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	)))))	<u>Case No. EO-2022-0040</u>
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	))))))	<u>Case No. EO-2022-0193</u>

<u>PUBLIC COUNSEL'S POSITIONS ON THE LISTED ISSUES (HC)</u>

Liberty has incurred costs due to February 2021 Storm Uri. Liberty also retired its Asbury generating plant in December 2019 before Liberty recovered all of its investment in that plant, and Liberty has not recovered costs that it has incurred, or is expected to incur, due that retirement. Although Liberty retired Asbury in December 2019, it continued to recover for Asbury and an onsite 60 days' burn coal fuel supply through Missouri general retail rates set in Case No. ER-2016-0023 until September 16, 2020, and then through general rates set in Case No. ER-2019-0374 until June 1, 2022, when general rates from Case No. ER-2021-0312 took effect. Broadly, in these securitization cases Liberty is seeking to recover from the proceeds of bonds backed by its retail customers both those costs and that investment, and all of the costs of issuing and administering the bonds.The issues Public Counsel's witnesses raise are focused on the amounts that the Commission would allow Liberty to recover from its retail customers absent the bonds (securitization), not the costs of issuing and administering the bonds. With those amounts as limits, then the most decisive impact to Liberty's retail customers of not issuing or issuing the bonds is the difference between the carrying cost rate without securitization and the

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bond rate plus the impacts of the costs of issuing and administering the bonds. It is Public Counsel's positions that Liberty recover no more than $69,535,902 for Winter Storm Uri, and by June 1, 2022, Liberty has recovered more than enough from its Missouri retail customers for Asbury and its 60 days' burn coal fuel supply. Further, the amounts of the Asbury over recovery of transition costs of $24,243,495 could be used to:

- reduce its recoverable February 2021 Storm Uri fuel and purchased power costs of $69,535,902; or
- be placed in a regulatory liability account as an offset to rate base.

Public Counsel's positions on the issues follow:

1) What amounts should the Commission authorize Liberty to finance using securitized utility tariff bonds?

A) What amounts of qualified extraordinary costs should the Commission authorize Liberty to finance for Winter Storm Uri?

B) What amounts of energy transition costs should the Commission authorize Liberty to finance for Asbury?

OPC Position:

A) The Commission should allow Liberty to recover $69,535,902 related to Winter Storm Uri before OPC's position that the excess value of Asbury collected from rate payers be a reduction to Winter Storm Uri.

B) The Commission should not authorize the financing of any transition costs for Asbury. OPC's position is that Liberty has over recovered energy transition costs for Asbury by $24,243,495. This value should be used to offset the qualified extraordinary costs and financing costs, or booked as a regulatory liability offsetting rate base.

OPC Witnesses: Lena Mantle; Geoff Marke; John Riley.

2) Storm Uri

A) What amount of costs, if any, that Liberty is seeking to securitize would Liberty recover through customary ratemaking?

OPC Position: The Commission should disallow costs due to resource planning of $67,031,627, the net revenue amount the Riverton 11 unit should have provided customers of $4,015,143, Liberty's tax deduction due to the Storm Uri losses of $48,753,024, and the

5% of costs above what was included in the FAC of $4,066,502 for a total disallowance of $123,866,296. These disallowances would bring the deferred fuel and purchased power amount from the $193,402,198 requested by Liberty to $69,535,902. Additionally, legal costs would be included. This is also the amount on which carrying costs should be calculated with LUCo's average short-term debt rate for each month from February 2021 through the date the costs are recovered in rates.

OPC Witnesses: Lena Mantle.

B) What is the appropriate method of customary ratemaking absent securitization?

OPC Position: Extraordinary Storm Uri costs did not flow through Liberty's FAC, because of Commission rule 20 CSR 4240-20.090(8)(A)2.A.(XI) which provides: "Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason." Customarily, prudently incurred extraordinary fuel and purchased power costs (non-capital items) would be recovered through rates in a general rate case, where they would be amortized over a period of time and the annual amortization amount included in Liberty's revenue requirement as an expense, with any carrying costs based on debt cost of LUCo that is commensurate with the length of the amortization period.

OPC Witnesses: Lena Mantle.

C) Under RSMo. 393.1700.2(2)(e), what is the "customary method of financing"? What are the costs that would result "from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates"?

