

**330th MEETING OF THE
STATE ENVIRONMENTAL IMPROVEMENT
AND ENERGY RESOURCES AUTHORITY
EIERA Office
425 Madison Street, Second Floor
Jefferson City, Missouri
December 14, 2017
10:00 a.m.**

1. Call to Order
2. Approval of Minutes

Approval of Minutes from the 329th Meeting of the Authority held August 29, 2017, in Jefferson City, Missouri
3. Red Tape Reduction Initiative (Regulation Review)
 - A. Overview
 - B. Opportunity for Public Comment
 - C. Discussion and Authorization to File the December 30 Report
4. Presentation of Fiscal Year 2017 Authority Audit
5. State Revolving Program
 - A. Program Update
 - B. Other
6. Missouri Market Development Program
 - A. Program Update
 - B. Other
7. Brownfields Revolving Loan Fund
 - A. Program Update
 - B. Other
8. Update on PACE Rulemaking Discussions
9. Review of Professional Services Policy
10. Other Business
 - A. Opportunity for Public Comment (Limit of Four Minutes per Individual)
 - B. Next Meeting Date
 - C. Other

State Environmental Improvement and Energy Resources Authority
330th Board Meeting
December 14, 2017

Agenda Item #3A
RED TAPE REDUCTION INITIATIVE (RULEMAKING REVIEW)

Issue:

The public comment period on rules under the Red Tape Reduction Initiative will end on December 15, 2017. This meeting is another opportunity to discuss the initiative, the EIERA regulations and provide opportunity for public comment. The first report on the initiative is due December 30, 2017 and staff would like guidance and approval of potential changes to be noted in this report.

Action Needed:

Following a presentation on the Initiative, an opportunity for public comment on the EIERA rules will be held. Staff will also seek guidance and feedback from the Board on potential rule changes and authorization to file the report.

Staff Recommendation:

NA

Staff Contact:

Karen Massey

Background:

As has been discussed at previous meetings, Governor Greitens issued Executive Order 17-03, attached as Attachment "A", requiring all state agencies to review their existing rules.

The review of existing rules is to be completed and a report submitted to the Governor's Office by May 31, 2018. The review is to include a 60 day public comment period and at least two public hearings. Six criteria must be affirmed in the report. Those criteria include:

1. That the regulation is essential to the health, safety, or welfare of Missouri residents;
2. the costs do not outweigh the benefits;
3. a process exists to measure effectiveness;
4. that less restrictive alternatives were considered and found to be less desirable;
5. the regulation is based upon sound scientific, technical, economic and other relevant information; and
6. the rule does not unduly and adversely affect Missouri citizens or customers of the State, or the competitive environment in Missouri.

This effort is being called the Red Tape Reduction Initiative. Each agency has developed a plan to solicit stakeholder input and comments will be taken until December 15, 2017. A preliminary report on the rules is due on December 30.

The EI ERA has one regulation related to application and issuance fees. We have coordinated our efforts to solicit comments with those of DNR to avoid duplication of effort and to minimize confusion by our shared stakeholders. Multiple E-mails have been sent directly to our unique stakeholders impacted by the regulations informing them of the initiative, providing copies of our rules, links to more information and letting them know the ways in which they may comment. Information about the initiative is posted on our website and links to our information has been posted on DNR's Red Tape Reduction website as well.

Presentations about the initiative and opportunity to comment was provided at each of the PACE Rulemaking Discussion meetings held across the State. Additionally, Authority staff has attended multiple DNR stakeholder meetings in which comments were solicited under this regulatory review.

To date, two comments have been received on EI ERA regulations. Neither suggested any changes.

At the meeting, staff will provide a brief presentation on the initiative, the slides for which are attached as Attachment "B", and members of the public in attendance will be provided the opportunity to comment on the Authority's regulation.

Additionally, staff will present their preliminary recommended changes to the rules. Those changes may be found on Attachment "C", and focus on three areas: decreasing regulatory restrictions (mandatory provisions), removing items which duplicate the Authority's enabling statutes or other parts of the Rule and addressing or removing outdated provisions. On the attachment, mandatory provisions are highlighted in yellow, duplicative items in green or pink and outdated provisions in blue. Words that are marked through (~~like this~~) are being removed and new language is underlined. There is a key on the front of the Attachment to remind you what color means what. Staff would like your guidance and authorization to move forward with the December 30 report noting these changes.

