

THE HOUSE OF REPRESENTATIVES
Tuesday, February 20, 2007

House Bill No. 1739

HOUSE BILL NO. 1739 - By: ADKINS AND WATSON 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 retail electric supplier of intention to negotiate division; specifying process for notification; requiring good faith negotiations; providing for execution of a contract; directing Corporation Commission to issue order approving division; stating presumption; directing the Commission to divide affected area if suppliers are unable; specifying criteria for division; allowing certain retail electric suppliers to continue electric service during certain time period; providing for collection and remittance of an in lieu tax; providing an exception for suppliers paying a franchise fee; providing for collection and remittance of sales tax; providing for payment of an infrastructure fee; authorizing two or more suppliers to serve an affected area in certain circumstances; granting retail electric suppliers right to continue and extend service in incorporated or annexed areas; making certain declarations; amending 17 O.S. 2001, Sections 158.22, 158.25, 158.28, and 158.29, which relate to the Retail Electric Supplier Certified Territory Act; updating statutory language and citations; modifying definitions; increasing size of facility to which electric service can be extended in certain areas; deleting exception for certain municipal entities; limiting provision relating to annexation of territory; amending 17 O.S. 2001, Section 190.7, which relates to the Electric Restructuring Act of 1997; limiting application of prohibition for certain providers to service certain electric consuming facilities; providing for codification; and providing an effective date.

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

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

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

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

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

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

18 A. Notwithstanding any other provision of law to the contrary, when as a result of
19 annexation by a municipality or for any other reason, two or more retail electric
20 suppliers, excluding the Grand River Dam Authority but including investor-owned
21 utilities, rural electric cooperatives, municipalities that provide electricity either directly
22 or through a trust, authority or other political entity and any other retail supplier of

1 electricity, have been authorized to serve consumers in a geographical area, to be defined
2 herein as the “affected area”, part or all of which was previously certified territory under
3 the Retail Electric Supplier Certified Territory Act, the following procedure shall apply:

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

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

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

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

1 determination, the Commission shall issue an order dividing the territory among the
2 affected retail electric suppliers.

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

8 B. An investor-owned utility or rural electric cooperative that enters into a
9 contract, or that is assigned territory by the Commission under subsection A of this
10 section, beginning upon execution of the contract, or upon the effective date of a
11 Commission order, shall collect and remit to the affected municipality an annual tax
12 upon the gross receipts from residential and commercial sales of power, light, heat or
13 electricity, in the municipality in the amount of two percent (2%) of the gross receipts
14 from residential and commercial sales, which tax shall be in lieu of any other franchise,
15 license, occupation or excise tax levied by the municipality, except as otherwise provided
16 for in this subsection. The provisions of this subsection shall not apply to a retail electric
17 supplier that is paying a franchise fee under a valid franchise with the municipality.
18 Any retail electric supplier affected by this subsection shall also be required to collect
19 and remit any applicable municipal sales tax on retail sales of electricity beginning upon
20 execution of the contract or upon the effective date of a Commission order, which sales
21 tax shall be cumulative of any gross receipts tax or franchise fee.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 C. In cases when a municipality that provides electricity either directly or through
2 a trust, authority or other political entity is an affected retail electric supplier, an
3 investor-owned utility or rural electric cooperative that enters into a contract or that is
4 assigned territory by the Commission under subsection A of this section shall include in
5 the contract or shall be ordered by the Commission, whichever the case may be, to pay
6 the municipality an infrastructure fee of no more than two percent (2%) of the gross
7 receipts from sales of electricity. The purpose of the infrastructure fee shall be to offset
8 potential profits the municipality would lose from retail electric service sales in the
9 territory assigned to the investor-owned utility or rural electric cooperative. The
10 infrastructure fee shall be prospective in effect and shall be collected from the customers
11 located within the municipality. The provisions of this subsection shall apply exclusively
12 to municipalities that were providing electricity either directly or through a trust,
13 authority or other political entity prior to November 1, 1971.

