BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Qualified Extraordinary Costs	)))))	Case No. EO-2022-0040
In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Energy Transition Costs Related to the Asbury Plant	)))))	Case No. EO-2022-0193

INITIAL POST-HEARING BRIEF OF THE EMPIRE DISTRICT ELECTRIC COMPANY D/B/A LIBERTY

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COMES NOW The Empire District Electric Company d/b/a Liberty ("Liberty" or the "Company"), and for its Initial Post-Hearing Brief, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

I. INTRODUCTION

RSMo. §393.1700 (the "Securitization Statute") was signed into law in 2021, making securitization financing available to electric utilities under specific circumstances when its use can be shown to benefit customers. First, it creates an opportunity for utilities to recover through securitization extraordinary costs that were prudently incurred by an electric utility during anomalous weather events ("qualified extraordinary costs"). Second, the statute allows for securitization of an electric utility's undepreciated investment in a retired or abandoned generating facility, provided that such early retirement or abandonment is deemed reasonable and prudent by the Commission ("energy transition costs"). The Missouri Legislature recognized that, under these circumstances, securitization has advantages over customary utility financing and can create two very important benefits for customers: (1) lower rates, since utilities' prudent costs are recovered through the issuance of low-cost bonds; and (2) avoidance of "rate shock," sudden increases in customer costs, by stretching the repayment of some balances over a longer period of time at lower rates. Ex. 5, DeCourcey Dir., pp. 4-6; Ex. 7, Emery Dir., pp. 18-19. In both instances, securitization represents a "win-win" by allowing a utility to recover the costs of providing service in a way that minimizes impacts on customers.

While the mechanics of securitization are complex, the core issues that the Commission is being asked to decide in this proceeding are clear. The Securitization Statute is highly proscriptive and describes with great specificity the appropriate circumstances for securitization, what costs may be securitized, and what a utility must do to demonstrate customers benefits before it may

move forward, among a great many other details that leave no ambiguity as to the Legislature's intent on these matters.

Despite that clarity, the Staff of the Commission ("Staff") and the Office of the Public Counsel ("OPC") each ask the Commission to knowingly disregard the Securitization Statute in favor of their preferred approaches to ratemaking. In several instances, Staff and OPC recommend disallowance of costs where prudence is not in question. Some recommendations are based on the parties' interpretation of rules that govern unrelated proceedings. For example, the parties make repeated reference to cost sharing elements that are applied to the recovery of Liberty's operating costs in other settings. But rules and practices that could be applied in other settings are irrelevant when the Securitization Statute leaves no ambiguity as to what costs an electric utility may recover and what costs it may not. Importantly, when the Securitization Statute was enacted in 2021, the Legislature was aware of every rule and regulation cited in this proceeding by the Staff and OPC, and the Legislature still chose to enact a detailed, prescriptive law setting forth with great specificity how securitization must work. Acceptance of the recommendations made by Staff and OPC requires that the Commission disregard that very clear direction from the Legislature in favor of an approach that the Securitization Statute does not contemplate.

In yet another attempt to end run the Securitization Statute, Staff and OPC simply rely on a sense of "rough justice," arguing, in effect, that because the costs involved in the case are large, that selected portions of the Securitization Statute no longer apply. Those arguments should be rejected entirely.

The implications of the Commission's findings in this regard will have far-reaching implications as the decisions it makes in this proceeding will establish important precedents. If Liberty is able to recover through securitization the costs that it prudently incurred on behalf of its customers, other utilities will be encouraged to consider the benefits of securitization under similar

circumstances, as the Legislature intended when it passed the Securitization Statue. If other market participants perceive the securitization process to be arbitrary and risky in ways that are not consistent with the Securitization Statute, they will be less inclined to utilize it. That means that those same utilities will be less likely to invest in the energy transition, even when doing so would benefit their customers. And they will have fewer options and less flexibility to deal with rate shock from extreme weather events. Ultimately, customers' bills will be higher and more volatile and an opportunity will have been lost.

On the other hand, the Commission's approval of Liberty's applications without modification will send the signal that securitization is a viable option when its use would create benefits. At every turn, Liberty's request closely adheres to the provisions of the Securitization Statute with regard to the specific types of costs that can be recovered, specific requirements for the Commission's financing order, and specific requirements for the ongoing collection and true-up of any securitized charges that are collected from customers. Liberty witness Niehaus, an expert in the field, explained that the statutory provisions are designed to permit the securitized bonds to be issued with triple-A ratings in order to deliver cost savings for customers. Ex. 18, Niehaus Dir., pp. 8-22; Ex. 19, Niehaus Dir., pp. 7-23. In these consolidated securitization proceedings, Liberty has demonstrated full compliance with all required elements of the Securitization Statute. Specifically, Liberty has demonstrated that:

(1) the early retirement of Asbury was reasonable and prudent (RSMo. §393.1700.1(7)) and recovery of the costs associated with Asbury's retirement is just and reasonable and in the public interest (RSMo. §393.1700.2(3)(c));

(2) Liberty's costs associated with Storm Uri are of an extraordinary nature and were prudently incurred during an anomalous weather event (RSMo. §393.1700.1(13)) and recovery of such costs is just and reasonable and in the public interest (RSMo. §393.1700.2(3)(c)); and

(3) the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge regarding Asbury and Storm Uri are just

and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers (RSMo. §393.1700.2(3)(c)).

The competent and substantial evidence demonstrates that the Commission should authorize Liberty to finance $362,419,908 of qualified extraordinary costs and energy transition costs using securitized utility tariff bonds, representing $221,645,532 for Winter Storm Uri and $140,774,376 for Liberty's retired Asbury coal plant.[1] Ex. 8, Emery Surreb., pp. 1-2. All costs sought to be securitized by Liberty comply with the statutory definitions of "qualified extraordinary costs" for Winter Storm Uri, and "energy transition costs" regarding Asbury, and Liberty has otherwise fulfilled all requirements of the Securitization Statute.

The Commission should help ensure that electric utility customers in Missouri will have access to the benefits of securitization by issuing a financing order that meets the requirements of the Securitization Statute and not stray beyond its bounds as Staff and OPC recommend. *See State ex rel. MoGas Pipeline, LLC v. Public Service Commission*, 366 S.W.3d 493, 496 (Mo. banc 2012) (the Commission "is purely a creature of statute, its powers are limited to those conferred by statute either expressly, or by clear implication as necessary to carry out the powers specifically granted").

II. WINTER STORM URI

The Commission should issue a financing order approving the Company's request to securitize $221,645,532 in qualified extraordinary costs for Storm Uri. All Storm Uri costs meet the statutory definition of "qualified extraordinary costs," no party disputes that the amount claimed for fuel and power purchases was actually incurred by the Company on behalf of its customers, and it is indisputable that those costs were of an "extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through

[1] With the amounts subject to adjustment with the issuance advice letter and via a future ratemaking process to reconcile any differences between securitized utility tariff costs and the final costs incurred by Liberty. *See* RSMo. §§393.1700.2(1)(g), 393.1700.2(2)(f), and 393.1700.2(3)(h).

customary ratemaking." RSMo. §393.1700.1(13). In fact, Liberty, Staff, and OPC are all in agreement that the Commission should issue a financing order authorizing Liberty to finance, through securitization, Winter Storm Uri costs incurred by Liberty, as this is exactly the circumstance intended for application of the statute (RSMo. §393.1700.2(2)).

A. The Commission Should Authorize Securitization of $221,645,532 in Qualified Extraordinary Costs for Storm Uri Because Liberty Met All Elements of the Securitization Statute (List of Issues, Issues 1A and 2D)

The Commission should issue a financing order approving the Company's request to securitize $221,645,532 in qualified extraordinary costs for Storm Uri. Ex. 8, Emery Surreb., p. 1. RSMo. §393.1700.1(13) defines "qualified extraordinary costs" as:

> costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

The costs the Company incurred to provide electric service to customers during Storm Uri clearly fit this definition. Liberty witness Doll testified that the Company incurred $193,402,198[2] for fuel and purchased power in January and February 2021 in order to provide electricity service to its customers. Ex. 2, Doll Dir., pp. 8-13. He provided detailed and unrefuted testimony about the events and the Company's actions that led to these extraordinary costs. Mr. John Olsen, an expert with decades of experience procuring power in the Southwest Power Pool ("SPP") for a 5,000 MW generation fleet, reviewed all of the Company's fuel and power purchases at issue in this case, as well as the Company's operational practices during Storm Uri and concluded that "EDE [Liberty] operated proactively, prudently, and in compliance with its emergency operations and winter preparedness procedures" and that "EDE demonstrated operations proficiency that

[2] This is the amount above the non-extraordinary portion that flowed through the FAC.

meets and at times exceeds prudent utility practices." Ex. 9, Olsen Dir., p. 2. Notably, no party challenged any of those fuel and power purchases, and even Ms. Mantle of OPC offered evidence that Liberty's market purchases were consistent with those made by Evergy West during the same weather event. Ex. 4, Doll Surreb., pp. 3-4.

No party disputes that Storm Uri qualifies as an "anomalous weather event." While the Securitization Statute does not define "anomalous weather event," the record evidence demonstrates that Storm Uri was such an occurrence. Unfortunately, this is not the first time the Company's customers have experienced such an extreme weather event that necessitated significant expenditures. As the Commission will no doubt recall, in 2011, the Company's system suffered catastrophic damage from the Joplin tornado. While securitization did not exist then, the Commission permitted Liberty to accumulate the costs pursuant to an Accounting Authority Order that allowed for these costs to be eligible for recovery on a deferred basis. Ex. 1, Reed Surreb., p. 23. Subsequently, in Case No. ER-2019-0374, the unamortized balance was included in rate base and, thereby, the Commission provided for a return on this deferral at the same cost of capital that is applied to all other rate base. *Id*.

With Winter Storm Uri, because of the extreme rate shock that would have occurred and the unreasonable financial burden that would have been placed on Liberty's customers, Liberty never sought to have the extraordinary storm costs flow through its fuel adjustment clause ("FAC"), with recovery of costs over six months. Instead, Liberty proposed to have the extraordinary costs deferred, and the Commission authorized FAC rates with the extraordinary storm costs excluded. When Liberty filed its last rate case, Commission Case No. ER-2021-0312, the Securitization Statute was not yet law. With the storm costs having been excluded from the FAC, Liberty proposed to recover the storm costs over 13 years, in which case Liberty's cost to provide that financing would have been based on the cost to carry balances at its weighted average

cost of capital ("WACC"). But then, the securitization financing mechanism became a possibility when the Missouri Legislature recognized that it would be an important tool to protect customers against extreme rate shock while providing the utility with cost recovery in these highly unusual circumstances.

The Company acted prudently and properly related to Storm Uri, and the other parties have failed to demonstrate imprudence or lack of statutory compliance in any way. This Commission should recognize that Liberty has acted in the best interests of its customers by seeking securitization of its extraordinary storm costs and should not accept the recommended disallowances of Staff or OPC.

Staff and OPC propose a disallowance of 5% of the extraordinary Storm Uri fuel and purchased power costs. Their proposals are made in spite of the fact that there does not seem to be any dispute about the prudence of the large majority of the actions the Company took and the reasonableness of the costs that it incurred as a result of those actions. Staff and OPC, in fact, admit that this proposed storm cost disallowance has nothing to do with prudency. They have instead tried to tether their position to the sharing provisions of the FAC, a mechanism that Liberty uses to recover certain fuel and power costs.

Where Staff and OPC err in this instance is that the Company is not seeking recovery of anything via the FAC in this proceeding. In the same way that the provisions of the Securitization Statute govern each facet of a utility's recovery of its qualified extraordinary and/or its energy transition costs through securitization, the FAC statute and rule are specific and perspective. They include, among other things, authorization for a tariff feature that requires Liberty to share a portion of its net costs or gains through its participation in wholesale markets via the FAC. That provision is authorized by a specific statute (RSMo. §386.266) and implemented by Liberty's tariff and a Commission order regarding the FAC. But that statute, that tariff, and that order only apply

to net costs and revenues *flowing through the FAC mechanism*. None are relevant to this proceeding, and there are no equivalent provisions in the Securitization Statute. Neither Staff nor OPC explain why the Legislature would omit such an impactful element from the Securitization Statute if it intended for it to be implemented. Nor do they rationalize their recommendation on any basis other than their own preference. In effect, Staff and the OPC speculate that under different circumstances, in some other docket, some of Liberty's costs or gains might be subject to sharing. On that basis alone, they recommend that the Commission set the Securitization Statute aside and impose a disallowance. To do so would be unlawful.

It is noteworthy that §393.1700.1(13) of the Securitization Statute defines "qualified extraordinary costs" as those "incurred prudently" and of "an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, ***such as but not limited to*** those related to purchases of fuel or power . . .." The option of seeking securitization as the financing mechanism is available for ***all*** extraordinary costs resulting from atypical weather events – it is not specific to fuel and purchased power costs, as is the case with the FAC; and there is nothing in the Securitization Statute that allows for extraordinary fuel costs stemming from a weather event to be treated differently from other extraordinary costs stemming from a weather event.

