

Exhibit No.:
Issue(s): *Asbury Environmental
Asset/ARO,
ADIT and EADIT,
Income Tax Savings*
Witness: *Kimberly K. Bolin*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Surrebuttal Testimony*
Case Nos.: *EO-2022-0040/
EO-2022-0193*
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MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL & BUSINESS ANALYSIS DIVISION

AUDITING DEPARTMENT

SURREBUTTAL TESTIMONY

OF

KIMBERLY K. BOLIN

**THE EMPIRE DISTRICT ELECTRIC COMPANY,
d/b/a Liberty (Liberty)**

CASE NOS. EO-2022-0040/EO-2022-0193

*Jefferson City, Missouri
May 2022*

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EXECUTIVE SUMMARY1

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Surrebuttal Testimony of
Kimberly K. Bolin

1 A. Yes. Staff included this tracker amount as part of the Asbury Environmental
2 Regulatory Asset, which had a balance of \$1,426,482 (Missouri Jurisdictional) as of
3 June 1, 2021. These costs pertain to removal of asbestos at the Asbury plant and to the
4 CCR impoundment.

5 Q. In the Amended Report and Order in Case No. ER-2019-0374, did the
6 Commission address how the Asbury Environmental costs included in the tracker should be
7 addressed in future rate cases?

8 A. Yes. On pages 149 and 150 of the Amended Report and Order in Case No.
9 ER-2019-0374, the Commission states, “The cost of removal of asbestos at Asbury and costs
10 associated with the operation of certain ash ponds at Asbury and Iatan shall be charged to the
11 accumulated depreciation reserve of each respective generation facility.”

12 Q. Why did Liberty include the environmental regulatory asset instead of offsetting
13 the accumulated reserve?

14 A. The Asbury generation facility was closed before the Amended Report and
15 Order was issued and Liberty had removed the plant and accumulated depreciation reserve from
16 Liberty’s books. Therefore, Liberty recorded these amounts in a regulatory asset.

17 Q. Does Staff recommend these amounts should be included in the Asbury
18 securitized balance?

19 A. Yes. Since these were costs spent by Liberty for environmental activities at the
20 Asbury plant, Staff recommends these amounts be include in the Asbury securitized balance.

21 Q. Does OPC witness Riley recommend that the Asbury Environmental Asset be
22 included in the Asbury securitization balance?

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Kimberly K. Bolin

1 A. No. OPC witness Riley asserts on page 10 of his rebuttal testimony that he is not
2 confident that the approximately \$1.4 million is not already included in the CCR impoundment
3 Asset Retirement Obligation, thus he recommends that the amount not be included.

4 Q. Does Staff recommend that the CCR Impoundment ARO be include in the costs
5 to securitize?

6 A. No. Staff has recommended that the CCR Impoundment ARO not be included
7 because the amounts provided by Liberty for the ARO is estimated and Liberty has not provided
8 any documentation that supports the estimation. In addition, Liberty will have the opportunity
9 to recover the AROs actually incurred in a future ratemaking process. Section 2.(1)(c) and
10 2.(3)(c)k of the securitization statute allow an electrical corporation to pursue applicable costs
11 not included in the securitized balance in a separate proceeding such as a rate case.

12 Q. Please summarize the differences between Liberty, Staff and OPC for the
13 environmental regulatory asset, dismantling and decommission costs.

14 A. The following table shows the differences:

Description	Liberty	Staff	OPC
Asbury Environmental Regulatory Asset	\$1,494,657	\$1,494,657	\$0
Asbury Decommissioning Costs (Phase 2)	\$3,541,054	\$3,541,054	\$3,541,054
Asbury Decommission Costs (Phase 3)	\$7,436,214	\$3,364,002	\$3,364,140
ARO – Asbestos	\$2,807,540	\$0	\$0
ARO- CCR Impoundment	\$18,473,530	\$0	\$18,473,530
Total	\$26,324,217.214	\$8,399,713.00	\$25,378,724.00

15
16 Amounts are reflected as the Missouri Jurisdictional amounts.

