

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1109-06
Bill No.: SCS for SB 228
Subject: Consumer Protection; Public Service Commission; Utilities
Type: Original
Date: April 6, 2009

Bill Summary: Modifies the construction-while-in-progress (CWIP) law for construction of certain new power plants and creates the Missouri Clean and Renewable Energy Construction Act

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	\$0	\$0	(\$236,123 to \$393,423)
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	(\$236,123 to \$393,423)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Public Service Commission Fund*	\$0	\$0	\$0*
Total Estimated Net Effect on <u>Other</u> State Funds*	\$0	\$0	\$0*

***Offsetting Income and Cost for Public Service Commission Fund**

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	0	0	3 to 5 FTE
Public Service Commission Fund	0 to 4 FTE	0 to 4 FTE	4 to 12 FTE
Total Estimated Net Effect on FTE	0 to 4 FTE	0 to 4 FTE	7 to 17 FTE

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Local Government	(Unknown - Expected to exceed \$100,000)	(Unknown- Expected to exceed \$100,000)	(Unknown- Expected to exceed \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** state this proposal will have no fiscal impact on the Courts.

Officials from the **Department of Natural Resources** state this proposal will have no direct fiscal impact on their agency.

Officials from the **Department of Revenue, Office of Administration - Administrative Hearing Commission**, and the **State Tax Commission** state this proposal will have no fiscal impact on their agency.

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** state there will be no additional cost or savings to BAP.

According to officials from the **Office of Secretary of State (SOS)**, many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Economic Development - Office of Public Counsel (OPC)** state that this proposal would create an entirely new set of procedures for approval of costs associated with electric power plants. OPC would require a significant increase in its staff to be able to handle the additional complex and fast-track cases.

Under a very tight time line, the Public Service Commission will be required to conduct a case (in which OPC would participate) and make a finding that a particular plant is a prudent investment. Then, under another very tight time line, it will be required to conduct another case (in which Public Counsel would also participate) to rule on detailed budgets and construction schedules for the plant. Other cases to revisit the findings in these first two cases may be filed at any time. Yet another series of new cases, as many as four per year for every plant, will follow.

ASSUMPTION (continued)

In order to have the public interest adequately represented in all of these proceedings, OPC must be able to fully participate. Current staff numbers and current staff expertise are not adequate. Public Counsel must have at least two engineers to evaluate utilities' plans for generating plants, and to evaluate the progress of construction. It must have at least one additional economist to evaluate the economic assumptions and impacts of the generating plants. It must have at least two additional accountants to audit the plans for the generating plants and the books and records relating to construction.

Oversight assumes that while regulatory approval for a pending project may not be received until FY 12, at which time the PSC approval process would begin, other qualified projects may begin the approval process. Oversight will range the FTE for FY 12 from 3 to 5 FTE.

Oversight has, for fiscal note purposes only, changed the starting salary for requested staff to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Officials from the **Public Service Commission (PSC)** assume this proposed legislation modifies the construction-work-in-progress law for certain power plants in Missouri and creates new rate filings for construction projects related to renewable energy sources. If the investor-owned electric utilities use the provisions of this legislation, it would result in additional filings, audits, reviews, rate cases and associated proceedings before the PSC.

It is difficult to estimate the full impact of the legislation since it is unknown how many clean baseload generating plant and low-carbon producing generating facility construction projects will be submitted to the commission in total or at any given time. In looking at the potential number of additional filings and FTE, it is necessary to consider the different provisions that the legislation contains while also considering the potential synergies between new and existing staff.

In response to Senate Bill 179 (FN 983-05 - 2005) and Senate Bill 54 (FN 983-05 - 2007), the PSC established an Energy Resource Analysis Group to review filings associated with integrated resource planning proposals, Green Power Initiative (superseded by Renewable Energy Standard), net metering filings, environmental cost recovery mechanism proposals and fuel adjustment clause filings and reviews. It was also envisioned that this group would monitor, review and make recommendations related to the construction of a new nuclear plant in Missouri. During the period from May to September, 2008, six FTE were approved and assigned

ASSUMPTION (continued)

to this group.

In response to HB 554 (FN 1194-01), the Energy Resource Analysis Group would also be responsible for monitoring, reviewing and making recommendations related to initial applications for the construction within Missouri of clean baseload generating plants and low-carbon producing generating facilities that utilize renewable sources to produce energy.

