

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1739

By: Watson

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5  
6 AS INTRODUCED

7 An Act relating to the Corporation Commission;  
8 creating the Retail Electric Consumer Cost Reduction,  
9 Safety and Service Efficiency Act; stating purpose of  
10 the act; providing procedures for division of  
11 affected area by retail electric suppliers; requiring  
12 notification by retail electric supplier of intention  
13 to negotiate division; specifying process for  
14 notification; requiring good faith negotiations;  
15 providing for execution of a contract; directing  
16 Corporation Commission to issue order approving  
17 division; stating presumption; directing the  
18 Commission to divide affected area if suppliers are  
19 unable; specifying criteria for division; allowing  
20 certain retail electric suppliers to continue  
21 electric service during certain time period;  
22 providing for collection and remittance of an in lieu  
23 tax; providing an exception for suppliers paying a  
24 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

1 electric consuming facilities; providing for  
2 codification; and providing an effective date.

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

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

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

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

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

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

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

15           1. Any retail electric supplier authorized to serve consumers  
16 in the affected area shall notify all other retail electric  
17 suppliers authorized to serve consumers in the same affected area of  
18 its intention to negotiate a division of the affected area among the  
19 affected retail electric suppliers. Notification shall be performed  
20 by certified mail to the chief executive officer of a privately  
21 owned retail electric supplier, including investor-owned utilities  
22 and rural electric cooperatives, or to the mayor of a municipality  
23 or chief executive officer of any other governmental entity, and a  
24 copy of the notification shall be transmitted simultaneously to the

1 Corporation Commission. All affected retail electric suppliers  
2 shall negotiate in good faith to divide the affected area by mutual  
3 agreement.

4 2. Within six (6) months of the date of notification, the  
5 affected retail electric suppliers shall negotiate a division of the  
6 affected area. Upon successful negotiation, the affected retail  
7 electric suppliers shall execute a contract that recites with  
8 specificity the precise division of the affected area. An executed  
9 copy of the contract shall be filed with the Corporation Commission.  
10 The Commission, within thirty (30) days of receipt of an executed  
11 copy of the contract, shall issue an order approving the division of  
12 the affected area as specified in the contract unless it determines,  
13 after hearing, that the contract does not comply with provisions of  
14 the 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. No contract executed under  
18 provisions of this act shall become effective until the contract is  
19 approved by the Commission.

20 3. If the affected retail electric suppliers are unable to  
21 negotiate a division of the affected area within the applicable six-  
22 month period, the retail electric supplier that provided the  
23 original notice shall have ten (10) days in which to notify the  
24 Corporation Commission of the inability of the retail electric

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

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

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

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1 effective date of a Commission order, which sales tax shall be  
2 cumulative of any gross receipts tax or franchise fee.

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

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

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

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

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

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

20           Any retail electric supplier shall be entitled to continue and  
21 extend the furnishing of electricity, including the right to  
22 construct, maintain and operate electric transmission and  
23 distribution lines and related facilities along, upon, under and  
24 across all existing and future public thoroughfares in an area that

1 has been or shall be included, as a result of incorporation,  
2 annexation, population growth or otherwise, within the boundaries of  
3 a municipality if the retail electric supplier was furnishing  
4 electricity or was constructing or operating electric facilities in  
5 the area prior to inclusion without obtaining the consent,  
6 franchise, license, permit or other authority of the municipality.

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 158.22, is  
20 amended to read as follows:

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

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

6        2. ~~The term "certified~~ "Certified territory" ~~shall mean~~ means  
7 the unincorporated areas as certified by and pursuant to Section  
8 158.24 of this title-;

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

- 11            a. is located in an unincorporated area, and  
12            b. is being or has been substantially used for retail  
13                electric service- provided to an electric-consuming  
14                facility not owned or operated by the retail electric  
15                supplier;

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

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

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

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

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

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

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

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

19       Section 158.25 A. Except as otherwise provided ~~herein~~ in this  
20 section, each retail electric supplier shall have the exclusive  
21 right to furnish retail electric service to all electric-consuming  
22 facilities located within its certified territory, and shall not  
23 furnish, make available, render or extend its retail electric  
24 service to a consumer for use in electric-consuming facilities

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

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

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

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

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

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

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

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

20 Section 158.28 The provisions of this act shall not be  
21 applicable to ~~municipal corporations, or beneficial trusts thereof,~~  
22 ~~owning or operating electric lines or generating facilities, or the~~  
23 financing of a rural electric cooperative or association, ~~and~~  
24 ~~nothing.~~ Nothing in this act shall prohibit or shall ever be

1 construed to prohibit any municipal corporation, or beneficial  
2 trusts thereof, owning or operating electric lines, from furnishing  
3 electric service to any territory thereafter annexed to and  
4 incorporated into the corporate limits of ~~said~~ the municipal  
5 corporation, or from acquiring the electric distribution facilities  
6 of any association or cooperative corporation as now provided in  
7 ~~Title 18,~~ Section 437.2 of Title 18 of the Oklahoma Statutes.  
8 Provided further that it shall not be necessary for any ~~such~~  
9 municipal corporation, or beneficial trusts thereof, to secure the  
10 prior order, consent or authorization of the Corporation Commission  
11 to proceed under ~~said Title 18,~~ Section 437.2 of Title 18 of the  
12 Oklahoma Statutes, but after the acquisition of any ~~such~~ electric  
13 distribution facilities of any association or cooperative  
14 corporation, the Commission shall be notified by ~~such~~ the municipal  
15 corporation as to the description of the territory annexed and  
16 incorporated into the corporate limits in order that the Commission  
17 may adjust its required maps.

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

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

1 void. ~~In such event, the Commission shall be notified and the~~  
2 ~~appropriate maps be corrected accordingly, except to the extent~~  
3 otherwise provided by law.

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

6 Section 190.7 A. Electric distribution providers governed by  
7 the Retail Electric Supplier Certified Territory Act, ~~Section 158.21~~  
8 ~~et seq. of this title~~ or municipal corporations or beneficial trusts  
9 thereof owning or operating a retail electric distribution system or  
10 the Grand River Dam Authority, shall not furnish retail electric  
11 service to an electric-consuming facility which is currently being  
12 served, or which was being served and the permanent electric  
13 facilities are in place to render ~~such~~ the service, by a municipal  
14 corporation or beneficial trust thereof, a rural electric  
15 cooperative or an investor-owned electric utility or the Grand River  
16 Dam Authority, until enactment of electric restructuring enabling  
17 legislation and the implementation of consumer choice of retail  
18 electric energy suppliers, unless the entities involved have agreed  
19 by mutual consent, in writing, to ~~such~~ the transaction. For the  
20 purpose of this section, "electric distribution providers" shall  
21 mean the same as "retail electric service distributors" as defined  
22 by Section 190.3 of this title. The provisions of this section  
23 shall not apply to an order issued by the Corporation Commission

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1 under the Retail Electric Consumer Cost Reduction, Safety and  
2 Service Efficiency Act.

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

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

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