

By: Representatives Beckett, Staples, Hines To: Public Utilities

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1139

1 AN ACT TO AMEND SECTION 77-5-203, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF CERTAIN TERMS AS USED IN THE ELECTRIC
3 POWER ASSOCIATION LAW; TO AMEND SECTION 77-5-207, MISSISSIPPI CODE
4 OF 1972, TO PROVIDE THAT THE PERIOD OF DURATION OF A CORPORATION
5 FORMED UNDER THIS ARTICLE MAY BE PERPETUAL; TO AMEND SECTION
6 77-5-209, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THE NAME OF A
7 CORPORATION SHALL INCLUDE EITHER THE WORDS "ELECTRIC POWER
8 ASSOCIATION" OR "ELECTRIC COOPERATIVE"; TO AMEND SECTION 77-5-211,
9 MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR FILING A
10 CERTIFICATE OF INCORPORATION WITH THE SECRETARY OF STATE; TO AMEND
11 SECTION 77-5-215, MISSISSIPPI CODE OF 1972, TO REVISE THE
12 PROCEDURE FOR A CORPORATION TO AMEND ITS CERTIFICATE OF
13 INCORPORATION; TO AMEND SECTION 77-5-217, MISSISSIPPI CODE OF
14 1972, TO REVISE THE PROCEDURE WHEREBY TWO OR MORE CORPORATIONS MAY
15 ENTER INTO AN AGREEMENT FOR CONSOLIDATION; TO AMEND SECTION
16 77-5-219, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR
17 DISSOLUTION OF A CORPORATION; TO AMEND SECTION 77-5-221,
18 MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROVISION PROVIDING FOR
19 THE ANNUAL ELECTION OF A BOARD OF DIRECTORS; TO AMEND SECTION
20 77-5-223, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS OF THE
21 BOARD OF DIRECTORS; TO AMEND SECTION 77-5-225, MISSISSIPPI CODE OF
22 1972, TO DELETE CERTAIN LANGUAGE REGARDING RATES TO NONMEMBERS; TO
23 AMEND SECTION 77-5-229, MISSISSIPPI CODE OF 1972, TO MAKE A
24 NONSUBSTANTIVE CHANGE; TO AMEND SECTION 77-5-231, MISSISSIPPI CODE
25 OF 1972, TO REVISE THE SPECIFIC POWERS OF A CORPORATION FORMED
26 UNDER THIS ARTICLE; TO AMEND SECTION 77-5-233, MISSISSIPPI CODE OF
27 1972, TO PROVIDE THAT A CORPORATION SHALL CONTINUE TO HAVE THE
28 POWER TO ACQUIRE, CONSTRUCT, OWN, INVEST IN, OPERATE, MAINTAIN
29 AND/OR IMPROVE GENERATING AND/OR TRANSMISSION ASSETS; TO AMEND
30 SECTION 77-5-235, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL
31 RATES OF A CORPORATION FORMED UNDER THIS ARTICLE SHALL BE
32 ESTABLISHED BY THE CORPORATION'S BOARD WITH CERTAIN EXCEPTIONS; TO
33 AMEND SECTION 77-5-239, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A
34 CORPORATION TO INCUR OBLIGATIONS AND LIABILITIES, BORROW MONEY,



ISSUE NOTES, BONDS, CERTIFICATES OF INDEBTEDNESS AND OTHER OBLIGATIONS, AND TO ENTER CONTRACTS OF GUARANTY; TO AMEND SECTION 77-5-241, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY NOTE, BOND OR OTHER INDEBTEDNESS ISSUED BY A CORPORATION MAY BEAR SUCH INTEREST RATE OR RATES AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS; TO AMEND SECTION 77-5-243, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE SECURITY FOR OBLIGATIONS OF A CORPORATION; TO AMEND SECTION 77-5-247, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT MONIES OF A CORPORATION SHALL BE DEPOSITED OR INVESTED IN ONE OR MORE BANKS, TRUST COMPANIES, FINANCIAL INSTITUTIONS OR SUCH OTHER PUBLIC OR PRIVATE ENTITIES AS MAY BE APPROVED BY THE BOARD OF DIRECTORS; TO AMEND SECTION 77-5-249, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CORPORATION AND ITS PROPERTY SHALL BE TAXED AND ASSESSED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSISSIPPI; TO AMEND SECTION 77-5-253, MISSISSIPPI CODE OF 1972, TO REQUIRE EACH CORPORATION TO SUBMIT FINANCIAL AND COMPLIANCE AUDITS TO THE MISSISSIPPI PUBLIC SERVICE COMMISSION AND PUBLIC UTILITIES STAFF; TO AMEND SECTION 77-5-255, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MEDIATION PROCEEDINGS OF DISPUTES BETWEEN MEMBERS OR CUSTOMERS AND ELECTRIC POWER ASSOCIATIONS; TO CREATE SECTION 77-5-257, MISSISSIPPI CODE OF 1972, TO DECLARE THAT THE MISSISSIPPI PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS OF THE STATE SHALL NOT HAVE JURISDICTION OVER THOSE PORTIONS OR ASPECTS OF A CORPORATION'S OPERATIONS, FACILITIES, SERVICES OR RATES THAT ARE REGULATED BY THE TENNESSEE VALLEY AUTHORITY; TO CREATE SECTION 77-5-259, MISSISSIPPI CODE OF 1972, TO LIMIT THE TIME BY WHICH AN ACTION MAY BE COMMENCED FOR COLLECTION OR REIMBURSEMENT ARISING FROM A BILLING ERROR BY A CORPORATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 77-5-203, Mississippi Code of 1972, is amended as follows:

77-5-203. The following terms whenever used or referred to in this article shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Corporation" shall mean a corporation formed under this article or operating under this article pursuant to Section 77-5-213.

(b) "Bonds" shall mean and include bonds, interim certificates or receipts, notes, debentures and all other



evidences of indebtedness, either issued or the payment thereof assumed by the corporation.

(c) "Person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic.

(d) "Energy" shall mean and include any and all electric energy no matter how or where generated or produced.

(e) "Acquire" shall mean and include construct, acquire by purchase, lease, devise, gift, or other mode of acquisition.

(f) "System" shall mean and include any plant, works, system, facilities, or properties, or parts thereof, together with all appurtenances thereto, used or useful in connection with the generation, production, transmission or distribution of energy.

(g) "Law" shall mean any act or statute, general, special or local of this state.

(h) "Federal agency" shall mean and include the United States of America, the President of the United States of America, Tennessee Valley Authority, the Federal Emergency * * * Management Agency, the United States Department of Agriculture and its agencies, including the Rural Utilities Service, and any and all other authorities, agencies and instrumentalities of the United States of America, heretofore or hereafter created.

(i) "Improve" shall mean and include construct, reconstruct, improve, replace, extend, enlarge, alter, better or repair.



(j) "Board" shall mean the board of directors of a corporation formed under this article.

(k) "Member" shall mean and include each natural person signing the certificate of incorporation of a corporation and each person admitted to and retaining membership therein pursuant to law or its bylaws, and shall include a joint membership as defined by the corporation's bylaws.

(l) "Services" or "service" shall mean the sale or other disposition of energy, electrical appliances, wiring and equipment at the lowest cost consistent with sound economy, public advantage and the prudent conduct of the business of a corporation.

(m) "Certificate of incorporation" includes a certificate of incorporation or articles of incorporation.

(n) "Rate" means and includes every compensation, charge, deposit, contribution, fee, fare, toll, rental, cost and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged, collected, avoided, or owed by a corporation for or relating to electric energy offered or provided by the corporation to the public or received by the corporation, and any rules, regulations, practices or contracts relating to any such compensation, charge, deposit, contribution, fee, fare, toll, rental, cost, or classification, including, but not limited to, any rules, regulations, practices or contracts relating to the disconnection



124 of service to members or nonmember customers who have failed to
125 pay for electric energy provided by the corporation.

126 **SECTION 2.** Section 77-5-207, Mississippi Code of 1972, is
127 amended as follows:

128 77-5-207. The certificate of incorporation shall state:

129 (a) The name of the corporation, which name shall
130 include the words "electric power association" or "electric
131 cooperative" and shall be such as to distinguish it from any other
132 corporation organized and existing under the laws of this state.

133 (b) The location of its principal office and the
134 post-office address thereof.

135 (c) The maximum number of directors, not less than
136 three (3).

137 (d) The names and post-office addresses of the
138 directors who are to manage the affairs of the corporation for the
139 first year of its existence, or until their successors are chosen.

140 (e) The period of the duration of the corporation,
141 which * * * may be perpetual.

142 (f) The terms and conditions upon which persons shall
143 be admitted to membership in the corporation.

144 The certificate of incorporation may also contain any
145 provisions not contrary to law which the incorporators may choose
146 to insert for the regulation of its business and for the conduct
147 of the affairs of the corporation. It may also contain any



provisions creating, defining, limiting or regulating the powers of the corporation, its directors and members.