Staff and the Authority's General Counsel (who has reviewed the suggested changes) will be available to answer questions.

KM:ge

Attachments

RECEIVED & FILED

EXECUTIVE ORDER
17-03

JAN 10 2017

SECRETARY OF STATE
COMMISSIONS DIVISION

WHEREAS, Missouri's state government has proposed and codified an excessive amount of regulations; and

WHEREAS, the Missouri Register, a publication that includes proposed and final regulations, has published more than 40,000 pages since 2000; and

WHEREAS, Missourians and Missouri businesses deserve efficient, effective, and necessary regulations; and

WHEREAS, regulations should not reduce jobs, stifle entrepreneurship, limit innovation, or impose costs far in excess of their benefits; and

WHEREAS, regulations that are ineffective, unnecessary, or unduly burdensome must be repealed; and

WHEREAS, removing needless and burdensome regulations will make Missouri more attractive to businesses and encourage job growth.

NOW THEREFORE, I, ERIC R. GREITENS, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order:

1. Every State Agency shall immediately suspend all rulemaking.
 - a. This suspension shall remain in effect until February 28, 2017.
 - b. Any proposed regulation that affects health, safety, or welfare, or is otherwise time sensitive or required by law, should be submitted to the Office of the Governor prior to February 28, 2017.
2. No State Agency shall release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations at any time until approved by the Office of the Governor.
3. Every State Agency shall undertake a review of every regulation under its jurisdiction within the Code of State Regulations.
 - a. As part of its review, every State Agency shall (i) accept written public comments for at least a 60-day period; (ii) hold at least two public hearings to allow citizens and businesses to identify regulations that are ineffective, unnecessary, or unduly burdensome; (iii) solicit and incorporate comments and advice from private citizens, stakeholders, regulated entities, and other interested parties; and (iv) complete the review by May 31, 2018.
 - b. Every State Agency shall designate an individual to oversee the review.
 - c. For each existing regulation, and any future proposed regulation, every State Agency shall affirm in a report submitted to the Office of the Governor by May 31, 2018:
 - i. The regulation is essential to the health, safety, or welfare of Missouri residents;
 - ii. The costs of the regulation do not outweigh their benefits, based on a cost-benefit analysis;
 - iii. A process and schedule exist to measure the effectiveness of the regulation;

- iv. Less restrictive alternatives have been considered and found less desirable than the regulation;
 - v. The regulation is based on sound, reasonably available scientific, technical, economic, and other relevant information; and
 - vi. The regulation does not unduly and adversely affect Missouri citizens or customers of the State, or the competitive environment in Missouri.
- d. By June 30, 2018, every State Agency shall take any action necessary to repeal or to cease rulemaking for any regulation that does not meet any criteria in Section 3(c) of this Order.
4. This Order does not modify any State Agency's obligations under Section 536.175, RSMo. Any State Agency that has already completed the review required by Section 536.175, RSMo. may include any applicable results of that review when responding to this Order. Any State Agency that has not already completed the review required by Section 536.175, RSMo. shall do so in the manner and on the schedule required by statute.
5. "State Agency" shall have the definition provided in Section 536.010(8), RSMo.
6. This Order shall supersede any previous executive order that is inconsistent with the terms contained herein.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 10th day of January, 2017.



