the
House

7 and

Bingman of the Senate

8
9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to Corporation Commission; creating
12 the Retail Electric Consumer Cost Reduction, Safety
13 and Service Efficiency Act; stating purpose of the
14 act; providing procedures for division of affected
15 area by retail electric suppliers; requiring
16 notification by retail electric supplier of intention
17 to negotiate division; specifying process for
18 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 when a municipal electric
supplier is a party; making contracts effective upon
certain approval; limiting construction of the act;
specifying venue for disputes; directing the
Commission to divide affected area if suppliers are
unable; 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; directing the Commission to
issue an order dividing the territory; directing that
the order divide the affected area in a certain

1 manner; limiting affect of the order on service to
2 existing customers; limiting application of certain
3 provisions; allowing certain retail electric
4 suppliers to continue electric service during certain
5 time period; providing for collection and remittance
6 of an annual municipal fee; providing for calculation
7 of the amount of the municipal fee; providing for
8 collection of municipal fee from certain customers;
9 providing an option for the payment of the municipal
10 fee or infrastructure fee in certain areas; providing
11 for calculation of the infrastructure fee; limiting
12 certain provisions to certain municipalities;
13 authorizing two or more suppliers to negotiate for an
14 affected area in certain circumstances; granting
15 retail electric suppliers right to continue and
16 extend service in incorporated or annexed areas;
17 making grant subject to the act; making certain
18 declarations; amending 17 O.S. 2001, Sections 158.25
19 and 158.29, which relate to the Retail Electric
20 Supplier Certified Territory Act; updating statutory
21 language and citations; limiting authorization for
22 the extension of service to certain new electric-
23 consuming facilities; increasing size of facility to
24 which electric service can be extended in certain
areas; making provision 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:

24

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

1 2. Within six (6) months of the date of notification, the
2 affected retail electric suppliers shall negotiate a division of the
3 affected area. Upon successful negotiation, the affected retail
4 electric suppliers shall execute a contract that recites with
5 specificity the precise division of the affected area. An executed
6 copy of the contract shall be filed with the Corporation Commission
7 by and for the investor-owned utility or the rural electric
8 cooperative. The Corporation Commission within thirty (30) days of
9 receipt of an executed copy of the contract, shall issue an order
10 approving the division of the affected area as specified in the
11 contract for the investor-owned utility or the rural electric
12 cooperative unless the Corporation Commission determines, after
13 hearing, that the contract does not comply with provisions of the
14 Retail Electric Consumer Cost Reduction, Safety and Service
15 Efficiency Act or that it is not in the public interest. There
16 shall be a presumption that a contract that complies with provisions
17 of this act is in the public interest. In the case that a municipal
18 electric supplier is a party to the contract dividing the affected
19 area, the contract shall be approved for the municipal electric
20 supplier by the governing body of the municipal electric supplier
21 that is providing electricity either directly or through a trust,
22 authority or other political entity within thirty (30) days unless
23 it determines that the contract does not comply with the provisions
24 of the Retail Electric Consumer Cost Reduction, Safety and Service

1 Efficiency Act or that it is not in the public interest. No
2 contract executed under provisions of this act shall become
3 effective until the contract is approved by the Corporation
4 Commission for the investor-owned utility or the rural electric
5 cooperative and the governing body of the municipality in the case
6 of a municipal electric provider. Nothing in this act shall be
7 construed to create or imply any regulation of or authority over any
8 municipal electric provider by the Corporation Commission. To the
9 extent that a dispute arises between an investor-owned utility or a
10 rural electric cooperative with a municipal electric provider, then
11 the Oklahoma district courts shall have jurisdiction;

12 3. If the affected retail electric suppliers are unable to
13 negotiate a division of the affected area within the applicable six-
14 month period, either retail electric supplier shall have sixty (60)
15 days in which to notify the Corporation Commission of the inability
16 of the retail electric suppliers to negotiate a division of the
17 affected area. Upon receipt of the notice, the Corporation
18 Commission shall, within six (6) months, divide the affected area
19 among the affected retail electric suppliers based upon projected
20 sales and other criteria so that each affected retail electric
21 supplier shall have, as nearly as is reasonable, an approximately
22 equal share of the projected economic benefits associated with the
23 extension of retail electric service to new electric-consuming
24 facilities in the affected area. When dividing the affected area so