When asked if Staff alleges any imprudence regarding Liberty's extraordinary fuel and purchased power costs incurred on behalf of customers during Storm Uri, Staff's witness confirmed that Staff's recommended 5% disallowance is not based on imprudent conduct on the part of Liberty. Tr. Vol. 3, p. 290 (Fortson). No discussion of imprudence regarding this amount is contained in Staff's written testimony, and at the hearing, Staff's witness said the only imprudence would be in the Company's request for recovery:

> So my thoughts on that are this testimony [Staff's pre-filed testimony recommending the disallowance] doesn't explicitly state imprudence for the 95/5, but I would consider it alleged imprudence on the company's part of proposing a hundred percent of these fuel costs in this case.

Id., lines 10-14.

Unlike the Securitization Statute, and contrary to the testimony of Staff (*Id*. at 289), the FAC statute authorizes "sharing" by allowing for the inclusion of incentive features in FAC tariffs. RSMo. §386.266 specifically provides that the Commission may include in FAC tariffs "features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities." There is no such language in the Securitization Statute. That stands to reason, because the Securitization Statute addresses, among other things, extraordinary costs stemming from an anomalous weather event. By definition, there is no amount of incentivizing that could have led to Liberty being able to avoid – or even limit – the extraordinary Storm Uri fuel costs. The Commission has never imposed a 95/5 sharing for other extreme weather events, such as the 2011 Joplin tornado and the various ice storms where utilities have been authorized to recover their extraordinary costs. To do so here would not only depart from Commission precedent, but more importantly, would violate the Securitization Statute.

A Missouri Supreme Court decision regarding Spire Missouri was referenced in Staff's opening statement at the evidentiary hearing, with Staff arguing that the Commission "has great discretion in allowing or disallowing costs based on that just and reasonable standard whether or not those costs are prudent," and Staff counsel also questioned Liberty witness John Reed regarding this decision. Tr. Vol. 2, pp. 51, 91. As Mr. Reed explained, the Spire decision dealt with the inclusion or exclusion of rate case expenses, an administrative expense, in a utility's cost of service or revenue requirement in a general rate case, and after a finding by the Commission

that "including all of these expenditures in setting Spire's future rates was not just because some of the expenses were not fair to ratepayers in that they only were incurred to benefit (if anyone) Spire's shareholders." *Id*. at pp. 98-99 (Reed); *Spire Missouri, Inc. v. MoPSC*, 618 SW3rd 225, 233 (Mo. banc 2021). The Spire decision does not address the disallowance of a prudently incurred capital investment or an operating expense, and it certainly does not address the application of the Securitization Statute. Instead, the Spire decision held as follows:

> The PSC expressly identified those issues (and related expenses) Spire pursued that benefitted only its shareholders and not its ratepayers, and the PSC decided what proportion of the total case (and expenses) they represented. Nothing in the PSC's authorizing statutes or this Court's precedents requires the PSC to conduct an item-by-item analysis when the issue is the degree to which a utility's case expenses should be included in calculating 'just and reasonable' rates . . .

Spire Missouri, Inc. v. MoPSC, 618 S.W.3d 225, 234 (Mo. 2021).

As Mr. Reed noted, although the Securitization Statute does not contain a definition or explanation of what constitutes "just and reasonable," the statute defines "qualified extraordinary costs." Tr. Vol. 2, p. 96 (Reed); RSMo. §393.1700.1(13). Further, "just and reasonable rates" are those that balance the interests of consumers and investors *and* that provide the utility with a reasonable opportunity to earn a fair return on its investments after deducting its operating costs. Tr. Vol. 2, p. 98 (Reed). "The regulatory principle relating to cost recovery has been clear for many decades – utilities are entitled to recover their prudently incurred costs, and a reasonable opportunity to earn a fair return on the assets that are the product of prudent investment." Ex. 1, Reed Surreb., pp. 4-5. "(A) public utility is entitled to recover from ratepayers all its costs (plus a reasonable return on its investments) by way of rates that are 'just and reasonable.'" Spire Missouri, 618 S.W.3d at 232.

Liberty's FAC tariff cannot, lawfully, be used here to override the plain wording of the Securitization Statute. There is nothing that allows for extraordinary fuel costs stemming from a

weather event to be treated differently from other extraordinary costs stemming from a weather event, and there is no evidence that Liberty incurred 5% of the extraordinary Storm Uri fuel and purchased power costs imprudently or other than for the benefit of Liberty's customers. Simply put, there is nothing in the Securitization Statute – or any other applicable law – that would allow the Commission to issue a lawful financing order which arbitrarily denies Liberty's recovery of 5% of its prudently incurred storm costs.

B. The Securitization Statute Does Not Provide a Basis to Reduce Qualified Extraordinary Costs By Base Rate Revenues Generated During an Anomalous Weather Event (Issue 2E)

Staff argues that the qualified extraordinary costs for Winter Storm Uri should be offset by what it calls "excess revenues." Ex. 100, McMellen Reb., p. 5. Staff defines these "excess" revenues as "base rate" revenues, meaning revenues generated from sales to customers during Storm Uri, as opposed to off-systems sales revenues (revenues generated from power sold into the Southwest Power Pool Integrated Marketplace). Tr. Vol. 3, pp. 255-256 (Lange). Staff claims that any amount of revenue the Company generated during Storm Uri from sales to customers over and above what it would ordinarily expect during that period should be deducted from the amount of "qualified extraordinary expense" that is securitized. Staff claims that during Storm Uri, the Company generated $2,760,686 in "excess revenues" which should not qualify as "qualified extraordinary expense" under the Securitization Statute, and hence cost recovery by the Company.

The Commission should reject Staff's argument because its proposed reduction is not permitted by the Securitization Statute. The Securitization Statute does not contain any requirement or authorization to reduce fuel and purchased power costs by what Staff has described as "excess base rate revenues." Ex. 8, Emery Surreb., p. 24. The definition of "qualified extraordinary costs" is unambiguous:

> . . . costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

Section 393.1700.1(13), RSMo. There is no mention of "excessive" base revenues, much less a mechanism for disallowing the recovery of prudently incurred costs via securitization. Of course, its absence also implies that there is no definition of "excessive" base revenues that could be applied in any instance. Once again, the Commission must apply the Securitization Statute as it is written.

Even if the Staff's recommended disallowance for "excessive base rate revenues" were based on an actual provision of the Securitization Statute, the logic that underlies their recommendation is fundamentally flawed. Staff's calculation of what it calls "excess base rate revenues" is limited in time to essentially the month of February 2021 and does not provide an appropriate comparison between Liberty's revenues and the Winter Storm Uri costs. To develop her recommended disallowance, Staff witness Lange utilized monthly cycle bills for customers that included the time period of Winter Storm Uri. Tr. Vol. 3, pp. 256-257, 258 (Lange). She then compared those bills, essentially for the month of February 2021, with what "would have been billed by Liberty under 'normal' weather conditions." Ex. 108, Lange Reb., p. 33. Using that process, she created a number of excess 'base rate' revenues for essentially a one month period. Ms. Lange did not compute a comparison of Liberty's actual base rate revenues for the entire 2021 calendar year with those revenues that would have been billed by Liberty under 'normal' weather conditions for 2021. Tr. Vol. 3, pp. 257-258, 259-260 (Lange). Put simply, even if such adjustment was allowed by the Securitization Statute, which it is not, Staff performed only a partial analysis, which is highly skewed. There should be no offset for what Staff deems "excess" revenues, as any such offset is not authorized by the Missouri Securitization Statute or other law and inappropriately

seeks to compare base rate revenues for a finite, one month period without regard to Liberty's experience for the entirety of 2021.

C. Liberty Should Not Be Penalized for Complying With the Terms of its Air Permit for the Riverton 11 Generating Unit (Issue 2F)

Staff argues that the amount of qualified extraordinary expense to be securitized should be reduced because the Company was allegedly imprudent in not tuning its Riverton 11 gas fired generation unit with emergency fuel oil for winter temperatures. Ex. 105, Hull Reb., p.1. OPC, based upon Staff witness Hull's rebuttal testimony, recommended a larger disallowance as a result of OPC's position as to the appropriate level of fuel oil to be maintained at Riverton. Ex. 211, Robinett Surreb., p. 1.

Liberty's witness on this subject, Dr. Brian Mushimba, has over 20 years of experience in electric operations, managing power generating assets and working on power plant equipment to enhance reliability and availability.[3] Ex. 10, Mushimba Surreb., p. 1. Dr. Mushimba explained that the Riverton unit, which normally operates using natural gas, has an air permit from the Kansas Department of Health and Environment, which restricts Riverton's operations on emergency fuel oil to two circumstances: (1) the natural gas delivery system must break down and the required natural gas supply becomes unavailable to Liberty, and the power requirements from the Riverton station cannot be assumed by power generating equipment other than Unit #10 and Unit #11; and, 2) black start testing. Ex. 10P, Mushimba Surreb., pp. 5-6; Ex. 10C, Mushimba Surreb., pp. 8-9. There is no provision in the air permit that allows Unit 11 to operate on fuel oil *for the sole purpose of tuning*. *Id*.

[3] Staff witness Hull, whose testimony is relied upon by both Staff and OPC, has never worked for an electrical corporation; has never been responsible for starting a natural-gas fired combustion turbine unit; has never been responsible for tuning or starting a natural-gas fired combustion turbine unit on fuel oil; has no experience trying to start such a turbine in subzero temperatures; and has only worked for the Missouri Department of Natural Resources and the Commission since he was graduated from college in 2016. Tr. Vol. 3, p. 310 (Hull).

In its review of Storm Uri, the Federal Energy Regulatory Commission ("FERC"), the North American Energy Reliability Corporation ("NERC"), and the Regional Entities identified this industry wide issue, recommending that there be a forum consisting of state legislatures and/or regulators, in cooperation with FERC, NERC, and Regional Entities to discuss, amongst other things, "(w)hether there are barriers to dual-fuel capability that could be addressed by changes in state or federal rules or regulations. Dual-fuel capability can help mitigate the risk of loss of natural gas fuel supply, and issues to consider include facilitating testing to run on the alternate fuel, ensuring adequate fuel supply of the alternate fuel and obtaining the necessary air permits and air permit waivers." Ex. 10, Mushimba Direct, pp. 5-6 (referencing the *FERC-NERC – Regional Entity Staff Report: The February 2021 Cold* 12 *Weather Outages in Texas and South Central United States*). Simply put, Liberty could not have ***legally*** performed the tuning that Staff and OPC believe had to be done in order for Liberty to have been prudent without violating its air permit, and thus violating the law and incurring penalties. For the Commission to conclude that the Company was imprudent because it did not break the law would be clear error.

Further, there is no testimony that Riverton 11 would have necessarily started during Winter Storm Uri, even it had been possible to tune it using fuel oil. Staff witness Hull has no experience with starting a unit on fuel oil in sub-zero temperatures. Tr. Vol. 3, p. 310 (Hull). According to Dr. Mushimba, the primary problem was that the plant was attempting to operate outside its normal parameters with the sub-zero temperatures being experienced. Tr. Vol. 3, p. 200 (Mushimba). The failure to ignite was due to the temperature being very cold (subzero) and the fuel being very cold. *Id*. Even if it had been possible to tune on fuel oil, these are not issues that would be addressed by the tuning process.

Moreover, even if by some chance Liberty's actions in regard to Riverton 11 were found to not be prudent, Staff witness Hull's and OPC witness Robinett's recommendations do not take

into account two important adjustments. First, Mr. Hull did not take into account the Missouri jurisdictional adjustment that would be necessary to identify an appropriate amount associated with Liberty's Missouri operations. Tr. Vol. 3, pp. 301-302 (Hull); Tr. Vol. 5, pp. 366-367 (Robinett). Second, neither Mr. Hull nor Mr. Robinett took into account the sales contract related to the SPP revenues associated from Riverton 11 in determining their adjustments, thereby falsely inflating their recommended disallowances. Tr. Vol. 3, p. 303 (Hull); Tr. Vol. 5, pp. 367-368 (Robinett); Ex. 22.

D. **There Is No Evidence That Liberty's Resource Planning and Established Resource Portfolio Were Imprudent** (Issue 2G)

OPC witness Mantle argues that $67,031,627 in fuel and power purchase costs were avoidable "because of its [Liberty's] imprudent planning," particularly "imprudent resource planning to beat the Southwest Power Pool ('SPP') market" and should be disallowed. Ex. 200, Mantle Reb., p. 1. To support her recommended disallowance, Ms. Mantle does not define what would, in her opinion, have been the appropriate or industry norm approach to resource planning, nor does she demonstrate how Liberty's actions deviated from any such standard. Ex. 4, Doll Surreb., p. 3. Rather, she argues that Liberty should not have retired its Asbury coal plant, and that had Asbury been in service during Storm Uri, the Company would not have incurred all of the fuel and power purchase costs that it now seeks to securitize. Ex. 200, Mantle Rebuttal, pp. 9-10. In other words, Liberty should have had the foresight to see that a Storm Uri event would occur, and should have left an uneconomic power plant in rates for the sole purpose of it being available in case an anomalous weather event occurred. Applying this same logic, as witness Doll observed, OPC could allege the Company was imprudent for its past retirements of Riverton units 7, 8, and 9, because they too could have remained in operation and *possibly* have been available to provide

energy during Storm Uri. Ex. 4, Doll Surreb., p. 8. Surely such a highly speculative approach cannot be the standard for prudent utility resource planning.