Eric R. Greitens
Governor

John R. Ashcraft
Secretary of State

MISSOURI RED TAPE REDUCTION

1

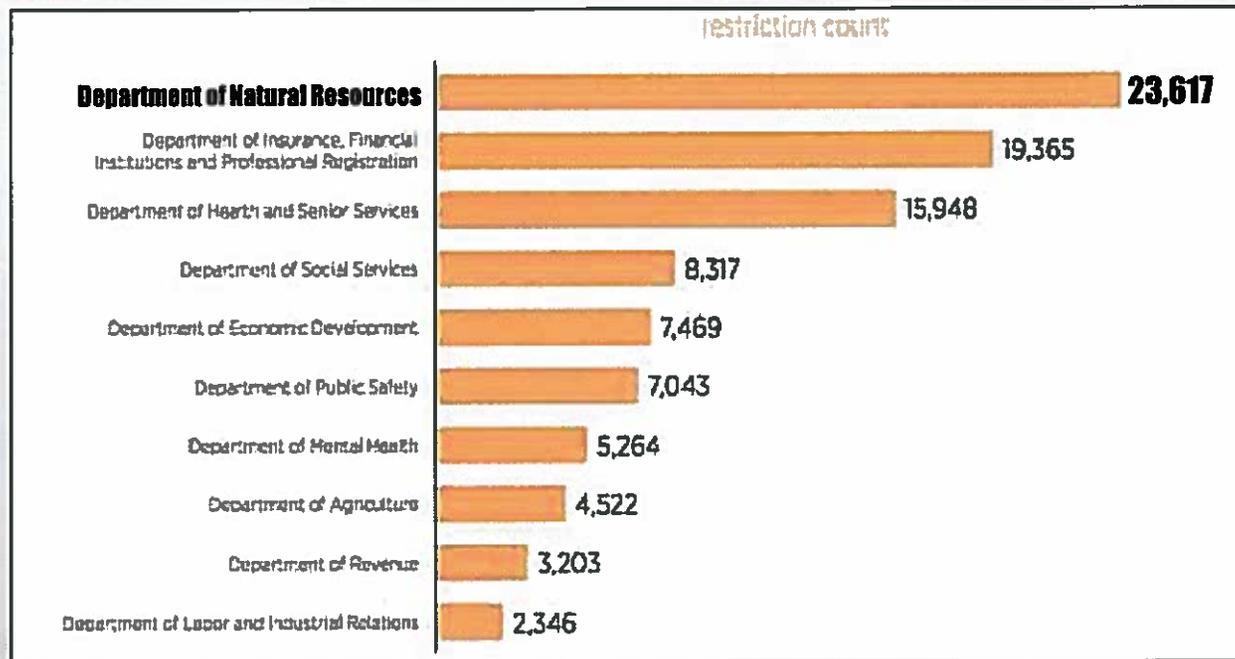


MISSOURI – REGULATORY STATISTICS

- **113,112 regulatory restrictions (federal level has 1.08 million restrictions)**
- **7.2 million words (more than 400 hours of reading)**

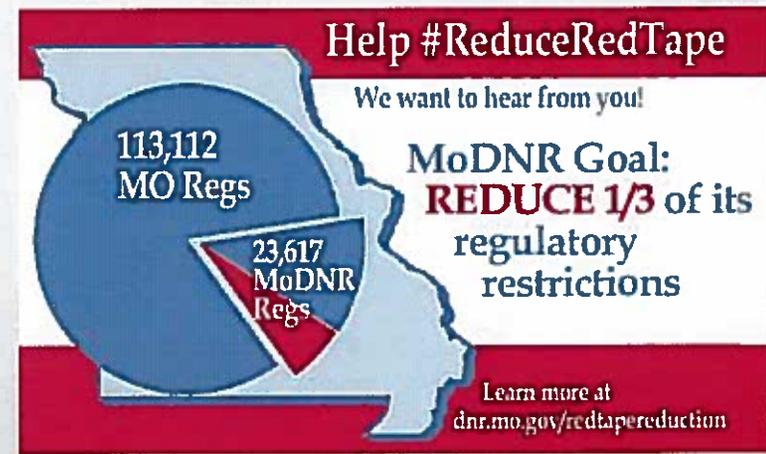


MISSOURI – TOP 10 REGULATORY AGENCIES (2016)



RED TAPE REDUCTION GOAL

- **Missouri's statewide goal is a one-third reduction in the number of regulatory restrictions.**
- **This number is achievable.**
- **It is based on results achieved by other states and countries that underwent similar reviews.**



OBJECTIVES SUMMARY

- 1. Eliminate one-third of Missouri's regulatory restrictions**
- 2. Receive more than 1,500 public comments**
- 3. Improve Missouri's regulatory and business rankings**



