

ENROLLED HOUSE
BILL NO. 1739

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Morrissette, Nations, Peters,
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Richardson, Roan, Shoemake,
Shumate, Smithson, Sullivan,
Terrill, Thomsen, Wesselhoft,
Winchester and Worthen of the
House

and

Bingman of the Senate

An Act relating to the Corporation Commission;
creating the Retail Electric Consumer Cost Reduction,
Safety and Service Efficiency Act; stating purpose of
the act; providing procedures for division of
affected area by retail electric suppliers; requiring
notification by certain retail electric supplier of
intention to negotiate division; specifying process
for notification; requiring good-faith negotiations;
limiting the number of negotiations a retail electric
supplier is required to participate in at any one
time; setting time frame for negotiations; providing
for execution of a contract for certain retail
electric suppliers; directing Corporation Commission
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; directing the Commission to issue an order dividing the territory; directing that the order divide the affected area in a certain manner; limiting affect of the order on service to existing customers; allowing certain retail electric suppliers to continue electric service during certain time period; authorizing the governing body of a municipality to assess an annual municipal fee upon approval of certain agreement; providing for collection and remittance of a municipal fee on certain gross receipts by certain suppliers; providing for the amount of the municipal fee; providing for collection of a municipal fee from certain customers; limiting authority of two or more suppliers to negotiate for an affected area only if certain conditions are met; granting retail electric suppliers right to continue and extend certain services in incorporated or annexed areas in certain circumstances; making grant subject to the act; requiring compliance with certain safety requirements; making certain declarations; amending 17 O.S. 2001, Section 158.29, which relates to the Retail Electric Supplier Certified Territory Act; updating statutory language; 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".

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

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

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

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

1. Any retail electric supplier authorized to serve consumers, as described in subsection C of this section, in the affected area which intends to negotiate a division of the affected area among the affected retail electric suppliers shall notify all other retail electric suppliers authorized to serve consumers in the same affected area. Notification shall be performed by certified mail to the chief executive officer of a privately owned retail electric supplier, including investor-owned utilities and rural electric cooperatives, or to the mayor of a municipality or chief executive officer of any other governmental entity, and a copy of the

notification shall be transmitted simultaneously to the Corporation Commission. All affected retail electric suppliers shall negotiate in good faith to divide the affected area by mutual agreement, consistent with the purposes of the Retail Electric Consumer Cost Reduction, Safety and Service Efficiency Act as set out in Section 2 of this act. No retail electric supplier shall be required to participate in negotiations for more than five affected areas at one time. Any retail electric supplier that is engaged in, or has received notice for, negotiations in five affected areas, may, upon receipt of an additional notice or notices, advise the retail electric supplier providing the additional notice or notices of that fact, in which case the requirements of this subsection to negotiate shall not begin until at least one of the previous negotiations is completed or the parties are unable to agree after six (6) months of negotiation;

2. Within six (6) months of the date of notification, the affected retail electric suppliers may attempt to negotiate a division of the affected area. Upon successful negotiation, the affected retail electric suppliers shall execute a contract that recites with specificity the precise division of the affected area. An executed copy of the contract shall be filed with the Corporation Commission by and for the investor-owned utility or the rural electric cooperative. The Corporation Commission, within ninety (90) days of receipt of an executed copy of the contract, shall issue an order approving the division of the affected area as specified in the contract for the investor-owned utility or the rural electric cooperative unless the Corporation Commission determines, after hearing, that the contract does not comply with provisions of the Retail Electric Consumer Cost Reduction, Safety and Service Efficiency Act or that it is not in the public interest. There shall be a presumption that a contract that complies with provisions of this act is in the public interest. If a municipal electric supplier is a party to the contract dividing the affected area, the contract shall be approved for the municipal electric supplier by the governing body of the municipality that is providing electricity either directly or through a trust, authority or other political entity within ninety (90) days unless the governing body of the municipality determines that the contract does not comply with the provisions of the Retail Electric Consumer Cost Reduction, Safety and Service Efficiency Act or that it is not in the public interest. No contract executed under provisions of this act shall become effective until the contract is approved by the Corporation Commission for the investor-owned utility or the rural electric cooperative and the governing body of the municipality in the case

of a municipal electric provider. Nothing in this act shall be construed to authorize, create or imply any regulation of or authority over any municipal electric provider by the Corporation Commission for any purpose, whether or not an agreement under this act is entered into by the municipal electric provider. To the extent that a dispute arises after the execution and approval of an agreement made pursuant to this act between an investor-owned utility or a rural electric cooperative with a municipal electric provider, then the Oklahoma district courts shall have exclusive jurisdiction in the contract dispute;

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

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

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

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

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

B. Upon the approval by the Corporation Commission of an agreement dividing an affected area as specified in the Retail Electric Consumer Cost Reduction, Safety and Service Efficiency Act, the governing body of a municipality may, at its sole discretion, collect, by municipal ordinance, an annual municipal fee upon the gross receipt from all retail sales of power, light, or electricity, in the affected area of the municipality. An investor-owned utility or rural electric cooperative that enters into a contract with another retail electric supplier in an affected area, or that is assigned territory by the Corporation Commission under subsection A of this section, beginning thirty (30) days after the effective date of the municipal ordinance, shall collect and remit to the municipality in the affected area the municipal fee specified in the

municipal ordinance, upon the gross receipts from all retail sales of power, light, or electricity, in the affected area of the municipality. The municipal fee shall not exceed the cumulative amount of any current or future municipal sales tax as applied to each consumer plus the greater amount of any voter-approved franchise fee or annual tax on gross receipts levied as a result of a municipal ordinance enacted pursuant to Section 2601 of Title 68 of the Oklahoma Statutes less any current or future municipal sales tax, franchise fee or gross receipts fee paid by the retail electric service provider or its customers to the municipality. The municipal fee amount shall be collected from the customers of the retail electric supplier on the gross receipts from all retail sales in the affected area within the municipal corporate limits and be remitted by the retail electric supplier to the municipality in the affected area.

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

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

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

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

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

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

Subject to the provisions of the Retail Electric Consumer Cost Reduction, Safety and Service Efficiency Act, any retail electric supplier shall be entitled to continue and extend the furnishing of electricity, including the right to construct, maintain and operate electric transmission and distribution lines and related facilities along, upon, under and across all existing and future public thoroughfares in an area that has been or shall be included, as a result of incorporation or annexation, within the boundaries of a municipality if the retail electric supplier was furnishing electricity or was constructing or operating electric facilities in the area prior to its incorporation or annexation without obtaining the consent, franchise, license, permit or other authority of the municipality, subject, however, to compliance with the lawful safety requirements of the municipality as to the matter of constructing and maintaining facilities along, upon, under and across thoroughfares.

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

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

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

Section 158.29 When an area, which is included in whole or in part in any territory or territories certified to a retail electric supplier or suppliers under this act, is annexed to and becomes a part of an incorporated city or town, the certification of ~~such~~ the territory or territories ~~hereunder~~ under this act shall be ~~null and void.~~ ~~In such event, the Commission shall be notified and the~~

~~appropriate maps be corrected accordingly~~ subject to the provisions of the Retail Electric Consumer Cost Reduction, Safety and Service Efficiency Act.

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

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

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

Passed the House of Representatives the 8th day of May, 2008.

Presiding Officer of the House of
Representatives

Passed the Senate the 15th day of May, 2008.

Presiding Officer of the Senate