Ms. Mantle went further, arguing not only that Liberty should have tested its resource portfolio against prices that were 1000 times greater than normal (Tr. Vol. 5, p. 467 (Mantle)), but then contradicting herself by saying that it also would have been imprudent if the Company had designed its generation fleet for every possible, although incredibly unlikely, new peak or extreme prolonged temperature. Tr. Vol. 5, p. 468 (Mantle). It is abundantly clear from Ms. Mantle's testimony that her "prudence" review was an after-the-fact, result-dependent assessment not based on accepted planning principles. *See* 20 CSR 4240-22.

Additionally, Ms. Mantle's claim that Liberty is now more reliant on purchasing energy from the SPP marketplace (to serve native load) is in direct conflict with the evidence from Liberty's recently concluded general rate case. In that case, the amount of "purchased power" was determined by Staff to be a reduction from 34% to 19.39%. OPC concurred with this calculation. Ex. 4, Doll Surreb., p.8. The Commission must reject OPC's recommended disallowance related to Liberty's resource planning. The evidence demonstrates that Liberty complied with the Commission's resource planning rule and that Liberty prudently executed upon its resource plans. It would be unlawful and unreasonable for the Commission to adopt OPC's recommended disallowance related to Liberty's resource planning, as there is no competent evidence of imprudence on the part of Liberty.

E. The Commission Should Reject OPC's Proposed Disallowance for Income Tax Deductions for Winter Storm Uri Costs (Issue 2H)

OPC argues that Liberty has received a tax benefit for the losses from Storm Uri that should be recognized as a reduction to its qualified extraordinary costs even though OPC's arguments are inaccurate and there is no basis in the Securitization Statute to support its position.

Specifically, Mr. Riley proposes a disallowance of qualified extraordinary costs based upon a "Tax Deduction" he has concocted by claiming that Liberty gets a deferred tax benefit that doesn't reduce rate base and that will not be paid back by Liberty. Ex. 208, Riley Reb., p. 22. This argument is erroneous as:

> . . . any significant loss related item is created by a tax timing item. For example, accelerated depreciation or severe weather events that result in regulatory accounting both create a tax timing difference. Liberty customers and general rate making account for this by including the ADIT as an offset to rate base.

Ex. 8, Emery Surreb., p. 38.

Mr. Riley's referenced tax deduction is based purely on the fact that Liberty expended $204 million dollars for fuel and purchased power expenses during Winter Storm Uri and, as of its tax reporting period, Liberty did not report any revenues for those costs. Tr. Vol. 5, pp. 417-418 (Riley). As of its 2021 tax return, Liberty has not received any cash benefit from this deduction. Ex. 8, Emery Surreb., p. 38.

Mr. Riley's suggestion that this tax treatment and timing difference will not be addressed in a future rate case is wrong. This timing difference, in fact, will be reflected in Liberty's rates. Any ADIT related to qualified extraordinary costs will continue to be addressed and resolved in Liberty's general rate case proceedings *Id*. In other words, any ADIT balances will be addressed as a reduction or addition to rate base, contrary to Mr. Riley's suggestion. Ex. 8, Emery Surreb., p. 39.

The Securitization Statute identifies the proper treatment of accumulated deferred income taxes ("ADIT") for both Energy Transition Costs and Qualified Extraordinary Costs. RSMo. §393.1700.2(3)(c)m. Only the Energy Transition Costs (retired or abandoned property) are called out for special treatment of ADIT in the Securitization Statute. Ex. 8, Emery Surreb., p. 39.

As justification for his proposed offset, Mr. Riley cites two provisions of the Securitization Statute - definition of "Energy Transition Costs" and a definition of "Financing costs." Ex. 209, Riley Surreb., pp. 9-10. Neither of these definitions provide any support for his proposed $64 million adjustment. "Energy Transition Costs" are "costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility . . . ." RSMo. §393.1700.1(7). Winter Storm Uri costs are not Energy Transition Costs. Mr. Riley clearly has conflated two separate provisions in the Securitization Statute; the definition of "Qualified Extraordinary Costs" in the statute does not include the "deferred expenses" language Mr. Riley cited as some sort of support for his position. Put simply, by excluding qualified extraordinary costs from special tax treatment, the Securitization Statute expressly envisions that ADIT liabilities or assets will be addressed in future rate cases, in turn meaning that Mr. Riley's proposed income tax adjustment is contrary to the statute.

Mr. Riley's reliance on the definition of "Financing Costs" is equally misplaced. The statute provides a lengthy definition of "financing costs" which include a provision on taxes:

> Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable or accrued.

RSMo §393.1700.1(8)(e). This reference is to taxes associated with the "securitized utility tariff bonds," *see* §393.1700.1(8), not a tax deduction unrelated to the securitization process as Mr. Riley would like to believe. The Commission should reject Mr. Riley's request for such a deduction, as there is no statutory support for such a deduction and no competent evidence justifying it.

F. The Carrying Charge for Winter Storm Uri Costs Should be Based on the Company's Most Recently Approved Rate of Return (6.77%) (Issue 2I)

The Securitization Statute, through the definition of "qualified extraordinary costs," explicitly provides for the recovery of carrying charges:

> "Qualified extraordinary costs", costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, ***inclusive of carrying charges***, during anomalous weather events;

RSMo. §393.1700.1(13) (emphasis added). Based on this clear statutory language, the Commission must award carrying charges incurred by the Company for the Commission-determined qualified extraordinary costs. To do otherwise would be plain error.

While the Securitization Statute does not define "carrying charges," the appropriate standard in this case is the "fair return standard" established by the United States Supreme Court. Ex. 1, Reed Surreb., p. 22. The fair return standard established by the U.S. Supreme Court in the *Hope* and *Bluefield* cases and routinely relied upon by Commissions when establishing a utility's allowed cost of capital is the appropriate regulatory standard. In *Bluefield Waterworks & Bluefield Waterworks & Improvement Company v. Public Service Commission of the State of West Virginia et al ("Bluefield")* the U.S. Supreme Court found that:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.

Bluefield Waterworks & Improvement Co., v. Public Service Commission of West Virginia, 262 U.S. 679 (1923).

In *Federal Power Commission et al v. Hope Natural Gas Co.* ("*Hope*"), the U.S. Supreme Court found that:

> … [T]he investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view, it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. … By that standard, the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient

> to assure confidence in the financial integrity of the enterprise, to maintain its credit and to attract capital…

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944). The fair return standards must be applied here because Liberty has committed capital to funding the deferred qualified extraordinary costs, and that commitment of capital warrants the opportunity to earn a reasonable return. Ex. 1, Reed Surreb., p. 22.

The Company's most recently allowed rate of return (6.77%) is the appropriate carrying cost for the Winter Storm Uri costs. Ex. 1, Reed Surreb., p. 24. Liberty has committed capital to funding the deferred fuel cost collections that are the subject of this securitization application, and that commitment of capital warrants a reasonable return on capital until such time as Liberty's capital is paid off by the proceeds from securitization. *Id*. This accumulation of the carrying charge should commence when the costs were incurred, which is the date of payment for the power costs arising from Storm Uri. *Id*. This is the point at which the costs were first afforded deferred cost recovery status. *Id*. Application of Liberty's pre-tax WACC results in carrying costs in the amount of $24,168,807 for Winter Storm Uri.[4] Ex. 8, Emery Surreb., p. 10. The Commission should approve recovery of that entire amount as authorized by the Securitization Statute.

Staff and OPC propose that the carrying charge be based on Liberty's debt rate; in the case of Staff, the Company's long term debt rate, and for OPC, the Company's short-term debt rate of 0.24 – 0.36%. Tr. Vol. 7, p. 501 (Murray); Ex. 206, Murray Reb., p. 8. Both of these parties are incorrect. The Company relies on a mix of debt and equity – the determinants of its Commission-authorized WACC – to fund its business, including funding for emergencies, like Storm Uri; debt is only part of the equation. Ex. 1, Reed Surreb., p. 22. For that reason, the funding that the

[4] With the amount subject to adjustment with the issuance advice letter and via a future ratemaking process to reconcile any differences between securitized utility tariff costs and the final costs incurred by Liberty. *See* RSMo. §§393.1700.2(2)(f) and §393.1700.2(3)(h).

Company provided its customers for those costs is financed at the WACC. Staff's and OPC's recommendations to recompense Liberty at the short-term rate would create an arbitrary penalty.

Staff's recommendation that the Commission authorize recovery of a carrying charge based on its actual debt rate is problematic for the reasons described above but is, at least, anchored in elements of the Company's financial reality. OPC, on the other hand, discards that reality entirely in its recommendation that somehow the short-term debt rate used for certain calculations pertinent to Liberty's FAC would be appropriate in this situation. It is not. As with other instances in which OPC attempts to invoke elements of the FAC, the Commission should reject OPC's recommendation here too, as this is not an FAC proceeding, and the Securitization Statute does not provide for the use of a rate used in the FAC setting. Moreover, OPC does not explain why it believes this particular rate is appropriate, relying instead on its use for other purposes and in other circumstances as the only basis for the recommendation.

The appropriate return (or carrying cost) for the deployment of Liberty's capital in this instance is no different than that which should apply to any other commitment of capital and should reflect a balanced mix of debt and equity. Ex. 1, Reed Surreb., p. 22. The interval over which Liberty's capital will be deployed is not yet known, but it significantly exceeds one year, which is the typical definition of short-term capital. *Id*. As discussed by Liberty witness Ms. Emery, securitization will reduce customers costs by financing certain Asbury and Storm Uri costs with securitization bonds that have a lower cost than Liberty's WACC. Ex. 6, Emery (adopting Hall), Dir., pp. 9-11.

Staff and OPC witnesses' proposals would deny Liberty the opportunity to earn a reasonable return until securitization bonds are issued. This is neither reasonable nor appropriate and would constitute reversible error, not to mention that acceptance of these positions would

provide a substantial disincentive for utilities to use the Securitization Statute for emergencies like Winter Storm Uri. The Company's proposed securitization should be supported, not penalized.

G. The Securitization Statute Requires a Comparison with the Customary Method of Financing and Does Not Require a Comparison With Traditional Cost of Service Ratemaking (Issue 2J)

In order to proceed with a securitization, the Securitization Statute requires the utility to calculate the net present value and a benefit determination of securitization in comparison to the "customary method of financing" (RSMo. §393.1700.2(2)(e)), not "customary ratemaking" as is implied by the wording used in the List of Issues. During this proceeding, Staff has suggested that the Commission should conduct a traditional cost of service ratemaking analysis of all of the costs that are proposed to be securitized and then compare this hypothetical outcome with the cost of securitization. That is not what the Securitization Statute states or implies.

The Company's customary method of financing relies on a balanced mix of debt and equity to fund intermediate term and longer-term investments, operations, and emergencies, like Storm Uri. Ex. 1, Reed Surreb., p. 22. Debt costs are only one of a utility's sources of capital, not the entire source of capital. The customary method of financing for regulated utilities recognizes this fact and uses a weighted average cost of capital.

A good example of the application of a WACC to extraordinary costs is found in Commission File No. ER-2019-0374. Ex. 1, Reed Surreb., p. 23. There, the Commission approved the inclusion of the unamortized balance of storm costs from the Joplin tornado in the Company's rate base. *Id*. These costs were accumulated pursuant to an Accounting Authorization Order from the Commission that allowed for these costs to be eligible for recovery on a deferred basis. *Id*. By including the unamortized balance in rate base, the Commission provided for a return on this deferral at the same cost of capital that is applied to all other rate base. *Id*. That treatment is analogous to the Company's proposed use of the WACC here, as representative of the customary

method of financing. Accordingly, Liberty's last authorized WACC of 6.77% is the appropriate rate for determining the costs that would result from the application of the customary method of financing.

H. Deferral of the Storm Uri costs to a regulatory asset and general rate case recovery of the deferred amount must be deemed "customary ratemaking," but consideration of the method of customary ratemaking is only relevant for purposes of determining if the costs Liberty seeks to securitize under RSMo. §393.1700.2(2) constitute "qualified extraordinary costs." (Issue 2B)

As discussed above, RSMo. §393.1700.1(13) (emphasis added) defines "qualified extraordinary costs" as those "incurred prudently" and of "an extraordinary nature ***which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking***, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events." This is the only subsection of the Securitization Statute that mentions "customary ratemaking," and there appears to be no dispute among the parties that recovery of Liberty's Winter Storm Uri costs through customary ratemaking would have caused extreme customer rate impacts. With regard to the benefits calculation required by the Securitization Statute, which is discussed next, a comparison of the "customary method of financing" – not "customary ratemaking" – is required.

For purposes of determining if the costs Liberty seeks to securitize under RSMo. §393.1700.2(2) constitute "qualified extraordinary costs," deferral to a regulatory asset and general rate case cost recovery is the "customary ratemaking." The "customary ratemaking" regarding recovery of extraordinary storm costs cannot be through Liberty's FAC for two reasons. First, RSMo. §386.266 and the Commission's FAC Rule limit recovery through the FAC to fuel and purchased power costs, while the Securitization Statute specifically provides that "qualified extraordinary costs" are not limited to those related to purchases of fuel or power. Second, Commission Rule 20 CSR 4240-20.090(8)(A)2AXI authorizes the exclusion of extraordinary fuel

and purchased power costs from the FAC, and the Commission has, in fact, excluded Liberty's extraordinary Storm Uri fuel and purchased power costs from flowing through Liberty's FAC. In other words, a mechanism that excludes recovery of extraordinary costs cannot lawfully be the method of customary ratemaking for costs of an extraordinary nature.