SUBMIT COMMENTS

- **Website** eiera.mo.gov
dnr.mo.gov/redtapereduction
- **Email** eiera@eiera.mo.gov
communications@dnr.mo.gov **Subject Line: RedTape**
- **Mail** **EIERA**
PO Box 744, Jefferson City, MO 65102-0744
- **Fax** **(573) 635-3486**



Rules of
Department of Natural Resources
 Division 130—State Environmental Improvement
 and Energy Resources Authority
 Chapter 1—Applications

Title	Page
10 CSR 130-1.010 Definitions	3
10 CSR 130-1.020 Application Forms and Fees	4

Mandatory items highlighted in Yellow.

Duplicative of EIERA statutes highlighted in Green.

Duplicative of other portions of the regulation highlighted in Pink.

Outdated provisions highlighted in Blue.

Deleted language is noted by strike through.

New language is underlined.

**** In red** tells you to go to the next page to see what language needs to be inserted.

Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 130—State Environmental
Improvement and Energy Resources
Authority
Chapter 1—Applications

10 CSR 130-1.010 Definitions

PURPOSE: This rule sets out definitions used in the rules of the State Environmental Improvement and Energy Resources Authority.

(1) Except where the context indicates otherwise, the following terms as used in these rules shall have the meaning ascribed to them in this rule or the Act.

(2) Act shall mean sections 260.005 to 260.125, inclusive, Revised Statutes of Missouri and Appendix B(1) thereto.

(3) Air pollution shall mean the presence in the ambient air of one (1) or more air contaminants in quantities, of characteristics and a duration which directly and proximately cause or contribute to injury to human, plant or animal life or health or to property or which unreasonably interferes with the enjoyment of life or use of property.

(4) Application fee shall mean the fee payable upon filing of an application.

(5) Authority shall mean the State Environmental Improvement and Energy Resources Authority created by the Act.

(6) Authorized representative shall mean with respect to a corporation that person designated to act on its behalf by written certificate of authority furnished to the authority containing the specimen signature of the person and signed on behalf of the corporation by its president or any vice president and attested to by its secretary or an assistant secretary.

(7) Bonds shall mean bonds issued by the authority pursuant to the provisions of the Act.

(8) Cost shall mean the expense of the acquisition of land, rights of way, easements and other interests in real property and the expense of acquiring or construction of buildings, improvements, machinery and equipment relating to any project, including the cost of demolishing or removing any existing structures, interest during the construction of any project and engineering research, legal, accounting, underwriting, consulting and

other expenses necessary or incident to determining the feasibility or practicability of any project and in carrying out the same, all of which are to be paid out of the proceeds of the loans, bonds or notes authorized by the Act.

(9) Disposal of solid waste or sewage shall mean the entire process of storage, collection, transportation, processing and disposal of solid waste or sewage.

(10) Loans shall mean loans made by the authority pursuant to the provisions of the Act.

(11) Notes shall mean notes issued by the authority pursuant to the provisions of the Act.

(12) Pollution shall mean the placing of any noxious substance in the air or waters or on the lands of the state in sufficient quantity and of amounts, characteristics and duration so as to injure or harm the public health or welfare or animal life or property.

(13) Pollution control facility shall mean any facility, including land, disposal areas, incinerators, buildings, fixtures, machinery and equipment financed, acquired or constructed or to be financed, acquired or constructed by the authority for the purpose of preventing or reducing pollution or providing for the disposal of solid waste or sewage.

(14) Project shall mean any facility, including land, disposal areas, incinerators, buildings, fixtures, machinery and equipment financed, acquired or constructed or to be financed, acquired or constructed by the authority for the purpose of developing energy resources or preventing or reducing pollution or the disposal of solid waste or sewage or providing water facilities or resource recovery facilities.

(15) Resource recovery shall mean the recovery of material or energy from solid waste.

(16) Resource recovery facility shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy or otherwise separating and preparing solid waste for reuse.

