
**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) **File No. EO-2022-0040**
Obtain a Financing Order that Authorizes the)
Issuance of Securitized Utility Tariff Bonds for)
Qualified Extraordinary Costs)

In the Matter the Petition of The Empire)
District Electric Company d/b/a Liberty to) **File No. EO-2020-0193**
Obtain a Financing Order that Authorizes the)
Issuance of Securitized Utility Tariff Bonds for)
Energy Transition Costs Related to the)
Asbury Plant)

INITIAL BRIEF OF STAFF

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July 13, 2022

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SUMMARY

Missouri enacted its securitization statute effective August 2021.¹ The statute authorizes the Commission to approve the use of securitized utility tariff bonds to pay for certain costs.² Securitization can save ratepayers money compared to traditional rate recovery, but with the significant tradeoff that securitized utility tariff bonds create an irrevocable, binding, and nonbypassable charge on all of the electrical corporation’s current and existing retail customers.³

The securitized utility tariff charges associated with securitized utility tariff bonds must be just and reasonable and in the public interest.⁴ In deciding what rates are just and reasonable, Missouri Courts have instructed that the purpose of the Public Service Commission Act is to substitute regulated monopoly for destructive competition.⁵ The

¹ § 393.1700, RSMo (Cum. Supp. 2021); Mo. LEGIS. H.B. 734 (2021), 2021 Mo. Legis. Serv. H.B. 734 (VERNON’S) (West’s No. 25).

² § 393.1700.1(15), RSMo (Cum. Supp. 2021).

³ § 393.1700.2(3)(c)b, 393.1700.11, RSMo (Cum. Supp. 2021).

⁴ § 393.1700..2(3)(c)b, RSMo (Cum. Supp. 2021).

⁵ *State ex rel. Elec. Co. of Mo. v. Atkinson*, 275 Mo. 325, 204 S.W. 897, 899 (Mo. banc 1918).

primary purpose is protection of the public interest; protection given to the utility is incidental.⁶

Because all of the burdens of securitization (irrevocable, binding, and nonbypassable payment obligations) fall on ratepayers, all of the benefits of securitization should also go to ratepayers in order for securitization to meet the requirement that securitization be just and reasonable and in the public interest. Ratepayer savings from securitization should be sufficient to justify the payment obligations imposed by securitization. Moreover, the cost savings associated with securitization should all flow to customers, and a utility cannot be allowed to use securitization as a way to collect more than it would otherwise be allowed to recover under traditional ratemaking. The electrical corporation already experiences significant benefits from securitization in the form of an immediate recovery of costs that would otherwise be recovered over a longer period of time, with no connected repayment obligation.

Applying the above principles to this case, Liberty should be allowed to securitize approximately \$266 million in securitized utility tariff costs and upfront financing costs.⁷ This includes approximately \$193.9 million in qualified extraordinary costs associated with Winter Storm Uri,⁸ approximately \$66 million in energy transition costs associated with the early retirement of the Asbury coal plant,⁹ and approximately \$6.2 million in estimated upfront financing costs.¹⁰

⁶ *State ex rel. Elec. Co. of Mo. v. Atkinson*, 275 Mo. 325, 204 S.W. 897, 899 (Mo. banc 1918).

⁷ Issue I.

⁸ Issue I.A. and II.

⁹ Issue I.B. and III.

¹⁰ Issue IV.

First, the Commission should determine the just and reasonable amounts that Liberty would be allowed to recover in the absence of securitization. For Winter Storm Uri, the just and reasonable amount to recover is \$193,868,094, carrying costs included.¹¹ For Asbury, the just and reasonable amount to recover is \$66,107,823, carrying costs included.¹² To justify securitization, the net present value of these amounts must be higher than the amounts determined in the second step below.

For Uri amounts to be just and reasonable, recovery should reflect the adjustments identified in Issue II below, including in particular:

- The same 95/5 sharing of fuel and purchased power costs that Liberty would otherwise be required to adopt under its fuel adjustment clause (FAC);¹³
- A recognition of approximately \$2,760,686 in extraordinary revenues that Liberty would not have otherwise earned in the absence of the extreme cold weather during Winter Storm Uri;¹⁴ and
- A prudence disallowance of approximately \$** [REDACTED] ** in sales revenues that Liberty should have received from its Riverton 11 unit had Liberty reasonably tuned Riverton 11 to winter temperatures instead of 70 degrees.¹⁵

For Asbury amounts to be just and reasonable, recovery should reflect the adjustments in Issue III below, including in particular:

¹¹ Issue II.A. This amount includes appropriate carrying costs from the date costs were incurred through the date the bonds are issued. Issue II.I.

¹² Issue III.A. This amount includes appropriate carrying costs from the date Asbury was no longer reflected in general rates (June 2022) through the date bonds are issued. Issue III.T.

¹³ Issue II.D.

¹⁴ Issue II.E.

¹⁵ Issue II.F.

- Staff’s calculation of the ADIT and Excess ADIT customer credits, and not Liberty’s unlawful and unreasonable calculation of those amounts;¹⁶
- Staff’s valuation of the Asbury regulatory liability to reflect a refund of the amounts “earned on” Asbury while it was not used and useful;¹⁷
- Decommissioning costs of \$** [REDACTED] ** (total company) to reflect likely salvage value in phase 3 of Liberty’s decommissioning process;¹⁸ and
- Depreciation expense of \$24,349,929 for accumulated depreciation from January 2020 through April 2022 to recognize a retirement date in December 2019, when Asbury stopped producing energy and no longer had coal or coal contracts.¹⁹

Second, the Commission should decide what the cost of securitization would be by adding the likely financing costs associated with amounts securitized as determined in the first step above. Assuming a consolidated financing order and bond issuance, the upfront financing costs are estimated at \$6.2 million, with ongoing financing costs of approximately \$35,000 per month; however, the actual amounts are not currently known and would be reviewed by the designated Commission Staff representative and financial advisor.²⁰

Third, the Commission should decide whether securitization provides quantifiable net present value benefits to ratepayers. The Commission should compare the amounts from the first step using carrying costs at an appropriate rate for the electrical corporation,

¹⁶ Issue III.H.

¹⁷ Issue III.I.

¹⁸ Issue III.J.

¹⁹ Issue III.S.

²⁰ Issue IV.

to the amounts from the first step and second step added together, using the expected interest rate associated with securitized utility tariff bonds. The two compared amounts should be reduced to a net present value using an appropriate value discount rate and examining a sufficiently diverse set of likely scenarios. Generally, securitization will provide quantifiable net present value benefits where the lower interest rates associated with securitized utility tariff bonds provide sufficient savings to offset the higher financing costs associated with securitization.²¹

Fourth, the Commission must decide whether the imposition of securitized utility tariff charges is just and reasonable and in the public interest. As always, the Commission has discretion in deciding what is just and reasonable and in the public interest. Its analysis should include, but not necessarily be limited to, deciding whether the net present value benefits associated with securitization are sufficiently large to justify the irrevocable, binding, and nonbypassable charges imposed on all current and future ratepayers. It may also include whatever conditions the Commission decides are just and reasonable and not inconsistent with the securitization statute.²²

Fifth, in all events, the Commission should establish protections to ensure the financing can be expected to provide net present value savings and that it effectuates the financing consistent with the lowest securitized utility tariff charge requirements of the Act. The Commission should consider designating a least one member of Staff, who may be advised by a financial advisor, to provide input and collaborate in all aspects of the bond

²¹ Issue V.

²² Issues I, II, and III.

issuance process, together with other conditions to protect ratepayers' interests during the bond issuance process.²³ In particular, the Commission should order conditions:

- Requiring both Liberty and its underwriter to separately certify to the Commission that the proposed securitization meets the requirement that securitized utility tariff bonds as structured provide quantifiable net present value benefits to ratepayers compared to traditional recovery, and to identify in that certification all calculations and assumptions used;
- Requiring the designated Staff member(s) and financial advisor(s) to provide regular written status reports to the Commission on the status of the bond issuance, and to include in those status reports any unresolved concerns of the representative(s) and advisor(s); and
- Removing any doubt that the designated Staff member(s) and financial advisor(s) may be represented by counsel.

Finally, the Commission must allocate the securitized utility tariff charges among the electrical corporation's retail ratepayers. In some cases, this may involve exclusion of certain ratepayers receiving service under special contracts, but Liberty in this case does not have any such ratepayers.²⁴

CONSOLIDATION

Generally, the Commission should issue a consolidated order authorizing Liberty to issue consolidated securitized utility tariff bonds.²⁵ In considering whether to authorize

²³ Issues VI and VII.

²⁴ Issue VIII.

²⁵ Tr. 587:8-13 ("All else being equal a single financing order would provide a benefit.").

a single bond offering for Winter Storm Uri and Asbury costs, the Commission should consider multiple factors, including capital market implications, financing costs, the requirement that securitization provide net present value benefits, and logistical requirements post-issuance.²⁶ A larger consolidated offering may generate increased investor interest and secondary liquidity.²⁷ A consolidated offering would also avoid duplicative fixed up-front financing costs, delivering more net present value benefits to ratepayers compared to separate bond offerings.²⁸ A consolidated offering could also offer greater net present value savings to customers compared to two separate offerings.²⁹ Finally, even in the event of a limited appeal, there may be net present value benefits associated with a consolidated offering that are projected to be sufficient to overcome interest rate volatility risk associated with an appeal.³⁰

ARGUMENT³¹

Because securitization entails irrevocable, binding, and nonbypassable charges on all current and future ratepayers, securitization should never be a foregone conclusion. Instead, the securitization statute establishes an objective process under which the Commission must decide whether securitization would result in quantifiable net present value benefits to ratepayers, is designed to provide the lowest securitized utility tariff

²⁶ Exhibit 107, Davis Rebuttal at 9:22-25.

²⁷ Exhibit 107, Davis Rebuttal at 9:24-25; 10:7-10.

²⁸ Exhibit 107, Davis Rebuttal at 10:7-10.

²⁹ Exhibit 118 (e.g., Scenario 3 showing NPV benefits of \$22 million from Uri standalone; \$25 million from consolidated).

³⁰ Tr. 587:14-588:5; Exhibit 107, Davis Rebuttal at 10:11-17.

³¹ Thanks to Staff Counsel Legal Intern Ethan Dwyer (Mizzou Law, JD expected 2024), who provided research assistance used in this brief.

charges consistent with market conditions, and is otherwise just and reasonable and in the public interest.