Thus, the appropriate method of customary ratemaking absent securitization, for the purpose of determining if the Storm Uri costs Liberty seeks to securitize under RSMo. §393.1700.2(2) constitute "qualified extraordinary costs," would be for Liberty to defer all of the extraordinary costs it incurred during Storm Uri in a regulatory asset for recovery through the general rate case process. With the conclusion of the first general rate case following the event, the Commission would issue an order authorizing Liberty to recover its extraordinary Storm Uri costs, specifying the period over which the Company would do so, and approve the application of carrying charges at Liberty's authorized WACC. As noted, however, there appears to be no dispute among the parties that recovery of Liberty's Winter Storm Uri costs through customary ratemaking would have caused extreme customer rate impacts, as Liberty, Staff, and OPC (the only parties that presented testimony on the issue) are all in agreement that the Commission should issue a financing order authorizing Liberty to finance, through securitization, certain Winter Storm Uri costs incurred by Liberty.

I. Liberty Has Demonstrated a Quantifiable Net Present Value Benefit to its Retail Customers Through Securitization of Qualified Extraordinary Costs (Issue 2C)

The Securitization Statute requires a "comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates," and such comparison "should demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized

utility tariff charges are expected to provide quantifiable net present value benefits to retail customers." RSMo. 393.1700.2(2)(e). On this record, Liberty has met and satisfied the necessary Net Present Value benefits by showing that there are an estimated $42,276,691 in net benefits by securitizing the Storm Uri costs.

For this benefit comparison required by the Securitization Statute, the "customary method of financing" means the utility carrying the costs on its own books and amortizing them over time, with the balance being assessed a carrying charge at Liberty's authorized WACC. Securitization is a financing alternative to this customary approach.

Pursuant to the competent and substantial evidence, a "comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates" demonstrates "that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide quantifiable net present value benefits to retail customers." Using Liberty's values and calculations, $42,276,691 is the net present value of the estimated benefits resulting from the comparison required by the Securitization Statute. Ex. 8, Emery Surreb., pp. 1-2. See Section V below for additional discussion on the net present value ("NPV") calculation.

III. THE ASBURY COAL PLANT

When the Legislature enacted the Securitization Statute, it expressly provided for cost recovery of "pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility…where such early retirement or abandonment is deemed reasonable and prudent by the commission…" RSMo. §393.1700.1(7)(a). In its wisdom, the Legislature made the judgment that such "energy transition costs" should be recoverable and provided securitization as the cost effective tool to accomplish this objective. In this case, the Company has demonstrated

that it was reasonable and prudent to retire Asbury and that the $140,774,376 in "energy transition costs" associated with the Asbury plant is reasonable and prudent and, thus, should be securitized.

Development plans for Asbury began in the late 1960s, and Asbury Unit 1 was commissioned in 1970. Ex. 13, Landoll Dir., p. 3. For decades, Asbury consistently exhibited an availability factor in excess of 90% and a low forced outage rate. At the time of de-designation from SPP, Asbury was operating in the SPP integrated marketplace ("IM"), as it had since March of 2014. Asbury had favorable availability metrics, but continued to see reduced capacity factors. In its final years, its heat rate was not as competitive as new, larger coal-fired facilities, thus impacting Asbury's dispatch profile in the SPP IM. Ex. 13, Landoll Dir., p. 4. Asbury was compliant with applicable federal and state rules, but the plant was facing many mandated environmental upgrades in the near future. Ultimately, it was determined that retiring Asbury was more favorable than continued operation of and investment in a 50-year old power plant. Ex. 13, Landoll Dir., pp. 3-4.

A. The Commission Should Issue a Financing Order Approving the Company's Request to Securitize $140,774,376 in Energy Transition Costs (Issues 1B and 3E)

The Commission should issue a financing order approving the Company's request to securitize $140,774,376 in energy transition costs for Asbury. Ex. 8, Emery Surreb., p 1. OPC argues that the majority of Liberty's Asbury costs should be denied based on the fact that Asbury was retired early – before the asset, as improved through the years, had reached the end of its predicted useful life. OPC's argument is in direct contravention of the Securitization Statute. RSMo. §393.1700.1(7)(a) (emphasis added) defines "energy transition costs" as :

> "(p)retax costs with respect to a retired or abandoned . . . electric generating facility . . . where such ***early*** retirement or abandonment is deemed reasonable and prudent" including, but not limited to, "the ***undepreciated*** investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric

> generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses . . ."[5]

All costs sought to be securitized by Liberty related to the retirement of Asbury comply with this definition.

Fundamentally, there is no compelling evidence in the record that it was anything other than reasonable and prudent to retire Asbury in 2020. Liberty's expert witness John Reed explains that the standard for the evaluation of whether costs are, or are not, prudently incurred is built on four principles. Ex. 1, Reed Surreb., p. 7.

> First, prudence relates to actions and decisions. Costs themselves are neither prudent nor imprudent. It is the decision or action that led to cost incurrence that must be reviewed and assessed, not the results of those decisions. In other words, prudence is a measure of the quality of decision-making, and does not reflect how the decisions turned out.
>
> The second feature is a presumption of prudence, which is often referred to as a rebuttable presumption. The burden of showing that a decision is outside of the reasonable bounds falls, at least initially, on the party challenging the utility's actions.
>
> The third feature is the total exclusion of hindsight from a properly constructed prudence review. A utility's decisions must be judged based upon what was known or reasonably knowable at the time the decision was made by the utility. Information that was not known or reasonably knowable at the time of the decision being made cannot be considered in evaluating the reasonableness of a decision, and subsequent information on "how things turned out" cannot influence the evaluation of the prudence of a decision.
>
> The final feature is that decisions being reviewed need to be compared to a range of reasonable behavior; prudence does not require perfection, nor does prudence require achieving the lowest possible cost. This standard recognizes that reasonable people can differ and that there is a range of reasonable actions and decisions that is consistent with prudence. Simply put, a decision can only be labelled as imprudent if it can be shown that such a decision was outside the bounds of what a reasonable person would have done under those circumstances.

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[5] Subsection (7)(b) provides that "energy transition costs" include "(p)retax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021." This provision in the Securitization Statute makes it clear that the law applies equally to costs incurred before, on, and after the statute's effective date. In other words, the effective date of RSMo. §393.1700 is irrelevant with regard to the determination of what constitutes recoverable "energy transition costs."

Ex. 1, Reed Surreb., pp. 7-8. The prudence standard, as explained by Mr. Reed, is rooted in case law, with the original standard of prudence in ratemaking being expressed by the Supreme Court in 1923 as a means of guiding regulators conducting reviews of utility capital investments. *Missouri ex. rel. Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U.S. 276 (1923).

This Commission reviewed and articulated its prudence standard in a 1985 case involving the costs incurred by Union Electric Company in the construction of the Callaway Nuclear Plant.[6] In that docket, the Commission adopted a standard established by the Court of Appeals for the District of Columbia in 1981. Under this standard, the Commission recognizes that a utility's costs are presumed to be prudently incurred and that the prudence standard is not based on hindsight, but upon a reasonableness standard. The Commission cited with approval a statement of the New York Public Service Commission that a utility's conduct "should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company." Missouri courts have adopted this standard as well.[7]

Mr. Reed explains why it is appropriate and fair in utility ratemaking to exclude the after-the-fact knowledge of "how things turned out" from the consideration of whether costs should be recoverable.

> This approach is essential in providing a regulatory framework for balancing the interests of customers and utility investors. While it is not the only workable

[6] In the Matter of the Determination of In-Service Criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway Rate Base and Related Issues. In the Matter of Union Electric Company of St. Louis, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company, 27 Mo. P.S.C. (N.S.) 183, 192-193 (1985).

[7] *See State ex rel. Associated Natural Gas v. Public Service Commission*, 954 S.W.2d 520, 528-29 (Mo. App. W.D. 1997) (quoting with approval the Commission's adoption of the standard quoted in the Union Electric case involving Callaway).

> framework, it is the one which is in use in nearly every utility regulatory jurisdiction in North America. Utilities are typically not allowed to recover more than their actual costs when very favorable results are achieved and are not asked to bear the results of what turned out to be unfavorable outcomes as long as the decisions leading to a result were reasonable. This is largely the same standard of care and responsibility that applies to parties that are acting in a fiduciary role where others will bear the consequences of an action, such as in acting as a financial advisor or a trust officer. I understand the "normal" inclination of seeking to have the higher costs of unfortunate and extraordinary weather occurrences shared between customers and investors, but that type of risk sharing is not appropriate when the utility operates under a cost-based regulatory regime with the acknowledged standard for cost recovery being the traditional prudence standard.

Ex. 1, Reed Surreb., p. 8. With proper application of the prudence standard, decisions are to be judged at the time they are made; and the resulting costs, as they become known at a later date, are not to enter into the equation for determining cost recovery. "This approach is not only fair, it is part of preserving the essential balance between customer and investor interests in public utility regulation." Ex. 1, Reed Surreb., p. 8.

With proper application of the relevant standard, the only reasonable conclusion is that the early retirement of Asbury was reasonable and prudent. Undeterred by sections of the Securitization Standard for transition costs, OPC actually asserts that nothing should be securitized with regard to Asbury. While Staff agrees with Liberty that the early retirement of Asbury was reasonable and prudent, Staff and the Company disagree as to the amount to be securitized. The differences between the parties on specific sub-issues are discussed following this discussion of the prudence of Liberty's decision to retire Asbury.

In the course of claiming its imprudence, OPC witness Marke accuses Liberty of "stranding an efficient baseload asset . . . so that it could utilize Asbury's SPP interconnection lines" for the new North Fork Ridge wind farm. Ex. 204, Marke Reb., p. 26. As with all of OPC's arguments regarding this issue, this assertion by Dr. Marke is without support and must be disregarded by the Commission. First, it is a gross mischaracterization to say that Asbury was an efficient asset.

Asbury was old, based on obsolete technology, and was the least efficient coal plant in Liberty's fleet. Ex. 12, Rooney Reb., p. 2. Regarding statements by OPC witness Marke, as well as OPC witness Robinett, that the efficiency of Asbury was disregarded by Liberty in the years after 2017, the evidence demonstrates that these statements are inconsistent with the Company's view of plant efficiency and are merely the witnesses' opinion presented without factual basis or empirical evidence. As explained by Liberty witness Rooney, who was the Asbury plant operations manager, a business plan and scorecard were developed for the Asbury plant. Ex. 12, Rooney Reb., pp. 3-4. This plan for 2017 and forward involved goal setting and heat rate tracking, with progress to targets discussed monthly. *Id.* Additionally, a review of the annual heat rate data demonstrates that the changes made to make Asbury more competitive in a wider range of market conditions did not result in a decrease in efficiency outside the range of normal variations in heat rate. *Id.* at 5.

In the past, the Company self-committed Asbury to meet the obligations of its coal transportation contract, which required the receipt of minimum delivery quantities. This practice had the potential to increase customer costs (*See* Commission Case No. EW-2019-0370), if Asbury's self-commitment displaced other, lower-cost generation. Ex. 11, Rooney Dir., p. 4. The Company successfully renegotiated the terms of Asbury's coal transportation contract in October 2016, removing the minimum delivery requirements and allowing the unit to be dispatched to market signals without the distortion caused by those requirements. *Id*. The unit's annual capacity factor then began to decline, as the market selected units with better heat rates, lower fuel costs, shorter start durations, shorter minimum downtimes, and faster ramp rates. *Id*. There was no reason to believe this decline in capacity factor would reverse itself, and the declining capacity factor would result in lower market revenues, increasing the cost of energy from the plant. *Id*.

Liberty made many changes to improve the unit's market performance, including shortening startup duration, decreasing minimum downtime, decreasing minimum run time, and

increasing the unit's load ramp rate. *Id*. at 4-5. During its final two years of operation, Asbury experienced a record number of starts. Unfortunately, though, this record number of starts was not accompanied by an increase in net capacity factor. Instead, the net capacity factor continued to decline. The increased number of starts also raised concerns regarding cycling. *Id*. at 5.

Liberty prudently examined operational concerns and market conditions, conducted an analysis of the economics of the unit under those conditions, and then made decisions based on that data. As explained in Commission Case Nos. EO-2018-0092 and EA-2019-0010, Liberty based its decision to retire Asbury and build wind on an extensive economic analysis (the "Generation Fleet Savings Analysis" or "GFSA") that was vetted with this Commission in Case Nos. EO-2018-0092 and EA-2019-0010. The GFSA factored in fuel savings and savings from future capital expenditures at Asbury, including an approximately $20 million expenditure to convert Asbury's ash handling system to one that was compliant with the U.S. EPA's Effluent Limitations Guidelines. Ex. 12, Rooney Surreb., p. 2.