(17) Resource recovery system shall mean a solid waste management system which provides for collection, separation, recycling and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(18) Sewage shall mean any liquid or gaseous waste resulting from industrial, commercial, agricultural or community activities in amounts, characteristics and duration so as to injure or harm the public health or welfare or animal life or property.

(19) Solid waste shall mean garbage, refuse, discarded materials and undesirable solid and semi solid residual matter resulting from industrial, commercial, agricultural or community activities in amounts, characteristics and duration so as to injure or harm the public health or welfare or animal life or property.

(20) Solid waste or sewage disposal area shall mean any area used for the disposal of solid waste or sewage from more than one (1) residential premises or one (1) or more commercial, industrial, manufacturing, recreational or governmental operations.

(21) Solid waste or sewage processing facility means incinerator, compost plant, transfer station or any facility where solid wastes or sewage are salvaged.

(22) Synthetic fuels shall mean any solid, liquid or gas or combination thereof, which can be used as a substitute for petroleum or natural gas (or any derivatives thereof, including chemical feedstocks) and which is produced by chemical or physical transformation (other than washing, coking or desulfurizing) of domestic sources of coal, including lignite and peat, shale, tar, sands, including heavy oils, water as a source of hydrogen only through electrolysis and mixtures of coal and combustible liquids including petroleum.

(23) Water facilities shall mean any facilities for the furnishing of water for industrial, commercial, agricultural or community purposes including, but not limited to, wells, reservoirs, dams, pumping stations, water lines, sewer lines, treatment plants, stabilization ponds, storm sewers, related equipment and machinery.

(24) Water pollution shall mean contamination or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity or odor of the waters or the discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is reasonably certain to create a nuisance or render the waters harmful, detrimental or injurious to public health, safety or welfare or to domestic, industrial, agricultural, recreational or other legitimate



beneficial uses or to wild animals, birds, fish or other aquatic life.

AUTHORITY: section 260.035.1(23), RSMo 1986.* Original rule filed Sept. 3, 1986, effective Nov. 28, 1986.

*Original authority: 260.035, RSMo 1972, amended 1980, 1982, 1983, 1985, 1995.

10 CSR 130-1.020 Application Forms and Fees

PURPOSE: The State Environmental Improvement and Energy Resources Authority is authorized to provide for the conservation of the air, land and water resources of the state by the prevention or reduction of the pollution thereof and proper methods of disposal of solid waste or sewage and providing water facilities and resource recovery facilities and to provide for the development of the energy resources of the state and to further the programs the authority is authorized to contract to provide services relating thereto, to finance, acquire or construct projects and to make loans or to issue its revenue bonds and/or notes to pay the cost thereof and to fund the costs of studies and research proposals in connection therewith. The pollution control projects must be in furtherance of applicable federal and state standards and regulations. These rules set forth the information and documents which constitute an application to the authority and the procedure which should be followed in making the applications.

(1) Any private person, firm, corporation, public body, political subdivision or municipal corporation who intends to acquire, construct or finance a project is eligible to submit an application with the authority for a resolution of official action toward issuance of the authority's bonds and/or notes or the granting of a loan.

(2) An application to acquire, construct or finance a project shall consist of the following: the application statement; proposed resolution of official action toward issuance of the authority's bonds and/or notes or the granting of a loan; and the application fee.

(3) Any private person, firm, corporation, public body, political subdivision or municipal corporation is eligible to submit an application with the authority requesting funding for a study or research proposal or a contract for services.

(4) An application to fund a study or research proposal or to enter into a contract to provide services shall consist of the following: the application statement and the application fee.

(5) The application shall be submitted due to the authority at least five (5) days prior to any meeting of the authority at which the applicant has requested an appearance.

(6) The completed original application together with five (5) copies shall be filed with the State Environmental Improvement and Energy Resources Authority at its office in Jefferson City and an additional copy of the application shall be delivered, either in person or by mail to the authority's general counsel, or to another person and/or address as the authority may from time to time designate by resolution.

(7) The application statement should present a detailed outline of the project or the study or research proposal or the services to be rendered for which the authority financing is requested and should be in a form as the authority may from time-to-time require. A copy of the application form may be obtained from the authority at its office in Jefferson City.