First, the Commission must establish what customary or traditional rate recovery would be for the given costs.³² Securitization entails additional financing costs.³³ The Commission must then compare the just and reasonable costs that would be recovered under traditional ratemaking with the just and reasonable costs, plus financing costs, that would be recovered under securitization.³⁴ If the net present value of the amounts to be securitized, even after financing costs are added, provide quantifiable net present value benefits to customers, then the Commission may authorize the utility to pursue securitization of those costs.³⁵

In authorizing securitization, the Commission can authorize certain ratepayer protections, including but not limited to designating a member of its Staff, who may be advised by a financial advisor, to provide input and collaborate in all respects with the bond issuance process.³⁶ The Commission must also decide on a just and reasonable allocation of costs among all of a utility's current and future ratepayers.³⁷

I. What amounts should the Commission authorize Liberty to finance using securitized utility tariff bonds?

³² § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021) (requiring comparison to traditional financing); *see also* § 393.1700.2(2)(e), RSMo (Cum. Supp. 2021); *and* § 393.1700.2(1)(f), RSMo (Cum. Supp. 2021).

³³ § 393.1700.1(8), RSMo (Cum. Supp. 2021).

³⁴ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021) (requiring comparison to traditional financing); *see also* § 393.1700.2(2)(e), RSMo (Cum. Supp. 2021); *and* § 393.1700.2(1)(f), RSMo (Cum. Supp. 2021).

³⁵ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021) (requiring comparison to traditional financing); *see also* § 393.1700.2(2)(e), RSMo (Cum. Supp. 2021); *and* § 393.1700.2(1)(f), RSMo (Cum. Supp. 2021).

³⁶ § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021).

³⁷ § 393.1700.2(3)(c)h, RSMo (Cum. Supp. 2021).

If authorized by the Commission, an electrical corporation can issue securitized utility tariff bonds to recover or finance commission-approved securitized utility tariff costs and financing costs.³⁸ Securitized utility tariff costs include energy transition costs and qualified extraordinary costs.³⁹ Financing costs include a specific list of items associated with the cost of issuing securitized utility tariff bonds, including costs associated with the Commission’s performance of its responsibilities under the securitization statute, such as “costs to retain counsel, one or more financial advisors, or other consultants as deemed appropriate by the commission and paid pursuant to this section.”⁴⁰

Before the Commission authorizes an electrical corporation to issue securitized utility tariff bonds, the Commission must find that the amount of securitized utility tariff costs to be financed is just and reasonable and in the public interest.⁴¹

The Commission should authorize Liberty to finance approximately \$266,210,148. This amount consists of \$193,868,094 in qualified extraordinary costs that should be securitized as identified in Issue II below for Winter Storm Uri. It also includes \$66,107,823 in energy transition costs that should be securitized as identified in Issue III below for Asbury retirement costs. Finally, it includes estimated upfront financing costs of approximately \$6,234,231 million as identified in Issue IV below. As identified in Issue V below, securitization (particularly a consolidated securitization for Uri and Asbury) would provide quantifiable net present value benefits to customers, so long as the ratepayer

³⁸ § 393.1700.1(15), RSMo (Cum. Supp. 2021).

³⁹ § 393.1700.1(17), RSMo (Cum. Supp. 2021).

⁴⁰ § 393.1700.1(8)(f), RSMo (Cum. Supp. 2021).

⁴¹ § 393.1700.2(3)(c)a-b, RSMo (Cum. Supp. 2021).

protections and conditions identified at Issues VI and VII below are included in the Commission's financing order.

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

The securitization statute authorizes recovery of qualified extraordinary costs, defined as “costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.”⁴² In addition, the Commission must find both the securitized utility tariff costs and the resulting securitized utility tariff charges are just and reasonable and in the public interest.⁴³

There is generally no dispute that Winter Storm Uri costs were incurred before, on or after August 28, 2021, that they were extraordinary, that they would cause extreme customer rate impacts if reflected in retail customer rates recovered through a fuel adjustment clause mechanism, and that it was an anomalous weather event.

The disputed amounts related to Winter Storm Uri are identified at Issue II below. As discussed at Issue II below, the Commission should authorize Liberty to securitize approximately \$193,868,094 in qualified extraordinary costs (including carrying costs).⁴⁴

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

⁴² § 393.1700.1(13), RSMo (Cum. Supp. 2021).

⁴³ § 393.1700.2(3)(c)a-b, RSMo (Cum. Supp. 2021).

⁴⁴ Exhibit 112 pdf page 7, line 1 (reflecting long-term debt carrying costs).

The securitization statute authorizes recovery of energy transition costs, defined as

Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.”⁴⁵

In addition, the Commission must find that both the securitized utility tariff costs and the resulting securitized utility tariff charges are just and reasonable and in the public interest.⁴⁶

There is generally no dispute that Asbury was a generating facility that was retired before August 28, 2021, that retirement costs were incurred before, on, or after August

⁴⁵ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021). Energy transition costs also include pretax costs “previously incurred previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021.” § 393.1700.1(7)(b), RSMo (Cum. Supp. 2021).

⁴⁶ § 393.1700.2(3)(c)a-b, RSMo (Cum. Supp. 2021).

28, 2021, and that Liberty had undepreciated investment in Asbury and facilities ancillary thereto.

The disputed amounts related to Asbury are identified at Issue III below. As discussed in Issue III below, the Commission should authorize Liberty to securitize approximately \$66,107,823 in energy transition costs (including carrying costs).⁴⁷

II. Storm Uri

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

To securitize qualified extraordinary costs associated with Winter Storm Uri, the Commission must find that “recovery of such costs is just and reasonable and in the public interest.”⁴⁸ The Commission must also specify the period over which the costs may be recovered.⁴⁹ The Commission must additionally find that the proposed issuance of securitized utility tariff bonds and imposition and collection of securitized utility tariff charges are just and reasonable and in the public interest.⁵⁰

Here, for the reasons discussed below, the appropriate amount of qualified extraordinary costs that Liberty would recover under traditional ratemaking for Winter Storm Uri is \$193,868,094, carrying costs included.⁵¹

B. What is the appropriate method of customary ratemaking absent securitization?⁵²

⁴⁷Exhibit 113 at pdf page 2 line 1; Exhibit 100, McMellen Rebuttal at 7, Table 2.

⁴⁸ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

⁴⁹ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

⁵⁰ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

⁵¹ Exhibit 112, pdf page 7 line 1.

⁵² Issue II.B is the same as Issue II.C below.

Liberty must prove “the costs that would result from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates,”⁵³ and “the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds.”⁵⁴ “At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the...electrical corporation....”⁵⁵

Absent securitization, Liberty is generally required to include all fuel and purchased power costs in its fuel adjustment clause.⁵⁶ The only exception to this requirement falls under Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), which requires a utility to file proposed tariff sheets periodically updating its fuel adjustment rates, with tariff sheets accompanied by, among other information, “Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to rejection due to litigation or for any other reason.” The Commission has construed this provision as giving the Commission “the ability to allow for the exclusion of extraordinary costs from passing through the FAC if there is a good reason to do so.”⁵⁷

Once excluded from a utility’s fuel adjustment clause, the recovery of extraordinary fuel and purchased power costs could be sought using an accounting authority order (AAO).⁵⁸ An accounting authority order is an accounting mechanism that permits deferral

⁵³ § 393.1700.2(2)(e), RSMo (Cum. Supp. 2021).

⁵⁴ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

⁵⁵ § 393.150, RSMo (2016).

⁵⁶ Exhibit 104, Mastrogiannis Rebuttal, at 8:2-4.

⁵⁷ Exhibit 206, Murray Rebuttal at 5:4-13 (quoting from *Report and Order* in ER-2022-0025).

⁵⁸ Exhibit 102, Bolin Rebuttal at 3:8-4:11.

of costs from one period to another, and, during a subsequent rate case, the Commission may determine what portion, if any, of the deferred amounts to recover in rates.⁵⁹ Here, Liberty requested an accounting authority order for Winter Storm Uri extraordinary costs, but the Commission has not yet issued an order in that case.⁶⁰

In the absence of securitization, Staff would recommend recovery of Winter Storm Uri costs (subject to certain adjustments), with amortization over at least ten years, due to the magnitude of the costs.⁶¹ Staff would recommend carrying costs for a period of ten or more years to be at the applicable long-term debt rate.⁶²

In summary, in the absence of securitization, just and reasonable recovery of the qualified extraordinary costs associated with Winter Storm Uri would be through the fuel adjustment clause. Any amount not recovered through the fuel adjustment clause for good cause shown should be deferred via an accounting authority order and recovered, subject to adjustments, in a subsequent rate case with an amortization period of at least ten years and carrying costs at the applicable long-term debt rate.

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”?⁶³

Staff’s position on this issue is identical to its position for Issue II.B above.

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

⁵⁹ Exhibit 102, Bolin Rebuttal at 4:1-6.

⁶⁰ Exhibit 102, Bolin Rebuttal at 3:8-22.

⁶¹ Exhibit 102, Bolin Rebuttal at 4:12-19.

⁶² Exhibit 102, Bolin Rebuttal at 4:16-19.

⁶³ Issue II.C is the same as Issue II.B above.

Liberty should not be authorized to recover more than 95% of the fuel and purchased power costs it incurred in connection with Winter Storm Uri.

Absent a fuel adjustment clause, a utility bears all of the risks and benefits of changing fuel costs, and to increase rates a utility must file a full rate case to consider all relevant factors and not just fuel costs in isolation.⁶⁴ Otherwise, a utility may automatically adjust its rates to reflect changing fuel and purchased power costs only if it has a Commission-approved fuel adjustment clause, authorized by Section 386.266.1, RSMo (Cum. Supp. 2021). A fuel adjustment clause can be changed only in a general rate case.⁶⁵

In implementing Liberty's fuel adjustment clause, the Commission has ordered Liberty to retain 5% of the risk and benefit of any shift in fuel and purchased power costs.⁶⁶ This 5% sharing provision has not been changed in any of Liberty's rate cases since 2008, when its fuel adjustment clause was first approved.⁶⁷ The Commission has explained the purpose of the 5% risk-sharing provision:

The Commission has found on several occasions, and finds here that the 95/5 sharing ratio provides Empire [d/b/a Liberty] sufficient incentive to operate at optimal efficiency and still provides an opportunity for Empire to earn a fair return on its investment.⁶⁸

⁶⁴ *State ex rel. Utility Consumers' Council of Mo., Inc. v. Pub Serv. Comm'n*, 585 S.W.2d 41, 56-57 (Mo. banc 1979) (rejecting proposed fuel adjustment clause in absence of statutory authority) (abrogated by Section 366.266, RSMo, as recognized by *State ex rel. Union Elec. V. Pub. Serv. Comm'n*, 399 S.W.2d 467 (Mo. App. W.D. 2013)).

