

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of March, 2023.

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 )  
)

**File 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 )

**File No. EO-2022-0193**

**ORDER DIRECTING THE COMMISSION'S GENERAL COUNSEL TO  
REQUEST LEAVE TO CORRECT A MISTAKE IN THE COMMISSION'S  
AMENDED REPORT AND ORDER**

Issue Date: March 8, 2023

Effective Date: March 8, 2023

On February 9, 2023, the Office of the Public Counsel filed a motion for clarification of the Commission's *Amended Report and Order*. Specifically, Public Counsel notes that the *Amended Report and Order* at page 37 sets the carrying cost rate for Winter Storm Uri costs at Liberty's long-term debt rate of 4.65 percent,<sup>1</sup> and on page 72 it sets the carrying cost rate for Liberty's Asbury generating plant balance at Liberty's long-term debt rate of 4.65 percent.<sup>2</sup> However, on page 122, the *Amended Report and Order* states that

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<sup>1</sup> Amended Report and Order, page 37, Decision, "The Commission believes that Staff's proposal to calculate carrying costs for Winter Storm Uri related costs at Liberty's long-term debt rate of 4.65 percent is most appropriate because the costs to be securitized are not capital costs and there is no reason Liberty should be allowed to earn a profit on those costs."

<sup>2</sup> Amended Report and Order, page 72, Decision, "For the same reason, the Commission finds it just and reasonable to allow Liberty to recover those carrying costs at its 4.65 percent cost of long-term debt rather than at its WACC."

the securitized balance is equal to the balance of securitized utility tariff costs plus carrying costs of 5.16 percent, which is a weighted balance of 4.65 percent for Winter Storm Uri costs and 6.77 percent for Asbury generating plant costs.<sup>3</sup> Public Counsel asks the Commission to clarify the *Amended Report and Order* with regard to carrying costs.

The Commission made specific findings, conclusions and a decision for the issue of carrying costs for Winter Storm Uri, beginning at subheading (I) on page 35 through page 37. The Commission made specific findings, conclusions and a decision for the issue of carrying costs for Asbury, beginning at subheading (T) on page 70 through page 72. The Commission determined the appropriate carrying costs at pages 37 and 72 of the *Amended Report and Order* as 4.65 percent for Winter Storm Uri and Asbury. The references to 5.16 percent and 6.77 percent were in error as to carrying costs and are inconsistent with the carrying cost decisions on pages 37 and 72. The Commission intended to restate its decisions on pages 37 and 72 that carrying costs are 4.65 percent for Winter Storm Uri costs and for Asbury costs in its ordered paragraph 2 on page 122. This correction is not an “exercise of judicial discretion” because the Commission’s error on page 122 and what the Commission intended are easily discernable both within the Commission’s *Amended Report and Order* and from the record.<sup>4</sup>

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<sup>3</sup> *Amended Report and Order*, page 122, Ordered paragraph 2, “The securitized balance as of any given date is equal to the balance of securitized utility tariff costs plus carrying costs of 5.16%, which reflects a weighted balance of 4.65% for Uri costs and 6.77% for Asbury costs through the date the securitized utility tariff bonds are issued.”

<sup>4</sup> *McGuire v. Kenoma, LLC*, 447 S.W.3d 659, at 665 (Mo. banc 2014) states “The party seeking the correction has the burden to prove that the judgment did not conform to the record. *Id.* at 243. The party seeking correction must prove that: (1) the correction does not include any ‘exercise of judicial discretion’ because ‘any such change constitutes a change in the court’s judgment,’ not merely a correction of a clerical error, and (2) the clerical error is ‘discernible from the record.’ *Id.* (citations omitted). The evidence needed to prove the error or omission is discernible from the record is broad, as long as it can ‘in some way show, either from the judge’s minutes, the clerk’s entries, or some paper in the cause, the facts authorizing such [nunc pro tunc] entries.’ *Childers v. State*, 502 S.W.2d 249, 251 (Mo.1973).”

The *Amended Report and Order* in these securitization cases is being appealed before the Missouri Court of Appeals for the Western District, in consolidated Case No. WD85800. Missouri Supreme Court Rule 74.06(a) sets out that when an appeal is pending clerical mistakes in an order may be corrected with leave of the appellate court.

Accordingly, the Commission will direct the general counsel of the Commission to request leave of the Missouri Court of Appeals for the Western District to correct the carrying cost recovery error in the Commission's *Amended Report and Order*.

**THE COMMISSION ORDERS THAT:**

1. The Commission authorizes and directs its general counsel to request leave of the Missouri Court of Appeals for the Western District to correct the carrying cost recovery error in the Commission's *Amended Report and Order* pursuant to Missouri Supreme Court Rule 74.06.

2. This order shall be effective when issued.



**BY THE COMMISSION**

*Nancy Dippell*  
Nancy Dippell  
Secretary

Rupp, Chm., Coleman, Holsman, and  
Kolkmeier CC., concur.

Clark, Senior Regulatory Law Judge

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 8<sup>th</sup> day of March, 2023.**



*Nancy Dippell*  
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**Nancy Dippell**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**March 8, 2023**

**File/Case No. EO-2022-0040 and EO-2022-0193**

**Missouri Public Service  
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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Nancy Dippell  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.