SECTION 3. Section 77-5-209, Mississippi Code of 1972, is amended as follows:

77-5-209. The name of a corporation * * * shall include either the words "electric power association" or "electric cooperative." The words "electric power association" and the words "electric cooperative" shall not be used in the corporate name of any corporation other than those formed pursuant to the provisions of this article or those operating under this article pursuant to Section 77-5-213. Whenever the words "electric power association" or "electric cooperative" or "nonprofit cooperative electric power association" appear in the laws of this state, such words shall refer to a corporation formed pursuant to and/or operating under the provisions of this article, including a corporation that uses either the words "electric power association" or "electric cooperative" in its name.

SECTION 4. Section 77-5-211, Mississippi Code of 1972, is amended as follows:

77-5-211. The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted, who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before any officer authorized to



173 take acknowledgments to deeds or other instruments. When so
174 acknowledged, the * * * certificate may be filed with the
175 Secretary of State at any time thereafter within six (6) months of
176 the date of the last acknowledgment. * * * When submitted for
177 filing, the Secretary of State shall accept and file the
178 certificate and enter the date of filing in its records. The
179 certificate of incorporation shall be effective as of the date on
180 which the certificate of incorporation is filed with the Secretary
181 of State, and the powers specified in the certificate of
182 incorporation shall thereupon be vested in the corporation without
183 further formalities.

184 * * *

185 **SECTION 5.** Section 77-5-215, Mississippi Code of 1972, is
186 amended as follows:

187 77-5-215. A corporation * * * may amend its certificate of
188 incorporation to change its corporate name, to increase or reduce
189 the number of its directors, or to change any other provisions
190 therein. Notwithstanding any provisions of a corporation's
191 certificate * * * of incorporation to the contrary, * * * if a
192 corporation's certificate of incorporation provides that the
193 period of duration of the corporation is a limited number of
194 years, the corporation may amend its certificate to provide that
195 the duration of the corporation is perpetual if such an amendment
196 is authorized by the board of directors of the corporation
197 pursuant to the affirmative vote of at least two-thirds (2/3) of



198 the directors. Otherwise, and notwithstanding any provisions of
199 a corporation's certificate of incorporation to the contrary, a
200 corporation may amend its certificate of incorporation if (a) the
201 amendment is authorized by the board of directors of the
202 corporation pursuant to the affirmative vote of at least
203 two-thirds (2/3) of the directors, and (b) the amendment
204 authorized by the board of directors is ratified by sixty percent
205 (60%) of the corporation's members voting, at either the
206 corporation's annual meeting or at a meeting of the members called
207 for the special purpose of considering and voting on the
208 amendment. Written notice of any meeting at which an amendment to
209 the corporation's certificate * * * of incorporation will be voted
210 on by the members must be sent to the corporation's members at
211 least thirty (30) days prior to the date of the meeting. The
212 notice shall set forth the date, time, location and purpose of the
213 meeting, and identify and describe the purpose of the amendment
214 authorized by the corporation's board of directors. In the event
215 an amendment is fully authorized * * * in accordance with the
216 foregoing, a certificate reflecting the amendment to the
217 certificate * * * of incorporation shall be prepared and executed
218 by the president and by the secretary of the corporation who shall
219 both affirm therein, under oath, that they have been authorized by
220 the corporation to execute and file such certificate. Such
221 certificate of amendment shall then be filed by the corporation in
222 the Office of the Secretary of State, who shall forthwith cause



223 this certificate to be handled in the manner prescribed in Section
224 77-5-211 for original certificates of incorporation; and the
225 amendment of the corporation's certificate or articles of
226 incorporation shall be effective as of the date on which the
227 certificate of amendment is * * * filed with the Secretary of
228 State, and the powers specified in the certificate of amendment
229 shall thereupon be vested in the corporation without further
230 formalities.

231 **SECTION 6.** Section 77-5-217, Mississippi Code of 1972, is
232 amended as follows:

233 77-5-217. Any two (2) or more corporations * * * may enter
234 into an agreement for the consolidation of such corporations.
235 Such agreement, which may or may not require the dissolution of
236 one or both of the corporations as provided in Section 77-5-219,
237 shall set forth the terms and conditions of the consolidation, the
238 name of the proposed consolidated corporation, the number of its
239 directors, who shall be not less than three (3), the time of
240 the * * * initial meeting of the consolidated corporation and
241 election of directors, and the name of at least three (3) persons
242 to * * * serve as directors until the * * * election of directors
243 at the initial meeting. * * * To be effective, any such
244 agreement * * * must be (a) authorized by the * * * board of * * *
245 directors of each corporation pursuant to the affirmative vote of
246 at least two-thirds (2/3) of the directors of each corporation,
247 and (b) ratified by sixty percent (60%) of each corporation's



