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Missouri Enacts Significant Utility/Regulatory Omnibus Bill

*By Frank A. Caro, Andrew O. Schulte and Spencer E. Culver**

In this article, the authors discuss a new law in Missouri that, among other things, significantly changes the regulated electric utility landscape.

Missouri Governor Mike Kehoe has signed into law a comprehensive Utility Omnibus Bill - Senate Bill 4 (SB 4 or the Bill). Among other things, the Bill significantly changes the regulated electric utility landscape. SB 4 establishes a statutory integrated resource planning framework, requires electrical corporations to add schedules governing large load customers to their tariffs, authorizes recovery of construction work in progress for the development of new natural gas generation facilities and establishes new standards for decommissioning large thermal generation assets.

INTEGRATED RESOURCE PLANNING

The last section of SB 4 modifies the integrated resource planning (IRP) process under what will become Section 393.1900 RSMo. The Bill makes filing an IRP a statutory requirement, rather than the current IRP process, which is codified by regulations administered by the Missouri Public Service Commission (MPSC). Under the current regulations, utilities file a new IRP every three years with an informational-only “Preferred Plan.” Every year between the triennial filings, utilities provide annual updates. The MPSC does not “approve” the Preferred Plan, and the utility can deviate from the Preferred Plan as long as it provides notice within 60 days of the utility’s determination of the need to deviate. Under the current regulations, adherence to the Preferred Plan does not meaningfully streamline the utility’s need to file for a certificate of convenience and necessity (CCN) prior to beginning construction on a new generation facility.

By contrast, under SB 4, utilities will file its IRP every four years, and CCN approvals will be streamlined if the utility can show consistency with their Preferred Plan. After holding a public hearing, the MPSC is specifically required to determine if the Preferred Plan “represents a reasonable and prudent means of meeting the electrical corporation’s load serving obligations at just and reasonable rates.” If such a finding is made, it “shall constitute the commission’s permission for the electrical corporation to construct or acquire the specified supply-side resources.” Before issuing a CCN, the MPSC will still assess the

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utility's qualifications to construct and operate the resources, their ability to finance construction or acquisition of the resources, and siting consideration. The CCN process will be vastly expedited, requiring Commission action in 120-180 days. The IRP requirements of SB 4 begin in August 2027. The MPSC is directed to promulgate rules to implement the new IRP requirements, and such rules will need to be in place prior to August 2027.

LARGE LOAD TARIFF SCHEDULES

SB 4 requires electric utilities to submit schedules that govern large load customers to the MPSC for inclusion in the utility's service tariffs. This provision will be codified at Section 393.130(7) RSMo. Utilities with over 250,000 customers must submit schedules for customers who are reasonably projected to exceed 100 megawatts (MW) of annual peak demand. Utilities with fewer than 250,000 customers must submit schedules for customers reasonably projected to exceed 50 MW of annual peak demand. The schedules should be designed to reflect these customers' representative share of the costs incurred to serve them, to prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers.

RECOVERY OF CONSTRUCTION WORK IN PROGRESS FOR NEW NATURAL GAS GENERATION FACILITIES

While Missouri law has prohibited electric utilities from charging customers for the costs of construction of new facilities prior to their becoming operational, SB 4 allows electric utilities to recover construction work in progress (CWIP) in its rate base for new natural gas generation units. This provision is codified in new Section 393.135(2) RSMo. The amount of CWIP that a utility may recover is limited by the estimated cost of the project and project expenditures made during the estimated construction period for the project. Any recovery of CWIP is subject to refund with interest if the MPSC determines that construction costs were imprudently incurred or if the project is not placed in service within a reasonable amount of time.

Furthermore, the CWIP recovery provision replaces other allowances for recovery of funds used during construction that may have otherwise been recoverable in the rate base for an electric utility. The rate base used to determine a deferred return under Section 393.1400.3(2) RSMo. will now include an offset for the amount of CWIP included in the rate base under Section 393.135.2.

The CWIP recovery provision will sunset in 2035 unless, in a hearing conducted in 2035, the MPSC chooses to extend the provision through 2045 based upon a submission from an electric utility demonstrating good cause for such an extension.

DECOMMISSIONING AND REPLACEMENT OF GENERATION FACILITIES

SB 4 prescribes a new practice for decommissioning and replacing thermal generation assets. This will be codified in Section 393.401 RSMo. Before closing an existing electric generating power plant on or after January 1, 2025, the electric utility must certify to the MPSC that it has secured and placed an equal or greater amount of reliable electric generation on the grid as accredited power resources based on the relevant regional transmission organization's resource accreditation for the technology at issue and any loss of load expected by the utility. An "existing electric generating power plant" is defined as a thermal power plant (or generating unit/combination of generating units within a thermal power plant) with over 100 MW of nameplate capacity. Concurrent with the closure of the existing generation asset, the electric utility must have adequate electric transmission lines in place and the replacement reliable electric generation shall be fully operational, unless the new facility uses some or all of the interconnection facilities of the existing asset or the existing asset is closed due to an "unexpected or unplanned event."

Under SB 4, "dispatchable power resources" shall comprise at least 80 percent of the average of the summer and winter accredited capacity of the replacement reliable electric generation. Section 393.401.2 RSMo.

Furthermore, if "existing electric generating power plant" capacity is replaced pursuant to Section 393.401, its capacity shall not be replaced by "replacement resources" as defined in Section 393.1705 RSMo., which includes wind and solar energy.

It is unclear from the statute to what extent, if any, renewable energy resources may comprise up to 20 percent of the replacement reliable electric generation.

RENEWABLE PORTFOLIO STANDARDS

SB 4 amended Missouri's Renewable Portfolio Standard (RPS) statute: Section 393.1030 RSMo. Renewable energy generated by an electric utility with between 250,000 and 1,000,000 retail customers in Missouri and contracted for by an "accelerated renewable buyer" cannot have its renewable energy certificates (RECs) used to meet the utility's RPS requirements, and the RECs shall be retired by the accelerated renewable buyer. Evergy is the only electric utility that will be affected by this provision. An "accelerated renewable buyer" is an electric utility customer with an aggregate load over 80 MW that contracts to obtain RECs – as defined in Section 393.1025 RSMo. – or energy and RECs from solar or wind generation located within the Southwest Power Pool and placed into service after January 1, 2020. SB 4 exempts "accelerated

renewable buyers” from any RPS compliance costs established by utilities regulated by this section and approved by the MPSC associated with the amount of credits retired pursuant to new Section 393.1030.2.