Contrary to OPC's allegation, the evidence demonstrates that any reduction in the risk that North Fork Ridge's interconnection would trigger the construction of network upgrades from the closure of Asbury was simply a co-benefit to customer savings. In fact, OPC witness Marke acknowledged that North Fork Ridge obtained its own interconnection, with no transfer of the Asbury interconnection rights, that new lines were constructed, and that a utility may seek an additional interconnect at or near a facility that already exists. Tr. Vol. 5, p. 438-440 (Marke). In fact, Liberty's Kings Point wind farm is interconnected at the same substation as Energy Center, and Energy Center has more generation than Asbury did when it was in service and did not require a subsequent retirement to "make room" or "avoid competition" with existing generation. *Id*. at 440. Further demonstrating the lack of validity of OPC's assertion that Liberty imprudently retired Asbury so that it could use Asbury's SPP interconnection for North Fork Ridge, the highest

locational marginal price of Liberty's three wind farms is found where Kings Point is interconnected at the same substation with Energy Center. *Id.* at 440-441.

OPC witness Marke also appears to allege imprudence in the retirement of Asbury by asserting that Liberty did not consider other options, such as selling Asbury as an operating coal plant. Ex. 204, Marke Reb., pp. 20-21. Dr. Marke attacks Liberty's retirement of Asbury, but Dr. Marke failed to read Liberty's direct testimony on the issue.

> Q. You're familiar with Drew Landoll's direct testimony in the Asbury securitization docket?
>
> A. I'm not.
>
> Q. You're not? You didn't review Mr. Landoll's direct testimony in securitization?
>
> A. I did not.

Tr. Vol. 5, p. 432 (Marke). If Dr. Marke had reviewed Mr. Landoll's direct testimony before filing rebuttal testimony in the docket, Dr. Marke would have seen a 15-page section on decommissioning and repurposing of Asbury, including a discussion on the exact actions which Dr. Marke alleged Liberty failed to take. Ex. 13, Landoll Direct, pp. 5-20. As noted therein, Liberty did explore the possible option of selling Asbury, but it was determined that Liberty would actually have to pay someone to accept ownership of the plant. *Id.* at 11.

Liberty obtained guidance from the Commission on acquiring the three winds farms in the initial Customer Savings Plan case, and then obtained CCNs authorizing construction and acquisition of the three wind farms – all with Asbury remaining open. Liberty's investment in Asbury was reflected in Liberty's Commission-approved rates, with all costs already found to have been prudently incurred. If maximizing shareholder profits was the Company's goal, Liberty would have acquired the three wind farms, as authorized, *and* kept Asbury in service. If the Commission adopts OPC's positions in this case, the Commission will be sending the message to

utilities to not seek to use securitization as a financing alternative to traditional ratemaking, leading to higher costs for customers. Further, the Commission will be sending the clear message that a Missouri utility should keep open a coal plant – no matter the economics, no matter the environmental impact – or else face the chance of being denied recovery of costs already incurred and already deemed prudent.

Liberty made a reasonable and prudent decision to retire Asbury, and all costs sought to be securitized by Liberty related to the retirement of Asbury otherwise comply with the definition of "energy transition costs." As such, the Commission should issue a financing order approving the Company's request to securitize $140,774,376 in energy transition costs for Asbury.

B. The Commission Should Rely on the Company's and Staff's Testimony Regarding Asbury's Net Book Value, Leading to the Issuance of a Financing Order Approving the Securitization of $140,774,376 in Energy Transition Costs (Issue 3D)

The net book value of the retired Asbury plant is $159,414,474, as calculated through May 2022. Ex. 8, Emery Surreb., p. 24. Staff agrees with the net book value used by Liberty. Ex. 113, McMellen Asbury Calculations, p. 2. OPC disagrees with the net book value utilized by Staff and Liberty. The primary difference in OPC's net book value number is Mr. Riley's improper creation and use of a separate cash working capital number that he uses to reduce his net book value. Ex. 209, Riley Surreb., Sched. JSR-S-01, p. 1. This cash working capital issue is discussed in List of Issues, Issue 3L below.

C. The Missouri Jurisdictional Value of the Asbury Environmental Regulatory Assets is 1,643,357 (Issue 3F)

The Missouri jurisdictional value of the Asbury environmental regulatory assets projected through April 2022 was $1,494,657, and the updated balance through May 2022 is $1,643,357. Ex. 8, Emery Surreb., p. 28; Ex. 21, Emery Extra Calculations, Sched. CTE-9. The Company

incurred environmental costs that were settled and paid out by the Company as of May 2022 for the removal of asbestos and retirement of the coal ash ponds at the Asbury plant. *Id*.

These environmental costs were identified as part of the legal obligations associated with the retirement of Asbury. The Amended Report and Order in Case No. ER-2019-0374, at pp. 149-150, stated that "[t]he cost of removal of asbestos at Asbury and costs associated with the operation of certain ash ponds at Asbury and Iatan shall be charged to the accumulated depreciation reserve of each respective generation facility." Because the Asbury generation facility was closed before the Amended Report and Order was issued and Liberty had removed the plant and accumulated depreciation reserve from Liberty's books, Liberty recorded these amounts in a regulatory asset. Ex. 103, Bolin Surreb., p. 2. Staff agrees with inclusion of this amount. *Id*., pp. 2-3.

Liberty was authorized in Case No. ER-2019-0374 to recover the subject costs related to the removal of asbestos and retirement of the coal ash ponds at the Asbury plant in a future proceeding. Accordingly, the amounts associated with these costs should be recovered through the securitized bonds.

D. $1,532,832 Represents the Missouri Jurisdictional Fuel Inventory That Should be Added to the Asbury Securitization Costs (Issue 3G)

The amount of $1,532,832 represents the Missouri jurisdictional fuel inventory that should be added to the Asbury securitization costs. This is Missouri's portion of the $1,925,886 ordered to be deferred to a regulatory asset in Case No. ER-2020-0311. Ex. 8, Emery Surreb., pp. 30-31. This balance represents the unrecoverable coal located at the bottom of the Asbury generating facility's coal piles, which over time blends with the coal mat upon which all recoverable coal sits. *Id*.

In his testimony, OPC witness Riley references an amount of $3,947,465, which represents the 60 day fuel burn for Asbury that was ordered by the Commission in Case No. ER-2019-0374.

This was used by the Company as its baseline for its calculation of the Asbury AAO liability to reflect the impact of the retirement of Asbury. Ex. 8, Emery Surreb., pp. 30-31. That amount was included in the Company's test year balance in general rate case, ER-2021-0312. The amount was ultimately removed from the rate case after the Company elected to pursue securitization. *Id*.

The baseline balance was compared to the actual monthly balances for coal inventory and the monthly differences were included in the calculation of the AAO liability. Ex. 101, McMellen Surreb., p. 2. Staff and Liberty have no difference in regard to the fuel inventory for purposes of the AAO liability.

The issue of unrecoverable coal as it relates to the Asbury securitization costs is discussed further below (concerning "Basemat coal").

E. Accumulated Deferred Income Taxes ("ADIT") and Excess ADIT (Issue 3H)

The issues associated with ADIT and Excess ADIT are quite different from each other and will be addressed in separate sections below. As to ADIT, Liberty's calculation is consistent with the direction of the Securitization Statute, while OPC's approach ignores the statute and Staff's method does not recognize the impact ADIT has on the revenue requirement. As to Excess ADIT, Liberty and Staff recognize that amounts were returned to customers until June 1, 2022, when new rates became effective for Liberty. OPC promotes a fiction that such return stopped as of the Asbury retirement date, without regard to the fact that the customers' rates did not change as of that retirement.

On these ADIT issues, it is important to understand what ADIT is and how it works. "ADIT" is measured with reference to the cumulative timing difference between amounts of taxable revenue or deductions reported and the corresponding amounts recognized for financial or regulatory purposes through a particular date. Put another way, ADIT is a measure of the future tax liability owed to the government when, for example, cumulative tax deductions for a particular

expense exceed cumulative book recognition of the expense for such item. The existence of an ADIT liability signifies that payment of tax has been deferred but is still owing. As timing differences reverse, ADIT liabilities reverse and additional income tax payments become payable. Unlike a regulatory liability, ADIT is not a liability potentially owed to customers.

ADIT liability that originated due to tax depreciation deductions sooner than financial reporting recognition of depreciation expense reverses either (1) later in the service period of the asset when book depreciation exceeds the deductions for tax depreciation, or (2) upon disposition of the asset with larger gain (or smaller loss) recognized for tax purposes than the gain/loss computed with respect to net book value.

An ADIT liability reduces rate base and thereby reduces the allowed return. The amount by which an ADIT liability reduces a revenue requirement is computed by multiplying the amount of ADIT by the weighted average cost of capital. Rate base is computed as part of a revenue requirement calculation in order to determine the cost of capital of a utility (i.e., allowed return for debt and equity investors). An ADIT liability arises due to a deferral of income tax liability to a future year. The government does not charge interest for deferrals of income tax payments due to book/tax differences such as the use of accelerated tax depreciation. Accordingly, ADIT liability is a source of cost-free capital to taxpayers and, in the context of utility ratemaking, results in a portion of rate base not funded by investor-supplied capital.

i. ADIT

The Commission has recognized the fundament concepts underlying ADIT and described the interaction of ADIT with a company's rate base as follows:

> 2. ADIT represents assets or liabilities for cumulative amounts of deferred income taxes resulting from differences between book accounting and income-tax accounting. For example, tax law sometimes allows a company to claim accelerated depreciation in calculating its taxes.

> 3. Since in the short term it pays less in taxes, the company is able to keep more cash. But, because the company can only depreciate its assets once, the accelerated depreciation will reduce the depreciation expense the company would otherwise use to reduce its taxes in future years. Essentially the ADIT allows the company to have the use of "free" cash between the time the ADIT is acquired and the time the increased taxes will come due. Because the ADIT represents "free" cash to the company, ratepayers should not be required to pay for it and the company should not be allowed to earn a return on it. Thus ADIT is removed from the company's rate base.

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff, 2015 Mo. PSC LEXIS 380, *22-23, 320 P.U.R.4th 330, ER-2014-0258 (April 29, 2015) (emphasis added).

An example of the impact ADIT has on a revenue requirement in a normal situation is shown on Schedule CTE-13. Ex. 21, Emery Extra Calculations, Sched. CTE-13. Ms. Emery took an ADIT amount of $35,665,767 and showed how it would be reduced over a 13-year period (columns A, B and C). Assuming annual rate cases and a Rate of Return of 6.77% over that 13-year period (Column G), the gross reduced revenue requirement reduction associated with that $35,665,767 ADIT would be a $14,487,435 revenue requirement benefit for customers (Line 28, Column H). This is because ADIT has only an indirect benefit as to the revenue requirement. This context is important to the understanding of this issue. Tr. Vol. 5, pp. 408-409 (Riley).

The Securitization Statute indicates as follows in regard to ADIT associated Energy Transition Costs:

> The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from rate base in future general rate cases and the net tax benefits relating to amounts that will be recovered through the issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that would otherwise be issued. *The customer credit* ***shall include the net present value of the tax benefits****, <u>calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds</u>.*

Section 393.1700.2(3)(c)m, RSMo. (emphasis added). Thus, the Securitization Statute requires the following credit associated with ADIT:

- Net present value of the tax benefits;
- Calculated using a discount rate equal to the expected interest rate of the securitized tariff bonds;
- including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds;
- multiplied by the expected interest rate on such securitized utility tariff bonds.

Net present value ("NPV") is a calculation to quantify the total value of a series of cash flows at a specific point in time. Ex. 8, Emery Surreb., p. 14. Summarized at a high level, the NPV calculation sums future cash inflows and outflows associated with an investment, discounts the total at an appropriate rate to reflect the fact that the value of a payment depends, in part, on when the payment is made or received, and then adds the discounted net cash flows together. *Id*. The resulting sum is the NPV of the cash flows, which allows for like-for-like comparison of the current value of net cash flows, even ones that are uneven over time. *Id*.

Staff argues that the Company's NPV calculation discounted the ADIT balance twice. Ex. 102, Bolin Reb., p. 11. It did not. Liberty followed the steps outlined by the statute in its NPV calculation of the ADIT credit. Liberty witness Emery described those steps as follows:

> The first step is to determine future cash inflows (rates from customers). In order to accomplish this, one calculates the impact on rates associated with ADIT. The impact on rates (cash in-flows) is not the total value of ADIT, rather it is a reduction to rate base. The impact on the annual revenue requirement associated with ADIT is calculated by multiplying the ADIT balance by the Rate of Return ("ROR"). Said another way, the annual cash in-flows are equal to the amounts collected from customers (ADIT x ROR). The next step is to include all of the future cash in-flows (i.e., 13 years). Finally, once you have the annual cash in-flow, one applies the discount rate (i.e., bond coupon rate) to each of the respective cash in-flows.

Ex. 8, Emery Surreb., p. 14.

Ms. Emery's calculation is found in Exhibit 21 (Emery Extra Calculations), Schedule CTE-13. That calculation utilizes the "discount rate equal to the expected interest rate of the securitized tariff bonds" from Liberty's proposal (2.47%). It also includes "timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds" (lines 1-13, columns D and E). Finally, it includes multiplication by the expected interest rate on such securitized utility tariff bonds (line 30, column E).