⁶⁵ § 386.266, RSMo (Cum. Supp. 2021).

⁶⁶ Exhibit 104, Mastrogiannis Rebuttal at 6:9-14.

⁶⁷ *Id.*

⁶⁸ Exhibit 104, Mastrogiannis Rebuttal at 7:9-12 (quoting Amended Report and Order in rate case ER-2019-0374).

Even regardless of Liberty's fuel adjustment clause, some extraordinary events, such as Winter Storm Uri, should be shared between ratepayers and shareholders.⁶⁹ Utilities should not be completely insulated from all risk of unanticipated events such as natural disasters.⁷⁰ The Commission has previously decided that recovery for floods should be shared between ratepayers and shareholders.⁷¹ Here, the risk of Winter Storm Uri should be shared between ratepayers and shareholders, using the 5% sharing mechanism from Liberty's fuel adjustment clause as the appropriate dividing line.⁷²

Allowing Liberty to recover 95% of its fuel and purchased power costs is also consistent with the plain text and structure of the securitization statute, which makes clear that a utility may use securitization to recover only what the utility would have recovered under traditional ratemaking. The only costs that qualify for recovery are those that "would result from the application of the customary method of financing and reflecting the qualified extraordinary costs on retail customer rates."⁷³ In addition, a utility must prove that securitization provides "quantifiable net present value benefits" compared to customary ratemaking recovery, on the basis that all qualified extraordinary costs are reflected in retail rates.⁷⁴ Finally, securitized utility tariff charges must be "just and reasonable and in the public interest," which is the same standard used in any other

⁶⁹ Exhibit 102, Bolin Rebuttal at 4:22-5:5.

⁷⁰ Exhibit 102, Bolin Rebuttal at 5:4-8.

⁷¹ Exhibit 102, Bolin Rebuttal at 5:11-22

⁷² Exhibit 102, Bolin rebuttal at 5:11-22.

⁷³ § 393.1700.2(2)(e), 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

⁷⁴ § 393.1700.2(2)(e) ("...and reflecting the qualified extraordinary costs in retail customer rates."), 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021) ("...as compared to recovery of the component of securitized utility tariff costs that would have been incurred....").

ratemaking context.⁷⁵ Construing the statute to allow automatic recovery of 100% of fuel costs simply because they meet the definition of “qualified extraordinary costs” would unlawfully render the provisions of Section 393.1700.2(2)(e), 393.1700.2(3)(c)b, quoted above as mere surplusage.⁷⁶

Allowing Liberty to recover 95% of its fuel and purchased power costs is also consistent with the purpose of the statute, because it ensures that all of the benefits of securitization go to ratepayers as much as all of the burdens of securitization go to ratepayers. Securitization places on ratepayers the burden of irrevocable, binding, and nonbypassable obligations.⁷⁷ Liberty is not obligated to repay the bonds.⁷⁸ For securitized utility tariff charges to be just and reasonable, the benefits of securitization should therefore also go to ratepayers.

Moreover, Liberty’s proposal to shift all of the cost of Winter Storm Uri to its ratepayers undermines the purpose of the securitization statute to avoid extreme rate impacts.⁷⁹ As indicated above, the Commission’s rules allow a utility to exclude “extraordinary costs from passing through the FAC if there is a good reason to do so.”⁸⁰ If pulling extraordinary costs out of an FAC and passing them through securitization

⁷⁵ *Compare*, § 393.1700.2(3)(c)a (requiring finding that recovery of securitized utility tariff costs is “just and reasonable and in the public interest”), RSMo (Cum. Supp. 2021), *and* § 393.150.2, RSMo (2016) (“At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the...electrical corporation....”).

⁷⁶ *In re KCP&L Greater Mo. Operations Co.*, 408 S.W.3d 175, 186 (Mo. App. W.D. 2013) (statutes must be construed knowing that the legislature “intended that each word, clause, sentence, and provision of a statute have effect and should be given meaning.”).

⁷⁷ § 393.1700.2(3)(c)d, RSMo (Cum. Supp. 2021).

⁷⁸ *Id.*

⁷⁹ § 393.1700.1(13), RSMo (Cum. Supp. 2021) (defining qualified extraordinary costs as costs that “would cause extreme customer rate impacts if reflected in retail rates recovered through customary ratemaking.”).

⁸⁰ Exhibit 206, Murray Rebuttal at 5:4-13 (quoting from *Report and Order* in ER-2022-0025).

means that ratepayers would pay 100% of all extraordinary costs, ratepayers may oppose removing costs—no matter how extraordinary—from the FAC, to avoid shouldering the additional 5% of the costs.⁸¹ The Commission should follow the intent of the securitization statute to avoid extreme rate impacts, and it should not create perverse incentives to seek out one extreme rate impact at the expense of another.

Finally, Liberty's claim in this case is not consistent with its claims in other cases. In a separate case, Liberty asks the Commission for an accounting authority order (AAO), specifically stating that Liberty would have some reasonable assurance of future recovery of the amounts including in the AAO on grounds that the fuel adjustment clause would otherwise entitle them to that recovery.⁸² Its position here, that the provisions of the fuel adjustment clause no longer apply, is plainly not consistent with its position in the separate AAO case.⁸³

For all of the reasons above, the Commission should require Liberty to follow the 95/5 sharing mechanism and allow Liberty to recover 95% of its extraordinary fuel and purchased power costs associated with Winter Storm Uri through securitization.

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

Under the securitization statute, the Commission must identify amounts that are just and reasonable and in the public interest for Liberty to recover.⁸⁴ In setting just and

⁸¹ Tr. at 455:15-457:24.

⁸² Tr. 423:21-424:9.

⁸³ Id.

⁸⁴ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

reasonable rates, the Commission must consider “all relevant factors.”⁸⁵ The securitization statute requires the Commission to consider the “retail customer rate impact that would result from customary ratemaking treatment” of qualified extraordinary costs.⁸⁶ The securitization statute then requires the Commission to compare the cost of recovery through securitization and the cost of recovery that would have been incurred absent the issuance of securitized utility tariff bonds.⁸⁷ Only upon a finding that the issuance of securitized utility tariff bonds and collection of securitized utility tariff charges “are expected to provide quantifiable net present value benefits to customers” compared to customary ratemaking treatment may the Commission authorize a utility to issue securitized utility tariff bonds.⁸⁸

Here, Liberty’s higher than normal revenues is a relevant factor to consider. During Winter Storm Uri, Liberty earned approximately \$2,760,686 in additional revenues than it would have under normal weather conditions.⁸⁹ This reflects additional revenues that are not subject to the sharing mechanism in Liberty’s fuel adjustment clause.⁹⁰

For the reasons stated above, the Commission should adjust the amounts Liberty is authorized to securitize for Winter Storm Uri by \$2,760,686, to account for revenues that Liberty would not have otherwise earned in the absence of the extreme cold weather experienced in Winter Storm Uri.

⁸⁵ *State ex rel. Utility Consumers’ Council of Mo., Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 49 (Mo. banc 1979) (superseded by statute on other grounds by Section 386.266, RSMo, as recognized in *State ex rel. Union Elec. Co. v. Pub. Serv. Comm’n*, 399 S.W.3d 467, 481 (Mo. App. W.D. 2013)).

⁸⁶ § 393.1700.2(2)(a), RSMo (Cum. Supp. 2021).

⁸⁷ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

⁸⁸ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

⁸⁹ Exhibit 108, Lange Rebuttal at 33:7-34:2.

⁹⁰ Exhibit 108, Lange Rebuttal at 33:15-16.

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?

Only “prudently incurred costs” qualify for recovery under the securitization statute.⁹¹ “[I]n order to disallow a utility’s recovery of costs from its ratepayers, a regulatory agency must find both that (1) the utility acted imprudently [and] (2) such imprudence resulted in harm to the utility’s ratepayers.”⁹² In making this determination, “it is helpful for the Commission to have evidence as to the *amount that the expenditures would have been if the local distribution company had acted in a prudent manner.*”⁹³

Missouri Courts have noted the Commission’s prudence standard looks to what a reasonable utility would have done under the circumstances at the time:

[T]he company’s conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than reliance on hindsight. In effect, [the Commission’s] responsibility is to determine how reasonable people would have performed the tasks that confronted the company.⁹⁴

Historically, the Commission has relied on a presumption of prudence, where a utility’s costs are presumed to be prudently incurred unless another party shows “inefficiency or improvidence that creates serious doubt as to the prudence of an

⁹¹ § 393.1700.1(13), RSMo (Cum. Supp. 2021).

⁹² State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm’n, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

⁹³ State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm’n, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997) (quoting Commission Report and Order) (emphasis original).

⁹⁴ State ex rel. Assoc. Natural Gas Co. v. Pub. Serv. Comm’n, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

expenditure.”⁹⁵ However, this presumption does not change the burden of proof at all.⁹⁶ Moreover, the presumption of prudence is not a rule of law created by statute or rule; rather, it is an evidentiary presumption adopted by the Commission, and the Commission is not bound by its own precedent.⁹⁷

Liberty’s ratepayers pay for Riverton 11’s capability as a dual fuel unit.⁹⁸ But Liberty was not able to use Riverton 11 as a dual fuel unit during Winter Storm Uri because it did not tune Riverton 11 to operate at temperatures under 70 degrees.⁹⁹ Using the volume of fuel oil on site before Winter Storm Uri, and looking at the Southwest Power Pool (SPP) day ahead locational market prices for the Riverton node, Staff approximates that Riverton 11 could have earned \$** [REDACTED] ** in sales revenues for its customers from the SPP integrated resource market.¹⁰⁰ Using the 95/5 sharing mechanism from Liberty’s fuel adjustment clause, Staff therefore recommends a disallowance of \$** [REDACTED] ** “based on Liberty’s imprudence by not tuning Riverton 11 for winter temperatures.”¹⁰¹

Liberty’s excuses for failing to tune Riverton 11 to winter temperatures are contradictory and inconsistent. Liberty first claims that it could not tune Riverton under its air permit, but Liberty’s air permit allows testing for *** [REDACTED] *** testing

⁹⁵ *Office of Pub. Counsel v. Pub. Serv. Comm’n*, 409 S.W.2d 371, 376 (Mo. banc 2013) (internal quotations omitted).

