

**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)

REPLY BRIEF OF MIDWEST ENERGY CONSUMERS GROUP

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COMES NOW, the Midwest Energy Consumers Group, (“MECG”) and submits its *Reply*

Brief:

Reply to Staff on how should securitized utility tariff charges be initially allocated among retail customer classes? (Issue 8)

In its Brief, Staff begins by quoting the securitization statute about allocating the charges among retail customer classes which is to be updated in future rate cases.¹ Specifically Staff states:

“[h]ow securitized utility tariff charges will be allocated among retail customer classes.” This initial allocation remains in place until the electrical corporation’s next general rate proceeding, after which “all subsequent applications of an adjustment mechanism regarding securitized utility tariff charges shall incorporate changes in the allocation of costs to customers as detailed in the commission's order.”²

MECG’s position that securitized costs should be allocated among retail customer classes using the method proposed in the Company’s direct testimony³ is logically consistent with those

¹ Staff’s Br. p. 71.

² Staff’s Br. p. 71, citations omitted.

³ Ex. 7, p. 22-23 (Emery Direct); Ex. 6, p. 12-13 (Hall Direct).

provisions. Staff's proposal to use the same energy rate for all customers (adjusted only for line losses) is not.

The Company has different rate classes because the cost to serve different classes varies. The legislative language recognizes the existence of classes in stating that charges should be "allocated among retail customer classes."⁴ Further, because the securitized tariff will be in effect for a number of years during which rate cases will take place, the law explains that if the allocation of costs to customers changes then the securitized charges must be updated to incorporate the new allocation. Using class revenues resulting from a rate case to allocate the securitized charges allows for that update to take place in a consistent and straightforward way without abandoning the premise that different classes of customers incur different costs. Using staff's approach eliminates the cost-causation distinction among the different classes that should guide Commission allocation decisions and renders the statutory provision that "all subsequent applications of an adjustment mechanism regarding securitized utility tariff charges shall incorporate changes in the allocation of costs to customers as detailed in the commission's order" meaningless. Staff's method is how the Commission would order the costs to be recovered in a Fuel Adjustment Clause ("FAC") case but not in a general rate case. This is not an FAC case; it is a securitization case. The language of the securitization statute talks about the allocation of costs and subsequent adjustments in the context of how those allocations would be done in a "general rate proceeding." The Staff's approach is not logically consistent with the language of the statute and should be rejected.

Staff goes on to say that cost allocation methodology is discretionary and that "allocation decisions can be based on consideration of public policy interests, rather than a strict mathematical calculation."⁵ To the extent this is true, Staff's method prioritizes ease of administration over cost-

⁴ Section 393.1700.2(3)(c)h, RSMo.

⁵ Staff's Br. p. 72.

causation principles. When Staff's chosen method unduly increases the amount customers are required to pay, it should be rejected. This is especially true in this case when the Staff's method will shift more costs onto the overburdened commercial and industrial classes that already pay more than 22 percent higher than the state, regional and national averages.⁶

Reply to Staff's argument that Liberty's proposed allocation is unlawful under Section 393.1700.1(16), RSMo (Cum. Supp. 2021) because it fails to allocate costs to all classes.

MECG agrees that all customers should pay a portion of the securitized charges under Section 393.1700.1 RSMo. The Company did not propose a rate to be applied to its electric vehicle ("EV") service so the Commission should order that a rate for EV be determined using the method from the Company's direct testimony. MECG also agrees that the allocation factors and customer class names do not reflect those resulting from the most recent general rate case in ER-2021-0312. When the company filed its direct testimony, that rate case was not concluded and so the class names had not changed. Those customer classes and the allocations should be updated. With those updates, the methodology of allocation proposed by the company remains reasonable and consistent with the statute and should be adopted by the Commission.

Reply to Staff's argument that Winter Storm Uri costs should be allocated on the basis of loss-adjusted energy, consistent with Liberty's fuel adjustment clause.

As noted in more detail above, this is not an FAC case; it is a securitization case. The language of the securitization statute talks about the allocation of costs and subsequent adjustments in the context of how those allocations would be done in a "general rate proceeding." The Staff's approach is not logically consistent with the language of the statute and should be rejected.

Reply to Staff's argument that Asbury retirement costs should be allocated on the basis of loss-adjusted energy, to ensure that both the costs of Asbury's retirement are allocated in the same way as the benefits of Asbury's retirement are allocated.

⁶ Report and Order, Case No. ER-2021-0312, *iss'd* April 6, 2022, p. 13; Ex. 301.

Were Asbury not retired, its costs would not have been recovered from customers on the basis loss adjusted energy usage. Staff asserts that retiring Asbury and adding wind generation were related so the securitized costs should be recovered as if it were an FAC. Even if it were true that the Company's resource planning decision to retire Asbury was linked to adding wind generation, it does not impact how the company's costs (or liabilities) related to the Asbury facility would have been collected (or returned to) customers. When it was operating, the cost categories considered in this case were not recovered from the FAC alone. In its retirement, those costs should not be recovered through the FAC-like mechanism Staff proposes either. To recover any Commission ordered securitized costs related to Asbury through Staff's method is not logically consistent with the language of the statute or consistent with Commission practice and should be rejected.

Reply to Staff's argument that Allocation of costs based on loss-adjusted energy is easier to administer, less prone to error, and less likely to result in chronic under-collection of funds necessary to service the bonds.

Staff asserts that its method will be easier to administer and may prevent rate-switching.⁷ Prioritizing ease-of-administration over cost-of-service ratemaking would be a drastic departure from Commission practice and diminish any semblance of cost signals that customers can rely upon. Nor does the short-sighted "ease-of-administration" theory of ratemaking for securitization withstand evaluation against current practices. The Commission has approved, and its Staff has overseen, a variety of charges that are true-ed up and recovered on a customer class basis. This is a testament to the Commission staff's technical ability and evidence that it is capable of appropriately allocating and tracking utility costs to be paid by customers.

⁷ Staff Br. p. 77.

With respect to the bond-holder’s preference on revenue allocation and rate design, the Staff’s protestations that its method is “better” fell flat at hearing with the analyst from Goldman Sachs testifying that “the allocation of costs is something that is more of a political discussion than a ratings discussion”⁸ and that “we have worked through a number of different allocation mechanisms. I wouldn’t necessarily say that one is lower risk or not.”⁹ Staff’s “ease-of-administration” argument does not result in better bond ratings, lower cost of issuance, but departs from sound cost-of-service principles, and so, should be rejected.

Conclusion

If the Commission authorizes Liberty to issue securitized utility tariff bonds it should direct Liberty to allocate the amount among the customer classes with a rate for each class based on cost of service principles. Treating these securitized charges as Staff proposes – like an FAC charge – is not what the statute says to do, it’s not based on cost to provide service, and it is a design that is detrimental to industrial customers.

WHEREFORE, MCEG submits its *Reply Brief*

Respectfully,

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⁸ Tr. Vol. 7, p. 537.

⁹ Tr. Vol. 7, p. 538.

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 20th day of July 2022:

/s/ Tim Opitz
