

**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) Case No. EO-2022-0040
Securitized Utility Tariff Bonds for)
Qualified Extraordinary Costs)

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) Case No. EO-2022-0193
Securitized Utility Tariff Bonds for Energy)
Transition Costs Related to the Asbury Plant)

RESPONSE TO COMMISSION ORDER

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), and for its Response to Commission Order, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. The Commission’s *Order Directing Response*, issued on August 3, 2022, directs Staff, based on certain assumptions set forth by the Commission, “to work with the other parties to file scenarios calculating the numbers” for a financing order to be issued by the Commission regarding Liberty’s Storm Uri and Asbury securitization petitions.
2. The Commission directed the filing from Staff to be made by August 8, 2022, with the filing of any disagreements by August 9, 2022.
3. On August 8, 2022, Staff filed its Response to Commission Order of August 3. Prior to filing, Staff shared its calculations with the Company. On August 9, 2022, Staff filed a Motion to Correct and Corrected Response to Commission Order of August 3.
4. Liberty’s positions regarding the amounts to be securitized remain unchanged from its post-hearing legal briefs. Regarding the assumptions set forth in the *Order Directing Response*, however, Liberty agrees with Staff’s calculations for the following items:

Table 1. Correctly Calculated Balances

<u>Storm Uri</u>	<u>Missouri Balance</u>
Recovery of Storm Uri Costs	\$183,732,088
Carrying cost through Dec. 2022 (excluding carrying costs on Legal/Contracting Costs)	\$15,689,363
<u>Asbury</u>	<u>Missouri Balance</u>
Net plant	\$159,414,474
Environmental regulatory assets	\$1,643,357
Fuel inventories	\$1,532,832
Excess Accumulated Deferred Income Taxes (“ADIT”)	\$(12,173,189)
Phase 2 decommissioning costs	\$3,541,054
Asset Retirement Obligation (“ARO”) costs – Asbestos	\$2,837,588
ARO costs – CCR Impoundment	\$18,445,096

5. Staff incorrectly calculated several balances. Each is summarized in Table 2 below, along with the correct amounts:

Table 2. Incorrectly Calculated by Staff - Missouri Balances

	<u>Staff</u>	<u>Company Corrected</u>	<u>Difference</u>
<u>Storm Uri</u>			
Legal/Contracting Costs	\$140,121	\$2,111,715	\$(1,971,594)
<u>Asbury</u>			
ADIT	\$(21,156,205)	\$(8,106,144)	\$(13,040,061)
AAO liability	\$(77,549,553)	\$(44,258,322)	\$(33,291,231)
Phase 3 decommissioning costs	\$5,665,687	\$3,364,002	\$2,301,685
Carrying Charges Jun – Dec. 2022	\$2,548,235	\$3,131,964	\$(583,729)

6. The errors in Staff’s calculations incorrectly reduce the total amount to be securitized by \$46,594,930. Each item that Staff has calculated incorrectly is described below in detail, along with the Company’s correction and the basis for the change.

Storm Uri

7. The Staff balance includes a stale amount for Legal/Contracting fees that omits the additional Legal/Contracting Fees that the Company has incurred since the Company's original case filing. As of June 30, 2022, the Company has incurred \$2,111,715 in fees. It would be appropriate to establish a regulatory account to record any difference between the Legal/Contracting Fees included in the Securitization Bond Proceeds and the actual costs incurred, with the difference to be included in a future proceeding.
8. With the inclusion of the June 30, 2022 balance for Legal/Contracting Fees, the correct total of Storm Uri qualified extraordinary costs is \$201,533,166.

Asbury

9. **Asbury AAO Liability.** Based on the calculations provided to the Company, it appears that Staff has omitted a carrying rate/return for all balances included in the Asbury AAO Liability. That is inconsistent with the *Order Directing Response*. The *Order Directing Response* specifies that a return is not to be applied to the amounts for abandoned environmental capital projects, thereby indicating that a return should be applied to all other components of the Asbury AAO liability, and the *Order Directing Response* requires an assumption that there are no disallowances for imprudence. See *Order Directing Response*, pp. 2-3.
10. In addition, there is no direction or implication to be found in the *Order Directing Response* that would provide a basis for disallowing the Company from recovering a carrying charge/return on its prudently retired generating facility prior to May 2022. The *Order Directing Response* indicates only that the carrying charge for the period of May 2022 through December 2022 should be calculated using Staff's

recommended rate of 4.65 percent, based on long-term debt. Because the *Order Directing Response* clearly indicates that the debt rate should be used as the carrying charge for the period May 2022 through December 2022, while not indicating the same as to any other period of time. As such, the Company has included in its balance of the Asbury AAO Liability a carrying charge/return for the period prior to May 2022 that is equal to its weighted average cost of capital. *See* RSMo. §393.1700.1(7)(a) (energy transition costs include “accrued carrying charges”).

11. Utilizing Staff’s AAO Liability calculations would improperly deprive Liberty of accrued carrying costs/return for 26 months (January 2020 to May 2022). Staff’s initial legal brief in this proceeding surrounding the appropriateness of utilizing a 4.65% cost of debt stated that “Liberty was already recovering Asbury costs through May 2022 . . .” pp. 54-55. However, this justification is nonsensical if the Company is also ordered to return that same amount back through the AAO Liability, which is the position reflected in Staff’s balances. Staff’s calculations would require the Company to refund to customers a majority portion (26 months) of the carrying costs/return authorized by the Securitization Statute on early retirements or abandonments of generating facilities where such early retirement or abandonment is deemed reasonable and prudent. *See* RSMo. §393.1700.1(7)(a).
12. Based on these corrections, the balance for the Asbury AAO Liability should be \$(44,258,322).
13. **Asbury ADIT.** Staff’s ADIT calculation violates the express language of the Securitization Statute, which permits a reduction to the total bond issuance by the amount of “applicable tax **benefits** of accumulated and excess deferred income taxes.”

