

1 ENGROSSED HOUSE
2 BILL NO. 1739

By: Adkins and Watson of the
House

3 and

4 Bingman of the Senate

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8 (Corporation Commission - Retail Electric Consumer
9 Cost Reduction Safety and Service Efficiency Act -
10 amending 17 O.S., Sections 158.22, 158.25, 158.28,
11 158.29 and 190.7 - codification -
12 effective date)

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

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

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

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

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

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

12 A. Notwithstanding any other provision of law to the contrary,
13 when as a result of annexation by a municipality or for any other
14 reason, two or more retail electric suppliers, excluding the Grand
15 River Dam Authority but including investor-owned utilities, rural
16 electric cooperatives, municipalities that provide electricity
17 either directly or through a trust, authority or other political
18 entity and any other retail supplier of electricity, have been
19 authorized to serve consumers in a geographical area, to be defined
20 herein as the "affected area", part or all of which was previously
21 certified territory under the Retail Electric Supplier Certified
22 Territory Act, the following procedure shall apply:

23 1. Any retail electric supplier authorized to serve consumers
24 in the affected area shall notify all other retail electric

1 suppliers authorized to serve consumers in the same affected area of
2 its intention to negotiate a division of the affected area among the
3 affected retail electric suppliers. Notification shall be performed
4 by certified mail to the chief executive officer of a privately
5 owned retail electric supplier, including investor-owned utilities
6 and rural electric cooperatives, or to the mayor of a municipality
7 or chief executive officer of any other governmental entity, and a
8 copy of the notification shall be transmitted simultaneously to the
9 Corporation Commission. All affected retail electric suppliers
10 shall negotiate in good faith to divide the affected area by mutual
11 agreement.

12 2. Within six (6) months of the date of notification, the
13 affected retail electric suppliers shall negotiate a division of the
14 affected area. Upon successful negotiation, the affected retail
15 electric suppliers shall execute a contract that recites with
16 specificity the precise division of the affected area. An executed
17 copy of the contract shall be filed with the Corporation Commission.
18 The Commission, within thirty (30) days of receipt of an executed
19 copy of the contract, shall issue an order approving the division of
20 the affected area as specified in the contract unless it determines,
21 after hearing, that the contract does not comply with provisions of
22 the Retail Electric Consumer Cost Reduction, Safety and Service
23 Efficiency Act or that it is not in the public interest. There
24 shall be a presumption that a contract that complies with provisions

1 of this act is in the public interest. No contract executed under
2 provisions of this act shall become effective until the contract is
3 approved by the Commission.

4 3. If the affected retail electric suppliers are unable to
5 negotiate a division of the affected area within the applicable six-
6 month period, the retail electric supplier that provided the
7 original notice shall have ten (10) days in which to notify the
8 Corporation Commission of the inability of the retail electric
9 suppliers to negotiate a division of the affected area. In the
10 event notice is not provided within the ten-day period, any other
11 affected retail electric supplier may provide notice to the
12 Commission. Upon receipt of the notice, the Commission shall within
13 six (6) months divide the affected area among the affected retail
14 electric suppliers based upon projected sales and other criteria so
15 that each affected retail electric supplier shall have, as nearly as
16 is reasonable, an approximately equal share of the projected
17 economic benefits. The Commission shall consider economic
18 projections provided by the affected retail electric suppliers. The
19 Commission may choose to employ or contract with an independent
20 consultant to provide economic projections, in which case the
21 reasonable, ordinary and necessary costs of the consultant shall be
22 borne equally by the affected retail electric suppliers. In all
23 cases, criteria upon which the Commission makes its determination
24 shall include public safety, current and projected population,

1 existing electric service, current and anticipated municipal zoning,
2 potential customer revenue, quality of electric service, cost to
3 provide electric service, growth potential over a ten-year period,
4 conservation of natural resources and materials and efficient use of
5 public rights of way. After making its determination, the
6 Commission shall issue an order dividing the territory among the
7 affected retail electric suppliers.

8 4. During the time beginning when two or more retail electric
9 suppliers are authorized to serve consumers in an affected area and
10 ending when a contract is executed or a Commission order issued, the
11 affected retail electric suppliers shall be entitled to continue to
12 provide and extend electric service to retail consumers within the
13 territory previously certified to the retail electric supplier.

14 B. An investor-owned utility or rural electric cooperative that
15 enters into a contract, or that is assigned territory by the
16 Commission under subsection A of this section, beginning upon
17 execution of the contract, or upon the effective date of a
18 Commission order, shall collect and remit to the affected
19 municipality an annual tax upon the gross receipts from residential
20 and commercial sales of power, light, heat or electricity, in the
21 municipality in the amount of two percent (2%) of the gross receipts
22 from residential and commercial sales, which tax shall be in lieu of
23 any other franchise, license, occupation or excise tax levied by the
24 municipality, except as otherwise provided for in this subsection.