1 Q. Does Staff support a reconciliation mechanism requiring Liberty, in a future
2 ratemaking procedure, to account for differences between the Asbury costs that are financed
3 and the Asbury costs actually incurred?

4 A. Yes. At page 6, lines 7 through 20 of my Rebuttal Testimony, I described such
5 a procedure.

6 **ADIT AND EXCESS ADIT**

7 Q. Do you agree with OPC witness John Riley's calculation of EADIT and ADIT
8 for inclusion in the securitized balance?

9 A. No. OPC witness Riley uses the ADIT and EADIT balances that were
10 established in Case No. ER-2019-0374.

11 Q. Why does OPC witness Riley use these amounts?

12 A. He claims, "Once the plant associated with the deferred taxes is retired, the clock
13 stops on the deferred taxes as well."

14 Q. Is this statement correct?

15 A. No. While it is true that the plant was retired, the Asbury generating unit was
16 still included in rates in Case No. ER-2019-0374 and the amounts associated with the
17 Asbury unit were included in the amortization of EADIT and the ADIT balances associated
18 with Asbury were included as an offset to rate base at that time. The rates established in Case
19 No. ER-2019-0374 went into effect September 16, 2020 and are still in effect.¹ The amounts
20 reflected in the securitization balance for ADIT and EADIT offsets should reflect the values
21 from the ER-2019-0374 case offset by the customer collections received for these items since
22 rates went into effect for that case.

¹ The rates established in Case No. ER-2021-0312 will go into effect June 1, 2022.

1 **TAX SAVINGS**

2 Q. Do you wish to respond to Mr. Riley’s testimony that “Bond proceeds aren’t
3 taxable, so [Liberty] is compensated [for Storm Uri costs] yet still enjoys a tax break for
4 the ‘loss.’?”

5 A. Yes. Mr. Riley provided no citation and attached no authority for his
6 assertion that bond proceeds are not taxable. I have reviewed, however, IRS Revenue
7 Procedure 2005-62, which states that while immediate receipt of cash or other consideration
8 in exchange for securitized utility tariff property is not taxable, “[t]he non-bypassable charges
9 are gross income to the utility recognized under the utility’s usual method of accounting.”²

10 Q. Is it possible that Empire may be receiving a tax benefit for the Winter Storm
11 Uri fuel and purchased power costs?

12 A. It may be possible. Staff is still investigating the timing of the tax deductions
13 for Winter Storm Uri costs and the receipt of the income from the securitization charges and
14 how these will be recorded and treated in future ratemaking procedures and for tax purposes.

15 Q. Does this conclude your surrebuttal testimony?

16 A. Yes.

² Schedule KKB-s-1

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part 1, §§61, 451, 1001)

Rev. Proc. 2005-62

SECTION 1. PURPOSE

This revenue procedure sets forth the manner in which a public utility company may treat the issuance of a financing order by a State agency authorizing the recovery of certain specified costs incurred by the utility and the securitization of the rights created by that financing order.

SECTION 2. BACKGROUND

Revenue Procedure 2002-49, 2002-2 C.B. 172, provides a safe-harbor regarding the treatment of legislatively authorized transactions entered into by investor-owned electric utilities to recover transition costs resulting from the restructuring of the electric utility industry and the institution of a competitive marketplace. Some States enacted legislation to allow the recovery of these transition costs through a non-bypassable surcharge to customers within a utility's historic service area.

Utilities continue to operate in wholly or partially regulated environments and maintain exclusive distribution networks for customers in their historic service areas. Rates charged for these operations are determined by local authorities to allow for the recovery of costs and an appropriate return on capital. Some States have enacted legislation that allows utilities to recover certain specified costs through a surcharge based on consumption by customers within the utilities' historic service areas and also authorizes securitization of the surcharge. These statutes are unique to regulated utilities. Accordingly, the tax treatment allowed by this revenue procedure for these transactions is peculiar to this situation. See Revenue Procedure 2005-61, page **[INSERT PAGE NUMBER]**, this Bulletin, which adds certain related issues to areas in which rulings or determination letters will not be issued.

SECTION 3. CHANGES

The scope of Revenue Procedure 2002-49 was limited to transition costs that resulted from the deregulation of the generation operations of electric utility companies.