For FY 2010, the PSC is seeking 3 additional FTE to be allocated to the Energy Resource Analysis Group - 2 FTE classified as Utility Engineering Specialist III/Utility Regulatory Engineer 1 and 1 FTE classified as a Rates and Tariff Examiner. If the PSC receives the three FTE associated with the pending request the PSC would need 9 additional FTE to monitor the interests of the consumer throughout the ratemaking processes. However, if the additional FTE are not approved, the PSC will need 12 FTE.

Oversight assumes the requirements of §393.1164 requiring the PSC to compile a report that considers the relative merits of various methods to finance new generating plants and facilities and the requirements of §393.1259 requiring PSC to develop requirements for a facility review order could result in a need for additional staffing in FY 2010 and 2011. For fiscal note purposes only, Oversight will range staff requirements from 0 FTE to 4 FTE.

For fiscal note purposes only, **Oversight** will range the staff requirements from 4 FTE to 12 FTE in FY 2012. Oversight assumes that while regulatory approval for a pending project may not be received until FY 12, other qualified projects may begin the approval process and additional FTE will be needed to augment the staff already in place with the Energy Resource Analysis Group.

PSC FTE Request:

- 1 Regulatory Law Judge @ 10%-15% travel
- 1 Senior Counsel @ 10%-15% travel
- 1 Legal Counsel @ 10%-15% travel
- 2 Utility Engineering Specialist III @ 10%-15% travel
- 1 Utility Engineer I @ 50% travel
- 1 Utility Engineer I @ 10%-15% travel
- 1 Utility Regulatory Auditor III @ 10-15% travel
- 1 Utility Regulatory Auditor IV @ 50% travel
- 1 Utility Regulatory Auditor V to supervise the group @ 10%-15% travel
- 1 Regulatory Economist III @ 10%-15% travel
- 1 Rate & Tariff Examiner @ 10%-15% travel

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ASSUMPTION (continued)

12 FTE for a travel estimate of \$44,410

Other Expenses

Seminars & Training: \$1000/year/professional FTE = \$12,000

Office Supplies: \$318/year/professional FTE = \$3816

Telephone Expense: \$780/year/professional FTE = \$9360

Publications and Subscriptions: \$100/year/professional FTE = \$1200

Rental of Office Space: \$200 sq ft/FTE@\$13.50/sq ft = \$32,400

Personal Computer installation: \$175 each x 12 FTE = \$2,100

PC (standard): \$1,092 each x 12 FTE = \$13,104

Laser Printer: \$2,000 each x 5 FTE = \$10,000

Calculator: \$51 each x 12 FTE = \$612

Oversight has, for fiscal note purposes only, changed the starting salary for requested staff to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Job Functions:

Regulatory Law Judge - Responsible for overseeing case processing for the commission, conducting hearings, and issuing orders regarding intervention, protection of sensitive data, filing deadlines, conferences, final decisions, etc.

Senior Counsel - Senior position responsible for assisting in coordinating cases before the PSC with involved technical Staff and responsible for representing Staff in hearings before the commission. This would include the timely researching, drafting, and filing of all Staff pleadings and timely review and processing of Staff testimony, reports and recommendations. This position also reviews the work of the Legal Counsel.

Legal Counsel - Responsible for assisting in coordinating cases before the PSC with involved technical Staff and responsible for representing Staff in hearings before the commission. This would include the timely researching, drafting, and filing of all Staff pleadings and timely review and processing of Staff testimony, reports and recommendations. This position reports to the Senior Counsel.

Utility Engineering Specialist III/Utility Engineer I - Responsible for auditing the engineering

ASSUMPTION (continued)

aspects of baseload and renewable generation facility design, modifications, and implementation. This effort would also include regular assessment of the data currently provided through the integrated resource planning process. This person would regularly serve as an expert witness in cases before the commission. This person reports to the Auditor V.

Utility Regulatory Auditor III/IV - Responsible for conducting comprehensive audits related to facility review, modification and completion. Responsible for conducting on-site audit during all phases of construction. Responsible for analyzing financial information related to revised rate cases. This person would regularly serve as an expert witness in cases before the commission. This individual reports to the Utility Regulatory Auditor V.