The resulting NPV of ADIT ($4,728,671) is the credit to be used as directed by Section 393.1700.2(3)(c)m, RSMo.

On the other hand, OPC witness Riley's calculation fails the very first requirement by his entire failure to calculate the NPV for the ADIT amount. His opinion and analysis on that issue should be disregarded for that reason alone. In spite of the language of the statute, Mr. Riley asserts that an NPV of the ADIT should not be calculated and does not recognize any NPV associated with his ADIT calculation. *See* Tr. Vol. 5, pp. 394-395 (Riley). He bases this approach on his opinion that the portion of the Securitization Statute quoted above is unconstitutional. Ex. 208, Riley Reb., p. 13 ("I see this recalculation as a confiscatory act. . . ."); Tr. 395 (Riley). Of course, this position is based only on Mr. Riley's self-admitted "uninformed opinion as [he has] not sought the advice of counsel regarding what this new law requires or allows." *Id*. The OPC calculation should be dismissed as clearly contrary to the Securitization Statute for its failure to even purport to determine the NPV amount.

Staff's ADIT analysis is also flawed. While Staff's calculation does include what purports to be a NPV calculation, Staff does not recognize the revenue requirement ***benefit*** of ADIT to customers. In other words, Staff's calculation does not properly quantify the series of cash flows by "including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds." In other words, Staff doesn't do what the Securitization

Statute requires for ADIT. Staff's calculation of ADIT should be entirely rejected as contrary to the Securitization Statute.

Staff's calculation of the ADIT credit is found at Exhibit 111 (Bolin ADIT Calculation). It is important to note that the starting place for Liberty and Staff is different because Staff used its starting point for Asbury retirement costs. Ex. 102, Bolin Reb., p. 11. However, regardless of the starting point, the process should follow the statutory direction.

The Staff error arises in the column titled "Plant Retirement – Customer Net Tax Benefit." What Staff has calculated is merely its ADIT starting point divided by 13. However, as discussed above, the securitization statute specifies the ADIT customer credit shall include the net present value of the tax ***benefits***, which in a revenue requirement calculation does not provide a dollar-for-dollar benefit for customers – a fatal flaw by Staff that undermines Staff's entire ADIT analysis and position. Staff entirely misses the point on ADIT -- ADIT provides a reduction to rate base, which is then multiplied by the return avoided, in each year. That means that ADIT does not provide a dollar for dollar benefit to customers as asserted by Staff. Rather than assess the future cash inflows and outflows associated with the investment (or ADIT), Staff merely assesses the full investment balance (ADIT) itself. Staff's approach has incorrectly calculated the ADIT benefit to customers (that is attributable to the timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds).

The amount for the Asbury ADIT (NPV Value utilizing 13 years) is ($4,728,671). Liberty's calculation is made in accordance with the Securitization Statute (Section 393.1700.2(3)(c)m, RSMo). The Commission should reject Staff's and OPC's arguments on ADIT and adopt the Company's position.

ii. Excess ADIT

The Excess ADIT issue concerns amounts that are being returned to customers as a result of the rates that were set in Case No. ER-2019-0374. Because those rates remained in effect until May 31, 2022, both Staff and Liberty have included all amounts that have been refunded to customers through May 31, 2022. Staff and Liberty, therefore, are in general agreement that the amount for Asbury Excess ADIT is ($12,173,189).

For OPC, Mr. Riley suggests a much higher amount for Excess ADIT because he assumes, without explanation or authority, that no Excess ADIT was returned to customers after Asbury was retired. Ex. 208, Riley Reb., p. 14 ("Once the plant associated with the deferred taxes is retired, the clock stops on the deferred taxes as well.")). Mr. Riley is wrong on that issue.

The retirement of Asbury did not alter the calculation of Excess ADIT and refunds to customers established in Liberty's 2019 rate case. At the time of its retirement, Asbury was still included in rates in Case No. ER-2019-0374 and the amounts associated with Asbury were included in the amortization of Excess ADIT associated with Asbury, meaning that those amounts were an offset to rates at that time. Ex. 103, Bolin Surreb., p. 4; Ex. 8, Emery Surreb., p. 33. The rates established in Case No. ER-2019-0374 went into effect September 16, 2020 and remained in effect until June 1, 2022, when they changed as a result of Case No. ER-2021-0312. *Id.*; Tr. Vol. 5, pp. 391-392 (Riley).

The amounts reflected in the securitization balance for EADIT offsets should reflect the values from the ER-2019-0374 case as adjusted for the amounts returned to the customers since rates went into effect for Case No. ER-2019-0374. Ex. 103, Bolin Surreb., p. 4. The Excess ADIT amount identified by Staff and Liberty appropriately reflects the amounts refunded to customers, between the retirement of Asbury and June 1, 2022.

F. The value of the Asbury AAO regulatory liability is $43,475,988 (Issue 3I)

The value of the Asbury AAO regulatory liability is $43,475,988. Ex. 8, Emery Surreb., pp. 33-38, Sched. CTE-2 (Asbury); Ex. 21, Emery Extra Calculations, Sched. CTE-6. Liberty calculated that amount in accordance with the Commission's Amended Report and Order in Case No. File No. ER-2019-0374 (issued July 23, 2020).

The difference between Liberty and Staff is primarily related to the interaction of the return on/carrying costs associated with Asbury (Issue 3T). The difference between Liberty and OPC is primarily related to Fuel Inventories (Issue 3G), Depreciation Expense (Issue 3S), Non-Labor O & M Expenses (Issue 3R), Labor Costs (Issue 3O), and Income Taxes (Issue 3N).

Additionally, OPC proposes a property tax amount for inclusion in the AAO Liability that is different from both Liberty and Staff and makes no sense in regard to the time period at issue.

Mr. Riley brought forward the June 2021 balance of $2,860,004 included in the Company's adjustment filed in Case No. ER-2021-0312. Ex. 8, Emery Surreb., p. 35. This balance represented the monthly impact for 18 months (January 2020 – June 2021). *Id*. Mr. Riley then took that balance times two to reflect the balance for 36 months (January 2020 – December 2022). *Id*. Had Mr. Riley calculated this correctly, the balance would have been $5,720,008. *Id*. Instead, Mr. Riley took the $2,860,004 (18 months) plus the $5,720,008 20 (36 months) to come up with his proposed balance of $8,580,012. *Id*. As a result, Mr. Riley erroneously included 54 months' worth of property tax in the OPC AAO liability calculation. *Id*. Moreover, his calculation is additionally erroneous as he continued through December 2022, although property tax related to Asbury was no longer included in customers base rates as of June 1, 2022. Tr. Vol. 5, p. 392 (Riley).

G. **“Energy Transition Costs” Should Include $9,206,741 in Decommissioning Costs** (Issue 3J)

RSMo. §393.1700.1(7)(a) provides that “energy transition costs” specifically include, but are not limited to, “the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, ***costs of decommissioning*** and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses . . .” Liberty estimates additional Asbury decommissioning costs in the Missouri Jurisdictional amounts of $3,541,054 (Phase 2) and $5,665,687 (Phase 3). Ex. 8, Emery Surrebuttal, Schedule CTE-2 (Asbury). These costs are explicitly contemplated by the Securitization Statute and should be included in the Commission’s financing order. While no party took issue with the Phase 2 amount of decommissioning costs, both Staff and OPC believe the Phase 3 balance should be reduced to reflect any salvage value that Liberty expects to receive for the demolished assets.

In regard to potential salvage amounts associated with the Phase 3 demolition costs, it should be noted that using the estimated salvage costs as an offset to demolition costs here, as recommended by Staff and OPC, may actually work to the detriment of Liberty’s customers. It may be more beneficial for customers to not include an offset for salvage value in the securitization bond amount, as those amounts could be more valuable to customers in reducing rate base, and the associated return, in a future rate case. Ex. 8, Emery Surreb., p. 13.

H. **“Energy Transition Costs” Should Include $21,282,684 for Asset Retirement Obligations** (Issue 3K)

RSMo. §393.1700.1(7)(a) provides that “energy transition costs” specifically include, but are not limited to, “the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction

therewith, costs of decommissioning and ***restoring the site of the electric generating facility***, other applicable capital and operating costs, accrued carrying charges, and deferred expenses . . ."

Liberty will have certain asset retirement obligations ("ARO") and demolition balances related to Asbury. Liberty expects additional Asbury ARO costs in the Missouri jurisdictional amounts of $2,837,588 (Asbestos) and $18,445,096 (Combustion Residuals Rule (CCR) Impoundment). Staff witness Bolin argues that the amounts provided by Liberty for AROs are estimated and that the Company has not provided any documentation that supports those ARO estimates, but Company witness Landoll provides details, documentation, and empirical support for the ARO costs and estimates. Ex. 14, Landoll Surreb. The AROs will be incurred by Liberty, and recovering them through securitization would decrease the costs otherwise paid by customers. Moreover, the Company proposes to track any difference between the securitized amount and actual ARO costs incurred so that any difference could be addressed in a future rate case. Ex. 8, Emery Surreb., pp. 12-13.

I. The Commission Should Utilize Negative $128,938 for Cash Working Capital (Issue 3L)

Based on this record, the Commission should utilize ($128,938) as the appropriate amount of cash working capital to reflect in the AAO Liability. The Commission's Amended Report and Order in Case No. File No. ER-2019-0374 (issued July 23, 2020) ordered Liberty to track in the Asbury AAO, among other things, "cash working capital and income tax gross up associated with Asbury." (p. 119). Both Liberty and the Staff have included ($128,938) to the AAO liability for cash working capital ("CWC"). Ex. 113, McMellen Asbury Calculations, p. 3; Ex. 21, Emery Extra Calculations, Sched. CTE-6.

Since the Company did not have an authorized CWC amount specific to Asbury, the Company made a reasonable estimate by taking the respective Asbury baseline revenue

requirement amounts and determining what percentage it was of the total base rate revenue requirement amount authorized in Case No. ER-2019-0374. Ex. 8, Emery Surreb., p. 30. The Company then applied that percentage to the total amount of CWC approved in Case No. ER-2019-0374 to determine the amount of CWC in base rates associated with the Asbury generating plant. *Id*. Staff has agreed with that approach.

Instead of the amount used by Staff and Liberty, Mr. Riley ignored the amount of CWC in Liberty's rates as of Case No. ER-2019-0374 and calculated his own CWC number in the amount of $15,205,731. Ex. 209, Riley Surreb., Sched., JSR-S-01, p. 1. This calculation is irrelevant for two fundamental reasons. First, the balance Mr. Riley is proposing fails to consider the CWC customers are currently paying in rates contrary to the concept of the Case No. ER-2019-0374 Order. Ex. 8, Emery Surreb., p. 30. Mr. Riley does not start his analysis with what customers have been paying as a result of the inclusion of Asbury in the Case No. ER-2019-0374 rates. Instead, he creates a standalone analysis of CWC without regard to those rates. Second, consistent with ignoring the current rates set in Case No. ER-2019-0374, Mr. Riley significantly changed the expense/revenue days in his independent calculation of CWC (Tr. Vol. 5, pp. 398-399 (Riley)) resulting in a mismatch.

Mr. Riley did not assess the impact of the retirement of Asbury on the CWC included in Liberty's rates. Rather, Mr. Riley calculates the total balance of CWC for 30 months for Asbury without regard to what customers are actually paying in rates. Ex. 8, Emery Surreb., p. 30. That error undermines Mr. Riley's entire CWC analysis. In sum, the appropriate amount for cash working capital is the ($128,938) used by both Liberty and Staff in their AAO Liability.

J. There Should be No Disallowance of the Remaining Costs of the Air Quality Control System ("AQCS") (Issue 3M)

OPC's recommended disallowance regarding Asbury's AQCS must be rejected by the Commission. OPC's argument is an impermissible collateral attack and is contrary to the express purpose of the Securitization Statute.

In 2014, Asbury was retrofit with an AQCS in order to continue operating in compliance with the Mercury Air Toxic Standards and the Cross State Air Pollution Rule promulgated by the EPA. This retrofit included the addition of a circulating dry scrubber to reduce sulfur dioxide emissions, a pulsejet fabric filter to reduce particulate emissions, powder activated carbon injection to control mercury emissions, conversion from forced draft to balanced draft, a new stack, and the upgrade of the steam turbine to increase efficiency. Ex. 13, Landoll Dir., p. 4. These investments were discussed in previous rate cases and resource planning proceedings and provided the intended results while they were in service. These capital improvements were the subject of testimony in the Company's 2014 and 2016 general rate cases filed with the Commission, and the cost of the capital improvements were included in rates (Commission Cases Nos. ER-2014-0351 and ER-2016-0023). Ex. 13, Landoll Dir., pp. 4-5. Any attempt to now find the AQCS investment to be imprudent would be an impermissible and unlawful collateral attack. *See* RSMo. §386.550; *see also State ex rel. MoGas Pipeline LLC v. Public Service Commission,* 395 S.W.3d 562 (Mo. Ct. App. 2013).

