COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1619-01
Bill No.: SB 455
Subject: Public Service Commission; Utilities
Type: Original
Date: February 26, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	($560,009)	($567,305)	($451,489)
Public Service Commission*	$0	$0	$0
Total Estimated Net Effect on All State Funds	**($560,009)**	**($567,305)**	**($451,489)**

*** Assumes costs of $457,980 in FY 02, $531,890 in FY 03 and $546,468 in FY 04 and an increase in the PSC assessment and appropriation, resulting in a net effect of $0.**

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None	$0	$0	$0
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 10 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Revenue** (DOR) assume the proposed legislation would result in no administrative impact to their department. Officials from the DOR did not provide information regarding revenue impact.

Officials from the **State Tax Commission** assume the proposed legislation would have no fiscal impact on their agency. However, officials noted that this proposal takes away State Tax Commission authority to access electric generation facilities built subsequent to January 1, 2001, contrary to Section 138.420.

Officials from the **Department of Natural Resources** assume that any increase in air emissions, wastewater emissions and additional ash generated for disposal will continue to require appropriate permits that must consider cumulative impacts. Increases in air emissions will require additional controls for water contaminants such as SO2, NOX and mercury. Use of alternative fuels, for example landfill gases, tire-derived fuel or any other solid waste should continue to be competitively available. Siting new facilities and additional transmission lines and decommissioning of retiring facilities will require appropriate permits.

The DNR assumes that any increased needs as a result of this proposal will be handled with existing resources.

Officials from the **Office of Secretary of State** assume this bill creates the Electric Reliability and Economy Act of 2001. The Public Service Commission shall promulgate rules to implement this bill. Based on experience with other divisions, the rules, regulations, and forms issued by the Public Service Commission could require as many as 60 pages in the *Code of State Regulations*. For any given rule, roughly half again as many pages are published in the *Missouri Register* as in the *Code* because cost statements, fiscal notes and the like are not repeated in *Code*. These costs are estimated. The estimated cost of a page in the *Missouri Register* is $23.00. The estimated cost of a page in the *Code of State Regulation* is $27.00. Therefore, the estimated costs for FY 02 are $3,690. The actual costs could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

Officials from the **Department of Economic Development - Public Service Commission** (PSC) assume they will need four (4) FTE as a result of this proposal. The PSC would need one (1) Utility Policy Analyst II. This position will lead the Federal Energy Regulatory Commission (FERC) team that will be needed to provide testimony, analysis and positions before FERC for purchased power agreements for the purchase of wholesale energy.

ASSUMPTION (continued)

The PSC will need two (2) Utility Policy Analyst I's. One (1) Utility Policy Analyst I will assist in providing testimony and positions at FERC. In addition, this position will monitor events at FERC and assist in developing unbundled rates for electric utilities that choose to transfer generation assets to an affiliate. This position will also provide testimony at the Missouri PSC when a utility files to transfer generation assets to determine if the proposed transaction will provide safe and reliable service.

The other Utility Policy Analyst I will assist in developing Commission rules for electric service providers. If the affiliate transfers generation assets to an unaffiliated entity, the Commission must have a hearing and order within 90 days of the date the utility provided notice of such transfer of assets. This position will, along with existing staff, provide testimony to determine if the transaction will result in an adverse impact on rates or reliability of service.

Lastly, the PSC will need a Legal Counsel. This position will be assigned full-time to the state's FERC team to review testimony, analysis and positions before the FERC; serve as co-counsel at FERC proceedings, performing duties to include legal research, witness preparation and other trial litigation duties.

For the aforementioned FTE, the PSC has requested expenses for training, publications, office supplies, telephone usage and office space rental.

In addition, the PSC has included a dollar amount for consultant expense which is for Washington, D.C. counsel expenditures regarding Missouri electric purchased power agreements that require approval of the Federal Energy Regulatory Commission. The PSC has estimated these expenses at $200,000 per year.

For travel expense, officials noted that PSC staff would be required to attend hearings in Washington, D.C. before FERC. Officials noted that meetings may be necessary with Washington counsel and that technical or settlement conferences will be necessary. The PSC has estimated travel expenses at $40,000 per year.