⁹⁶ *Office of Pub. Counsel v. Pub. Serv. Comm’n*, 409 S.W.2d 371, 379 (Mo. banc 2013).

⁹⁷ *Office of Pub. Counsel v. Pub. Serv. Comm’n*, 409 S.W.2d 371, 376 (Mo. banc 2013); *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 120 S.W.3d 732, 736 (Mo. banc 2003).

⁹⁸ Exhibit 105, Hull Rebuttal at 66:18-7::14-17.

⁹⁹ Exhibit 105, Hull Rebuttal at 7:20-8:2.

¹⁰⁰ Exhibit 105C, Hull Rebuttal at 7:6-17.

¹⁰¹ Exhibit 105C, Hull Rebuttal at 8:8-20.

requirements,¹⁰² and Riverton 11 is a *** [REDACTED] ***.¹⁰³ Liberty also claims that

*** [REDACTED]

[REDACTED] .¹⁰⁵ *** Liberty further claims that *** [REDACTED]

[REDACTED] .¹⁰⁷ [REDACTED]

[REDACTED]¹⁰⁸ [REDACTED]

[REDACTED] .¹⁰⁹ ***

Finally, Liberty insinuates that tuning to winter temperatures takes too much planning,¹¹⁰ but admits that tuning is done “routinely as given ambient conditions or as ambient conditions change,”¹¹¹ and even mentions preparing for summer temperatures by tuning for summer as an example of such routine tuning.¹¹² If Liberty can tune Riverton 11 routinely for summer, it can tune Riverton 11 routinely for winter. And Liberty should have

¹⁰² Exhibit 105HC, Hull Rebuttal at 3:11-22 and 5:1-25.

¹⁰³ Exhibit 105HC, Hull Rebuttal at 5:1-25 (quoting Liberty response to Staff Data Request 64).

¹⁰⁴ Exhibit 10C, Mushimba Surrebuttal at 9:7-9.

¹⁰⁵ Tr. 314:13-23; 314:22-315:6.

¹⁰⁶ Tr. 15:17-24.

¹⁰⁷ Tr. 166:5-10.

¹⁰⁸ Tr. 3:11-13.

¹⁰⁹ Exhibit 105 HC, Hull Rebuttal at 6:21-22; Tr. 314:7-314:16.

¹¹⁰ Tr. 202:22-203:6

¹¹¹ Tr. 190:3-6.

¹¹² Tr. 203:3-6.

tuned Riverton 11 routinely for winter, as Riverton 11 is a peaking unit that is not likely to require use at 70 degrees.¹¹³

Liberty's own expert witness notes that *** [REDACTED]

114 [REDACTED] . 115***

For all of the above reasons, the Commission should order the disallowance proposed by Staff for Liberty's failure to reasonable tune Riverton 11 for winter temperatures.

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

Except for the Riverton 11 disallowance proposed at Issue II.F above, the Commission should not order a disallowance based on Liberty's resource planning. "[I]n order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that (1) the utility acted imprudently [and] (2) such imprudence resulted in harm to the utility's ratepayers."¹¹⁶ In making this determination, "it is helpful for the Commission to have evidence as to the *amount that the expenditures would have been if the local distribution company had acted in a prudent manner.*"¹¹⁷

¹¹³ Tr. at 316:18-317:8.

¹¹⁴ Exhibit 9C, Olsen Direct at Schedule JO-3 page 78.

¹¹⁵ Exhibit 9C, Olsen Direct at Schedule JO-3 page 19.

¹¹⁶ State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm'n, 954 .W.2d 520, 529 (Mo. App. W.D. 1997).

¹¹⁷ State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm'n, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997) (quoting Commission Report and Order) (emphasis original).

Here, the Office of the Public Counsel posits that it was imprudent to retire Asbury, among other resource planning options.¹¹⁸ The Office of the Public Counsel’s calculation of ratepayer harm is not so clear, however.¹¹⁹

For the reasons stated above, Staff’s proposed recovery for Winter Storm Uri does not include an adjustment based on the resource planning arguments raised by the Office of the Public Counsel.

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

The Commission should not include in its financing order a disallowance for income tax deductions for Winter Storm Uri costs. “Financing costs” under the securitization statute include “[a]ny **taxes** and license fees or other fees **imposed on the revenues generated from the collection of the securitized utility tariff charge** or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued.”¹²⁰ Under Revenue Procedure 2005-62 issued by the United States Internal Revenue Service, a “qualifying securitization” will treat the collection of securitized utility tariff charges as gross income to Liberty.¹²¹ The

¹¹⁸ Exhibit 200, Mantle Rebuttal at 9.

¹¹⁹ See, *State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm’n*, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997); See, Exhibit 200, Mantle Rebuttal at 11:16-21 (looking at February 2021 costs and benefits but not more).

¹²⁰ § 393.1700.1(8)(d), RSMo (Cum. Supp. 2021) (emphasis added).

¹²¹ Exhibit 103, Bolin Surrebuttal at Schedule KBB-s1 Section 6.03 (“The non-bypassable charges are gross income to the utility recognized under the utility’s usual method of accounting”); see also, Exhibit 18, Niehaus Direct at 14:23-15:15. Revenue Procedure 2005-62 “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.” Exhibit 103, Bolin Surrebuttal at Schedule KBB-s1 Section 4 (“SCOPE”).

Commission is authorized to include in a financing order “[a] statement specifying a future ratemaking process to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation.”¹²²

It is possible that Liberty may ultimately receive a tax benefit for Winter Storm Uri fuel and purchased power costs.¹²³ John Riley, testifying for the Office of the Public Counsel, observes that Liberty “expects to claim” a Missouri jurisdictional tax deduction. Mr. Riley’s testimony does not acknowledge Revenue Procedure 2005-62, which treats collection of securitized utility tariff charges as income to Liberty.¹²⁴ Mr. Riley’s testimony fails to acknowledge Section 393.1700.2(3)(c)k, which authorizes the Commission to require a future reconciliation requiring Liberty to account for any potential tax benefit that may lower its actual securitized utility tariff costs associated with Winter Storm Uri.

Staff will continue to investigate the timing of tax deductions for Winter Storm Uri costs and the receipt of income from securitized utility tariff charges, and how these will be recorded and treated in future ratemaking procedures and for tax purposes.¹²⁵ The Commission’s financing order should not include a disallowance for tax deductions for Winter Storm Uri costs. If Liberty does receive a tax benefit for Winter Storm Uri fuel and purchased power costs, those benefits must be reconciled and accounted for in a future ratemaking under Section 393.1700.2(3)(c)k.

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

¹²² § 393.1700.2(3)(c)k, RSMo (Cum. Supp. 2021).

¹²³ Exhibit 103, Bolin Surrebuttal at 5:10-13.

¹²⁴ Exhibit 103, Bolin Surrebuttal at Schedule KBB-s1 Section 6.03.

¹²⁵ Exhibit 103, Bolin Surrebuttal at 5:12-14.

Unlike the definition of energy transition costs, the definition of qualified extraordinary costs does not include carrying costs.¹²⁶ The statute does, however, include in the definition “costs incurred prudently.”¹²⁷ As fuel and purchased power costs generally result in borrowing costs that are later recovered through a fuel adjustment clause, it is therefore not unreasonable to construe the statute in this instance as authorizing carrying costs on Liberty’s fuel and purchased power costs prudently incurred.

Whatever carrying costs the Commission approves, if any, the Commission must find that the securitized utility tariff costs and the resulting securitized utility tariff charges are both just and reasonable and in the public interest.¹²⁸ The Commission has great discretion in making pragmatic adjustments in deciding what is just and reasonable and in the public interest.¹²⁹

It is appropriate to securitize some of the financing costs that Liberty has incurred since it paid for fuel and purchased power and legal costs associated with Winter Storm Uri. However, those costs will be carried only from the time of Winter Storm Uri to the date of securitization. The securitization statute became effective on August 28, 2021, but Liberty did not file its Uri Securitization request as soon as it could have.¹³⁰ This supports some carrying costs, but lower than the full weighted average cost of capital requested by Liberty.

¹²⁶ Compare § 393.1700.1(7), RSMo (Cum. Supp. 2021), to § 393.1700.1(13), RSMo (Cum. Supp. 2021).

¹²⁷ § 393.1700.1(13), RSMo (Cum. Supp. 2021).

¹²⁸ § 393.1700.2(3)(c)a-b, RSMo (Cum. Supp. 2021).

¹²⁹ State ex rel. Public Counsel v. Pub. Serv. Comm’n, 274 S.W.3d 569, 586 (Mo. App. W.D. 2009); State ex rel. U.S. Water/Lexington v. Pub. Serv. Comm’n, 795 S.W.2d 593, 597 (Mo. App. W.D. 1990).

¹³⁰ Liberty filed its 60-day notice on August 28, 2021, but did not file its petition until January 19, 2022. Case No. EO-2022-0040, EFIS Items 3 and 4.

General public interest considerations support some sharing of extraordinary natural disaster costs between a utility and its customers,¹³¹ further supporting a carrying cost lower than the full weighted average cost of capital.¹³² Liberty's long-term cost of debt of 4.65% is the appropriate carrying cost rate for Uri costs.¹³³

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?

In deciding whether securitization provides quantifiable net present value benefits, the securitization statute does not specify the discount rate to use.¹³⁴ The term "net present value" is not defined by statute, so its plain and ordinary meaning as derived from the dictionary governs.¹³⁵ Black's Law Dictionary defines net present value as "[t]he present value of net cash flow from a project, discounted by the cost of capital. This value is used to evaluate the project's investment potential."¹³⁶

For purposes of securitization, the weighted average cost of capital may be a useful reference point to help serve as a proxy for the customers' cost of capital.¹³⁷

¹³¹ Exhibit 100, McMellen Rebuttal at 4:11-16; Tr. 211:2-19.

¹³² Exhibit 100, McMellen Rebuttal at 4:11-16.

¹³³ Tr. 211:2-5.

¹³⁴ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

¹³⁵ *Pub. Serv. Comm'n v. Union Elec. Co.*, 552 S.W.3d 532, 541 (Mo. banc 2018).