(8) The authority may request additional information from the applicant and additional information so requested must be satisfactory to the authority before it passes its resolution of official action.

(9) If the project for which the authority is requested to finance is a pollution control project, the applicant, prior to the issuance of the authority's bonds and/or notes or the granting of the loan, shall file with the authority—

(A) A control agency certificate issued by the state or federal agency which is charged with regulating the pollution which the project is designed to control, reduce or prevent in a form so as shall be determined by the authority from time to time stating that the pollution control project, as designed, is in furtherance of applicable state or federal standards and regulations; or

(B) An engineering certificate from an engineering firm acceptable to the authority in a form so as shall be determined by the authority from time to time stating that the pollution control project, as designed, is in furtherance of applicable state or federal standards and regulations. The applicant shall be responsible for applying to the appropriate state or federal agency or engineering firm for the control agency certificate and for sub-

mitting to the state or federal agency or engineering firm information as the state or federal agency or engineering firm may require.

(10) As a part of the application, the applicant shall prepare and submit a proposed resolution of official action.

(11) The following fees are payable by applicant to the authority:

(A) Application Fee. An application fee in an amount as hereinafter provided is due and payable upon filing of the request for financing or refinancing. The application fee is an amount equal to one-tenth (1/10) of one percent (1%) of the amount for which financing is requested or of the total cost of the study or research proposal or contract to provide services. Notwithstanding the foregoing, the applicant fee shall not be less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500). The application fee is nonrefundable and is in addition to the issuance fee or refinancing fee provided for that follows. Payment of the application fee shall be by bank draft, money order or check made payable to the State Environmental Improvement and Energy Resources Authority;

(B) Issuance Fee. For all loans, bonds or notes issued by the authority, other than loans, bonds or notes which are being issued to refund or refinance loans, bonds or notes previously issued by the authority, an issuance fee shall be payable to the authority at the time of the closing of the issuance of the bonds or notes or the granting of the loan which shall be and computed in the following manner:

Rate	Amount of Financing
.00625 (5/8 of 1%) on the 1st	\$ 2,500,000;
.005 (1/2 of 1%) on the next	\$ 2,500,000;
.00375 (3/8 of 1%) on the next	\$ 5,000,000;
.0025 (1/4 of 1%) on the next	\$15,000,000;
.00125 (1/8 of 1%) on all over	\$25,000,000;

(C) Refinancing Fee. On all loans, bonds or notes issued for refinancing or refunding previously issued loans, bonds or notes, a refinancing fee shall be payable to the authority at the time of the closing of the issuance of the bonds or notes or the granting of the loan which shall be is calculated as follows: i) within two (2) years after the issuance of the loan, bonds or notes being refinanced, one-tenth (1/10) of the issuance fee provided in subsection (11)(B); ii) after two (2) years and within five (5) years after the issuance of the loan, bonds or notes being refinanced, one-fifth (1/5) of the issuance fee provided in subsection (11)(B); iii) after five (5) years and within ten (10) years after the issuance of the

loan, bonds or notes being refinanced, one-third (1/3) of the issuance fee provided in subsection (11)(B); iv) after ten (10) years and within fifteen (15) years after the issuance of the loan, bonds or notes being refinanced, one-half (1/2) of the issuance fee provided in subsection (11)(B); or v) after fifteen (15) years, same as issuance fee provided in subsection (11)(B); but in no event shall the refinancing fee be less than the lesser of a) ten thousand dollars (\$10,000) or b) the issuance fee provided in subsection (11)(B);

(D) Nature of Fees. The application fee, issuance fee and refinancing fee are for the support of the authority and its activities. The application fee, issuance fee and refinancing fee do not provide for bond registration and/or any other issuance or project costs, including, though not by way of limitation, attorneys' fees, printing costs, financial advisor fees, underwriting fees or trustee fees;

~~(E) Partial Prepayment of Issuance Fee or Refinancing Fee. Upon adoption of the resolution of official action toward issuance of the authority's bonds and/or notes or approval of the loan by the authority, the authority may require an applicant to make partial prepayment of the issuance fee or refinancing fee. The partial prepayment shall not exceed twenty five percent (25%) of the total issuance fee or refinancing fee, as provided for in subsections (11)(B) or (C).~~

(12) Each applicant shall may be required to personally appear at the meeting at which the authority considers the proposed resolution of official action.