OPC Position: See position to **B)** above. The costs for fuel and purchased power are no more than $69,535,902, and the carrying costs should be calculated with LUCo's average short-term debt rate for each month from February 2021 through the date the securitized bonds are issued.

OPC Witnesses: David Murray.

D) Should Liberty's recovery include more than 95% of fuel and purchased power costs?

OPC Position: No. The Commission has determined that the 95%/5% sharing mechanism provides the appropriate incentive for Liberty to properly manage its net energy costs. If the Commission allows Liberty to recover the total amount of fuel and purchased power expenses, then the Commission, in effect, has removed any incentive for Liberty to plan for and to efficiently manage extraordinary events that impact its biggest cost. The Commission allows Liberty to earn a return for assuming the risk of the 95%/5% sharing mechanism. Liberty's customers should not have to pay Liberty's 5%.

Because the 5% is based on the "actual" fuel and purchased power expenditures, the dollar amount reduction varies based on the amount of disallowances. If there are no other disallowances, the Commission should reduce the recovery amount by $10,056,492.

OPC Witnesses: Lena Mantle.

E) Should Liberty's recovery reflect an offset based on certain higher than normal customer revenues received by Liberty during Winter Storm Uri?

OPC Position: Public Counsel does not have any witness on this issue, but does not oppose recognition that, driven by their higher than normal customer usage, Liberty's revenues from its retail customers were higher than normal during Winter Storm Uri.

OPC Witnesses: None.

F) Should Liberty's recovery reflect an offset based on revenues that Liberty's Riverton 11 unit would have generated during Winter Storm Uri, and if so how much?

OPC Position: Yes. According to Liberty's recent IRPs (Case Nos. EO-2019-0049 and EO-2021-0331) Riverton 10 and 11 are "fueled by natural gas as a primary fuel, with the ability to use fuel oil as a backup. In addition to their dual-fuel capability, *** ________ ________ ***[1] Liberty took measures to ** ________ ________ **[2]

OPC recommends the commission find Liberty was imprudent for ** ________ ________ ** OPC's disallowance is $4,015,143 after theoretical total revenues for Riverton unit 11 are adjusted to reflect fuel cost and a Missouri Jurisdictional adjustment.

If the Commission disallows $4,015,143 and Liberty's 5% of the fuel and purchased power costs, the associated 5% is $9,855,734.

OPC Witnesses: John Robinett, surrebuttal testimony.

G) Should Liberty's recovery reflect a disallowance based on Liberty's resource planning?

OPC Position: Yes. Aside from any other adjustments, e.g., 5% reduction, up to $69,535,902 Missouri retail ($74,421,702 total company) for the unreliability of the dispatchability of Liberty's generation resource portfolio (which includes its access to the SPP markets) to supply sufficient energy to match its retail customers' load during Storm Uri.

Liberty chose to change the objective of its resource planning process from providing safe and adequate service at a just and reasonable rate to beating the market resulting in reduced control over its generating resources. If Liberty had resources (both supply- and demand-side) to meet its customers' requirements in February 2021, then it would have generated market revenues to cover the market cost of its load. Therefore the Commission should

[1] Staff Witness Jordan T. Hull Highly confidential rebuttal testimony page 2 lines16-20.
[2] OPC Witness John A. Robinett Surrebuttal page 4 lines 8-9.

find Empire was imprudent in its resource planning process and disallow up to $67,031,627 (Missouri jurisdictional).

If the Commission disallows $67,031,627 and Liberty's 5% of the fuel and purchased power costs, the associated 5% is $6,704,910.

OPC Witnesses: Lena Mantle.

H) Should Liberty's recovery reflect a disallowance for income tax deductions for Winter Storm Uri costs?

OPC Position: Yes. the tax benefit enjoyed by the Company for this "loss" on its 2021 tax returns should be recognize as a reduction to the amount of the Storm Uri costs. The Missouri jurisdictional tax savings due to the storm loss will be $48,753,024.

If the Commission disallows $48,753,024 and Liberty's 5% of the fuel and purchased power costs, the associated 5% is $7,490,543.

OPC Witnesses: John Riley.

I) What are the appropriate carrying costs for Winter Storm Uri?

OPC Position: Storm Uri costs are expenses not capital investment. Therefore LUCo's average short-term debt rate for each month from February 2021 through the date the securitized bonds are issued (Murray Rebuttal, pgs. 7-8).

OPC Witnesses: David Murray.