¹³⁶ Black's Law Dictionary PRESENT VALUE (11th ed. 2019); *see also*, *Webster's Third New International Dictionary*, 1794 (3rd ed. 1976), which defines "present value" as "the principal of a sum of money payable at a future date that drawing interest at a given rate will amount to the given sum at the date on which this sum is to be paid ,at 6% interest the *present value* of \$106 due one year hence is \$100>." *Webster's Third New International Dictionary* is "the institutional dictionary of choice" for the Supreme Court of Missouri. *AAA Laundry & Linen Supply Co. v. Director of Revenue*, 425 S.W.3d 126, 131-32 (Mo. banc 2014).

¹³⁷ Exhibit 107, Davis Rebuttal at 5:11-13.

However, the discount rate for Winter Storm Uri should also be evaluated based on the long-term cost of debt.¹³⁸ Liberty's long-term cost of debt as of February 2022 is 4.65%.¹³⁹

III. Asbury

Plant retirement costs must meet the definition of “energy transition costs,” which includes among other things a requirement that the Commission find the retirement prudent and reasonable. Also, the Commission must find that the recovery of energy transition costs is just and reasonable and in the public interest.¹⁴⁰ The Supreme Court of Missouri has held that “just and reasonable” and “prudent” are not the same.¹⁴¹ Expenses must be prudent to be recovered, but “just and reasonable” rates means the recovery of expenses must also be fair to both investors and ratepayers.¹⁴² Put another way, it is necessary that an expense be prudent before it can be recovered in rates, but prudence by itself is not sufficient for rate recovery of an expense.¹⁴³

The fact that Liberty is seeking recovery of costs for both Winter Storm Uri and Asbury, even though Asbury was not delivering much-needed capacity during Winter Storm Uri, supports some cost sharing of Asbury costs between Liberty and its ratepayers.¹⁴⁴

¹³⁸ Exhibit 107, Davis Rebuttal at 5:11-14 (citing McMellen Rebuttal reference to long-term cost of debt of 4.65% for Uri); see also Issue II.B above discussing traditional rate recovery calculating carrying costs at a long-term cost of debt.

¹³⁹ Exhibit 100, McMellen Rebuttal at 8:1-3.

¹⁴⁰ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2022).

¹⁴¹ *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 618 S.W.2d 225, 232 (Mo. banc 2021).

¹⁴² *Spire Mo., Inc.*, 618 S.W.2d at 232.

¹⁴³ See, *Spire Mo., Inc.*, 618 S.W.2d at 232.

¹⁴⁴ Tr. 220:20-222:14.

The Commission has long disallowed recovery of assets that are no longer used and useful, except in unique circumstances such as the retirement of Asbury.¹⁴⁵ Allowing a sharing of costs between ratepayers and shareholders does not result in a “windfall” to customers or a “punishment” to the utility.¹⁴⁶

Missouri policy, as reflected in its legislation, further supports a sharing of costs between ratepayers and shareholders for retired and abandoned plants that are no longer used and useful. Missouri law prohibits charges for any electrical plant “before it is fully operational and used for service.”¹⁴⁷ This statute codifies in part the general policy against recovery of plant that is not used and useful.

In addition, effective August 28, 2022, Section 393.1715.6, RSMo will be amended to authorize the Commission to include rate base coal-fired assets that are offline and providing capacity only (or what might be described as useful but not used).¹⁴⁸ Again, this statute codifies and reflects in part a policy against full recovery for plant that is not both used and useful. Instead, it appears to reflect a legislative intent to encourage maintaining coal-fired plants in offline, capacity-only status “to remain in service to customers for reliability during events such as extreme weather.”¹⁴⁹ Equally awarding full cost recovery to utilities for fully abandoned coal plants like Asbury would therefore undermine the policy of the newly-amended Section 393.1715, as a utility would have equal incentive to fully

¹⁴⁵ Exhibit 100, McMellen Rebuttal at Schedule ACM-r2 page 3, lines 13-20.

¹⁴⁶ Exhibit 100, McMellen Rebuttal at Schedule ACM-r2 page 4, lines 11-22.

¹⁴⁷ § 393.135, RSMo (2016).

¹⁴⁸ MO. LEGIS. S.B. 745 (2022), 2022 Mo. Legis. Serv. S.B. 745 (VERNON'S) (West's No. 18) (amending § 393.1715.6, RSMo).

¹⁴⁹ Id.

abandon a coal plant as it would to keep it in offline, capacity-only status where it can provide reliability in extreme weather events such as Winter Storm Uri.

In summary, Liberty should not recover costs for Asbury as if Asbury were a plant still providing capacity and energy to Liberty's customers. Some sharing of costs between Liberty's ratepayers and shareholders is required to establish just and reasonable rates.

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

To securitize energy transition costs associated with Asbury, the Commission must find that "recovery of such costs is just and reasonable and in the public interest."¹⁵⁰ The Commission must also specify the period over which securitized utility tariff costs and financing costs may be recovered.¹⁵¹ The Commission must additionally find that the proposed issuance of securitized utility tariff bonds and imposition and collection of securitized utility tariff charges are just and reasonable and in the public interest.¹⁵²

Here, for the reasons discussed below, the appropriate amount of energy transition costs that Liberty would recover under traditional ratemaking for Asbury is \$66,107,823, carrying costs included.¹⁵³ Staff agrees with Liberty's proposal to recover those costs over thirteen years.

B. What is the appropriate method of customary ratemaking absent securitization?¹⁵⁴

¹⁵⁰ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

¹⁵¹ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

¹⁵² § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

¹⁵³ Exhibit 113, line 1; Exhibit 100, McMellen Rebuttal at 7 Table 2.

¹⁵⁴ Issue III.B is the same as Issue III.C below.

The securitization statute imposes on a utility the burden of proving “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,”¹⁵⁵ and “the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds.”¹⁵⁶ “At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the...electrical corporation....”¹⁵⁷

Absent securitization, it would not be unreasonable for Liberty to recover Asbury costs, subject to Staff’s proposed adjustments, amortized over a thirteen-year period with carrying costs at 6.77%.¹⁵⁸ While Staff opposed a “return on” retired Asbury balances in Liberty’s most recent rate case, for comparison purposes it is reasonable to assume that the interest rate on bonds would be lower than the carrying costs that could be supportable by Liberty in a future rate case.¹⁵⁹

Moreover, the Commission is not bound by its own precedent, and it is free to issue new orders so long as its decision is supported by competent and substantial evidence.¹⁶⁰ Even if this Commission were not inclined to allow Liberty a return on remaining Asbury assets, a future Commission might.¹⁶¹ Securitization, in contrast usually provides for a

¹⁵⁵ § 393.1700.2(1)(f), RSMo (Cum. Supp. 2021).

¹⁵⁶ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

¹⁵⁷ § 393.150, RSMo (2016).

¹⁵⁸ Exhibit 107, Davis Rebuttal at 3:14-4:4; .

¹⁵⁹ Exhibit 100, McMellen Rebuttal at 10:12-11:3

¹⁶⁰ Office of Pub. Counsel v. Pub. Serv. Comm’n, 409 S.W.2d 371, 376 (Mo. banc 2013); State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n, 120 S.W.3d 732, 736 (Mo. banc 2003).

¹⁶¹ See, id.

fixed interest rate for the entire recovery period of securitized utility tariff bonds.¹⁶² For comparison purposes, the interest rate certainty associated with securitization therefore supports the use of a weighted average cost of capital in calculating the value of traditional recovery with recovery through securitization.

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.”¹⁶³

Staff’s position on this issue is identical to its position for Issue III.B above.

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

The net book value of the retired Asbury plant is \$159,414,474.¹⁶⁴

The securitization statute authorizes recovery of “energy transition costs.”¹⁶⁵ Net book value is not defined or referenced in the statute,¹⁶⁶ but net book value is a number used in calculating the value of the total energy transition costs.¹⁶⁷

The Commission should not adopt the proposed net book value of \$155,044,297 proposed by the Office of the Public Counsel.¹⁶⁸ The \$155 million figure represents a stale

¹⁶² Exhibit 19, Niehaus Direct at 6:6 (“Nearly all rate reduction bonds have been fixed-rate bonds”).

¹⁶³ Issue III.C is the same as Issue III.B above.

¹⁶⁴ Exhibit 7, Schedule CTE-2, Emery Direct at Line No. 1; Exhibit 113 at pdf page 2 line 1. The net book value is not the same as the amount Staff proposes Liberty be authorized to recover.

¹⁶⁵ § 393.1700.2, RSMo (Cum. Supp. 2021).

¹⁶⁶ § 393.1700.1, RSMo (Cum. Supp. 2021).

¹⁶⁷ Exhibit 113, pdf page 2 line 1 and line 11.

¹⁶⁸ See Exhibit 208, Riley Rebuttal at 7:10-13.

and estimated balance as of January 2020.¹⁶⁹ The \$159 million figure represents the actual net plant as of March 1, 2020.¹⁷⁰

In addition, the Commission should reject the Office of the Public Counsel's proposed unworkable and meaningless distinction between costs incurred "due to" abandonment of a resource and costs incurred "because of" abandonment of a resource.¹⁷¹ The proposed distinction is also not based on the plain language of the statute, which defines "energy transition costs" as costs previously incurred "with respect to" and "related to" retirement or abandonment of an electric generation facility.¹⁷²

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

Before securitizing energy transition costs, the early retirement or abandonment of a facility must be "deemed reasonable and prudent by the commission through a final order issued by the commission."¹⁷³ Missouri Courts have noted the Commission's prudence standard:

[T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than reliance on hindsight. In effect, [the Commission's] responsibility is to determine how reasonable people would have performed the tasks that confronted the company.¹⁷⁴

¹⁶⁹ Exhibit 8, Emery Surrebuttal at 25:14-17.

¹⁷⁰ Exhibit 8, Emery Surrebuttal at 26:1-13.

¹⁷¹ Exhibit 208, Riley Rebuttal at 56:7-10.

¹⁷² § 393.1700.1(7)(a)-(b).