248 members voting, at either the corporation's annual meeting or at a
249 meeting of the members called for the special purpose of
250 considering and voting on the agreement for consolidation. If the
251 agreement is so authorized and ratified, a joint application for
252 approval of consolidation shall be filed by the consolidating
253 corporations with the Mississippi Public Service Commission in the
254 manner provided by Section 77-3-23. In no event shall another
255 party be allowed to intervene in a proceeding initiated under this
256 section for the purpose of seeking to obtain the certificated
257 area, or any portion thereof, of any petitioning party. Upon
258 approval of the application by the commission, the directors named
259 in the consolidation agreement shall subscribe and acknowledge a
260 certificate conforming substantially to * * * an original * * *
261 certificate of incorporation, except that it shall be entitled and
262 indorsed "certificate of consolidation of ____" (the blank space
263 being filled in with the names of the corporations being
264 consolidated) and shall state:

265 (a) The names of the corporations being consolidated.

266 (b) The name of the consolidated corporation.

267 (c) The other items required or permitted to be stated
268 in * * * a corporation's original certificate of incorporation.

269 Such certificate of consolidation * * * shall be filed with
270 the Secretary of State in the same * * * manner as * * * provided
271 in Section 77-5-211. Upon such filing, the proposed consolidated
272 corporation, under its designated name, shall be and constitute a



body corporate with all the powers of a corporation as originally formed under the provisions of this article.

SECTION 7. Section 77-5-219, Mississippi Code of 1972, is amended as follows:

77-5-219. * * * Upon complying with the requirements of Section 77-5-217 or 77-5-237, a corporation * * * may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and indorsed "certificate of dissolution of ____" (the blank space being filled in with the name of the corporation) and shall state:

(a) Name of the corporation * * *.

(b) The date of filing of the * * * corporation's most recent certificate of incorporation.

(c) That the corporation elects to dissolve.

(d) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the * * * officers of the corporation, who shall make and annex an affidavit stating that the corporation has complied with the requirements of Section 77-5-217 or Section 77-5-237 and that they have been authorized to execute and file such certificate * * *.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same * * * place as an original



298 certificate of incorporation and thereupon the corporation shall
299 be deemed to be dissolved.

300 Such corporation shall continue for the purpose of paying,
301 satisfying and discharging any existing liabilities or obligations
302 and collecting or liquidating its assets, and doing all other acts
303 required to adjust and wind up its business and affairs, and may
304 sue and be sued in its corporate name. Any assets remaining after
305 all liabilities or obligations of the corporation have been
306 satisfied or discharged shall be ratably distributed to the
307 members thereof.

308 **SECTION 8.** Section 77-5-221, Mississippi Code of 1972, is
309 amended as follows:

310 77-5-221. * * * A corporation * * * shall have a board of
311 directors, and the powers of the corporation shall be vested in
312 and exercised by such board of directors. The directors of the
313 corporation * * *, other than those named in * * * a certificate
314 of incorporation, * * * shall be elected annually by the members
315 entitled to vote. The initial directors of the corporation,
316 including directors elected to succeed those * * * named in a
317 certificate of incorporation, shall be elected * * * as follows:
318 one-third (1/3) to be elected for a term of one (1) year,
319 one-third (1/3) for a term of two (2) years, and one-third (1/3)
320 for a term of three (3) years. Thereafter, all directors shall be
321 elected for a term of three (3) years, or for such other term(s)
322 as may be subscribed by the corporation's certificate of



323 incorporation. Only members of * * * the corporation shall be
324 entitled to vote. The directors of a corporation must be members
325 of the corporation * * *. In order to qualify as a candidate for
326 director of a corporation by petition, a candidate shall obtain
327 not less than fifty (50) signatures of members of the
328 corporation * * * on whose board such candidate wishes to serve;
329 however, a corporation shall be empowered, in its discretion, to
330 adopt, through its bylaws, * * * provisions which * * * allow a
331 person to qualify as a candidate for director by petition by
332 obtaining less than fifty (50) signatures or by other less
333 restrictive means. The directors shall be entitled to
334 reimbursement for expenses incurred by them in the performance of
335 their duties. In addition to * * * reimbursement for expenses,
336 the board may authorize compensation and benefits to be paid to
337 and on behalf of such directors for the * * * performance of their
338 duties, including for the time it takes for them to travel to and
339 from meetings and to board functions. The board shall elect * * *
340 periodically from its own number * * * officers as prescribed by
341 the corporation's bylaws. Directors may elect to attend the board
342 meetings by telephone or video conference. All board meetings,
343 unless in executive session, shall be open to any member of a
344 corporation. Subject to the limitations below, any member or
345 customer of a corporation shall be entitled to address the board
346 at any regular meeting regarding any suggestions for better
347 service, grievances or any other matter affecting the corporation.