The crux of OPC's argument is that Asbury was retired early – before the Company had fully recovered its investment in the plant, including its investment in the AQCS, from customers. OPC's position in this regard is in conflict with the plain wording of the Securitization Statute. In a petition for a financing order to finance energy transition costs through the issuance of securitized utility tariff bonds, the utility must describe the facility that was retired or abandoned "prior to the

date that all undepreciated investment relating thereto has been recovered through rates." RSMo. §393.1700.2(1)(a). Additionally, the definition of "energy transition costs" specifically includes "the undepreciated investment" in the retired facility. RSMo. §393.1700.1(7). Any argument that a disallowance should be made due to Asbury no longer being in service (or used and useful) must be rejected as being in direct contravention of the Securitization Statute.

K. There Should be No Disallowance for Income Tax Deductions for Asbury Abandonment (Issue 3N)

Liberty's securitized amount for Asbury should not reflect a disallowance for income tax deductions for Asbury abandonment. This is another artificial issue raised by OPC in effort to overturn the retirement of Asbury and prevent securitization. In raising this issue, OPC again ignores Liberty's underlying ratemaking treatment as established by this Commission. Mr. Riley's adjustment for what he calls "Tax on Abandonment 2019 & 2020" is another example of his ignoring what was in Liberty's rates associated with Asbury, and recalculating what he thinks should be done outside the ratemaking process.

Mr. Riley proposes to add $16,504,355 to the OPC AAO liability calculation for what he describes as a tax benefit resulting from Liberty's write off of Asbury in 2020 (or, "Tax on Abandonment"). Ex. 208, Riley Reb., p. 19. This approach ignores the fact that the referenced tax deduction is a normal timing item that is treated the same as any other deferred income tax item in rates. Ex. 8, Emery Surreb., p. 37. Specifically, OPC is not taking into account that a regulatory asset was also established for the net book value of Asbury. This regulatory asset has deferred taxes associated with it, as evidenced in this securitization filing. As this regulatory asset gets amortized, the amortization expense is added back for taxable income purposes with no corresponding tax deduction because Asbury already qualified as an abandonment for tax

purposes. *Id*. OPC's approach would result in "double dipping" as the tax benefit. No amount should be reflected in the AAO Liability for "Tax on Abandonment."

L. Labor Costs Should Not Be Included in the Asbury AAO Liability (Issue 3O)

This issue arises because Mr. Riley has included $6,988,710 in his Asbury liability related to labor expense. Ex. 209, Riley Surreb., JSR-S-01, p. 2. Neither Liberty nor Staff have included any amounts for Asbury labor in their Asbury AAO liability. As to the labor costs at issue, all Asbury employees were retained and were either transferred to other departments within the Company or stayed at Asbury to work on the decommissioning. Ex. 8, Emery Surreb., p. 36; Ex. 100, McMellen Surreb., p. 4. Thus, the labor at issue was incurred by Liberty even after the retirement of Asbury. Ex. 8, Emery Surreb., p. 36.

Mr. Riley acknowledges that the employees remained employed by the Company. Mr. Riley, however, further suggests that that because the nature of their work changed, although still employed and paid by Liberty, their salaries should be added to the Asbury liability. Ex. 208, Riley Reb. p. 18; Ex. 209, Riley Surreb., p. 3. That position should be rejected. As stated by Staff witness McMellen, "[t]hese employees filled positions elsewhere at Liberty that were needed to provide safe and adequate service." Ex. 100, McMellen Surreb., p. 4; see also Ex. 8, Emery Surreb., p. 36. As further evidence of this, all of the labor expense for the reassigned employees was included in rate case expense in Liberty's most recent rate case (Case No. ER-2021-0312). *Id*.

The Commission's Amended Report and Order in Case No. File No. ER-2019-0374 (issued July 23, 2020) stated that the Commission would "issue an AAO to allow the Commission to defer a final decision until more is known about the financial impact of the retirement." (Report & Order, p. 118) In reaching this decision, the Commission recognized that not enough was known at the time to determine how costs would be treated in the future. For example, as to plant, the

Commission recognized that "some of [Liberty's] facilities may still be used and useful" or "repurposed." (Report & Order, pp. 116-117)

The Asbury employees have essentially been "repurposed" after the retirement of Asbury to assist with the provision of safe and adequate service. The employees continue to provide necessary labor services in providing safe and reliable electric service to customers, and there is no basis for OPC witness Riley's recommended adjustment.

M. $1,673,601 in (Missouri jurisdictional) Capital Projects Should be Included in Energy Transition Costs (Issue 3P)

The balance of the Asbury plant at its retirement date was $157,740,873. Staff and the Company agree that in addition to the net retired plant balance, $1,673,601 (Missouri jurisdictional) should be included. This amount represents costs that were included in both construction work in progress (CWIP) and removal work in progress (RWIP) related to two Asbury environmental capital projects that were suspended as of March 1, 2020. Ex. 8, Emery Surreb., p. 26; Ex. 21, Emery Extra Calculations, CTE-11 (182404 & 186216 Activity).

These projects were related to 1001003-Install Landfill Cell and 4002160-Bottom Ash Conversion and were undertaken a number of years ago to comply with upcoming environmental regulations. *Id*. Completion of these projects would have been required had the plant not been retired and the costs reflected represent "undepreciated investment" in the retired Asbury facility, as called for by the Securitization Statute. Section 393.1700.1(7)(a), RSMo.

N. $1,532,832 in Basemat Coal Costs Should be Included in Energy Transition Costs. (Issue 3Q)

A balance of $1,532,832, identified as Asbury Fuel Inventories, is added to the amount Liberty proposes to securitize. This amount represents the unrecoverable coal located at the bottom of the Asbury generating facility's coal piles, which over time blends with the coal mat upon which all recoverable coal sits. Ex. 8, Emery Surreb., p. 31.

While the mat for the coal is initially constructed using packed rock and/or clay, the coal that rests on this mat will compress into the mat over time as additional coal is piled on top. *Id*.; *see also* Ex. 101., McMellen Surreb., p. 3; Tr. Vol. 2, p. 110 (Doll). This is the base mat. Tr. Vol. 2, p. 110 (Doll). When the Company starts scraping toward the bottom, it gets coal that is not deemed usable and may start to risk the unit. *Id*. Thus, while there is still coal on, or in, the ground, such coal is not usable. *Id*. The cost related to the basemat coal was incurred while the plant was operational, and the resulting coal mat was necessary to reliably operate the plant. Ex. 8, Emery Surreb., p. 31. The associated cost should be included in the amount to be securitized.

O. Non-Labor Retirement Costs Should be Included in the Energy Transition Costs (Issue 3R)

The Commission's Amended Report and Order in Case No. File No. ER-2019-0374 (issued July 23, 2020) ordered Liberty to track in the Asbury AAO, among other things, "[a]ny costs associated with the retirement of the Asbury plant, including dismantlement and decommissioning – Non-Empire labor excluded." (p. 119). The Company included $3,959,602 related to incurred decommissioning costs and costs related to obsolete inventory through May 2022. Ex. 8, Emery Surreb., p. 36.

Ms. McMellen notes this as an appropriate AAO category and Staff similarly reflects this amount in its AAO. Ex. 100, McMellen Reb., p. 9; Ex. 113, McMellen Asbury Calculations, p. 3.

Mr. Riley suggests that, while it is appropriate to track as the Order suggests, the costs should be addressed in the next general rate case. Ex. 209, Riley Surreb., p. 6. He does not provide any further explanation. Given that these amounts are authorized by the Commission's AAO and there is no challenge to the types or validity of the amounts, Liberty's recovery should include non-labor Asbury retirement costs.

P. Negative $23,480,289 of Depreciation Expense Should be Reflected in the Asbury Regulatory Liability (Issue 3S)

The appropriate amount of depreciation expense to be included in the Asbury regulatory liability is ($23,480,289), which is computed based on the balances embedded in the current rates customers have been paying since Asbury's retirement. Ex. 8, Emery Surreb., p. 36; Ex. 21, Emery Extra Calculations, Sched. CTE-6.

Liberty disagrees with the depreciation balance used by OPC. Mr. Riley's calculated his depreciation balance by using the depreciation expense proposed by Staff and approved in the ER-2019-0374 for Asbury less the depreciation expense for the remaining plant established in the ER-2021-0312 case. Ex. 208, Riley Reb., pp. 17-18. That analysis is improper because there is no reason to use the depreciation expense for the remaining plant established in the 2021 case to determine the monthly impact since those are not the balances embedded in the rates customers have been paying since Asbury's retirement. Ex. 8, Emery Surreb., p. 36. Additionally, Mr. Riley states that he extended his calculation for 30 months. Ex. 208, Riley Reb., pp. 17-18. Given that the period from January 1, 2020 through the date new rates went into effect, June 1, 2022, is only 29 months, the use of 30 months is incorrect.

Q. The Carrying Charge for Energy Transition Costs Should be Based on the Company's Most Recently Approved Rate of Return Carrying Charges (Issues 3T and 3U)

Just as is the case for qualified extraordinary costs, the Securitization Statute expressly authorizes recovery of carrying charges for energy transition costs:

> "Energy transition costs", include all of the following:
>
> (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in

> conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, ***accrued carrying charges***, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the costs of retiring any existing indebtedness, fees, costs and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;

RSMo. §393.1700.1(7)(a) (emphasis added).

In turn, the proper and appropriate standard for determining the proper carrying costs for securitization in this case is the "fair return standard" established by the United States Supreme Court. Ex. 1, Reed Surreb., p. 22. The fair return standard established by the U.S. Supreme Court in the *Hope* and *Bluefield* cases and routinely relied upon by Commissions when establishing a utility's allowed cost of capital is the appropriate regulatory standard. In *Bluefield Waterworks & Bluefield Waterworks & Improvement Company v. Public Service Commission of the State of West Virginia et al (Bluefield)* the U.S. Supreme Court found that:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.

Bluefield Waterworks & Improvement Co., v. Public Service Commission of West Virginia, 262 U.S. 679 (1923).

In Federal Power Commission et al v. Hope Natural Gas Co., (Hope) the U.S. Supreme Court found that:

> … [T]he investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view, it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. … By that standard, the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, to maintain its credit and to attract capital…

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944). The principle of a fair return applies to this issue because Liberty has committed capital to funding the deferred fuel and purchased power cost collections and the regulatory asset associated with Asbury, and that commitment of capital warrants the opportunity to earn a reasonable return. Ex. 1, Reed Surreb., p. 22.

The Company's most recently allowed rate of return ("ROR") is the appropriate carrying cost. Ex. 1, Reed Surreb., p. 24. Liberty has committed capital to funding the regulatory asset associated with Asbury that is the subject of this securitization application, and that commitment of capital warrants a reasonable return on capital until such time as Liberty's capital is paid off by the proceeds from securitization. *Id*. This accumulation of the carrying charge should commence when the costs were incurred, which is the retirement date for the Asbury remaining plant balances. *Id*. This is the point at which the costs were first afforded deferred cost recovery status. *Id*.

Staff does not start its carrying cost calculation as of Asbury's retirement date, but instead only assumes carrying costs from May – December 2022. Ex. 100, McMellen Reb., p. 8. Thus, there are no carrying costs to the Asbury balance starting with the retirement of Asbury through May of 2022. Tr. Vol. 3, pp. 216-217 (McMellen).

Staff witness McMellen's justification for this is that a return was "included in rates " and there should be some sharing between the customers and the shareholders." Tr. Vol. 3, p. 216 (McMellen). However, the return Liberty would have recovered through rates has been included in Staff's AAO liability balance and is used to offset Liberty's net balance of costs to be securitized. Ex. 100, McMellen Reb., p. 9.

The error with Staff's approach is that by both using the return collected by the Company as a component in their AAO liability balance <u>AND</u> not utilizing a carrying cost from retirement through May 2022, Liberty receives <u>NO carrying costs for 26 months</u>. Tr. Vol. 3, p. 216

(McMellen). That is contrary to the plain language of the Securitization Statute, which states that Energy Transition Costs are to include "accrued carrying charges." Ex. 8, Emery Surreb., p. 18. Accordingly, Liberty should be allowed carrying costs related to its committed capital associated with Asbury's undepreciated asset balances.

Lastly, Ms. McMellen suggests that if the Commission uses the Company's WACC to calculate carrying costs in this case, it should not include an allowance for taxes. Ex. 100, McMellen Reb., p. 8. This proposal is illogical because such proposal, will, by definition, prevent Liberty from earning a fair return by failing to account for income tax obligations of the Company. For the Company to earn its ROR as suggested by the *Hope* and *Bluefield* cases, the equity return portion of the cost of capital requires an adjustment for income taxes. *Id*.; Ex. 8, Emery Surreb., p. 16.

As discussed by Liberty witnesses Ms. Emery and Ms. Niehaus, securitization will reduce customers costs over the proposed thirteen-year recovery period by financing certain Asbury costs with securitization bonds that have a lower cost than Liberty's WACC. Staff and OPC witnesses' proposals would deny Liberty the opportunity to earn a reasonable return until securitization bonds are issued. This is neither reasonable nor appropriate, not to mention providing a substantial disincentive for utilities to use the Securitization Statute. The Company's proposed securitization should be supported, not penalized.