¹⁷³ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

¹⁷⁴ State ex rel. Assoc. Natural Gas Co. v. Pub. Serv. Comm'n, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

Historically, the Commission has relied on a presumption of prudence, where a utility's costs are presumed to be prudently incurred unless another party shows "inefficiency or improvidence that creates serious doubt as to the prudence of an expenditure."¹⁷⁵ However, this presumption does not change the burden of proof at all.¹⁷⁶ Moreover, the presumption of prudence is not a rule of law created by statute or rule; rather, it is an evidentiary presumption adopted by the Commission, and the Commission is not bound by its own precedent.¹⁷⁷

The Commission should not rely on a mere presumption of prudence in its financing order. Reviewing the competent and substantial evidence on the whole record in this case, there is sufficient evidence to support a finding that it was reasonable and prudent to retire Asbury under the circumstances at the time the decision to retire Asbury was made.

It is just, reasonable, and in the public interest to recover prudently incurred costs associated with the early retirement of Asbury, consistent with Staff's other adjustments to share Asbury costs between Liberty's ratepayers and shareholders.¹⁷⁸

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

Energy transition costs include "costs of decommissioning and restoring the site of the electric generating facility...."¹⁷⁹

¹⁷⁵ *Office of Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.2d 371, 376 (Mo. banc 2013) (internal quotations omitted).

¹⁷⁶ *Office of Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.2d 371, 379 (Mo. banc 2013).

¹⁷⁷ *Office of Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.2d 371, 376 (Mo. banc 2013); *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003).

¹⁷⁸ Exhibit 100, McMellen Rebuttal at 6:1-3.

¹⁷⁹ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

Here, the Asbury Environmental Regulatory Asset has a balance of \$1,494,657 (Missouri Jurisdictional) as of June 1, 2021.¹⁸⁰ This balance pertains to the removal of asbestos at the Asbury plant and the coal combustion residuals (CCR) impoundment.¹⁸¹

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

Energy transition costs include “the undepreciated investment in the retired or abandoned...electric generating facility and any facilities ancillary thereto or used in conjunction therewith.”¹⁸²

Unrecoverable coal is an investment that Liberty made that it will not recover that is ancillary to and used in conjunction with Asbury, and should therefore be included as an amount to be securitized.¹⁸³ Here, Liberty used the proper amount of \$1,532,832 to offset the \$3,947,465 which is part of the Asbury regulatory liability.¹⁸⁴ The \$3.9 million amount represents the 60 burn days ordered by the Commission in Case Number ER-2019-0374, and this amount was included in the baseline to track in the AAO liability for coal inventory.¹⁸⁵ The \$1.5 million amount represents the Missouri jurisdictional amount to be included in the AAO as unrecoverable coal at the Asbury generating unit, pursuant to the Commission-approved stipulation and agreement in Case Number ER-2022-0311, deferring unrecoverable coal to FERC Account 182.3, Other Regulatory Assets.¹⁸⁶

¹⁸⁰ Exhibit 103, Bolin Surrebuttal at 3:14-16.

¹⁸¹ Exhibit 103, Bolin Surrebuttal at 2:3-4; Exhibit 102, Bolin Rebuttal at 9:12-13.

¹⁸² § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

¹⁸³ Exhibit 101, McMellen Surrebuttal at 3:11-15.

¹⁸⁴ Exhibit 101, McMellen Surrebuttal at 1:22-2:7.

¹⁸⁵ Exhibit 101, McMellen Surrebuttal at 2:9-11.

¹⁸⁶ Exhibit 101, McMellen Surrebuttal at 3:2-7.

Unrecoverable coal is coal purchased to support sales, but which has become unusable over time due to its close proximity to the coal basemat of rock and clay.¹⁸⁷

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

The securitization statute requires Liberty to provide its customers with a credit equivalent to the net present value of the balance on the Accumulated Deferred Income Tax (ADIT) and Excess ADIT previously paid by ratepayers associated with Asbury.¹⁸⁸ A financing order authorizing recovery of energy transition costs must include:

[A] procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned or to be retired or abandoned electric generating facility, or in connection with retired or abandoned facilities included in qualified extraordinary costs. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from rate base in future general rate cases and the net tax benefits relating to amounts that will be recovered through the issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that would otherwise be issued. The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the

¹⁸⁷ Exhibit 101, McMellen Surrebuttal at 3:8-10.

¹⁸⁸ § 393.1700.2.(3)(c)m, RSMo (Cum. Supp. 2021).

expected interest rate on such securitized utility tariff bonds;¹⁸⁹

Under the above provision, the first requirement is that ADIT and Excess ADIT must be excluded from rate base in future general rate cases. This provision ensures that ratepayers no longer benefit from the ADIT and Excess ADIT balance in future rate cases after receiving a credit in the securitization case.¹⁹⁰

The second requirement is that the net tax benefits of the ADIT and Excess ADIT must be credited back to customers by reducing the amount of the securitized utility tariff bonds that would otherwise be issued.¹⁹¹ The customer credit must specifically include the full net present value of the tax benefits.¹⁹² In calculating the net present value of the tax benefits, the expected interest rate on the securitized utility tariff bonds must be the discount rate.¹⁹³ The customer credit must “include[e] timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds.”¹⁹⁴ The statute does not say that the credit is *limited* to the timing differences.¹⁹⁵

Staff and Liberty agree that the value of the Excess ADIT customer credit should be \$12,313,459 as of April 30, 2022.¹⁹⁶ The proposal by the Office of the Public Counsel

¹⁸⁹ § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021); see also, § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021) (requiring energy transition costs to “be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds....”).

¹⁹⁰ See, id.

¹⁹¹ § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021).

¹⁹² § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021).

¹⁹³ Id.

¹⁹⁴ Id.

¹⁹⁵ Id.

¹⁹⁶ Exhibit 102, Bolin Rebuttal at 12:5-8. Liberty’s calculation of Excess ADIT is only slightly different, at \$12,177,195. Exhibit 102, Bolin Rebuttal at 12:2-4.

to use Excess ADIT balances from Case Number ER-2019-0374 is not correct.¹⁹⁷ The rates from Case Number ER-2019-0374 went into effect on September 16, 2020, and remained in effect until June 1, 2022.¹⁹⁸ The amounts reflected in the securitization balance for Excess ADIT should reflect the values from ER-2019-0374 offset by the customer collections received for these items since rates went into effect in September 2020.¹⁹⁹

Staff's calculation of the ADIT balance, based on Staff's Asbury retirement costs, is \$22,306,688.²⁰⁰ Staff's ADIT balance is lower than Liberty's, because Staff did not include asset retirement obligations (AROs) in its retirement costs, because Staff recommended lower decommissioning costs, and because Staff reflected a higher value for the Asbury regulatory liability.²⁰¹ The net present value of Staff's calculated ADIT balance of \$22,306,688 is approximately \$17,134,363, using an estimated discount rate of four percent (4%).²⁰²

Liberty's proposed ADIT balance, reflecting higher AROs, higher decommissioning costs, and a lower value of regulatory liability, is \$36,480,831.²⁰³ The net present value of an ADIT balance of \$36,480,831 is \$30,831,327, not Liberty's calculated \$4,747,535.²⁰⁴

¹⁹⁷ Exhibit 103, Bolin Surrebuttal at 4:6-22.

¹⁹⁸ Exhibit 103, Bolin Surrebuttal at 4:6-22 & n.1.

¹⁹⁹ Exhibit 103, Bolin Surrebuttal at 4:6-22.

²⁰⁰ Exhibit 102, Bolin Rebuttal at 11:16.

²⁰¹ Exhibit 102, Bolin Rebuttal at 11:16-19.

²⁰² Exhibit 102 at 11:20-12:1; Exhibit 107, Davis Rebuttal at 4:11-12 (using 4.00% as an illustrative interest cost of securitization).

²⁰³ Exhibit 102, Bolin Rebuttal at 10:16-11:8.

²⁰⁴ Exhibit 102, Bolin Rebuttal at 11:3-14.

Liberty's ADIT discount calculation suffers multiple fatal errors. The first fatal error is that Liberty's proposal to credit its ratepayers with a scant \$5 million, on its face, fails to reimburse Liberty's ratepayers with the net present value of the tax benefits of a \$36 million ADIT balance that would normally be returned to customers over thirteen years.²⁰⁵

The second fatal flaw appears on the face of Liberty's calculation. The securitization statute requires the "tax benefit," not a "net tax benefit."²⁰⁶ In Exhibit 21, Schedule CTE-13, Liberty identifies its calculation as a "customer *net* tax benefit," and is therefore facially unlawful. Moreover, it is not clear what Liberty is netting the ADIT balance against.²⁰⁷ To the extent that Liberty is attempting to limit the customer credit to "timing differences ... multiplied by the expected interest rate on such securitized utility tariff bonds,"²⁰⁸ Liberty's attempt to reduce the ratepayer credit is plainly unlawful, and yet this appears to be exactly what Liberty is doing: taking the "Balance ADIT" column, multiplying it by a "Securitization Yield" column to derive a "Customer Net Tax Benefit."²⁰⁹ The "timing differences" created by the bond issuance are only one aspect of the customer credit that must include the full "net present value of the tax benefits."²¹⁰ Liberty's attempt to limit the customer credit to the timing differences is plainly unlawful.

²⁰⁵ See, Tr. 245:4-10.

²⁰⁶ § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021).

²⁰⁷ See, Exhibit 21, Schedule CTE-13.

²⁰⁸ See, § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021).

²⁰⁹ Exhibit 21, Schedule CTE-13.

²¹⁰ § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021).

Third, to the extent Liberty's calculation discounts ADIT twice, it is also unlawful.²¹¹ The securitization statute requires the net present value of the ADIT balance, discounted once based on a discount rate equal to an expected bond interest rate.²¹² Here, Liberty appears to discount yearly amounts related to the remaining ADIT balance, then discounts the sum of those amounts a second time.²¹³ Nothing in the statute supports Liberty's approach to discounting the ADIT balance.

Fourth, Liberty failed to update the estimated bond interest rate to be used for the discount rate. Liberty uses a stale 2.47% estimated interest rate, resulting in an unreasonably low net present value.²¹⁴ Using a 4% discount rate, Liberty's proposed net present value would be over \$7.7 million, even using its unlawful formula.²¹⁵

In sum, Liberty's calculation of the ADIT credit to its ratepayers is both unlawful and unreasonable. The Commission must adopt Staff's calculation of the required ADIT customer credit, and it must reject Liberty's calculation. If the Commission adopts Staff's proposed ADIT balance of \$22 million, the customer credit should be approximately \$17 million; if the Commission adopts Liberty's proposed ADIT balance of \$36 million, the customer credit should be \$30 million.²¹⁶

²¹¹ Exhibit 102, Bolin Rebuttal at 11:9-14.