The * * * board shall have the right to impose reasonable limitations upon the number of members or customers addressing any one (1) board meeting * * * and the amount of time allotted to each presentation, and also to require members and customers to give the board reasonable * * * advance notice of their desire to address the board * * * so that the board may investigate and be able to respond to the presentation.

SECTION 9. Section 77-5-223, Mississippi Code of 1972, is amended as follows:

77-5-223. The board of a corporation shall have power to do all things necessary or convenient in conducting the business of * * * the corporation, including, but not limited to:

(a) * * * To adopt and amend bylaws for the management and regulation of the affairs of the corporation. The bylaws of a corporation may make provisions, not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the numbers, times and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings * * * ; the date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving



of notice thereof; the terms and conditions upon which the corporation is to render service to its members * * *; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof; and such other matters as the board may deem appropriate or desirable.

(b) To appoint agents and employees and to fix their compensation and benefits and the compensation and benefits of the officers of the corporation.

(c) To execute all instruments or documents, or to delegate the execution thereof.

(d) To delegate to one or more of the directors or to the officers, agents and employees of a corporation such powers and duties as it may deem proper.

(e) To make its own rules and regulations as to its procedure.

(f) * * * To appoint such committees as the board shall in its judgment see fit, which committees may consist of members or nonmembers of either the board or the corporation.

(g) To cause the corporation to reimburse directors for expenses incurred by them in the performance of their duties and to fix compensation and benefits to be paid to and on behalf of directors for the performance of their duties.

SECTION 10. Section 77-5-225, Mississippi Code of 1972, is amended as follows:



398 77-5-225. Except as hereinafter provided, the corporate
399 purpose of * * * a corporation * * * shall be to render service to
400 its members only. Any person may become and remain a member if
401 such person shall use energy supplied by such corporation and
402 shall comply with the terms and conditions in respect to
403 membership contained in the bylaws of such corporation, which
404 terms and conditions shall be nondiscriminatory. Any person who
405 shall agree to use energy supplied by the corporation from an
406 existing line or from a line the construction of which has been
407 authorized or commenced by the corporation may be admitted to
408 membership in the corporation prior to such use upon complying
409 with the other terms and conditions with respect to membership
410 contained in the certificate of incorporation or in the bylaws.
411 The membership fee of the corporation shall be fixed by the board
412 of directors. Should the corporation acquire any electric
413 facilities already dedicated or devoted to the public use it may,
414 for the purpose of continuing existing service and avoiding
415 hardship, continue to serve the persons served directly from such
416 facilities at the times of such acquisition without requiring that
417 such persons become members. In no event shall the number of such
418 nonmembers served exceed forty-nine percent (49%) of the total
419 number of persons served by the corporation. Such nonmember
420 customers shall have the right to become members upon
421 nondiscriminatory terms. * * *



422 **SECTION 11.** Section 77-5-229, Mississippi Code of 1972, is
423 amended as follows:

424 77-5-229. * * * A corporation * * * is hereby vested with
425 all power necessary or requisite for the accomplishment of its
426 corporate purpose, and no enumeration of particular powers hereby
427 granted in this article shall be construed to impair any general
428 grant of power herein contained, or to limit any such grant to a
429 power or powers of the same class or classes as those so
430 enumerated.

431 **SECTION 12.** Section 77-5-231, Mississippi Code of 1972, is
432 amended as follows:

433 77-5-231. (1) A corporation * * * shall have power to do
434 any and all acts or things necessary or convenient for carrying
435 out the purposes for which it was formed, including, but not
436 limited to:

437 (a) To sue and be sued.

438 (b) To have a seal and alter the same at pleasure.

439 (c) To acquire, hold and dispose of property, real and
440 personal, tangible and intangible, or interests therein and to pay
441 therefor in cash or property or on credit, and to secure and
442 procure payment of all or any part of the purchase price thereof
443 on such terms and conditions as the board shall determine.

444 (d) To render service and to acquire, own, operate,
445 maintain and improve a system or systems within the state and in
446 counties adjacent thereto.



447 (e) To pledge all or any part of its revenues and to
448 mortgage or otherwise incumber all or any part of its property for
449 the purpose of securing the payment of the principal of and
450 interest on any of its bonds or other obligations.

451 (f) To use any right-of-way, easement or other similar
452 property right necessary or convenient in connection with the
453 acquisition, improvement, operation or maintenance of a system,
454 granted by the state or any political subdivision thereof,
455 provided that the governing body of such political subdivision
456 shall consent to such use, and to have and exercise the power of
457 eminent domain in the manner provided by the condemnation laws of
458 this state for acquiring private property for public use, such
459 right to be paramount except as to the property of the state or of
460 any political subdivision thereof.