This revenue procedure expands the scope of Revenue Procedure 2002-49 to all public utility companies, and costs that are recoverable through a securitization mechanism are not limited to transition costs. Additionally, this revenue procedure eliminates certain requirements in section 4.04(3) of Revenue Procedure 2002-49 relating to level payments and now requires that payments be made on a quarterly or semiannual basis.

SECTION 4. SCOPE

This revenue procedure applies to investor owned public utility companies that, pursuant to specified cost recovery legislation, receive an irrevocable financing order from an appropriate State agency that determines the amount of certain specified costs the utility will be permitted to recover through qualifying securitization of an intangible property right created by the special legislation.

SECTION 5. DEFINITIONS

.01 PUBLIC UTILITY

For purposes of this revenue procedure, the terms “public utility” or “utility” refer to any investor owned utility company (electric or non-electric) that is subject to the regulatory authority of a State public utility commission or other appropriate State agency.

.02 SPECIFIED COST RECOVERY LEGISLATION

For purposes of this revenue procedure, specified cost recovery legislation is legislation that—

(1) Is enacted by a State to facilitate the recovery of certain specified costs incurred by a public utility company;

(2) Authorizes the utility to apply for, and authorizes the public utility commission or other appropriate State agency to issue, a financing order determining the amount of specified costs the utility will be allowed to recover;

(3) Provides that pursuant to the financing order, the utility acquires an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are non-bypassable and will be paid by customers within the utility's historic service territory who receive utility goods or services through the utility's transmission and distribution system, even if those customers elect to purchase these goods or services from a third party;

(4) Guarantees that neither the State nor any of its agencies has the authority to rescind or amend the financing order, to revise the amount of specified costs, or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by the specified cost recovery legislation;

(5) Provides procedures assuring that the sale, assignment, or other transfer of the intangible property right from the utility to a financing entity that is wholly owned, directly or indirectly, by the utility will be perfected under State law as an absolute transfer of the utility's right, title, and interest in the property; and

(6) Authorizes the securitization of the intangible property right to recover the fixed amount of specified costs through the issuance of bonds, notes, other evidences of indebtedness, or certificates of participation or beneficial interest that are

issued pursuant to an indenture, contract, or other agreement of a utility or a financing entity that is wholly owned, directly or indirectly, by the utility.

.03 SPECIFIED COSTS

For purposes of this revenue procedure, specified costs are those costs identified by the State legislature as appropriate for recovery through the securitization mechanism of the specified cost recovery legislation.

.04 QUALIFYING SECURITIZATION

For purposes of this revenue procedure, a qualifying securitization is an issuance of any bonds, notes, other evidences of indebtedness, or certificates of participation or beneficial interests that—

(1) Is secured by the intangible property right to collect charges for the recovery of specified costs and such other assets, if any, of the financing entity that is wholly owned, directly or indirectly, by the utility;

(2) Is issued by a financing entity that is wholly owned, directly or indirectly, by the utility that is initially capitalized by the utility in such a way that equity interests in the financing entity are at least 0.5 percent of the aggregate principal amount of the non-equity instruments issued; and

(3) Provides for payments on a quarterly or semiannual basis.

SECTION 6. APPLICATION

.01 The utility will be treated as not recognizing gross income upon—

(1) The receipt of a financing order that creates an intangible property right in the amount of the specified costs that may be recovered through securitization;

(2) The receipt of cash or other valuable consideration in exchange for the transfer of that property right to a financing entity that is wholly owned, directly or indirectly, by the utility; or

(3) The receipt of cash or other valuable consideration in exchange for securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility.

.02 The securitized instruments described in Section 5.04 will be treated as obligations of the utility.

.03 The non-bypassable charges are gross income to the utility recognized under the utility's usual method of accounting.

SECTION 7. EFFECT ON OTHER DOCUMENTS

This document modifies, amplifies, and supersedes Rev. Proc. 2002-49.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE INTERNAL REVENUE BULLETIN.]**

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Thomas M. Preston of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. Preston at (202) 622-3970 (not a toll free call).