Utility Regulatory Auditor V - Responsible for supervising the new group (including employee appraisals and other administrative functions), designating lead Staff in cases, coordinating work with other departments, conducting meetings with companies, and occasionally filling the role of an expert witness in cases before the commission. This person reports to the Utility Regulatory Manager - Energy.

Regulatory Economist III - Responsible for economic work in the analysis of revised rate cases. Responsible for comprehensive review of tariff filings associated with filings pursuant to HB 554. This position is also responsible for estimating the impact of rate increases on customer classes. This person would serve as an expert witness in cases before the commission. This individual reports to the Utility Regulatory Auditor V.

Rate and Tariff Examiner - Responsible for analyzing and evaluating proposed rates and tariffs. Work involves assisting the Regulatory Economist III in the development of Staff positions related to the revised rates, and preparation of material which may be used as testimony in PSC hearings. This person may also serve as an expert witness in cases before the commission. This individual reports to the Utility Regulatory Auditor V

Oversight assumes municipalities could be affected by higher electric rates as a result of this proposal which permits electric corporations to recover costs of construction prior to a facility going online.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE			
<u>Cost - Department of Economic Development - Office of Public Counsel Personal Costs (3 to 5 FTE)</u>			
Salaries	\$0	\$0	(\$151,372 to \$252,208)
Benefits	\$0	\$0	(\$73,612 to \$122,649)
Expense and Equipment	\$0	\$0	(\$11,139 to \$18,566)
Total Personal Cost	\$0	\$0	(\$236,123 to <u>\$393,423</u>)
ESTIMATED EFFECT ON GENERAL REVENUE	<u>\$0</u>	<u>\$0</u>	<u>(\$236,123 to \$393,423)</u>
Estimated Net FTE Change for General Revenue	0 FTE	0 FTE	3 to 5 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
PUBLIC SERVICE COMMISSION FUND			
<u>Income</u> - Assessments to recover regulation costs	\$0 to (\$298,726)	\$0 to \$353,405)	\$377,587 to \$1,100,655
<u>Cost</u> - PSC - Personal Services (4 to 12 FTE)			
Salaries	\$0 to (\$173,092)	\$0 to (\$213,941)	(\$220,359 to \$636,623)
Benefits	\$0 to (\$84,175)	\$0 to (\$104,040)	(\$107,161 to \$309,590)
Equipment and Expense	<u>\$0 to (\$41,459)</u>	<u>\$0 to (\$35,424)</u>	(\$50,067 to \$154,442)
Total Personal Services	<u>\$0 to (\$298,726)</u>	<u>\$0 to \$353,405)</u>	(\$377,587 to \$1,100,655)
ESTIMATED NET EFFECT ON PUBLIC SERVICE COMMISSION FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Estimate Net FTE Change for Public Service Commission Fund	0 to 4 FTE	0 to 4 FTE	4 to 12 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
<u>LOCAL POLITICAL SUBDIVISIONS</u>			
Cost - Cities - Increased electric rates	(Unknown- Expected to exceed <u>\$100,000</u>)	(Unknown - Expected to exceed <u>\$100,000</u>)	(Unknown - Expected to exceed <u>\$100,000</u>)
<u>ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS</u>	<u>(Unknown - Expected to exceed \$100,000)</u>	<u>(Unknown - Expected to exceed \$100,000)</u>	<u>(Unknown - Expected to exceed \$100,000)</u>

FISCAL IMPACT - Small Business

This proposed legislation may affect electric rates for small businesses.

FISCAL DESCRIPTION

This proposed legislation creates the Missouri Clean and Renewable Energy Construction Act.

The proposal modifies the construction work in progress (CWIP) law to allow costs associated with the planning and construction of certain types of power plants to be recoverable by an electric company through its customer rates prior to plant start-up. Eligible power plants include plants that generate electricity from renewable sources and plants that meet certain large capacity criteria that are also intended to reduce carbon emissions.

Subsidiary corporations created by an electric company for the purpose of building or operating an eligible power plant shall be considered and treated as the electric company under the proposal.

No later than 30 days after August 28, 2009, the Public Service Commission (PSC) shall begin an evaluation of the relative merits of various financing methods that an electric company may use to build new power plants and shall issue a report of its findings to the Governor and General Assembly by August 28, 2010.