461 (g) To accept gifts or grants of money, property, real
462 or personal, from any person, municipality or federal agency and
463 to accept voluntary and uncompensated services.

464 (h) To make any and all contracts necessary or
465 convenient for the full exercise of the powers in this article
466 granted, including, but not limited to, contracts with any person,
467 federal agency, state agency or municipality for the purchase,
468 transfer or sale of energy and/or the acquisition of all or any
469 part of any system, and in connection with any such contract to
470 stipulate and agree to such covenants, terms and conditions as the
471 board may deem appropriate, including covenants, terms and



472 conditions with respect to the resale rates, financial and
473 accounting methods, services, operation and maintenance practices
474 and the manner of disposing of the revenues of the system operated
475 and maintained by the corporation.

476 (i) To sell, lease, or otherwise dispose of all or any
477 part of its property, subject however to the provisions of Section
478 77-5-237.

479 (j) To contract debts, borrow money and to issue,
480 assume or indorse the payment of bonds or other evidences of
481 indebtedness.

482 (k) To fix, maintain and collect fees, rents, tolls and
483 other charges for services rendered.

484 (l) To acquire and to sell, lease, distribute and
485 generally to deal in electrical and plumbing appliances,
486 apparatus, machinery and equipment for the purpose of and in
487 connection with the promotion of the sale of electric energy to
488 its customers; to assist its customers to purchase or otherwise
489 obtain such appliances, apparatus, machinery and equipment; to
490 assist its customers to wire their premises and to install therein
491 such appliances, apparatus, machinery and equipment; to acquire
492 and to indorse, sell, pledge, hypothecate and dispose of notes,
493 bonds and other obligations of its customers in carrying out the
494 purposes expressed in this paragraph.

495 (m) To * * * maintain, in any reasonable manner and in
496 its discretion, its easements and rights-of-way and adjacent



property within a reasonable or necessary distance of its energy
facilities free of vegetation, trees, limbs or other impediments
in order to foster the integrity and reliability of the
corporation's electric energy system or the safety of the public
or its members, agents or employees.

(* * *n) To condemn any land, easements, or
rights-of-way, either on, under, or above the ground, as the
association may deem necessary for any purposes mentioned in this
article other than the purposes described in subsection (2) of
this section, and such property or interest in such property may
be so acquired whether or not the same is owned or held for public
use by corporations, associations or persons having the power of
eminent domain, or otherwise held or used for public purposes.
Such power of condemnation may be exercised in the mode or method
of procedure prescribed by Chapter 27, Title 11, Mississippi Code
of 1972, or in the mode or method of procedure prescribed by any
other applicable statutory provisions now in force or hereafter
enacted for the exercise of the power of eminent domain. Where
condemnation proceedings become necessary, the judge of the
circuit court or the judge of the county court in counties where
the county court exists, in which such proceedings are filed,
shall, upon application of the authority, and upon the deposit in
court, to the use of the person or persons lawfully entitled
thereto, of such amount as the judge may deem necessary to assure
just compensation, order that the right of possession shall issue



522 immediately or as soon and upon such terms as the judge, in his
523 discretion, may deem just and proper. Upon application of the
524 parties in interest other than the corporation, the judge may
525 order that the money deposited in the court, or any part thereof,
526 be paid forthwith for or on account of the just compensation to be
527 awarded in said proceedings.

528 (* * *o) To operate across state lines.

529 (* * *p) To perform any and all of the foregoing acts
530 and to do any and all of the foregoing things under, through or by
531 means of its own officers, agents and employees, or by contracts
532 with any person, federal agency or municipality.

533 (2) Any generation and transmission electric corporation
534 created under this article may undertake economic development
535 activities, whether directly, indirectly, or in conjunction with
536 other entities, including activities such as providing capital, or
537 investment in or acquisition and development of business or
538 industrial sites and the necessary infrastructure or services
539 needed to attract new or existing businesses or industry, to
540 create or maintain employment opportunities, or otherwise to
541 positively impact its service territory or in some manner promote
542 the sale of electric energy.

543 **SECTION 13.** Section 77-5-233, Mississippi Code of 1972, is
544 amended as follows:

545 77-5-233. To the extent necessary in the judgment of * * *
546 its board to make effective the powers conferred by this



article, * * * a corporation shall continue to have the power to
acquire, construct, own, invest in, operate, maintain, and/or
improve * * * generating and/or transmission * * * assets.

SECTION 14. Section 77-5-235, Mississippi Code of 1972, is
amended as follows:

77-5-235. (1) A corporation * * * shall have the power to
fix, adjust, charge, collect and pay reasonable rates for electric
energy and other facilities, supplies, equipment, products,
commodities, goods and services furnished by, offered by or
furnished to the corporation. All rates of a corporation formed
or operating under the provisions of this article shall be
established by the corporation's board and shall not be regulated
by the Mississippi Public Service Commission.

