

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Consideration and	)	
Implementation of Section 393.1075, the	)	<b><u>Case No. EX-2010-0368</u></b>
Missouri Energy Efficiency Investment Act	)	

**PUBLIC COUNSEL’S RESPONSE TO ORDER DIRECTING FILING**

COMES NOW the Office of the Public Counsel for its Response to Order Directing Filing states as follows:

1. In response to the passage of Senate Bill 376 (SB376), the Commission has held a number of workshops in which interested stakeholders have been discussing the parameters of rules designed to implement SB376. Two provisions in the latest filed drafts<sup>1</sup> of the proposed rules raise particular concern: the Demand-Side Investment Mechanism (DSIM) and the provisions allowing for recovery of “lost revenues.”

2. In an order issued on August 25, the Commission ordered participants to file a “comprehensive list of [legal] issues” and a “full legal briefing,” both on very short notice. This is an unusual step at this point in the rulemaking process, in that the process is well past the initial drafting process but proposed rules have not yet been voted on and published. Moreover, it is clear from Agenda discussions that there is not a majority of the Commission willing to vote for the rules in their current form.

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<sup>1</sup> Although the Staff of the Commission filed the draft rules on August 26, it must be noted that the Staff has explicitly disclaimed authorship of and responsibility for much of the draft rules, and Staff Counsel has explicitly opined that portions of the draft rules exceed the authority given in SB376.

3. The DSIM constitutes single-issue ratemaking, and SB376 did not give the Commission authority to implement a single-issue ratemaking mechanism. Public Counsel has identified the rule sections in which this mechanism is implemented as:

4 CSR 240-1.163

Purpose

(1)(G)

(2)(C)

(2)(F)

(4)(B)

(5)(A)

(8)

(9)(A)

(9)(B)

4 CSR 240-20.093

Purpose

(1)(N)

(2)(F)

(2)(H)

(4)

(4)(A)-(D)

(5)

(6)

4. SB376 did not give the Commission authority to implement a mechanism that allows for recovery of lost revenues. Public Counsel has identified the rule sections in which this mechanism is implemented as:

4 CSR 240-1.163

(1)(F)

(1)(I)

(1)(K)

(1)(O)

(1)(P)

(4)(C)

4 CSR 240-1.164

(1)(L)  
(1)(M)

4 CSR 240-20.093

(1)(M)  
(1)(P)  
(1)(R)  
(1)(V)  
(1)(X)  
(2)(E)  
(2)(G)  
(4)

4 CSR 240-20.094

(1)(M)  
(1)(Q)  
(1)(S)  
(3)

WHEREFORE, Public Counsel respectfully submits its Response to Order Directing Filing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Lewis R. Mills, Jr.**

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I hereby certify that a copy of the foregoing has been emailed this 7th day of September 2010 to:

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**/s/ Lewis R. Mills, Jr.**

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