

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

In the Matter of a Proposed Rulemaking)
Concerning Cogeneration Tariff Filings)

Case No. EX-2003-0367

**STAFF'S REPORT ON ACCURACY OF
IMPLEMENTATION COST ESTIMATES FOR RULE 4 CSR 240-3.155**

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), and for its report respectfully states as follows:

1. The Missouri Legislature has enacted a statutory provision which requires that the fiscal impact of a rule be reviewed at the end of the first full fiscal year after the rule is implemented. Section 536.200.2, RSMo 2000 provides:

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.

2. The Secretary of State published the Order of Rulemaking for Commission Rule 4 CSR 240-3.155 in the February 2, 2004 *Missouri Register*, and the rule became effective on March 30, 2004. Therefore, the end of the first full fiscal year after the effective date of Rule 4 CSR 240-3.155 was June 30, 2005, and ninety days thereafter is September 28, 2005.

3. In the attached Memorandum (Appendix A), the Staff concludes that the statutory triggers of Section 536.200.2 that would require publishing the original estimated cost together with the actual cost of Rule 4 CSR 240-3.155 in the *Missouri Register* have not been met.

4. Also in the Memorandum, the Staff reports that it has investigated the cost of implementing Rule 4 CSR 240-3.155 and has not discovered any information showing that the cost estimate published in the *Missouri Register* for implementation of Rule 4 CSR 240-3.155 was inaccurate. Further, the Staff reports that no party potentially or actually affected by the implementation of Rule 4 CSR 240-3.155 has provided any information showing that the cost estimate published in the *Missouri Register* was inaccurate.

5. The Staff also reports that while its report allows compliance with section 536.200.2, RSMo 2000, the report is untimely under Commission General Procedure GP-1.

WHEREFORE, the Staff reports to the Commission that the original estimated cost together with the actual cost for Commission Rule 4 CSR 240-3.155 need not be published in the *Missouri Register* to comply with section 536.200.2, RSMo 2000.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Dennis L. Frey

Senior Counsel
Missouri Bar No. 44697

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8700 (Telephone)
(573) 751-9285 (Fax)
e-mail: denny.frey@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 9th day of September 2005.

/s/ Dennis L. Frey

MEMORANDUM

TO: Case File for Case No. EX-2003-0367

FROM: Lena Mantle, on Behalf of the Commission Staff

SUBJECT: Accuracy of Cost Estimates for Rule Implementation – Compliance with the Requirements of GP-1 of the Commission's General Procedures

DATE: August 29, 2005

The Commission Staff has investigated the cost of implementing the rules adopted by the Commission through this case, and reports that it has not discovered any information that would show that the cost estimates published in the *Missouri Register* were not accurate in connection with the implementation of the change to the Electric Cogeneration Tariff Filing Rule 4 CSR 240-3.155, in Case No. EX-2003-0367.

Additionally, the Staff reports that it has not received any information from any party potentially or actually affected by the implementation of the subject rules that would show that the cost estimates published in the *Missouri Register* were not accurate.

The Commission's General Procedure GP-1 (GP-1) requires, among other things, that within 30 days before the end of the first full fiscal year after the implementation of a rule, amendment or rescission, that the Staff is to investigate whether the cost to all affected entities, including the Commission, has exceeded by ten percent or more the estimated cost in the fiscal note, or, where appropriate, has exceeded five hundred dollars.

GP-1 also requires the Staff to prepare a memorandum showing the results of their investigation within thirty (30) days after the end of the first full fiscal year of the implementation of the subject rule, amendment or rescission. If the Staff investigation shows that the costs have not exceeded ten percent for all entities or, where appropriate, the estimated five hundred dollars, Staff's Memorandum shall be entered into EFIS under the rulemaking's docket number.

While the internal time limits prescribed by GP-1 have not specifically been met, the Staff's response regarding the accuracy of the published cost estimates related to the change in the filing date of the cogeneration tariffs does permit timely compliance with the provisions of Section 536.200.2, RSMo 2000. This statute provides for publication in the *Missouri Register* of a report of any excess costs over estimated costs, or costs over five hundred dollars, where appropriate, within 90 days after the close of the "first full fiscal year" after the implementation of the subject rule, amendment or rescission. The change in the rule that was the subject of this case was effective on March 30, 2004. The first full fiscal year after implementation of the rules thus ended on June 30, 2005. Accordingly, September 28, 2005 would represent the 90-day expiration period for the publication of a report regarding excess cost information in the *Missouri Register*. Since the Staff's investigation indicates that the published cost estimates related to the changes in the rule have not been exceeded, no *Missouri Register* publication is required under Section 536.200.2, RSMo 2000.