Officials from the **Department of Economic Development - Office of Public Counsel** (OPC) have identified new duties and responsibilities in ten areas that would arise solely due to the passage of this bill. OPC would need an additional economist, attorney, and clerical person and additional funds for hiring both attorneys that specialize in FERC litigation and consultants in order to perform its new duties. The additional economist would be needed to oversee the work done by an outside technical consultant and to participate in hearings and perform the many additional economic analyses that would be required by the various tasks below for which no outside consulting assistance will be involved. The additional attorney would be needed to

oversee the work done by an outside legal counsel specializing in FERC matters and to participate in hearings that would be required by the various tasks below for which no outside legal counsel will be involved. With the addition of two full-time professional positions, OPC's current support positions would be extremely burdened with the additional duties this addition of FTE's would incur. An additional support staff position will be within the best interest of the office in order to maintain the level of support required to existing and newly requested professional/technical personnel.

The ten areas where the new responsibilities would arise are as follows: (1) PSC cases for the transfer of generating assets from the regulated utility to an unregulated affiliate, (2) FERC cases involving the approval of terms and conditions of PPAs (Purchased Power Agreements) between the regulated utility and its unregulated generation affiliate, (3) PSC cases involving the sale of coal and hydro generation assets from the unregulated generation affiliate to unaffiliated entities, (4) PSC cases involving tariffs filed by regulated utilities to enable retail customers to arrange for dedicated power supplies, (5) PSC rulemaking for electronic bill formats, (6) PSC rulemaking for protecting the confidentiality of data pertaining to alternative competitive suppliers, (7) PSC rulemaking for rules pertaining to the registration of alternative suppliers, (8) Review of annual reports regarding billing and pricing experiments and use of information from these reports in PSC rate cases and other cases, (9) PSC cases regarding the competitive procurement of generation supplies, and (10) FERC cases where Purchased Power Agreement rates are determined.

Missouri currently has four electric utilities that can take advantage of the procedures set forth in the bill. For this analysis, OPC has assumed that two utilities will begin the process of transferring assets in the first fiscal year after the bill passes and the other two Missouri electric utilities will begin this process in the second fiscal year after the bill passes. The remaining methodologies and assumptions used to determine the additional OPC resources necessary to fulfill duties (1) through (8) are described below. The additional OPC resources needed to fulfill duties (9) and (10) relate to the long-range implications.

PSC cases for the transfer of generating assets from the regulated utility to an unregulated affiliate are mandated by subsections 2 and 3 of 393.966. Additional technical (economist and engineer) and legal personnel will be required for these cases in order for OPC to analyze and prepare a case regarding the impacts on the safety and reliability of service resulting from the proposed generation asset transfers. Based on the assumption that two utilities will transfer generation assets in FY 2002 and two more will do so in FY 2003, OPC will need to participate in two of these cases in FY 2002 and two more in FY 2003. For each of these cases, OPC will require the assistance of an engineering consultant to provide expert testimony on the impacts that the transfer would have on the reliability of electric service. This consultant is assumed to

ASSUMPTION (continued)

work 200 hours at the rate of $200 per hour for a total cost of $40,000. The consulting expenses related to these cases will be $80,000 per year for FY 2002 and FY 2003.

PPAs (Purchased Power Agreements) between the regulated utility and its unregulated generation affiliate are mandated by 393.966.1. The terms and conditions of these PPAs will be determined in a FERC case. Additional technical (economist) and legal personnel will be required for these cases in order for OPC to analyze and prepare a case regarding the impacts of the proposed PPA on the rates paid by Missouri ratepayers and on the safety and reliability of service. OPC believes that it can more effectively and economically fulfill this duty by hiring, on an hourly basis, an attorney located near Washington, D.C. that specializes in FERC cases instead of relying on an "in house" OPC attorney. OPC anticipates needing a FERC attorney for approximately 800 hours per year for fiscal years 2002, 2003, and 2004. The total annual cost of the FERC attorney for each of these three fiscal years is expected to be $200,000 per year based on an hourly charge of $250. OPC will need technical assistance from both consultants that have experience in FERC wholesale electric contract cases and from OPC economists. This consultant is assumed to be needed for an average of 500 hours per year at an average cost of $150 per hour. This results in an annual cost of $40,000 per year for fiscal years 2002, 2003, and 2004.

PSC cases for the transfer of coal and hydro generating assets from the unregulated utility affiliate to an unaffiliated entity are mandated by 393.966.5. Additional technical (in house economist and consulting engineer) and legal personnel will be required for these cases in order for OPC to analyze and prepare recommendations in cases regarding the impacts of the proposed transfer of generation assets on the rates and reliability of electric service received by Missouri retail customers. OPC assumes that one case will be filed in fiscal year 2004. For this case, OPC will require the assistance of an engineering consultant to provide expert testimony on the impacts that the transfer would have on the reliability of electric service. This consultant is assumed to work 200 hours at the rate of $200 per hour for a total cost of $40,000.