(2) Notwithstanding the foregoing, a corporation shall be
subject to commission regulations that limit disconnections of
service during freeze warnings or excessive heat warnings issued
by the National Weather Service, limit disconnections of service
in life-threatening situations certified by a medical doctor, or
establish initial deposit requirements for certified victims of
domestic violence.

(3) Nothing herein shall be construed to impair the
Mississippi Public Service Commission's jurisdiction and
authority, if any, to require corporations to establish, offer or
participate in energy efficiency or net metering programs, but in
no event shall the commission set or establish the level of



expenditures, compensation or credits associated with a
corporation's energy efficiency, net metering or other programs.

(4) As used in this section, "attaching entity" means a
cable television system or provider of telecommunications service.
Nothing in this article shall be construed to impair the
Mississippi Public Service Commission's jurisdiction and authority
that existed prior to the effective date of this act, if any, with
regard to a corporation's rates, terms and conditions for
attachments by an attaching entity to poles owned or controlled by
the corporation. A corporation may only deny an attaching entity
access to its owned or controlled poles on a nondiscriminatory
basis if there is insufficient capacity or for reasons of safety
and reliability and if the attaching entity will not resolve the
issue. Nothing in this subsection shall be construed to prohibit
a corporation from requiring an attaching entity to enter into a
pole attachment agreement consistent with this section.

(5) A corporation's rates for energy furnished or offered by
the corporation shall be sufficient at all times to pay all
operating and maintenance expenses necessary or desirable for the
prudent conduct and operation of its business and to pay the
principal of and interest on such obligations as the corporation
may have issued and/or assumed in the performance of the purpose
for which it was formed. The revenues and receipts of a
corporation shall first be devoted to such operating and
maintenance expenses and to the payment of such principal and



597 interest and thereafter to such reserves for improvement, new
598 construction, depreciation and contingencies as the board may from
599 time to time prescribe. Revenues and receipts not needed for
600 these purposes shall be returned to the members * * * by such
601 means as the board may decide, including through the reimbursement
602 of membership fees, * * * the implementation of general rate
603 reductions, the limitation or avoidance of future rate increases,
604 or such other means as the board may * * * determine.

605 **SECTION 15.** Section 77-5-239, Mississippi Code of 1972, is
606 amended as follows:

607 77-5-239. A corporation * * * shall have the power to incur
608 obligations and liabilities, borrow money, issue notes, bonds,
609 certificates of indebtedness and other obligations, and to enter
610 into contracts of guaranty.

611 **SECTION 16.** Section 77-5-241, Mississippi Code of 1972, is
612 amended as follows:

613 77-5-241. Any * * * note, bond, or other * * *
614 indebtedness * * * issued by a corporation * * * may bear such
615 interest rate or rates * * * as may be determined by the board of
616 directors of the corporation * * *.

617 **SECTION 17.** Section 77-5-243, Mississippi Code of 1972, is
618 amended as follows:

619 77-5-243. * * * A corporation shall have the power to
620 execute and deliver any of one or more mortgages, deeds of trust,
621 financing statements, or other instruments to secure debt



622 covering, or to create by other means a security interest in, any
623 or all of the real or personal property assets, rights,
624 privileges, licenses, franchises, and permits of the corporation
625 or any interest therein, as well as the revenues therefrom,
626 whether acquired or to be acquired wherever situated, for the
627 purpose of securing the payment or performance of any one or more
628 contracts, notes, bonds, or other obligations of the corporation.

629 **SECTION 18.** Section 77-5-247, Mississippi Code of 1972, is
630 amended as follows:

631 77-5-247. All * * * monies of a corporation from whatever
632 source derived, shall be deposited or prudently invested in one or
633 more banks * * *, trust companies, or financial institutions, as
634 may be approved by the board of directors, and, if the corporation
635 shall so require, each of such accounts shall be continuously
636 secured by a pledge of direct obligations of the United States of
637 America or of the State of Mississippi having an aggregate market
638 value, exclusive of accrued interest, at all times at least equal
639 to the balance on deposit in such account or accounts, or
640 otherwise insured by the Federal Deposit Insurance Corporation by
641 whatever mechanism the corporation's board may deem appropriate.

642 Such securities shall either be deposited with the
643 corporation or held by a trustee or agent satisfactory to the
644 corporation. In lieu of any such pledge or such securities, said
645 deposits may be secured by a surety bond or bonds which shall be



646 in form, sufficiency and substance satisfactory to the
647 corporation.