J) What is the appropriate discount rate to use to calculate the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?

OPC Position: Storm Uri costs are expenses not capital investments. The Company's cost of capital used to determine the fair value of its utility assets (Murray Rebuttal, p. 12. lns 6-22).

OPC Witnesses: David Murray.

3) Asbury

A) How much of the amounts, if any, that Liberty is seeking to securitize for Asbury would Liberty recover through traditional ratemaking?

OPC Position: None for historical investment or expenses. Based on a Black and Veatch study, the total amount that should be recovered through traditional ratemaking as the expenses are incurred in the future is a Company estimated $22,775,527. This amount includes expected Asbury Environmental Regulatory Assets, ARO Asbestos cleanup and the estimated CCR Impoundment

OPC Witnesses: John Riley, John A. Robinett.

B) What is the appropriate method of customary ratemaking absent securitization?

OPC Position: Customarily, prudently stranded net investment (original cost less accumulated depreciation) in plant that is no longer used and useful would be recovered through rates in a general rate case, where the net investment would be amortized over a period of time and the annual amortization amount included in Liberty's revenue requirement as an expense, with any carrying costs based on debt cost commensurate with the length of the amortization period. Customarily, decommissioning and other historical costs associated with prudently stranded net investment in plant that is no longer used and useful are included as expense items (with or without amortization) in the revenue requirement of post retirement rate case(s), then recovered through the rates set in that/those case(s). Customarily, there is no recovery for imprudently stranded net investment in plant.

OPC Witnesses: John Riley.

C) Under RSMo. 393.1700.2(1)(f), what is the "traditional method of financing"? What are 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."

OPC Position: See position to **B)** above. None.

OPC Witnesses: David Murray.

D) What is the net book value of the retired Asbury plant?

OPC Position: Liberty retired Asbury December 12, 2019. The net book value as of January 1, 2020, that should be the starting point of the AAO adjustment is a plant balance of $217,663,073 less the accumulated depreciation of $62,618,776 for a net book value of $155,044,297.

OPC Witnesses: John Riley.

E) Was it reasonable and prudent for Liberty to retire Asbury?

OPC Position: No, because it was not prudent for Liberty management to prematurely retire the plant after investing more money in retrofit and environmental upgrades (that extended its useful life an additional twenty years) than was paid on the plant in total to that date.

In addition, Liberty did not replace Asbury in its generation portfolio with reliably dispatchable electrical energy resources. Neither Liberty's new wind projects nor the heavily wind dependent SPP market that also is susceptible to gas supply delivery issues are such resources.

OPC Witnesses: Geoff Marke, Lena Mantle.

F) What is the value of the Asbury environmental regulatory assets?

OPC Position: The OPC does not dispute Liberty's $1,494,657 amount, but opposes Liberty recovering it twice.

OPC Witnesses: John Riley.

G) What is the value of the Asbury fuel inventories?

OPC Position: The Commission-ordered 60-days' burn inventory in Case No. ER-2019-0374 with a value of $3,947,465.

OPC Witnesses: John Riley.

H) What are the values of the Accumulated Deferred Income Tax (ADIT) and Excess ADIT?

OPC Position: The trued up ADIT balance of $32,275,034 and the $16,934,393 Excess ADIT balance from Case No. ER-2021-0312.

OPC Witnesses: John Riley.

I) What is the value of the Asbury AAO regulatory liability?

OPC Position: Using the Commission-ordered start date of January 1, 2020 through May 31, 2022, the total liability balance is $116,646,983.

OPC Witnesses: John Riley.

J) What are the likely Asbury decommissioning costs?

OPC Position: According to Liberty's Asbury decommissioning consultant Black & Veatch, Liberty's Missouri jurisdictional decommissioning cost net of salvage are an estimated $6,905,194.

OPC Witnesses: John Riley.

K) What are the likely Asbury retirement obligations?

OPC Position: According to Black & Veatch's study, which includes Asbestos removal within its cost estimates, the only standalone estimate for the CCR Impoundment is Liberty's $18,473,530.

OPC Witnesses: John Riley.

L) What is the appropriate amount for Cash Working Capital?

OPC Position: OPC calculations of the Asbury specific CWC component amounts total a negative $15,205,731. The CWC components are payroll, income taxes, fuel, property taxes, and interest.

OPC Witnesses: John Riley.