PSC cases involving tariffs filed by regulated utilities to enable retail customers to arrange for dedicated power supplies are mandated by 393.969.2. A large amount of work will need to be performed to determine the reasonableness of these tariff filings. The majority of this work will be related to the studies and analysis that is necessary to unbundle the distribution, transmission, and generating costs for each utility that elects to use this law to transfer its generating assets. In addition to unbundling costs (to be performed by a consultant), the following tasks must be performed by an OPC economist to analyze the reasonableness of proposed tariffs: (1) determine rates for temporary power service, (2) determine costs and rates for decommissioning costs, and (3) determine the costs of regulatory assets using the definition provided in the bill. Additional technical (economist) and legal personnel will be required for these cases in order for OPC to

analyze and prepare a case regarding the reasonableness of the proposed tariffs. Based on the assumption that two utilities will transfer generation assets in FY 2002 and two more will do so in FY 2003, OPC will need to participate in two of these tariff cases in FY 2002 and two more in

FY 2003. OPC does not currently perform extensive, in depth cost unbundling studies. OPC will need outside consultants to perform cost unbundling studies, prepare pre-filed testimony on these studies and participate in hearings to support the studies. For each such case, the outside consultant is expected to work 400 hours at a rate of $150 per hour resulting, in a total consulting cost per case of $40,000. Since there will be two such cases per year in fiscal years 2002 and 2003, the consulting cost for each of these years will be $80,000.

The bill mandates two PSC rulemakings and permits a third which OPC expects to also occur. The two rulemakings that are mandated are the rulemaking setting rules to preserve the confidentiality of alternative supplier data (393.969.7) and the rules for the registration of alternative suppliers (393.981.4). The rulemaking permitted by the bill pursuant to 393.969.6 is a rulemaking to set PSC standards for electronic bill formats. Additional technical (economist) and legal personnel will be required for OPC to prepare for and participate in these rulemakings.

Subsection 393.969.8 permits utilities to conduct billing and pricing experiments. This subsection permits the PSC to require utilities conducting such experiments to file annual reports detailing the costs and effects of such experiments. OPC expects the utilities to conduct these experiments and expects the PSC will require reports regarding these experiments. One of the tasks of the additional OPC economist will be analyzing these reports and utilizing the data provided by these reports in PSC rate cases and possibly other cases.

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.

Oversight assumes the FTE requested by the PSC would be located in existing facilities and has not included office space rental costs in the fiscal impact specifications below.

In reference to equipment requested by the OPC, **Oversight** eliminated the office equipment (copy machine) since these three (3) staff members will be located in existing facilities.

Oversight assumes the State of Missouri may be considered an industrial or commercial user under terms of this proposal and could therefore negotiate their rates. This could result in some savings for the State. However, Oversight considers such savings speculative. Some political subdivisions could be impacted in the same manner.

FISCAL IMPACT - State Government	FY 2002 (10 Mo.)	FY 2003	FY 2004

GENERAL REVENUE FUND

FISCAL IMPACT - State Government	FY 2002 (10 Mo.)	FY 2003	FY 2004
Cost - Department of Economic Development (OPC)			
Personal Service (3 FTE)	($102,018)	($125,482)	($128,620)
Fringe Benefits	($34,003)	($41,823)	($42,869)
Expense and Equipment	($423,988)	($400,000)	($280,000)
Total Cost - Department of Economic Development (OPC)	**($560,009)**	**($567,305)**	**($451,489)**
PUBLIC SERVICE COMMISSION FUND			
Cost - Department of Economic Development (PSC)			
Personal Service (4 FTE)	($168,119)	($206,786)	($211,956)
Fringe Benefits	($56,034)	($68,922)	($70,645)
Expense and Equipment	($233,827)	($256,182)	($263,867)
Total Cost - Department of Economic Development (PSC)	($457,980)	($531,890)	($546,468)
Income - Department of Economic Development (PSC)			
Assessment to utilities	$457,980	$531,890	$546,468
Estimated Net Effect on Public Service Commission Fund	**$0**	**$0**	**$0**

FISCAL IMPACT - Local Government	FY 2002 (10 Mo.)	FY 2003	FY 2004
	$0	**$0**	**$0**

Long-Range Implications

OPC duties in the following areas could have significant fiscal and administrative impact in FY's 2005 and beyond: (1) competitive procurement of power (possible), (2) transfer of generation

Long-Range Implications (continued)

assets to unregulated affiliates (possible), (3) transfer of coal and hydroelectric power generating assets from unregulated utility affiliates to unaffiliated entities (required), (4) billing and pricing experiments (allowed) and (5) sale of coal and hydroelectric generating assets (possible).