The pre-tax WACC should be used to calculate carrying costs from the Asbury costs to be securitized and such carrying costs should start with the retirement of Asbury. As discussed above regarding the appropriate carrying cost for Winter Storm Uri, the Company's most recently allowed rate of return is the appropriate carrying cost for Asbury. In this case, that is the 6.77% WACC identified in Liberty's last litigated general rate case (Case No. ER-2019-0374). *See* Ex. 8, Emery Surreb., pp. 15-21 and Ex. 1, Reed Surreb., pp. 20-24.

R. The Securitization Statute Does Not Require a Comparison With Traditional Cost of Service Ratemaking (Issue 3V)

Section 393.1700.2(1)(f), RSMo., requires calculation of the net present value ("NPV") and a benefit determination of securitization in comparison to the "traditional method of financing" – not "traditional ratemaking," as is implied by the wording of the issue.

The "traditional method of financing" Liberty's capital in this instance is what would apply to any other commitment of intermediate or long-term capital. Ex. 1, Reed Surreb., p. 22. That is, a balanced mix of debt and equity. *Id*. That balance of debt and equity is represented by the WACC. Accordingly, the appropriate discount rate to use to calculate NPV of Asbury costs under a "traditional method of financing" is the weighted average cost of capital ("WACC") of 6.77%.

S. Liberty Has Demonstrated a Quantifiable Net Present Value Benefit to its Customers Through Securitization of Energy Transition Costs (Issue 3C)

With regard to Liberty's retired Asbury plant, the Securitization Statute requires a "comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become securitized utility tariff costs from customers" and a showing "that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers." RSMo. 393.1700.2(1)(f). For this benefit comparison required by the Securitization Statute, the "traditional method of financing" means the utility carrying the costs on its own books and amortizing them over time, with the balance being assessed a carrying charge at Liberty's authorized WACC. Securitization is a financing alternative to this customary approach.

Using Liberty's values and calculations, $31,096,447 is the net present value of the estimated benefits resulting from the comparison required by the Securitization Statute (Ex. 8,

Emery Surreb., pp. 1-2), but please see Section V below for additional discussion of the NPV calculation.

IV. FINANCING COSTS (Issue 4)

The financing order to be issued by the Commission herein must "describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charges." RSMo. §393.1700.2(3)(c)a.

As of the filing of testimony, the estimated upfront financing cost associated with securitizing the Winter Storm Uri costs is $3,655,297, with ongoing financing costs estimated to be $410,850 per year (or $34,237 per month). Ex. 8, Emery Surrebuttal, Schedule CTE-1 (Storm Uri). The estimated upfront financing cost associated with securitizing the Asbury costs is $3,264,961, with the ongoing financing costs estimated to be $343,039 per year (or $28,587 per month). Ex. 8, Emery Surrebuttal, Schedule CTE-1 (Asbury). These amounts will be trued up through a "formula-based true-up mechanism" to adjust the securitized utility tariff charges to account for the actual financing costs incurred and other required amounts. RSMo. §393.1700.2(3)(c)e.

V. THE BENEFITS OF SECURITIZATION (Issue 5)

Securitization represents a true "win-win" by allowing a utility to recover the costs of providing service in a way that minimizes the impacts on customers. The issuance of a single financing order in these consolidated dockets, in full compliance with the Securitization Statute, will allow Liberty to recover its reasonable and prudent costs by issuing bonds, with lower financing costs as compared with conventional utility financing methods, thereby saving Liberty's customers millions of dollars. The expected, quantifiable net present value of benefits to customers from securitization of the Asbury costs is $31,096,447, and the expected, quantifiable net present

value of benefits to customers from securitization of the Winter Storm Uri costs is $42,276,691. Ex. 8, Emery Surreb., pp. 1-2.

The Securitization Statute, however, does not require a showing of a particular amount or magnitude of benefits in order for the Commission to issue a financing order authorizing the issuance of securitized utility tariff bonds for Asbury and Storm Uri. Instead, the Securitization Statute requires Liberty only to "demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers." RSMo. §393.1700.2(1)(f) and (2)(e).

The competent and substantial evidence demonstrates that issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges will provide quantifiable net present value benefits to Liberty's customers. Although Liberty and Staff, the only two parties to present positions on this issue, use different inputs to their calculations, thus yielding somewhat different results, both show that the NPV of the benefits to customers from securitization is positive. In fact, both testify that the NPV of those benefits is expected to be quite large. As such, the requirements described in §393.1700.2(1)(f) and (2)(e) of the securitization statute are clearly met.

Quantifying the specific NPV of the benefits from securitization serves no purpose other than determining whether the statutory requirements described in §393.1700.2(1)(f) and (2)(e) are met. Put another way, quantifying the specific amount of benefits to customers informs only whether Liberty should be allowed to issue bonds to recover its costs, not how much it should be allowed to recover. Since the parties that have offered a view agree on the only pertinent result of the benefits calculation - that the NPV of the benefits is positive - additional consideration of the relative merits of the parties' inputs to and results from their calculations is irrelevant and should not be undertaken by the Commission in this proceeding.

VI. THE POST-FINANCING ORDER PROCESS (Issue 6)

The Commission should issue a financing order consistent with the specimen financing orders provided by Liberty, including the "Designated Representative" [8] section. In addressing this issue, the Commission should use the statutory duties of the Designated Representative as context. The Securitization Statute states that:

> . . . The commission shall have the authority to designate a representative or representatives from commission staff, who may be advised by a financial advisor or advisors contracted with the commission, to provide input to the electrical corporation and collaborate with the electrical corporation in all facets of the process undertaken by the electrical corporation to place the securitized utility tariff bonds to market so the commission's representative or representatives can provide the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis. . . .

Section 393.1700.2(3)(h), RSMo (emphasis added).

Thus, the Designated Representatives participation is for the purpose of providing "the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis." In fact, the following sentence of this sub-section is a further reminder of this situation as it indicates "(n)either the designated representative or representatives from the commission staff nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market although they shall be permitted to attend all meetings convened by the electrical corporation to address placement of the bonds to market." The task presented to the Commission is to walk the line between giving the Designated Representative tools needed to provide its opinion on an expedited basis, while recognizing that the electrical corporation has the authority to direct how the bonds are placed.

[8] Discussion of the Designated Representative includes its advisor(s).

Liberty provided a proposed Financing Order for the Commission's consideration with both its Winter Storm Uri and Asbury filings. Ex.18, Niehaus Dir. (0040), Sched. KN-4; Ex. 19, Niehaus Dir. (0193), Sched. KN-4. Pursuant to the Commission's direction, attached hereto for the Commission's consideration is a single Financing Order addressing the Winter Storm Uri and Asbury applications. This proposed Financing Order specifies the mechanisms and structures for payments of bond interest, principal, and ongoing expenses in a manner that minimizes the amount of additional credit enhancements required by the rating agencies to achieve the highest possible ratings. Ex.18, Niehaus Dir. (0040), pp. 16-17; Ex. 19, Niehaus Dir., p. 16. The highest possible ratings will allow the financing to achieve the desired pricing and savings results. *Id*.

Liberty's proposed Financing Order also specifically addresses the role of the Designated Representative in order to comply with the statutory requirements outlined above. *See* Findings of Fact 70-72. Further participation of the Designated Representative is identified in Conclusions of Law 5 and 6 and Ordering Paragraph 25.

Liberty intends and proposes that the Designated Representative and their financial advisor will be invited to join the regular conference calls among Liberty, the underwriters and their respective counsel. Ex. 15, Mosindy Surreb., p. 8. By joining these regular conference calls, the Designated Representative, consistent with requirements of the Missouri Securitization Statute, will be privy to information in real time and understand the decisions that Liberty is making with respect to the structuring, marketing and pricing of the Bonds. *Id*. During these calls, the Designated Representative is welcome to provide suggestions or pose any questions to the group. *Id*. Liberty envisions a collaborative process with all parties, including the Designated Representative, with everyone working together towards achieving the objectives of the Securitization Statute. *Id*.

Additionally, the Designated Representative may always reach out directly to Liberty with questions or suggestions about the transaction and Liberty will provide responses and take any suggestions under advisement. Ex. 15, Mosindy Surreb., p. 8. This process should provide the Designated Representative with more than enough information, in real time, so that the Designated Representative can regularly update the Commission and be comfortable providing the opinion required by the Missouri Securitization Statute. *Id*.

Specifically, as to the marketing process, the Designated Representative will be invited to attend calls where such marketing plan is discussed to understand the market backdrop and the rationale for the approach. Ex. 20, Niehaus Surreb., p. 6. Decisions regarding communication to investors of pricing thoughts for the bonds must be made quickly to ensure investor interest is sustained. *Id*. While the Designated Representative, with its advisor(s), will be involved in and able to provide input to Liberty and collaborate with Liberty on the marketing process, such involvement must not impede the marketing timeline. *Id.* Delays in communications to investors can cause investors to lose interest in a bond offering, particularly in a busy market where there are other bonds that investors can buy. *Id*.

Moreover, it is important that the post financing order process be designed in such a way as to not lead to delays in completing the transaction or otherwise result in increased costs for Liberty or its customers. Ex. 20, Niehaus Surreb., p. 4. Each bond marketing process is slightly different, based on many factors that can change day to day, or even hour to hour. For example, bond market volatility, geopolitical events, views on changes in benchmark rates, and supply or lack thereof of alternative high-quality debt investments can all significantly affect the number and types of investors who might purchase a utility securitization. *Id.* at p. 5. Liberty and the underwriters must have flexibility to amend the marketing plan day to day, as they receive feedback from investors, to ensure the bonds receive the greatest amount of interest, thus driving

down pricing. *Id.* at p. 6. In some cases, decisions will need to be made in “minutes.” Tr. Vol. 7, p. 569 (Niehaus). Liberty witness Ms. Niehaus provided the following example:

> We will get feedback from an account, we will know that we are fully allocated for our transaction, and there will be a decision that needs to be made about whether we are ready to move forward and price the transaction. Delays outside of the normal timing are generally not well received by the investors as they expect a certain cadence to a transaction.

Tr. Vol. 7, pp. 569-570 (Niehaus).

Delays in communications to investors can cause investors to lose interest in a bond offering, particularly in a busy market where there are other bonds that investors can buy. Ex. 20, Niehaus Surreb., p. 6. A flexible and nimble marketing and pricing process provides the best assurance to the Commission that the Bonds will in fact be sold at the lowest rates reasonably consistent with market conditions on the day and time of pricing and the terms of the financing order, which will result in the lowest charges to Liberty’s customers. *Id.* at p. 8.

Liberty’s proposal follows the specific post-financing order review process prescribed by the Securitization Statute. This process creates an appropriate level of Commission oversight in order to achieve the objectives of the statute, namely customer savings. There should not be additional protocols or procedures added to those proposed by Liberty in the specimen financing orders provided by the Company as additional protocols or procedures could lead to delays in completing the transaction and thus increased customer costs.

VII. FINANCING ORDER CONDITIONS (Issue 7)

RSMo. §373.1700.2(3)(a)b provides that “(n)o later than two hundred fifteen days after the date the petition is filed, the commission shall issue a financing order approving the petition, an order approving the petition subject to conditions, or an order rejecting the petition . . .” No such conditions were recommended by a party in pre-filed Direct, Rebuttal, or Surrebuttal Testimony, and Liberty is not aware of any additional conditions that should be imposed at this time.

VIII. CLASS ALLOCATION AND RATE DESIGN (Issue 8)

Liberty's primary interest is that the financing order, including the class allocation, be in accordance with the Securitization Statute. With the filing of surrebuttal testimony, Company witness Emery stated as follows:

> While I believe the rate design proposal presented by the Company [in direct testimony] is in alignment with the Securitization Statute, I also recognize the points and concerns outlined in [Staff's and OPC's] testimonies. I also acknowledge this is the Company's first securitization proceeding and also the first in Missouri, so it is important the design of rates and the respective tariff be in accordance with the statute. Therefore, I would recommend that prior to a Financing Order being issued, the various parties collaborate to design a tariff that meets the statutory requirements and accomplishes all the respective needs of the Special Purpose Entity and, where applicable, ensuring the securitization bonds receive the highest possible credit rating.

Ex. 3, Emery Surreb., pp. 39-40. The parties have not reached agreement on a tariff, and the financing order to be issued by the Commission must include how the "securitized utility tariff charges will be allocated among retail customer classes." RSMo. §393.1700.2(3)(c)h.

To calculate the requested securitized utility tariff charges, Liberty allocated the required revenue requirements to each of the Company's rate classes based on the updated results of the Class Cost of Service study presented by the Company in its last rate case (ER-2021-0312) and then used the agreed upon billing determinants to calculate Liberty's proposed securitized utility tariff rates for each class. Ex. 7, Emery Dir., p. 22. Liberty requests that the Commission, in its financing order, direct that this is how the "securitized utility tariff charges will be allocated among retail customer classes." In collaboration with the parties, Liberty would then submit a tariff for the Commission's consideration and approval.

WHEREFORE, The Empire District Electric Company d/b/a Liberty respectfully submits this Initial Post-Hearing Brief and requests the issuance of a financing order authorizing Liberty to finance $362,419,908 using securitized utility tariff bonds.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 13th day of July, 2022, and sent by electronic transmission to all counsel of record.

/s/ Diana C. Carter