(13) Prior to the issuance of the bonds and/or notes of the authority, the applicant shall either provide the authority with an unqualified opinion of counsel experienced in matters relating to tax exemption of interest on bonds and/or notes of states and their political subdivisions to the effect that the interest payments on the bonds and/or notes to be issued by the authority will be exempt from federal income taxes or shall apply for, and obtain in the name of the authority, a determination by the Internal Revenue Service that the interest payments on the bonds and/or notes to be issued by the authority will be exempt from federal income taxes.

(14) Upon written request submitted to the authority and upon good cause shown, the authority may waive or modify the strict application of any rule provided for in this rule including the payment of the application fee, issuance fee and refinancing fee, or the amount thereof, if the authority determines that the substance and purpose of any rule

provided for in these regulations has been complied with and fulfilled.

~~(15) After the issuance of the resolution of official action toward issuance of the authority's bonds and/or notes, and no later than one (1) month prior to the issuance of the bonds or notes, a timetable for all future proceedings, following adoption of the resolution of official action toward issuance of the authority's bonds and/or notes shall be agreed upon between the authority and the applicant. All proceedings thereafter shall be governed by an agreed upon time schedule.~~

AUTHORITY: section 260.035.1(23), RSMo 1986.* Original rule filed Sept. 3, 1986, effective Nov. 28, 1986.

*Original authority: 260.035, RSMo 1972, amended 1980, 1982, 1983, 1985, 1995.

** Replace with language allowing electronic filing.

*** and be filed within a reasonable time prior to the authority meeting at which action is to be taken on the application.

Agenda Item #8
UPDATE ON PACE RULEMAKING DISCUSSIONS

Issue:

Staff will provide an update on the PACE Rulemaking Discussions.

Action Needed:

None.

Staff recommendation:

None.

Staff Contact:

Karen Massey

Background:

The Property Assessment Clean Energy Act sets up the statutory framework for PACE financings in Missouri and grants the EIERA the authority to promulgate regulations to clarify the definitions of energy efficiency improvement and renewable energy improvement. In early October, staff began formally reaching out to potential PACE stakeholders in an effort to determine whether regulations are needed.

Over 250 potential stakeholders were identified through a variety of ways including those expressing interest at meetings, those known to EIERA staff, recommended by staff of the Division of Energy as well as those recommended by other stakeholders. A survey was developed, sent to the stakeholder list and posted on the PACE Rulemaking page of the EIERA website along with other PACE information. The Survey asked whether, what and why rules were needed; what problem needed to be addressed; whether it could be addressed in another manner or was already being addressed in law; what data or information supported the need for the rule; and what the costs would be. The items requested in the Survey are those which are needed for an agency to make a Finding of Necessity required by statute in any rulemaking. Five Survey Responses were received and were posted on the website.

Meetings were held in Kansas City, Jefferson City, Springfield and St. Louis to discuss the comments received on the Survey and to solicit discussion. In addition to EIERA and Energy representatives, four stakeholders attended the meeting in Kansas City, six in Jefferson City, four in Springfield and nine in St. Louis. Meeting summaries have been posted on the website and stakeholders have been asked to provide comments on the topic generally or on any of the previously received comments by the end of December.

No comments have been received relating directly to clarifying the definition of renewable energy improvement. Comments received to date have been on all sides of whether

clarification to the definition for energy efficiency improvement was needed. Some stated that a detailed list of allowable energy efficiency measures should be set forth in regulation. Others felt that regulations weren't needed or issues could be handled in other ways. Another felt that rules were only needed to make it clear that water efficiency measures are allowable. Other comments included wanting audits required for all projects, to provide for a commercial energy auditor certification, standardized methodologies for economic benefit findings by PACE Districts and that consumer protections are needed for residential property owners. Still other comments were received relating to the need for standardization and adherence to the requirements for tax bill collection. These and other comments received were well reasoned and thoughtful.

