

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1619-07  
Bill No.: SCS for SB 455  
Subject: Public Service Commission; Utilities; Consumer Clean Energy Act  
Type: Original  
Date: April 4, 2001

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$680,009)	(\$687,305)	(\$451,489)
Public Service Commission*	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>(\$680,009)</b>	<b>(\$687,305)</b>	<b>(\$451,489)</b>

\* Assumes costs of \$313,026 in FY 02, \$361,255 in FY 03 and \$371,041 in FY 04 and an increase in the PSC assessment and appropriation, resulting in a net effect of \$0.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 13 pages.

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## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of Administration - Division of Budget and Planning** assume the proposed legislation should not result in additional costs or savings to the division.

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 SO<sub>2</sub>, NO<sub>X</sub> 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 **Office of Administration - Division of Purchasing and Materials Management** assume this legislation provides the State of Missouri, as a retail electric customer,

ASSUMPTION (continued)

the ability to negotiate their electric rates. Depending on the availability of competitive markets for retail electric service, the Division of Purchasing could see an increased workload with bidding, negotiating and establishing contracts for electric service for state facilities. At this time, it is difficult to determine if additional resources will be needed or if this legislation will result in savings to the State.

Officials from the **Department of Economic Development - Public Service Commission** (PSC) assume three (3) FTE will be needed as a result of this proposal. The PSC will need one 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.

The PSC will need one Utility Policy Analyst I who will assist in providing testimony and positions at FERC, monitor events at FERC, and assist in developing unbundled rates for electric utilities that choose to transfer generation assets to an affiliate. In addition, this position will 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 PSC will need one 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.

Methodology: Training: \$1000/year per professional FTE = \$3,000; Publications: \$100/year per professional FTE = \$3400; Office supplies: \$300 per year per FTE = \$900; Telephone: \$65 per month per FTE = \$2,340; Office space rental: \$200 sq. feet per FTE @ \$13.50/sq. ft. = \$8100.

Consultant Expense: Washington, DC counsel expenditures regarding Missouri electric purchased power agreements that require approval of the Federal Energy Regulatory Commission. Estimated expenses \$100,000 per year.

Travel Expense: PSC staff would be required to attend hearings in Washington D.C. before FERC. Meetings may be necessary with Washington counsel, technical or settlement conferences will be necessary. Estimated travel expenses: \$40,000 per year.

Officials from the **Department of Economic Development - Office of Public Counsel** (OPC) have identified new duties and responsibilities in nine 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  
ASSUMPTION (continued)

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. Starting salary with probationary increase is entered at \$45,000 for this attorney position. 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 FTEs 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 nine 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 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 and (9) 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 (9) are described below. The additional OPC resources needed to fulfill duties (3) and (9) also 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 effect that the proposed asset transfer and purchased power agreement are expected to have on customers and the public interest. The effects on customers  
ASSUMPTION (continued)

and the public interest that must be analyzed pursuant to 369.966.3 include the impacts on the

cost of service, the quality, reliability, and safety of service, and the competitive position of the exempt wholesale generator that obtains the transferred generation assets. Subsection 3 of 369.966 also requires that the rate design of the proposed purchased power agreement and the proposed method of allocating costs and revenues of the affiliate to the proposed power purchase agreement are just and reasonable. 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. For each of these cases, OPC will also require the assistance of an economic consultant to analyze the impacts on the cost of service and the competitive position of the exempt wholesale generator that obtains the transferred generation assets and to analyze the reasonableness of the rate design of the proposed purchased power agreement and the proposed method of allocating costs and revenues of the affiliate to the proposed power purchase agreement. This consultant is assumed to work 400 hours at the rate of \$150 per hour for a total cost per case of \$60,000. The total consulting expenses related to these cases for this new area of responsibility would be \$200,000 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 final determination regarding terms and conditions of these PPAs will be made in an ongoing series of FERC cases. 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 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 ASSUMPTION (continued)

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  
ASSUMPTION (continued)

provided by these reports in PSC rate cases and possibly other cases. The additional economist will also be needed to review billing experiments to ensure they comply with the five year time limit and to ensure that they do not violate the law by limiting a customer's choice of supplier or

providing for a discount of rates for transmission, control area, or distribution service.

396.966.1 (2)(b) requires utilities that transfer assets to enter into purchase power agreements (PPAs) with the affiliate to which these assets are transferred and that these PPAs be regulated by FERC on a cost of service basis beginning on the date that such agreements become effective. This same provision in the legislation specifies that any party to the PPA can petition the FERC at any time for a change in the rates and charges. OPC expects that it will be involved in a series of cases at the FERC for each of the four utilities that are expected to transfer generation assets under the proposed legislation. These cases are expected to begin in 2002 and continue to occur at the rate of 2 per year as long as the FERC continues to regulate PPAs on a cost of service basis. Additional technical (economist) and legal personnel will not be required for OPC to prepare for and participate in these FERC cases so long as these cases are not in addition to the cases where the terms and conditions of the PPAs are determined. If these cases are in addition to the cases where PPA terms and conditions are determined, then OPC will need additional funds for outside attorneys, consultants and travel expenses for OPC personnel.