648 **SECTION 19.** Section 77-5-249, Mississippi Code of 1972, is
649 amended as follows:

650 77-5-249. * * * A corporation and * * * its property shall
651 be * * * taxed and assessed in accordance with the * * * laws of
652 the * * * State of Mississippi.

653 **SECTION 20.** Section 77-5-253, Mississippi Code of 1972, is
654 amended as follows:

655 77-5-253. All corporations created under this * * * article
656 shall submit annual financial and compliance audits to the
657 Mississippi Public Service Commission and Public Utilities Staff
658 for review and archiving.

659 **SECTION 21.** Section 77-5-255, Mississippi Code of 1972, is
660 amended as follows:

661 77-5-255. (1) Subject to the limitations herein, the Public
662 Service Commission shall investigate, review and * * * mediate any
663 dispute which qualifies as specified herein between a member or
664 customer and the corporation of which he is a member. The minimum
665 amount of a dispute which shall qualify for * * * mediation under
666 this section shall be: (a) One Thousand Dollars (\$1,000.00) which
667 has accumulated over the past twelve (12) months or (b) ten
668 percent (10%) of the cumulative previous twelve (12) months'
669 billing, whichever shall be the lesser. Investigation, review
670 and * * * mediation shall be commenced upon the filing of a



671 petition with the Public Service Commission by a corporation or a
672 member or customer of a corporation; provided, however, that the
673 Public Service Commission shall not commence any proceedings nor
674 commence any investigation * * *, review or mediation of any such
675 dispute until it has first been notified by both the member and
676 the corporation of their consent to the investigation, review and
677 mediation. The Public Service Commission also shall not commence
678 any proceedings nor commence any investigation, review or
679 mediation pursuant to such petition if at the time of filing the
680 petition suit has been filed in any court of this state or of the
681 United States with regard to the subject matter of the dispute and
682 in which such corporation and member or customer are parties. Any
683 such petition shall be immediately dismissed if any such suit is
684 filed after filing of the petition with the commission.

685 (2) In any * * * mediation proceedings commenced under the
686 provisions of this section, the Public Service Commission may, by
687 order entered on its minutes and delivery of a certified copy
688 thereof to the corporation, direct the corporation and the member
689 or customer to provide the Public Service Commission with copies
690 of all statements, accounts and reports concerning * * * the * * *
691 dispute which the Public Service Commission may require. The
692 Public Service Commission is further authorized to conduct
693 and * * * may conduct, or * * * request the * * * Public Utilities
694 Staff to conduct, investigation * * * and * * * mediation of the
695 dispute and may negotiate with the corporation and the member or



customer for the resolution thereof. In every * * * mediation proceeding under this section the Public Service Commission may perform only such duties relating to the dispute as it deems reasonable and likely to result in settlement of the dispute * * * between the corporation and the member or customer.

(3) Participation and continued participation in any investigation, proceeding, negotiation or * * * mediation under the provisions of this section shall be voluntary by the corporation and the member or customer * * *.

SECTION 22. The following shall be codified as Section 77-5-257, Mississippi Code of 1972:

77-5-257. **TVA jurisdiction.** It is hereby recognized that certain corporations formed or operating under this article have entered into contracts with the Tennessee Valley Authority for the purchase of wholesale electric power and that the operations, facilities, services and rates of such corporations are thereby subject to extensive regulation by the Tennessee Valley Authority. In order to avoid the inefficiencies and confusion caused by duplicative, overlapping and conflicting jurisdiction and regulations, it is hereby declared that the Mississippi Public Service Commission and political subdivisions of the state shall not have jurisdiction over and shall not regulate those portions or aspects of a corporation's operations, facilities, services, or rates that are regulated by the Tennessee Valley Authority. In the event of a dispute between the Mississippi Public Service



Commission (commission) and the Tennessee Valley Authority (TVA) over the existence or scope of TVA's regulatory authority, the commission shall defer to TVA's asserted authority unless and until the commission has obtained a favorable, final, and nonappealable declaratory judgment against TVA in a court of competent jurisdiction. In any such suit, the commission shall not force a corporation(s) to incur legal fees and expenses by naming them as a party, though a corporation shall maintain the right to seek voluntary intervention under the rules of the court in which the action is pending.

SECTION 23. The following shall be codified as Section 77-5-259, Mississippi Code of 1972:

77-5-259. **Limitation for billing errors.** In any action or regulatory proceeding arising from any overbilling or underbilling by a corporation, no collection, reimbursement, or other relief may be awarded for underbillings or overbillings occurring more than six (6) years prior to the commencement of the action or regulatory proceeding.

SECTION 24. This act shall take effect and be in force from and after July 1, 2016.