²¹² § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021).

²¹³ Exhibit 102, Bolin Rebuttal at 11:9-14.

²¹⁴ Compare Exhibit 21 at CTE-13 (using 2.47% securitization yield); to Tr. 526:5-21 (referencing a likely 4.28% securitization yield as of Friday, June 10, 2022).

²¹⁵ Tr. at 143:3-20.

²¹⁶ Exhibit 102, Bolin Rebuttal at 11:11-12:1.

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

The value of the Asbury regulatory liability is \$75,779,097, from January 2020 through April 2022.²¹⁷

In rate case ER-2019-0374, the total financial impact of the early retirement of Asbury was unknown.²¹⁸ The Commission approved a Global Stipulation and Agreement requiring Liberty to track specific rate elements to reflect the impact of the closure of Asbury.²¹⁹ The resulting accounting authority order (AAO) created a regulatory asset, consisting mostly of the unrecovered costs for Asbury as of the time of its retirement.²²⁰ It also created a regulatory liability to reflect the return on the unrecovered Asbury investment, depreciation expense, all non-fuel/non-labor operating and maintenance expenses, property taxes and non-labor Asbury retirement/decommissioning costs.²²¹

Contrary to the Commission's AAO, Liberty failed to include in this case the return on Asbury regulatory liability component from its proposed balance of costs to be securitized.²²² The Commission's financing order in this case should reflect the return on Asbury component of the regulatory liability to offset Liberty's energy transition costs to be securitized.²²³ This adjustment appropriately reflects that Liberty's customers have been paying a full return on Asbury in rates since the unit was effectively retired in December 2019, and that this amount should be returned to customers.²²⁴

²¹⁷ Exhibit 113, pdf page 4 line 21 column (f); Exhibit 116 page 2 line 21.

²¹⁸ Exhibit 100, McMellen Rebuttal at 8:21-23.

²¹⁹ Exhibit 100, McMellen Rebuttal at 8:20-9:2.

²²⁰ Exhibit 100, McMellen Rebuttal at 9:3-4.

²²¹ Exhibit 100, McMellen rebuttal at 9:5-7.

²²² Exhibit 100, McMellen Rebuttal at 9:8-11.

²²³ Exhibit 100, McMellen Rebuttal at 9:12-14.

²²⁴ Exhibit 100, McMellen Rebuttal at 9:13-20.

In contrast, failing to include this adjustment in the amount of energy transition costs to be securitized would improperly allow Liberty to recoup in rates all costs not recovered associated with Asbury since its retirement, while allowing Liberty to not credit customers for the Asbury cost recovery that Liberty's' ratepayers have paid since Asbury's retirement.²²⁵ This is consistent with Staff's position in Liberty's 2021 rate case.²²⁶ It would not be just and reasonable for Liberty to earn a return on Asbury while it was not used and useful to Liberty's ratepayers during the period of the AAO, which included Winter Storm Uri.²²⁷

J. What are the likely Asbury decommissioning costs?

The burden of proof is on Liberty to establish in its direct testimony supporting its petition that the amounts it seeks to recover in securitization meet the definition of energy transition costs.²²⁸ Energy transition costs include "costs of decommissioning...."²²⁹ The Commission's financing order must include a future ratemaking process to reconcile estimated costs that a utility securitized against the utility's actual costs.²³⁰

At this point, the decommissioning costs for phase 2 and phase 3 of Liberty's decommissioning plan for Asbury are only estimates.²³¹ Liberty should reflect the salvage value in phase 3 costs in order to offset the demolition costs of Asbury.²³²

²²⁵ Exhibit 100, McMellen Rebuttal at 9:17-20.

²²⁶ Tr. 220:4-221:1.

²²⁷ Tr. 221:2-222:14.

²²⁸ § 393.1700.2(1)(h), RSMo (Cum. Supp. 2021); *see also*, § 393.150.2, RSMo (2016).

²²⁹ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

²³⁰ § 393.1700.2(3)(c)k, RSMo (Cum. Supp. 2021).

²³¹ Exhibit 102, Bolin Rebuttal at 6:21-7:5.

²³² Exhibit 102, Bolin Rebuttal at 8:4-8.

The Commission should authorize \$** [REDACTED] ** (total company amount) in decommissioning costs, which consists of \$4,000,000 for phase 2 costs and \$** [REDACTED] ** for phase 3 costs.²³³ The Commission's order must require Liberty to track its actual decommissioning costs and reconcile the differences in a future ratemaking proceeding.

K. What are the likely Asbury retirement obligations?

The burden of proof is on Liberty to establish in its direct testimony supporting its petition that the amounts it seeks to recover in securitization meet the definition of energy transition costs.²³⁴ Energy transition costs include “costs of decommissioning and restoring the site of the electric generating facility....”²³⁵ The Commission must also include a reconciliation mechanism to account for differences between the energy transition costs Liberty securitized against the energy transition costs Liberty actually incurs.²³⁶

An asset retirement obligation (ARO) is an obligation, legal or non-legal, associated with the retirement of a tangible, long-lived asset for the cost of returning a piece of property to its original condition.²³⁷ In its direct testimony, Liberty failed to provide adequate documentation to support its estimated asset retirement obligations for Asbury.²³⁸ Consequently, Staff opposed inclusion of the \$21,281,070 estimate from

²³³ Exhibit 102, Bolin Rebuttal at 9:6-8.

²³⁴ § 393.1700.2(1)(h), RSMo (Cum. Supp. 2021); *see also*, § 393.150.2, RSMo (2016).

²³⁵ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

²³⁶ § 393.1700.2(3)(c)k, RSMo (Cum. Supp. 2021).

²³⁷ Exhibit 102, Bolin Rebuttal at 9:7-10.

²³⁸ Exhibit 102, Bolin Rebuttal at 9:21-22.

securitization in its Rebuttal testimony.²³⁹ However, in surrebuttal testimony, Liberty witness Drew Landoll provided documentation sufficient to support \$16,995,561 for recovery of asset retirement obligations.²⁴⁰ Because these obligations have not yet been paid, there is no need to include carrying costs for them. Any differences between the AROs securitized and the AROs actually incurred must be accounted for in a future reconciliation mechanism.

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

Staff does not recommend an adjustment based on Cash Working Capital as proposed by the Office of the Public Counsel. Liberty did not have a specific cash working capital amount specific to Asbury as part of rate case ER-2019-0374.²⁴¹ Liberty made a reasonable estimate of the Asbury cash working capital balance reflected in base rates associated with Asbury.²⁴²

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

Energy transition costs include "facilities ancillary thereto or used in conjunction therewith" an abandoned plant.²⁴³

The Commission should not disallow the remaining balance of the Air Quality Control System (AQCS). The AQCS was installed and used at Asbury in 2014 in anticipation of requirements under a pending federal Clean Power Plan regulation.²⁴⁴

²³⁹ Exhibit 102, Bolin Rebuttal at 9:14-22.

²⁴⁰ Tr. 231:13-21.

²⁴¹ Exhibit 8, Emery Surrebuttal at 29:21-30:2.

²⁴² Exhibit 8, Emery Surrebuttal at 30:2-14.

²⁴³ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

²⁴⁴ Exhibit 16, Graves Direct at 30:20-24.

Although the Clean Power Plan would ultimately be abandoned more than two years later, the Office of the Public Counsel acknowledges that, “[a]t the time, it seemed highly likely that [the] Clean power Plan would take effect and be enforced....”²⁴⁵ AQCS costs should not be disallowed.

N. Should Liberty’s recovery reflect a disallowance for income tax deductions for Asbury abandonment?

The securitization statute specifically prescribes the customer credit to be calculated based on the income tax benefits of early retirement of a plant and subsequent securitization.²⁴⁶ The Commission must follow that provision, and cannot lawfully adopt the approach proposed by the Office of the Public Counsel.²⁴⁷

O. Should Liberty’s recovery reflect a disallowance for labor at Asbury?

While the Accounting Authority Order (AAO) for Asbury was in place, Liberty recovered general rates based on employees that were associated with Asbury for purposes of the test year associated with its previous rate case.²⁴⁸ In reality, those same employees were reassigned to other duties when Asbury was retired.²⁴⁹ In other words, the labor costs that Liberty recovered in rates were used by Liberty to provide service to its ratepayers.²⁵⁰

²⁴⁵ Exhibit 204, Marke Rebuttal at 12:1-4.

²⁴⁶ § 303.1700.2(3)(c)m, RSMo (Cum. Supp. 2021); *see also* § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

²⁴⁷ Exhibit 103, Bolin Surrebuttal at 4:6-22.

²⁴⁸ Exhibit 101, McMellen Surrebuttal at 4:1-5.

²⁴⁹ Exhibit 101, McMellen Surrebuttal at 4:1-5.

²⁵⁰ Exhibit 101, McMellen Surrebuttal at 4:1-5.

The Office of Public Counsel does not appear to oppose Liberty recovering its labor costs.²⁵¹ The Office of Public Counsel's concerns therefore appear to be largely semantic. The Office of the Public Counsel, in testimony filed by John Riley, nevertheless proposes to include labor expense in the Asbury regulatory liability, which would in effect reverse payments from ratepayers to Liberty for Liberty employees who did in fact provide service to Liberty ratepayers.²⁵²

Resolution of the Office of Public Counsel's concerns would create more problems than it solves. If the Commission disallows labor costs here, Liberty cannot request recovery of those same costs in a future case without raising concerns of prohibited retroactive ratemaking.²⁵³ Therefore, the Commission should not disallow labor costs as proposed by the Office of Public Counsel.

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

Energy transition costs include "facilities ancillary thereto or used in conjunction therewith" an abandoned plant.²⁵⁴

Liberty should be allowed to recover costs associated with environmental capital projects that were ultimately abandoned as part of Asbury because those facilities are

²⁵¹ Exhibit 209, Riley Surrebuttal at 3:21-22 ("These employees moved from working at Asbury should be providing value to the other operations and, therefore, are labor associated with those operations, not Asbury.").

²⁵² Exhibit 101, McMellen Surrebuttal at 4:1-10.

²⁵³ See, *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n ex rel. State*, 311 S.W.3d 361, 365 (Mo. App. W.D. 2010) ("Retroactive ratemaking is defined as 'the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.'").