M) Should Liberty's recovery reflect a disallowance of the remaining cost of the Air Quality Control System (AQCS), and if so how much?

OPC Position: Yes, Dr. Marke recommends a disallowance of the remaining net book value for the Asbury AQCS. Liberty witness Frank C. Graves estimates the net book value of the Asbury AQCS was $122,460,654 as of February 29, 2020.

OPC Witnesses: Geoff Marke.

N) Should Liberty's recovery reflect a disallowance for income tax deductions for Asbury abandonment?

OPC Position: Yes. The income tax deduction of $16,504,355 is a known and measurable benefit that should be considered in the overall amount.

OPC Witnesses: John Riley.

O) Should Liberty's recovery reflect a disallowance for labor at Asbury?

OPC Position: Yes. Liberty retail customers have paid in rates for labor expenses at Asbury. That Liberty may have shifted those employees to other positions for which Liberty's retail customers already were paying in rates does not entitle Liberty to recover those same labor expenses twice, i.e., double dip.

OPC Witnesses: John Riley.

P) Should Liberty's recovery include amounts for abandoned environmental capital projects?

OPC Position: No. Recovery of Construction work in Progress ("CWIP") is not allowed through general rates; therefore, CWIP should not be recoverable through securitization either.

OPC Witnesses: John Riley.

Q) Should Liberty's recovery include basemat coal at Asbury?

OPC Position: No. The basemat coal issue was not settled in the last rate case so its inclusion would be an unreviewed addition. Besides, basemat coal has been provided a Rate of Return every year since the generation plant was built. It has been recovered over and over again for half a century. Even if this is to be considered, basemat coal should be used as a reduction to the overall recovery for Asbury.

OPC Witnesses: John Riley.

R) Should Liberty recovery include non-labor Asbury retirement costs?

OPC Position: Yes, but through the general rate case process, not securitization.

OPC Witnesses: John Riley.

S) What is the amount of depreciation expense?

OPC Position: Liberty collected $26,257,905 for the period January 1, 2020 through May 31, 2022.

OPC Witnesses: John Riley.

T) What are the appropriate carrying costs for Asbury?

OPC Position: The carrying costs can be determined when the Commission decides the balance of the Asbury AAO and the proper carrying charge mechanism. OPC calculated a carrying charge amount of $1,471,054, but expects it to be a fluid number.

OPC Witnesses: John Riley, David Murray.

U) What is the appropriate rate(s) of return that should be used to calculate the amount of recovery?

OPC Position: Because what Missouri retail customers paid in rates were based on different rates of return in Case Nos. ER-2016-0023 and ER-2019-0374, they paid different returns on Liberty's investment in the Asbury plant Liberty that retired when rates from those cases were in effect. The rate of return for Case No. ER-2016-0023 should be 7.484% and the rate of return from Case No. ER-2019-0374 should be 6.77%.

OPC Witnesses: John Riley (rebuttal p. 8).

V) What is the appropriate discount rate to use to calculate the net present value of Asbury costs that would be recovered through traditional ratemaking?

OPC Position: The Company's cost of capital used to determine the fair value of its utility assets (Murray Rebuttal, p. 15. ln. 23 - p. 16, l. 10).

OPC Witnesses: David Murray.

4) What are the estimated upfront and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri and the energy transition costs associated with Asbury?

OPC Position: OPC has not taken a position on the upfront and ongoing financing costs.

OPC Witnesses: None.

5) Would issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds?

OPC Position: OPC has not taken a position on the net present value of benefits to customers.

OPC Witnesses: None.

A) What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri and Asbury through securitization?

OPC Position: The appropriate discount rate to determine the net present value of customer payments through securitization is the rate/coupon of the securitized debt. This rate will be determined at the time of pricing of the securitized bond.

OPC Witnesses: David Murray (Rebuttal, p. 11, lns. 18-26 and p. 15, lns. 1-14.).

6) Regarding any designated staff representatives, who may be advised by a financial advisor or advisors, what provisions or procedures should the Commission order to implement the requirements of Section 393.1700.2(3)(h)?

OPC Position: OPC has not taken a position.

OPC Witnesses: None.

7) What other conditions, if any, are appropriate and not inconsistent with Section 393.1700, RSMo (Supp. 2021), to be included in the financing order?

OPC Position: OPC has not taken a position.

OPC Witnesses: None.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6th day of June 2022.

/s/ Nathan Williams