**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.

### **Assumptions in reference to the component of the proposal addressing Consumer Clean Energy Act**

Officials from the **Department of Social Services - Division of Family Services** assume the ASSUMPTION (continued)

proposed legislation would have no fiscal impact on their agency. Officials noted that electric companies would pass on the avoided cost of the retail electrical suppliers directly to low income customers following the same procedures established by the department.

Officials from the **Department of Natural Resources** assume additional requests for technical assistance from persons and businesses interested in clean energy and how to use net metering would be handled with existing resources.

In response to similar legislation (SB 529), officials from the **Department of Economic Development - Public Service Commission** and the **Department of Economic Development - Office of Public Counsel** assume the proposed legislation would have no fiscal impact on their agencies.

In response to similar legislation (SB 529), officials from the **Office of Secretary of State** assume this bill creates the Clean Energy Act. The Public Service Commission and possibly the Department of Social Services would promulgate rules to implement this bill. Based on experience with other divisions, the rules, regulations and forms issued by the Public Service Commission and Department of Social Services could require as many as 26 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 Regulations* is \$27.00. Therefore, the estimated costs for FY 02 are \$1,599. The actual cost 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.

**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.

In response to similar legislation (SB 529), officials from the **Department of Revenue** assume the proposed legislation would have no administrative impact on their department. Officials noted that the revenue impact is unknown.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
<b>GENERAL REVENUE FUND</b>			
<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)



Small businesses could be affected by the provisions of this proposal in the long term. In reference to net metering, if a small business installs any self generation, with net metering, the business's electric bill may decrease.

### DESCRIPTION

This proposal 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. A rate case will be required for the utility proposing the transfer. The transfer of an allocated portion of assets will be based on a methodology determined by PSC. PSC must rule on the request within 270 days, unless a rate case is pending, and then within 300 days. The proposal specifies requirements that the transfer proposal and the purchase power agreement must meet and findings which must be made by the PSC for approval of the transfer. 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.

In order to approve a transfer the PSC must consider and make the EWG findings required to be made by the Commission pursuant to the federal National Energy Policy Act: 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. Generation plants may not be transferred from the GENCO to a  
DESCRIPTION (continued)

non-affiliated entity without Commission approval pursuant to this proposal.

RATES AND OPTION TO CHOOSE SUPPLIER - PSC may hold a hearing and revise rates in order to implement a refund authorized by FERC on the wholesale rate under the PPA.

Industrial and commercial customers must have a demand interval meter on premises. If these

customers have a maximum demand of 1 million watts (megawatts or MW) in a service territory with at least 1 million customers or have a load greater than 2 MW, they 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 1 MW of load in a 1 million customer service territory and those customers with less than 2 MW of load in other service territories will remain on bundled rates while other customers may remain on bundled service 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, except customers in a service territory with fewer than 150,000 customers who may not return.

Utilities may conduct experimental billing and pricing programs.

PSC shall not regulate the rates of certain heating companies.

TRANSITION FOR EMPLOYEES - The proposal requires the GENCO to hire a sufficient number of the utility's non-supervisory workers to operate and maintain the transferred assets as are needed, 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.

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

This proposal would create the Consumer Clean Energy Act. Retail electric suppliers are required to comply with and notify all retail customers quarterly that they will supply net  
DESCRIPTION (continued)

generation meters to customer-generators and that the rates for the sale of energy must be the same for customer-generators and other customers. The method by which retail electric suppliers are required to calculate the net energy measurement for customer-generators is specified.

At the beginning of each year, any unused kilowatt-hour credit accumulated by customer-generators will be credited to low-income customers.

Local distribution companies which are retail electric suppliers will not be required to provide net metering service for additional customer-generators when the generating capacity of customer-generators is at least 1% of the companies average forecasted peak demand. Retail electric suppliers must maintain and make available to the public certain information regarding the total generating capacity of customer-generators.

Net metering units must meet certain standards. The retail electric supplier may not require a customer-generator to meet further requirements if the net metering unit has met the standards. Applications by a customer-generator for interconnection must be responded to within 30 days and if it is approved connection must be completed within 15 days.

The Public Service Commission in consultation with the Department of Natural Resources will promulgate regulations to ensure that simplified contracts will be used for interconnection.

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 Administration - Division of Purchasing and Materials Management  
Office of Secretary of State  
State Tax Commission

#### SOURCES OF INFORMATION (continued)

Department of Social Services - Division of Family Services  
Office of Administration - Division of Budget and Planning

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A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is written in a cursive style with a large initial "J".

Jeanne Jarrett, CPA  
Director

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