1 The provisions of this subsection shall not apply to a retail
2 electric supplier that is paying a franchise fee under a valid
3 franchise with the municipality. Any retail electric supplier
4 affected by this subsection shall also be required to collect and
5 remit any applicable municipal sales tax on retail sales of
6 electricity beginning upon execution of the contract or upon the
7 effective date of a Commission order, which sales tax shall be
8 cumulative of any gross receipts tax or franchise fee.

9 C. In cases when a municipality that provides electricity
10 either directly or through a trust, authority or other political
11 entity is an affected retail electric supplier, an investor-owned
12 utility or rural electric cooperative that enters into a contract or
13 that is assigned territory by the Commission under subsection A of
14 this section shall include in the contract or shall be ordered by
15 the Commission, whichever the case may be, to pay the municipality
16 an infrastructure fee of no more than two percent (2%) of the gross
17 receipts from sales of electricity. The purpose of the
18 infrastructure fee shall be to offset potential profits the
19 municipality would lose from retail electric service sales in the
20 territory assigned to the investor-owned utility or rural electric
21 cooperative. The infrastructure fee shall be prospective in effect
22 and shall be collected from the customers located within the
23 municipality. The provisions of this subsection shall apply
24 exclusively to municipalities that were providing electricity either

1 directly or through a trust, authority or other political entity
2 prior to November 1, 1971.

3 D. Two or more retail electric suppliers shall be authorized to
4 serve customers in an affected area if, and only if, one of the
5 following conditions is met:

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

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

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.

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

1 Any retail electric supplier shall be entitled to continue and
2 extend the furnishing of electricity, including the right to
3 construct, maintain and operate electric transmission and
4 distribution lines and related facilities along, upon, under and
5 across all existing and future public thoroughfares in an area that
6 has been or shall be included, as a result of incorporation,
7 annexation, population growth or otherwise, within the boundaries of
8 a municipality if the retail electric supplier was furnishing
9 electricity or was constructing or operating electric facilities in
10 the area prior to inclusion without obtaining the consent,
11 franchise, license, permit or other authority of the municipality.

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

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

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1 SECTION 6. AMENDATORY 17 O.S. 2001, Section 158.22, is
2 amended to read as follows:

3 Section 158.22 ~~For the purposes of this act, the following~~
4 ~~terms shall have the meanings given them~~ As used in the Retail
5 Electric Supplier Certified Territory Act:

6 1. ~~The term "retail~~ "Retail electric supplier" means any
7 person, firm, corporation, association or cooperative corporation,
8 exclusive of municipal corporations ~~or,~~ beneficial trusts, or
9 authorities thereof, engaged in the furnishing of retail electric
10 service-;

11 2. ~~The term "certified~~ "Certified territory" ~~shall mean~~ means
12 the unincorporated areas as certified by and pursuant to Section
13 158.24 of this title-;

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

16 a. is located in an unincorporated area, and

17 b. is being or has been substantially used for retail
18 electric service- provided to an electric-consuming
19 facility not owned or operated by the retail electric
20 supplier;

21 4. ~~The term "retail~~ "Retail electric service" means electric
22 service furnished to a consumer for ultimate consumption, but does
23 not include wholesale electric energy furnished by an electric
24 supplier to another electric supplier for resale-;

1 5. ~~The term "unincorporated~~ "Unincorporated area" ~~shall mean~~
2 means a geographical area outside the corporate limits of cities and
3 towns-; i

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

7 7. ~~The term "Commission" shall mean~~ means the "Corporation
8 Commission of Oklahoma" or its successor-; i

9 8. ~~The term "association~~ "Association or cooperative
10 corporation" ~~shall mean~~ means any association or cooperative
11 corporation doing business under the Rural Electric Cooperative
12 Act-; i

13 9. ~~The term "hearing" shall mean~~ "Hearing" means a hearing by
14 the Commission pursuant to reasonable notice to all affected retail
15 electric suppliers-; and

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

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

22 Section 158.25 A. Except as otherwise provided ~~herein~~ in this
23 section, each retail electric supplier shall have the exclusive
24 right to furnish retail electric service to all electric-consuming

1 facilities located within its certified territory, and shall not
2 furnish, make available, render or extend its retail electric
3 service to a consumer for use in electric-consuming facilities
4 located within the certified territory of another retail electric
5 supplier; ~~provided that any.~~ Any retail electric supplier may
6 extend its facilities through the certified territory of another
7 retail electric supplier, if ~~such~~ the extension is necessary for
8 ~~such~~ the supplier to connect any of its facilities or to serve its
9 consumers within its own certified territory.

10 B. Except as provided in ~~Section 5~~ subsections C and ~~Section 5~~
11 E of this section, any new electric-consuming facility located in an
12 unincorporated area which has not as yet been included in a map
13 issued by the Corporation Commission, pursuant to paragraph (1) of
14 subsection C of Section 4C(1) 158.24 of this title, or certified,
15 pursuant to subsection D of Section 4-D 158.24 of this title, shall
16 be furnished retail electric service by the retail electric supplier
17 which has an existing distribution line in closer proximity to ~~such~~
18 the electric-consuming facility than is the nearest existing
19 distribution line of any other retail electric supplier. Any
20 disputes under this ~~Section 5-B~~ subsection shall be resolved by the
21 Commission.

