

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. GX-2008-0032; Amend Rules 4 CSR 240-40.020, 4 CSR 240-40.030, and 4 CSR 240-40.080

FROM: John Kottwitz, Energy Department – Gas Safety/Engineering

/s/ Bob Leonberger 7/28/2009 /s/ Lera Shemwell 7/28/2009
Project Coordinator / Date General Counsel's Office / Date

SUBJECT: Staff Review of Costs Incurred during the First Full Fiscal Year

DATE: July 23, 2009

On August 3, 2007, the Missouri Public Service Commission (MoPSC) issued a Notice of New Proceeding in Case No. GX-2008-0032 for proposed amendments to Commission Rule 4 CSR 240-40. On October 15, 2007, the MoPSC filed three proposed rulemaking packets with the Secretary of State's office. The three proposed rulemakings were Proposed Amendments for 4 CSR 240-40.020, 4 CSR 240-40.030 and 4 CSR 240-40.080. These three proposed rulemakings were published in the *Missouri Register* on November 15, 2007. These rulemakings were adopted by an *Order of Rulemaking* issued by the MoPSC and published in the *Missouri Register* on March 17, 2008, with an effective date of April 30, 2008. The first full fiscal year for these two rulemakings was FY09, which ended on June 30, 2009.

Section 536.200 of the *Missouri Revised Statutes* requires that a state agency file a fiscal note if the adoption, amendment, or rescission of the rule would result in \$500 of increased costs or decreased revenues for public entities. Section 536.205 of the *Missouri Revised Statutes* requires that a state agency file a fiscal note if the adoption, amendment, or rescission of the rule would result in \$500 of increased costs or decreased revenues for private entities. The three proposed rulemakings in Case No. GX-2008-0032 included statements about the estimated costs to public and private entities as required. Section 536.205 of the *Missouri Revised Statutes* does not address a future review of actual costs to private entities, but Section 536.200 further requires for public entity fiscal notes that:

2. If at the end of the first full fiscal year after the implementation of the rule, amendment, or rescission the cost to all affected entities has exceeded by ten percent or more the estimated cost in the fiscal note or has exceeded five hundred dollars if an affidavit has been filed stating the proposed change will cost less than five hundred dollars, the original estimated cost together with the actual cost during the first fiscal year shall be published by the adopting agency in the Missouri Register within ninety days after the close of the fiscal year. Such costs shall be determined by the adopting agency. If the adopting agency fails to publish such costs as required by this section, the rule, amendment, or rescission shall be void and of no further force or effect.

As required by Section 536.200 of the *Missouri Revised Statutes*, the Staff has reviewed the public entity cost during the first full fiscal year after implementation of the three rulemakings in Case No. GX-2008-0032. MoPSC General Procedure GP-1 states that the Staff should investigate the cost to all affected entities and prepare a memorandum showing the investigation results within 30 days after the first full fiscal year. This memorandum is intended to meet these provisions in GP-1, and the statutory requirement shown above, for the three rulemakings in Case No. GX-2008-0032 as follows.

1) Proposed Amendment for 4 CSR 240-40.020

The proposed amendment was published with statements that neither the public entity cost nor the private entity cost would exceed \$500 in the aggregate (page 2220 from the 2007 *Missouri Register* is attached). The changes contained in the proposed amendment were to conform the rule to amendments of 49 CFR part 191 and to make editorial changes. These changes did not involve costs to public or private entities in excess of those costs required to comply with the federal amendments being adopted. Any federal amendment costs were considered during the federal rulemaking process, and would be incurred even in the absence of the proposed amendment. Therefore, the Staff states that the costs did not exceed \$500 during the first full fiscal year.

2) Proposed Amendment for 4 CSR 240-40.030

The proposed amendment was published with statements that neither the public entity cost nor the private entity cost would exceed \$500 in the aggregate (page 2238 from the 2007 *Missouri Register* is attached). The changes contained in the proposed amendment were to conform the rule to amendments of 49 CFR part 192, to clarify the rule, and to make editorial changes. These changes did not involve costs to public or private entities in excess of those costs required to comply with the federal amendments being adopted. Any federal amendment costs were considered during the federal rulemaking process, and would be incurred even in the absence of the proposed amendment. Therefore, the Staff states that the costs did not exceed \$500 during the first full fiscal year.

3) Proposed Amendment for 4 CSR 240-40.080

The proposed amendment was published with statements that neither the public entity cost nor the private entity cost would exceed \$500 in the aggregate (page 2240 from the 2007 *Missouri Register* is attached). The changes contained in the proposed amendment were to conform the rule to amendments of 49 CFR parts 40 and 199. These changes did not involve costs to public or private entities in excess of those costs required to comply with the federal amendments being adopted. Any federal amendment costs were considered during the federal rulemaking process, and would be incurred even in the absence of the proposed amendment. Therefore, the Staff states that the costs did not exceed \$500 during the first full fiscal year.

In conclusion, the Staff states that the actual costs did not exceed \$500 during the first full fiscal year after implementation of the three rulemakings in Case No. GX-2008-0032. Therefore, the Staff believes that the

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MoPSC is not required by Section 536.200 of the *Missouri Revised Statutes* to publish the estimated and actual costs in the *Missouri Register*. GP-1 specifies that if the investigation shows that costs have not exceeded \$500, then the Staff's memorandum shall be entered into EFIS under the rulemaking's docket number. Filing this official case file memorandum in Case No. GX-2008-0032 will comply with that provision. No further action by the MoPSC is necessary.