

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2009-01
Bill No.: SB 501
Subject: Public Service Commission; Utilities
Type: Original
Date: May 24, 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 <u>All</u> State Funds	(\$560,009)	(\$567,305)	(\$451,489)

* Assumes costs of \$142,440 in FY 02, \$143,911 in FY 03 and \$96,016 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 <u>All</u> 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 9 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, NO_X 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 one (1) FTE as a result of this proposal. The PSC would need one (1) Paralegal in the Adjudication Division. This person would relieve the law judges of part of their workload, thus allowing them to handle additional casework caused by the proposal.

ASSUMPTION (continued)

In addition, the PSC has included a dollar amount for consultant expense. The consultant would assist staff during the initial group of rate cases and generating asset transfer cases and to assist staff and participate in purchased power agreements that require approval of the Federal Energy Regulatory Commission. The PSC has estimated these expenses at \$100,000 per year for two years and \$50,000 per year subsequently.

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

ASSUMPTION (continued)

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 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, ASSUMPTION (continued)

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
ASSUMPTION (continued)

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.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
GENERAL REVENUE FUND			
<u>Cost - Department of Economic Development (OPC)</u>			
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 <u>Cost</u> - Department of Economic Development (OPC)	<u>(\$560,009)</u>	<u>(\$567,305)</u>	<u>(\$451,489)</u>
PUBLIC SERVICE COMMISSION FUND			
<u>Cost - Department of Economic Development (PSC)</u>			
Personal Service (1 FTE)	(\$26,035)	(\$32,023)	(\$32,824)
Fringe Benefits	(\$8,677)	(\$10,673)	(\$10,940)
Expense and Equipment	<u>(\$107,728)</u>	<u>(\$101,215)</u>	<u>(\$52,252)</u>
Total <u>Cost</u> - Department of Economic Development (PSC)	(\$142,440)	(\$143,911)	(\$96,016)
<u>Income - Department of Economic Development (PSC)</u>			
Assessment to utilities	<u>\$142,440</u>	<u>\$143,911</u>	<u>\$96,016</u>
Estimated Net Effect on Public Service Commission Fund	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

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 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, with Public Service Commission approval, 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 would 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 could apply to the Public Service Commission (PSC) to form
DESCRIPTION (continued)

a GENCO. Asset transfer must be at book value. The PSC would conduct a full rate case for the IOU to determine stranded costs due to the transfer. The Commission would approve the transfer if it finds that: the transfer of assets would benefit consumers, is in the public interest, does not violate state law, and that the Purchased Power Agreement (PPA) meets the same criteria and would not provide the GENCO with any unfair competitive advantage.

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.

If the FERC stops regulating PPAs on a cost-of-service basis, the PSC would review PPA cost-of-service rates.

GENCOs would not transfer generating plants to non-affiliated entities without PSC approval.

RATE FREEZE AND OPTION TO CHOOSE SUPPLIER - If an IOU forms a GENCO, the utility's rates would be frozen at January 1, 2001 rates for five years from the application date.

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, with PSC approval.

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
DESCRIPTION (continued)

from the utility.

DECOMMISSIONING COSTS - Nuclear decommissioning costs shall be recovered through charges approved by the PSC.

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. The procurement would not limit future power purchases under the PPA, or renewals of the PPA. The Commission shall approve the plan if it finds the plan is consistent

with applicable laws and is likely to result in identifiable benefits to customers.

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.

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
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