See RSMo. §393.1700.1(7)(a) (emphasis added); *see also* RSMo. §393.1700.2(3)(c)(m). Instead, Staff's calculation reduces the total bond issuance **by the ADIT balance**, which is far greater than the amount of the relevant tax benefits. That is not only contrary to the statutory language but also makes no sense. The ADIT funds were collected to make tax payments. If the Company is ordered to return the full ADIT balance to customers, the Company will not have the funds to make the tax payments when due.

14. By way of background, ADIT arises from a timing difference between revenues the Company collects from customers to pay its taxes and the actual income taxes paid. That timing difference exists because expenses from the depreciation of assets are treated differently for tax purposes than they are for ratemaking. Certain federal tax rules allow for accelerated depreciation for some utility assets, whereas depreciation is generally treated on a straight-line basis when a utility's revenue requirement is calculated. As a result, in the period after new assets are placed into service, the utility's expenses are higher for tax purposes than for ratemaking purposes, which reduces the amount of taxes the utility initially pays.
15. Nevertheless, the entire balance a utility will hold in ADIT at any time will be paid in income taxes at some point in the future. In other words, despite the timing difference, the utility continues to owe the tax. When an asset is placed into service, the difference in the depreciation rates means that the amount of revenues for taxes collected from customers is higher than the amount of taxes the utility has paid, which creates an ADIT balance. Later in an asset's life, the depreciation rate used for tax purposes will be lower than the straight-line rate assumed for ratemaking, so the utility will pay

more in taxes than it collects from customers. Because the book value of any asset ultimately depreciates to zero, the ADIT balance does as well.

16. A utility passes the benefit of the timing difference along to customers in the form of a reduction of the rate base assumed for ratemaking purposes. The underlying principle is that ADIT constitutes a “free” loan for the Company, the value of which is equal to the return the Company could generate with the extra capital that it can temporarily access. Specifically, the value of that benefit is assumed to be equal to the returns that could be generated from the ADIT balance at the utility’s authorized rate of return. For that reason, a reduction of the rate base by the ADIT balance will save customers an equal amount (ADIT times the rate of return), such that the customers, not the company, enjoy the benefit of the accelerated depreciation.
17. That is the very benefit that the Securitization Statute requires that the Company return. Specifically, the Securitization Statute requires that the total bond issuance be reduced “by applicable tax **benefits** of accumulated and excess deferred income taxes.” *See* RSMo. §393.1700.1(7)(a) (emphasis added); *see also* RSMo. §393.1700.2(3)(c)(m).
18. Staff’s calculation incorrectly reduces the amount to be securitized by the present value of the *balance* of the ADIT. This is not permitted by the Securitization Statute, is not indicated in the *Order Directing Response*, and makes no logical sense. It would require the Company to refund the revenues it had collected for its upcoming tax payments (the ADIT balance) despite the fact that the Company will still need to make those payments. And it would give customers an ADIT-related windfall under the Securitization Statute that they would not obtain in any other kind of proceeding.

19. The proper amount to include for Asbury ADIT, using the assumptions set forth in the *Order Directing Response*, is \$(8,106,144).
20. **Phase 3 of Asbury Decommissioning Costs.** Staff's calculations are incorrect because they omit the estimated net salvage value as an offset, contrary to the plain language on this issue in the *Order Directing Response*. See *Order Directing Response* at 2 ("Phase 3 decommissioning costs for Asbury in the amount of \$5,665,687 are to be included in the securitization, but those amounts are to be offset by the estimated net salvage value.").
21. **Carrying Costs from June 2022 to December 2022 (anticipated bond issuance date).** Because of the discrepancies described above regarding the balances, the Company disagrees with the amount Staff calculated for Asbury's Carrying Cost for the period of June 2022 to December 2022 (anticipated bond issuance date). As corrected, the appropriate carrying charge amount utilizing the 4.65% long term debt rate is \$3,131,964.

WHEREFORE, Liberty respectfully submits this Response to Commission Order and requests such relief as is just and proper under the circumstances.

Respectfully submitted,

**ATTORNEYS FOR THE EMPIRE DISTRICT
ELECTRIC COMPANY D/B/A LIBERTY**

Sarah B. Knowlton #71361
General Counsel, Liberty Utilities
116 North Main Street
Concord, New Hampshire 03301
Telephone: (603) 724-2123
E-Mail: sarah.knowlton@libertyutilities.com

/s/ Diana C. Carter
Diana C. Carter MBE #50527
The Empire District Electric Company d/b/a Liberty

428 E. Capitol Ave., Suite 303
Jefferson City, Missouri 65101
Joplin Office Phone: (417) 626-5976
Cell Phone: (573) 289-1961
E-Mail: Diana.Carter@LibertyUtilities.com

Dean L. Cooper MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Telephone: (573) 635-7166
E-mail: dcooper@brydonlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 9th day of August, 2022, and sent by electronic transmission to all counsel of record.

/s/ Diana C. Carter