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

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

19 2. When a municipality or beneficial trust or authority thereof provides retail
20 electric distribution service from a municipally- or trust- or authority-owned electric
21 distribution system, and the municipality annexes territory completely or partially

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 5. ~~The term "unincorporated~~ "Unincorporated area" ~~shall mean~~ means a
5 geographical area outside the corporate limits of cities and towns;

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

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

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

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

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

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

20 Section 158.25 A. Except as otherwise provided ~~herein~~ in this section, each retail
21 electric supplier shall have the exclusive right to furnish retail electric service to all
22 electric-consuming facilities located within its certified territory, and shall not furnish,

1 make available, render or extend its retail electric service to a consumer for use in
2 electric-consuming facilities located within the certified territory of another retail electric
3 supplier; ~~provided that any.~~ Any retail electric supplier may extend its facilities through
4 the certified territory of another retail electric supplier, if ~~such~~ the extension is necessary
5 for ~~such~~ the supplier to connect any of its facilities or to serve its consumers within its
6 own certified territory.

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

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

21 D. Except as provided in ~~Section 5~~ subsection C of this section, no retail electric
22 supplier shall furnish, make available, render or extend retail electric service to any

1 electric-consuming facility to which ~~such~~ service is being lawfully furnished by another
2 retail electric supplier on the effective date of this act, or to which retail electric service is
3 lawfully commenced thereafter in accordance with this section by another retail electric
4 supplier.

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

7 1. Its own property and facilities, in an unincorporated area; ~~and (2) subject~~

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

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

13 Section 158.28 The provisions of this act shall not be applicable to ~~municipal~~
14 ~~corporations, or beneficial trusts thereof, owning or operating electric lines or generating~~
15 ~~facilities, or the financing of a rural electric cooperative or association; and nothing.~~
16 Nothing in this act shall prohibit or shall ever be construed to prohibit any municipal
17 corporation, or beneficial trusts thereof, owning or operating electric lines, from
18 furnishing electric service to any territory thereafter annexed to and incorporated into
19 the corporate limits of ~~said~~ the municipal corporation, or from acquiring the electric
20 distribution facilities of any association or cooperative corporation as now provided in
21 ~~Title 18, Section 437.2 of Title 18 of the Oklahoma Statutes.~~ Provided further that it
22 shall not be necessary for any ~~such~~ municipal corporation, or beneficial trusts thereof, to

1 secure the prior order, consent or authorization of the Corporation Commission to
2 proceed under ~~said Title 18~~, Section 437.2 of Title 18 of the Oklahoma Statutes, but after
3 the acquisition of any ~~such~~ electric distribution facilities of any association or cooperative
4 corporation, the Commission shall be notified by ~~such~~ the municipal corporation as to the
5 description of the territory annexed and incorporated into the corporate limits in order
6 that the Commission may adjust its required maps.

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

9 Section 158.29 When an area, which is included in whole or in part in any territory
10 or territories certified to a retail electric supplier or suppliers under this act, is annexed
11 to and becomes a part of an incorporated city or town, the certification of ~~such~~ the
12 territory or territories ~~hereunder~~ under this act shall be null and void. ~~In such event, the~~
13 ~~Commission shall be notified and the appropriate maps be corrected accordingly, except~~
14 to the extent otherwise provided by law.

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

17 Section 190.7 A. Electric distribution providers governed by the Retail Electric
18 Supplier Certified Territory Act, ~~Section 158.21 et seq. of this title~~ or municipal
19 corporations or beneficial trusts thereof owning or operating a retail electric distribution
20 system or the Grand River Dam Authority, shall not furnish retail electric service to an
21 electric-consuming facility which is currently being served, or which was being served
22 and the permanent electric facilities are in place to render ~~such~~ the service, by a

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1 municipal corporation or beneficial trust thereof, a rural electric cooperative or an
2 investor-owned electric utility or the Grand River Dam Authority, until enactment of
3 electric restructuring enabling legislation and the implementation of consumer choice of
4 retail electric energy suppliers, unless the entities involved have agreed by mutual
5 consent, in writing, to ~~such~~ the transaction. For the purpose of this section, "electric
6 distribution providers" shall mean the same as "retail electric service distributors" as
7 defined by Section 190.3 of this title. The provisions of this section shall not apply to an
8 order issued by the Corporation Commission under the Retail Electric Consumer Cost
9 Reduction, Safety and Service Efficiency Act.

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

21 SECTION 11. This act shall become effective January 1, 2008.

1 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TECHNOLOGY, dated
2 02-19-07 - DO PASS, As Coauthored.