22 C. If the Commission, after hearing, shall determine that the
23 retail electric service being furnished or proposed to be furnished
24 by a retail electric supplier to an electric-consuming facility is

1 inadequate and is not likely to be made adequate, the Commission may
2 authorize another retail electric supplier to furnish retail
3 electric service to ~~such~~ the facility.

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

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

14 1. Its own property and facilities, in an unincorporated area, i
15 and ~~(2)~~ ~~subject~~

16 2. Subject to ~~Section 5~~ subsection D of this section, ~~to~~ an
17 electric-consuming facility requiring electric service, in an
18 unincorporated area, if the connected load for initial full
19 operation of ~~such~~ the electric-consuming facility is to be ~~1,000~~
20 2,500 kw or larger.

21 SECTION 8. AMENDATORY 17 O.S. 2001, Section 158.28, is
22 amended to read as follows:

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

1 ~~owning or operating electric lines or generating facilities, or the~~
2 ~~financing of a rural electric cooperative or association, and~~
3 ~~nothing.~~ Nothing in this act shall prohibit or shall ever be
4 construed to prohibit any municipal corporation, or beneficial
5 trusts thereof, owning or operating electric lines, from furnishing
6 electric service to any territory thereafter annexed to and
7 incorporated into the corporate limits of ~~said~~ the municipal
8 corporation, or from acquiring the electric distribution facilities
9 of any association or cooperative corporation as now provided in
10 ~~Title 18, Section 437.2~~ of Title 18 of the Oklahoma Statutes.
11 Provided further that it shall not be necessary for any ~~such~~
12 municipal corporation, or beneficial trusts thereof, to secure the
13 prior order, consent or authorization of the Corporation Commission
14 to proceed under ~~said Title 18, Section 437.2~~ of Title 18 of the
15 Oklahoma Statutes, but after the acquisition of any ~~such~~ electric
16 distribution facilities of any association or cooperative
17 corporation, the Commission shall be notified by ~~such~~ the municipal
18 corporation as to the description of the territory annexed and
19 incorporated into the corporate limits in order that the Commission
20 may adjust its required maps.

21 SECTION 9. AMENDATORY 17 O.S. 2001, Section 158.29, is
22 amended to read as follows:

23 Section 158.29 When an area, which is included in whole or in
24 part in any territory or territories certified to a retail electric

1 supplier or suppliers under this act, is annexed to and becomes a
2 part of an incorporated city or town, the certification of ~~such~~ the
3 territory or territories ~~hereunder~~ under this act shall be null and
4 void. ~~In such event, the Commission shall be notified and the~~
5 ~~appropriate maps be corrected accordingly,~~ except to the extent
6 otherwise provided by law.

7 SECTION 10. AMENDATORY 17 O.S. 2001, Section 190.7, is
8 amended to read as follows:

9 Section 190.7 A. Electric distribution providers governed by
10 the Retail Electric Supplier Certified Territory Act, ~~Section 158.21~~
11 ~~et seq. of this title~~ or municipal corporations or beneficial trusts
12 thereof owning or operating a retail electric distribution system or
13 the Grand River Dam Authority, shall not furnish retail electric
14 service to an electric-consuming facility which is currently being
15 served, or which was being served and the permanent electric
16 facilities are in place to render ~~such~~ the service, by a municipal
17 corporation or beneficial trust thereof, a rural electric
18 cooperative or an investor-owned electric utility or the Grand River
19 Dam Authority, until enactment of electric restructuring enabling
20 legislation and the implementation of consumer choice of retail
21 electric energy suppliers, unless the entities involved have agreed
22 by mutual consent, in writing, to ~~such~~ the transaction. For the
23 purpose of this section, "electric distribution providers" shall
24 mean the same as "retail electric service distributors" as defined

1 by Section 190.3 of this title. The provisions of this section
2 shall not apply to an order issued by the Corporation Commission
3 under the Retail Electric Consumer Cost Reduction, Safety and
4 Service Efficiency Act.

5 B. Any municipal corporation or beneficial trust thereof
6 offering retail electric distribution service from a municipally or
7 trust-owned electric distribution system that decides not to
8 participate in the provisions of this act as outlined in Section
9 190.3 of this title shall be prohibited from extending a retail
10 electric distribution primary feeder system beyond its corporate
11 limits with the exception that it may continue to offer retail
12 electric distribution service through the addition of secondary
13 service drops from the primary feeder system it owned outside the
14 corporate limits of ~~such~~ the municipality on April 25, 1997.
15 ~~Provided, however, nothing~~ Nothing contained in this section shall
16 be construed to prohibit system maintenance, repairs or upgrades to
17 ~~such~~ primary distribution feeder system outside the corporate limits
18 except that secondary service drops shall not be upgraded to primary
19 distribution lines.

20 SECTION 11. This act shall become effective January 1, 2008.
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1 Passed the House of Representatives the 14th day of March, 2007.

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4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2007.

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9 Presiding Officer of the Senate
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