1 as to achieve equal shares of the future growth in projected
2 economic benefit of providing retail electric service in the
3 affected area, the Corporation Commission shall not consider the
4 economic benefits associated with serving retail electric customers
5 existing prior to the order dividing the affected area between
6 retail electric suppliers. The Corporation Commission shall
7 consider economic projections provided by the affected retail
8 electric suppliers. The Corporation Commission may choose to employ
9 or contract with an independent consultant to provide economic
10 projections, in which case the reasonable, ordinary and necessary
11 costs of the consultant shall be borne equally by the affected
12 retail electric suppliers. In all cases, criteria upon which the
13 Corporation Commission makes its determination shall include public
14 safety, current and projected population, existing electric service,
15 current and anticipated municipal zoning, potential customer
16 revenue, quality of electric service, cost to provide electric
17 service, growth potential over a ten-year period, conservation of
18 natural resources and materials and efficient use of public rights-
19 of-way. After making its determination, the Corporation Commission
20 shall issue an order dividing the territory among the affected
21 retail electric suppliers. An order by the Commission, dividing the
22 affected area between the affected retail electric suppliers, shall
23 provide each retail electric supplier, as nearly as is reasonable,
24 an equal share of the future growth in projected economic benefit of

1 providing retail electric service in the affected area. In no
2 event, however, shall the Corporation Commission issue an order that
3 affects the right of a retail electric supplier to continue serving
4 existing customers in the affected area that the retail electric
5 supplier was serving prior to the effective date of the Commission
6 order except as otherwise provided by law. The provisions of this
7 paragraph shall not be applicable in a situation where one of the
8 retail electric suppliers is a municipal electric supplier and the
9 municipal electric supplier or any retail electric supplier are
10 unable to reach an agreement regarding the division of the affected
11 area in affected areas, as defined in this act; and

12 4. During the time beginning when two or more retail electric
13 suppliers are authorized to serve consumers in an affected area and
14 ending when a contract is approved under this act, the affected
15 retail electric suppliers shall be entitled to continue to provide
16 and extend electric service to retail consumers within the affected
17 area. Nothing in this act shall be construed to affect the right of
18 a retail electric supplier to continue serving existing customers in
19 the affected area that the retail electric supplier was serving
20 prior to the effective date of approval by the Corporation
21 Commission.

22 B. An investor-owned utility or rural electric cooperative that
23 enters into a contract with another retail electric supplier in an
24 affected area, or that is assigned territory by the Corporation

1 Commission under subsection A of this section, beginning thirty (30)
2 days after the effective date of a Corporation Commission order
3 assigning territory in the affected area, shall collect and remit to
4 the municipality in the affected area an annual municipal fee upon
5 the gross receipts from all retail sales of power, light, heat or
6 electricity, in the affected area of the municipality. The
7 municipal fee shall equal the cumulative amount of the municipal
8 sales tax as applied to each consumer plus the greater amount of any
9 voter-approved franchise fee or annual tax on gross receipts levied
10 as a result of a municipal ordinance enacted pursuant to Section
11 2601 of Title 68 of the Oklahoma Statutes. The amount of this
12 municipal fee shall be reduced by the amount of any municipal sales
13 tax collected by the investor-owned utility or rural electric
14 cooperative and by the amount of any voter-approved franchise fee or
15 annual tax on gross receipts levied as a result of a municipal
16 ordinance enacted pursuant to Section 2601 of Title 68 of the
17 Oklahoma Statutes. This municipal fee amount shall be collected
18 from the customers of the retail electric supplier on the gross
19 receipts from all retail sales in the affected area within the
20 municipal corporate limits and be remitted by the retail electric
21 supplier to the municipality in the affected area.

22 C. In areas where a municipality was providing retail electric
23 service in the affected area on the effective date of this act,
24 either directly or through a trust, authority or other political

1 entity, and the municipal retail electric provider enters into a
2 contract under subsection A of this section that assigns retail
3 electric service provider territory in the affected area to another
4 retail electric supplier that is an investor-owned utility or rural
5 electric cooperative, the contract shall specify either the
6 municipal fee as provided under subsection B of this section or an
7 infrastructure fee. The contract shall specify either the municipal
8 fee or the infrastructure fee, as may be mutually agreed by the
9 affected providers, but not both. The infrastructure fee or the
10 municipal fee amount shall be collected from the customers of the
11 retail electric supplier on the gross receipts from all retail sales
12 of electricity in the affected area and be remitted by the retail
13 electric supplier to the municipality in the affected area,
14 beginning thirty (30) days after the effective date of approval by
15 the Corporation Commission. Any contract under this subsection
16 shall not become effective until approved by the Corporation
17 Commission for the investor-owned utility or the rural electric
18 cooperative as provided for in paragraph 2 of subsection A of this
19 section. The infrastructure or municipal fee shall be prospective
20 in effect and shall be collected from the customers located within
21 the affected area. The provisions of this subsection shall apply
22 exclusively to municipalities that were providing electricity either
23 directly or through a trust, authority or other political entity
24 prior to November 1, 1971.