FISCAL IMPACT - Small Business

Small businesses could be affected by the provisions of this proposal in the long term.

DESCRIPTION

This bill would allow investor-owned utilities (IOUs) to transfer existing generating facilities to an affiliated entity which shall operate as an Exempt Wholesale Generator (EWG) or GENCO as provided pursuant to the federal National Energy Policy Act of 1992.

TAXATION - "Distributable property" of electric corporations shall continue to be assessed and the values distributed as in the 2000 tax year, even if such property is transferred to an EWG. The State Tax Commission shall promulgate rules to accomplish this. Generation property placed into service after January 1, 2001 shall be considered "local property" of the electric corporation.

GENCO FORMATION - An IOU can form a GENCO by notifying the Public Service Commission (PSC) of proposed transfer of assets. Asset transfer must be at book value. The Commission must rule on the request within 90 days. The Commission must approve the transfer if the IOU shows the transaction will not harm system reliability. The remaining portion of the IOU will be a local distribution utility (LDU). The LDU will enter into a 5-year purchased power agreement (PPA) with the GENCO for power supply to be approved by the Federal Energy Regulatory Commission (FERC) and 3-year renewals may be made at cost of service prices.

The bill declares that the EWG findings required to be made by the Commission pursuant to the federal National Energy Policy Act are made: the transfer of assets will benefit consumers, is in the public interest and does not violate state law; the PPA is declared to meet the same criteria and will not provide the GENCO with any unfair competitive advantage.

If the FERC ceases to exist and no successor is established, the Commission shall review cost of service rates of the PPAs. Coal-fired and hydropower plants may not be transferred from the GENCO to a non-affiliated entity without Commission approval.

RATE FREEZE AND OPTION TO CHOOSE SUPPLIER - If an IOU forms a GENCO, the

DESCRIPTION (continued)

utility's rates are frozen through December 31, 2006. The LDU may request Commission approval of new rates based on cost of service to be effective after December 31, 2006. The cost component of power will be determined in accordance with the PPA.

Industrial and commercial customers with load greater than 2 million watts (megawatts or MW) will be eligible to enter into agreements with an energy provider other than their LDU. The LDU will purchase power from the provider selected by the customer and deliver it for resale at the customer-agreed price, plus transmission, delivery service and decommissioning charges and applicable taxes. Customers eligible to choose may aggregate load for a combined purchase. Transmission charges will be those set by FERC or the Regional Transmission Organization (RTO).

The Commission will retain authority for bundled service rate design. All customers with less than 2 MW of load will remain on bundled rates. Customers greater than 2 MW may remain on bundled service at frozen rates, or subsequent to the end of a rate freeze, at cost of service rates set by the Commission until they choose to purchase from another supplier. Customers may return to bundled rates one time.

Utilities may conduct experimental billing and pricing programs.

TRANSITION FOR EMPLOYEES - The bill requires the GENCO to hire a sufficient number of the utility's non-supervisory workers to operate and maintain the transferred assets, under substantially the same terms of employment and continue such employment and terms for 30 months. The GENCO shall offer a transition plan for those non-supervisory workers not hired from the utility.

DECOMMISSIONING COSTS - Nuclear decommissioning costs shall be recovered through unbundled charges or bundled rates.

COMPETITIVE PROCUREMENT - A utility which has a PPA with a GENCO may attempt to competitively procure electric power if it can do so at lower cost than under the PPA and at equivalent reliability. A plan for procurement must be submitted to the Commission, which shall approve or deny the plan within 90 days. The Commission shall approve the plan if it finds the plan is consistent with safe and reliable service and is likely to result in identifiable benefits to customers.

Neither a utility transferring assets to a GENCO, nor a GENCO, shall be required to build new generation plants to supply retail customers.

<u>DESCRIPTION</u> (continued)

REGISTRATION OF SUPPLIERS - Suppliers providing service to customers eligible to shop must register with the Commission.

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

AK:LR:OD (12/00)

SOURCES OF INFORMATION

Department of Economic Development - Office of Public Counsel
Department of Economic Development - Public Service Commission
Department of Natural Resources
Department of Revenue
Office of Secretary of State
State Tax Commission

Jeanne Jarrett, CPA
Director

February 26, 2001