

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Amendment of the Commission's)
Rule Regarding Applications for Certificates of) File No. EX-2018-0189
Convenience and Necessity)
)

**DOGWOOD ENERGY'S COMMENTS REGARDING
ACCURACY OF FISCAL NOTE**

Pursuant to Section 536.200.3 RSMo, on June 23, 2020 the Commission invited interested stakeholders to file comments regarding the accuracy of the fiscal note submitted in connection with its rulemaking orders issued herein.

Dogwood has defended the fiscal note in the appellate courts regarding appeals of the Commission's rulemaking orders.

Section 536.205 required the Commission to file a fiscal note with the Secretary of State together with the notice of proposed rulemaking, if the estimated aggregated "expenditure of money by or reduction of income for" private persons or entities exceeded \$500. Such a fiscal note would need to estimate the number of persons and entities, by class, which would likely be affected, as well as the estimated aggregate cost of compliance.

The Commission's notice of proposed rule stated that the proposal was not expected to cost private persons and entities more than \$500. This statement was supported by an affidavit from the Director of the Missouri Department of Economic Development. It was also supported by the

Commission's Small Business Regulator Fairness Board Small Business Impact Statement, pursuant to Section 536.300.

As Evergy stated in its appellate brief, "the Commission's power to determine when a utility must obtain a CCN is derived exclusively from Section 393.170." (Evergy Brief, p 8). In other words, the statute already imposed all the requirements that are allowed to be imposed. The statute does not require any implementing regulations; it has applied since enactment in 1939. And there already was a rule in place, at 4 CSR 240-3.105, which was less specific than the new rule. By issuing new clarifying regulations, the Commission actually reduced private costs; without any such regulations, electric utilities would have to guess when to file applications, as well as what information to include in such filings. The Commission confirmed its intent to clarify its rules in its proposed rule submission to the Secretary of State, in both the statement of purpose and its Small Business Impact Statement.

The order of rulemaking scaled back the requirements for making submissions under Section 393.170 even further as compared to the propose rule. (The Commission noted the reduction in any costs in its response to comments filed about the proposed rule, as set forth in its order of rulemaking). Nonetheless, the Commission made an overly cautious revised estimate under Section 536.215 that the four regulated electric utilities in the state might have

costs of \$0 to \$100,000 over an estimated shelf-life of three years for the rule. In other words, the Commission did not abandon its initial cost estimate of less than \$500, but nonetheless allowed for the possibility that costs for the four regulated entities might be as much as \$100,000 over three years.

According to Section 536.175, at the time the rules were adopted the Commission would have been required to review the rules by July 1, 2020. Subsequently, the rules have been re-codified from title 4 to title 20 of the CSR, so review should commence no later than 2024. But the Commission could not have anticipated this recodification or change in review schedule when it issued its rulemaking order in September 2018. Furthermore, the Commission could still commence a review of the rule this year if the Missouri Supreme Court upholds the rulemaking order (if it does not, the Commission will have to restart the rulemaking process, mooted any issues about this fiscal note). Given the requirements of Section 536.175, the codification of the rule when issued, and the Commission's overall rulemaking discretion, the Commission's estimation that it would likely review and revise the rule again within three years was reasonable.

In short, the Commission reasonably limited its estimate of private costs of the final rule to a period of three years. It also over-estimated private cost impacts in that the rule does not (cannot) mandate more than Section 393.170

already required of the four regulated electric utilities. The new rule provides more clear instructions than the prior rule. Hence, there is no basis to contest the accuracy of the fiscal note.

CURTIS, HEINZ,
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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was either mailed, faxed, or emailed this 23 day of July 2020, to the persons listed on the below service list.

/s/ Carl J. Lumley

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