1 D. Two or more retail electric suppliers shall be eligible to
2 initiate or participate in the negotiations provided by subsection A
3 of this section if, and only if, one of the following conditions is
4 met:

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

10 2. When a municipality or beneficial trust or authority thereof
11 provides retail electric distribution service from a municipally
12 owned or trust- or authority-owned electric distribution system, and
13 the municipality annexes or has annexed prior to the effective date
14 of this act territory completely or partially certified to one or
15 more other retail electric suppliers under the Retail Electric
16 Supplier Certified Territory Act;

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

22 4. When by virtue of annexation by a municipality two or more
23 retail electric suppliers are authorized by franchise, state statute
24

1 or court order to provide retail electric service in such annexed
2 area.

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

6 Subject to the provisions of the Retail Electric Consumer Cost
7 Reduction, Safety and Service Efficiency Act, any retail electric
8 supplier shall be entitled to continue and extend the furnishing of
9 electricity, including the right to construct, maintain and operate
10 electric transmission and distribution lines and related facilities
11 along, upon, under and across all existing and future public
12 thoroughfares in an area that has been or shall be included, as a
13 result of incorporation or annexation, within the boundaries of a
14 municipality if the retail electric supplier was furnishing
15 electricity or was constructing or operating electric facilities in
16 the area prior to its incorporation or annexation without obtaining
17 the consent, franchise, license, permit or other authority of the
18 municipality.

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

22 If the Retail Electric Consumer Cost Reduction, Safety and
23 Service Efficiency Act, or any provision hereof is, or may be deemed
24 to be, in conflict or inconsistent with any of the provisions of

1 Sections 18 through 34, inclusive, of Article IX of the Constitution
2 of the State of Oklahoma, then, to the extent of any such conflicts
3 or inconsistencies, it is hereby expressly declared this entire act
4 and this section are amendments to and alterations of said sections
5 of the Constitution, as authorized by Section 35 of Article IX of
6 said Constitution.

7 SECTION 6. AMENDATORY 17 O.S. 2001, Section 158.25, is
8 amended to read as follows:

9 Section 158.25 A. Except as otherwise provided ~~herein~~ in this
10 section, each retail electric supplier shall have the exclusive
11 right to furnish retail electric service to all electric-consuming
12 facilities located within its certified territory, and shall not
13 furnish, make available, render or extend its retail electric
14 service to a consumer for use in electric-consuming facilities
15 located within the certified territory of another retail electric
16 supplier, ~~provided that any.~~ Any retail electric supplier may
17 extend its facilities through the certified territory of another
18 retail electric supplier, if ~~such~~ the extension is necessary for
19 ~~such~~ the supplier to connect any of its facilities or to serve its
20 consumers within its own certified territory.

21 B. Except as provided in ~~Section 5~~ subsections C and ~~Section 5~~
22 E of this section, any new electric-consuming facility located in an
23 unincorporated area which has not as yet been included in a map
24 issued by the Corporation Commission, pursuant to paragraph (1) of

1 subsection C of Section 4-C(1) 158.24 of this title, or certified,
2 pursuant to subsection D of Section 4-D 158.24 of this title, shall
3 be furnished retail electric service by the retail electric supplier
4 which has an existing distribution line in closer proximity to ~~such~~
5 the electric-consuming facility than is the nearest existing
6 distribution line of any other retail electric supplier. Any
7 disputes under this ~~Section 5-B~~ subsection shall be resolved by the
8 Commission.

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

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

22 E. The provisions of this act shall not preclude any retail
23 electric supplier from extending its service after the effective
24 date of this act ~~(1)~~ to its:

1 1. Its own property and facilities, in an unincorporated area;
2 and ~~(2) subject to Section 5 D, to an~~

3 2. A new electric-consuming facility requiring electric
4 service, in an unincorporated area, if the connected load for
5 initial full operation of ~~such the~~ electric-consuming facility is to
6 be ~~1,000 kw~~ one thousand kilowatts (1,000 kw) or larger.

7 SECTION 7. AMENDATORY 17 O.S. 2001, Section 158.29, is
8 amended to read as follows:

9 Section 158.29 When an area, which is included in whole or in
10 part in any territory or territories certified to a retail electric
11 supplier or suppliers under this act, is annexed to and becomes a
12 part of an incorporated city or town, the certification of ~~such the~~ territory or territories hereunder under this act shall be ~~null and~~
13 ~~void.~~ In such event, the Commission shall be notified and the
14 ~~appropriate maps be corrected accordingly~~ subject to the provisions
15 of the Retail Electric Consumer Cost Reduction, Safety and Service
16 Efficiency Act.

17 SECTION 8. NEW LAW A new section of law not to be
18 codified in the Oklahoma Statutes reads as follows:

19 It is the intent of the Legislature that no provisions of this
20 act shall be considered severable, that all provisions of this act
21 shall be considered connected and dependent upon all other
22 provisions of this act and that no provision of this act shall be
23 enacted without the enactment of all other provisions of this act,
24

1 | so that should any provision of this act be declared
2 | unconstitutional then the whole act must be declared invalid.

3 | SECTION 9. This act shall become effective January 1, 2009.

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