Staff is now in the process of reviewing comments and other information received to determine whether or not it appears that a rule is needed or more information is required to make that determination. Obviously this process will not be completed until after the time for final comments has expired. Should it appear that a rule is needed, language will be drafted and presented to stakeholders for further comment before it is brought before the Board for final approval. The Board will, however, continue to receive updates as to the status of the issue.

KM:ge

Agenda Item #9
REVIEW OF PROFESSIONAL SERVICES POLICY

Issue:

Staff wants to confirm that the Board is comfortable with the policy and have input as to any changes needed.

Action Needed:

Review of and on comment on policy.

Staff recommendation:

None.

Staff Contact:

Karen Massey

Background:

The EIERA has been operating under the same Professional/Contractual Services Policy for many years, but it is unclear if, or when, it was last formally reviewed by the Board. The policy is set forth in Attachment A.

Among other items in the policy, it includes a list of the service providers routinely hired by the Board which are selected through a competitive bidding process approved by the Board. The solicitation, evaluation tool, publication/distribution method and schedule must be approved by the board and should be constructed to provide a fair process that will allow informed bids. Exceptions may be allowed in certain circumstances such as when unique structures or refunding opportunities are brought forth by investment bankers. It is preferred that all services be selected by a competitive process, but exceptions may be authorized by the Board in where circumstances make a competitive process impractical.

The policy also states that contractual terms are generally to be no longer than three to five years; however, terms can be extended for cause including, but not limited to the examples given. Contracts may not be required for service providers if it is not customary to enter into contracts in that field (e.g. auditors and underwriters).

At the meeting, staff would like to discuss whether you are still comfortable with this policy and what, if any, changes the Board would like to see.

KM:ge

Attachment

Attachment "A"

Professional/Contractual Services Policy

The following professional/contractual services are formally bid and selected by the Authority Board through a formal competitive bidding process:

General Counsel

Auditor

CPA

Financial Advisor

Environmental Consultant

Programmatic Underwriting Teams

Programmatic Bond Counsel

The form of the solicitation and evaluation tools shall be approved by the Board as shall the method of publication or distribution, schedule and other items material to the solicitation and evaluation process. The solicitation shall be structured in such a way as to be fair for all bidders and allow informed bids for the services to be provided. The evaluation tool shall be constructed to evaluate the capabilities to perform the services and to meet the needs and priorities of the Authority. Cost shall be evaluated separately from other criteria and, while it is an important factor, should not be the sole criteria for selection of service providers.

In the case of program bond or note refundings and other innovative structures, the EIERA Board may choose to select underwriting firms by separate solicitation. The Board may, however, in its discretion select an underwriting firm or firms based upon transactions or structures brought to the EIERA by such firms outside of a solicitation process.

It is the preference of the EIERA that professional/contractual services not mentioned above also be selected through a competitive process.

The Board may authorize non-competitive selection when the circumstances make a competitive process impractical due to timing, cost effectiveness, specialized nature of the services or other factors. It may also authorize using contracts of other governmental entities where allowed in lieu of a competitive process.

Generally, services are bid and new agreements awarded, every three to five years; however, the Board may deviate from these time frames. The Board may choose to extend the term of an agreement/engagement for cause. Cause may include, but is not limited to, ongoing legal activity, audits, bond transactions, programmatic change or other activities that would be unnecessarily interrupted or adversely impacted by changing professionals while ongoing; limited staff resources or

heavy staff workload; or key staff vacancies or turnover (including turnover of other service providers) which, when coupled with changes in professional service providers, could jeopardize business functions, accountability, operations or transfer of knowledge. Agreement extensions should be tailored to meet the needs of the Authority while not unnecessarily hampering competition for the services provided.

Where applicable, contracts with the selected proposer shall set forth the term of the agreement and any extension thereof. Contracts for certain services, such as accounting, auditing and underwriting may not be necessary if engagement letters are entered into annually or as part of a bond transaction as is the custom for that service.

Contracts awarded may be amended when such an amendment is in the best interest of the Authority and does not significantly alter the original intent or scope of the agreement.