Electric companies may apply to the PSC for a project development order, which is an order issued by the PSC establishing the prudence of an electric company's decision to incur

FISCAL DESCRIPTION (continued)

preconstruction costs for an eligible power plant. The PSC may approve certain prudent preconstruction costs in rates charged by the company. The PSC shall respond to an application for a project development order or amended project development order within one year of the application's date of filing. If the electric company decides not to build the power plant after a project development order has been issued, the associated preconstruction costs are still recoverable through customer rates, provided that the decision to abandon the project is reasonable and that the costs to ratepayers would be less than if the company completed the project.

The proposal requires an electric company to seek approval from the PSC to sell, transfer, or encumber any interest it has in an eligible power plant. If such interest involves a license issued by the U.S. Nuclear Regulatory Commission and any of the costs to acquire the license were recovered from ratepayers, then the PSC shall prescribe how any proceeds arising from the transfer of interest shall be refunded to ratepayers.

Once an electric company has received any and all necessary licenses and permits for an eligible power plant, the company may apply to the PSC for a facility review order, which is an order issued by the PSC that establishes the prudence of the anticipated construction costs to build the plant. The proposal requires the PSC to develop the requirements for a facility review order application by September 1, 2010. The PSC must respond to a facility review order application no later than 11 months after its date of filing. Under a facility review order, the PSC may require quarterly expedited rate revisions or the company may request expedited rate revisions. An electric company may petition the PSC to modify a facility review order.

Provided that the electric company adheres to the construction schedule and costs listed in the facility review order, the facility review order is a binding determination of the prudence of the company's capital costs associated with construction. Such capital costs may be recovered in rates through expedited revised rate reviews or through general rate proceedings. The PSC can disallow any capital cost that it determines to have been imprudently incurred. Cost deviations caused by forces or factors beyond the company's control shall not be considered imprudence on the part of the company.

The proposed legislation provides that if the Clean and Renewable Energy Construction Act is modified in the future in such a way as to limit or prohibit construction costs to be recovered through rates, any costs incurred by an electric company up to that point shall still be recoverable, even in the event that the plant is not constructed.

The proposal allows the PSC to require electric companies that have been issued a facility review

FISCAL DESCRIPTION (continued)

order to file periodic reports. The PSC shall monitor the construction of and expenditure of capital associated with building a power plant under a facility review order.

The proposed legislation provides procedures for an electric company to request to revise its rates in an expedited manner as it incurs additional construction costs. The PSC shall respond to an expedited rate request within 6 months of its filing. The PSC staff shall audit any revised rates for compliance with the facility review order. If the PSC finds that any previously approved rates resulted in an excess of revenue above the amount approved in the facility review order, the electric company shall credit its customers' bills over the subsequent 4 monthly billing cycles.

Electric companies shall promptly notify their customers of any increase in rates approved by the PSC in a revised rate order.

If construction of the power plant gets cancelled, the associated construction costs may still be recovered through rates, provided that the decision to cancel the construction is reasonable and the company demonstrates that the cost to ratepayers would be less than the cost of completing the project.

Once a power plant under a facility review order is constructed, the PSC shall audit the company's finances in relation to the project and its cost recovery for purposes of determining compliance with the facility review order. Any over- or under-recovery of costs shall be credited or charged, respectively, to the customers.

Procedures for re-hearing a PSC order are provided in the proposed legislation. Procedural requirements for general PSC rate proceedings shall apply to rate proceedings under the proposal, however, form and content requirements shall only apply to proceedings that are combined with a general rate proceeding.

The proposal limits courts from reviewing any matter over which the proposal expressly gives the PSC jurisdiction except as provided under current law for appealing a re-hearing request or decision. Except for permits required by the Department of Natural Resources, the act restricts any state, regional, or local government from requiring any additional approval for the construction of an eligible power plant under the proposed legislation.

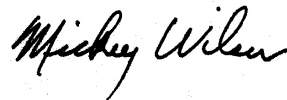
If an electric company subsequently sells a license acquired for an eligible power plant or sells the eligible power plant itself after having recovered costs from ratepayers under the act, the PSC shall require the company to refund the ratepayers.

FISCAL DESCRIPTION (continued)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements.

SOURCES OF INFORMATION

Department of Economic Development
 Public Service Commission
 Office of Public Counsel
Department of Revenue
Office of State Courts Administrator
Department of Natural Resources
State Tax Commission
Office of Secretary of State
 Administrative Rules Division
Office of Administration
 Administrative Hearing Commission
 Division of Budget and Planning



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