²⁵⁴ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

ancillary thereto or used in conjunction with Asbury, and Liberty began these environmental capital projects to comply with upcoming environmental regulations.²⁵⁵

Q. Should Liberty’s recovery include basemat coal at Asbury?

Energy transition costs include “facilities ancillary thereto or used in conjunction therewith” an abandoned plant.²⁵⁶

Unrecoverable coal is coal purchased to support sales, but which has become unusable over time due to its close proximity to the coal basemat of rock and clay.²⁵⁷ Unrecoverable coal is an investment that Liberty made that it will not recover that is ancillary to and used in conjunction with Asbury, and it should therefore be included in the amounts to be securitized.²⁵⁸ Here, Liberty used the proper amount of \$1,532,832 to offset the \$3,947,465 which is part of the Asbury regulatory liability.²⁵⁹ This is consistent with Staff’s position on Issue III.G above.

R. Should Liberty recovery [sic] include non-labor Asbury retirement costs?

Liberty is required to establish in direct testimony supporting its petition that the amounts it seeks to recover in securitization meet the definition of energy transition costs.²⁶⁰ Energy transition costs include “costs of decommissioning....”²⁶¹ The Commission’s financing order must include a future ratemaking process to reconcile estimated costs that a utility securitized against the actual costs that a utility incurred.²⁶²

²⁵⁵ Exhibit 8, Emery Surrebuttal at 26:3-8.

²⁵⁶ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

²⁵⁷ Exhibit 101, McMellen Surrebuttal at 3:8-10.

²⁵⁸ Exhibit 101, McMellen Surrebuttal at 3:11-15.

²⁵⁹ Exhibit 101, McMellen Surrebuttal at 1:22-2:7.

²⁶⁰ § 393.1700.2(1)(h), RSMo (Cum. Supp. 2021); *see also*, § 393.150.2, RSMo (2016).

²⁶¹ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

²⁶² § 393.1700.2(3)(c)k, RSMo (Cum. Supp. 2021).

Staff supports decommissioning and asset retirement obligation (ARO) adjustments consistent with Issues III.J and III.K above. Staff does not support other adjustments for non-labor Asbury retirement costs.

Contrary to the reconciliation mechanism in the securitization statute, the Office of Public Counsel proposes addressing these non-labor costs in a future rate case, and continuing to track non-labor retirement costs in an accounting authority order (AAO).²⁶³ The Commission should not grant the request for a continued AAO, because securitization in this case provides quantifiable net present value benefits to ratepayers compared to traditional ratemaking,²⁶⁴ Non-labor costs should be securitized rather than addressed in a future ratemaking proceeding and differences should be addressed in a future reconciliation process consistent with the securitization statute.

S. What is the amount of depreciation expense?

The Commission should calculate depreciation expense for the Asbury regulatory liability based on an Asbury retirement date in December 2019, when it stopped producing energy.²⁶⁵ Liberty had no burnable coal on the Asbury site past December 12, 2019.²⁶⁶ Asbury ceased operating on December 12, 2019.²⁶⁷

The Commission ordered Liberty to establish an accounting authority order beginning January 1, 2020.²⁶⁸ The Commission's accounting authority order (AAO) for Asbury required Liberty to track, among other items, accumulated depreciation

²⁶³ Exhibit 209, Riley Surrebuttal at 6:8-13.

²⁶⁴ Issue V below.

²⁶⁵ Exhibit 100, McMellen Rebuttal at 6:13-14; 10:1-3.

²⁶⁶ Exhibit 209, Riley Rebuttal at 12:10-11.

²⁶⁷ Exhibit 200, Mantle Rebuttal at 19:8-9 & n.13.

²⁶⁸ Exhibit 7, Emery Direct at 5:6-15.

associated with Asbury starting January 1, 2020.²⁶⁹ Contrary to the AAO, Liberty failed to track accumulated depreciation associated with Asbury until March 1, 2020.²⁷⁰

Staff's accumulated depreciation from January 2020 through April 2022 is \$24,349,929, and should be reflected in Liberty's AAO regulatory liability and considered in the balance to be securitized.²⁷¹

T. What are the appropriate carrying costs for Asbury?

The Commission should allow Liberty to securitize approximately \$1,987,723 in accrued carrying costs associated with Asbury.²⁷² The securitization statute authorizes the Commission to approve carrying costs as part of the definition of energy transition costs.²⁷³ The term carrying cost is not defined by statute.²⁷⁴ If the Commission approves carrying costs, it must find that the carrying costs are just and reasonable and in the public interest.²⁷⁵ The Commission has great discretion in making pragmatic adjustments in deciding what carrying cost is just and reasonable and in the public interest.²⁷⁶

In calculating carrying costs on Asbury, Liberty's most current (as of February 2022) long-term cost of debt rate of 4.65% is more appropriate than Liberty's full weighted average cost of capital or pre-tax rate of return.²⁷⁷ Liberty was already recovering Asbury costs through May 2022, and Asbury costs will not be recovered from

²⁶⁹ Exhibit 7, Emery Direct at 6:6-14.

²⁷⁰ Exhibit 8, Emery Surrebuttal at 34:14-24.

²⁷¹ Exhibit 113 at pdf page 4, line 14 column f; Exhibit 116 page 2 line 14.

²⁷² Exhibit 100, McMellen Rebuttal at 6:25-7:3 and Table 2; Exhibit 113 at pdf page 3, line 13.

²⁷³ § 393.1700.1(7)(a), RSMo (Cum. Supp. 2021).

²⁷⁴ *Id.*

²⁷⁵ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

²⁷⁶ *State ex rel. Public Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 586 (Mo. App. W.D. 2009); *State ex rel. U.S. Water/Lexington v. Pub. Serv. Comm'n*, 795 S.W.2d 593, 597 (Mo. App. W.D. 1990).

²⁷⁷ Exhibit 100, McMellen Rebuttal at 7:14-8:3.

June 2022 until bonds are issued, meaning carrying costs are likely to be accrued over a relatively short period of time, which supports the use of the long-term cost of debt rather than the weighted average cost of capital.²⁷⁸

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

Staff's position on this issue is identical to its position for Issue III.T above.

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?

In deciding whether securitization provides quantifiable net present value benefits, the securitization statute does not specify the discount rate to use.²⁷⁹ The term “net present value” is not defined by statute, so its plain and ordinary meaning as derived from the dictionary governs.²⁸⁰ Black's Law Dictionary defines net present value as “[t]he present value of net cash flow from a project, discounted by the cost of capital. This value is used to evaluate the project's investment potential.”²⁸¹

For purposes of securitization, the weighted average cost of capital may be a useful reference point to help serve as a proxy for the customer cost of capital.²⁸² The

²⁷⁸ Exhibit 100, McMellen Rebuttal at 7:1-3. (Exhibit 100 assumes May 2022 effective dates for Liberty's new electric rates; rates actually took effect in June 2022).

²⁷⁹ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

²⁸⁰ *Pub. Serv. Comm'n v. Union Elec. Co.*, 552 S.W.3d 532, 541 (Mo. banc 2018).

²⁸¹ Black's Law Dictionary PRESENT VALUE (11th ed. 2019); *see also*, *Webster's Third New International Dictionary*, 1794 (3rd ed. 1976) (present value defined as “the principal of a sum of money payable at a future date that drawing interest at a given rate will amount to the given sum at the date on which this sum is to be paid <at 6% interest the *present value* of \$106 due one year hence is \$100>.”). *Webster's Third New International Dictionary* is “the institutional dictionary of choice” for the Supreme Court of Missouri. *AAA Laundry & Linen Supply Co. v. Director of Revenue*, 425 S.W.3d 126, 131-32 (Mo. banc 2014).

²⁸² Exhibit 107, Davis Rebuttal at 5:11-13.

discount rate for Asbury costs should be based on the weighted average cost of capital of 6.77%.²⁸³

IV. 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?

Assuming the Commission issues a consolidated financing order, and incurs the “not-to-exceed” amounts in contracts relating to its own responsibilities under the securitization statute, then estimated upfront financing costs would be approximately \$6.2 million, as described below. Estimated ongoing financing costs are likely to be approximately \$35,000 per month.

The securitization statute requires the Commission to describe and estimate the financing costs that may be recovered through securitized utility tariff charges.²⁸⁴ The issuance advice letter provided by the utility to the Commission must also provide the best available estimate of total ongoing financing costs.²⁸⁵ The term “financing costs” is defined by statute to include:

- (a) Interest and acquisition, defeasance, or redemption premiums payable on securitized utility tariff bonds;
- (b) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to securitized utility tariff bonds;
- (c) Any other cost related to issuing, supporting, repaying, refunding, and servicing securitized utility tariff bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees,

²⁸³ Exhibit 107, Davis Rebuttal at 5:11-14.

²⁸⁴ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

²⁸⁵ § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021).

administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of securitized utility tariff bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

(d) Any taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized utility tariff charge or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued;

(e) Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable, or accrued;

(f) Any costs associated with performance of the commission's responsibilities under this section in connection with approving, approving subject to conditions, or rejecting a petition for a financing order, and in performing its duties in connection with the issuance advice letter process, including costs to retain counsel, one or more financial advisors, or other consultants as deemed appropriate by the commission and paid pursuant to this section;²⁸⁶

Financing costs can be included in the principal amount of the securitized utility tariff bonds.²⁸⁷

²⁸⁶ § 393.1700.1(8), RSMo (Cum. Supp. 2021).

²⁸⁷ § 393.1700.1(16), RSMo (Cum. Supp. 2021) (“securitized utility tariff charges” include “financing costs.”).

Here, Liberty seeks to securitize upfront financing costs but not its ongoing financing costs.²⁸⁸ It is customary for utility securitizations to include upfront financing costs.²⁸⁹

Financing costs are only estimates when the Commission issues a financing order.²⁹⁰ Actual financing costs depend on a number of variables, including the size of the transaction, the length and complexity of transaction execution, and negotiations with third parties.²⁹¹

1. Upfront Financing Costs

Liberty included in its estimate “fees to the Company’s legal and structuring advisors, consultants, underwriting fees, auditing fees, and other fees as well as rating and filing fees necessary to secure the bonds.”²⁹² Liberty estimates its own upfront financing costs for securitization of Winter Storm Uri will be approximately \$3.6 million.²⁹³ For Asbury, Liberty estimates its upfront financing costs will be approximately \$3.3 million.²⁹⁴ Liberty’s estimates appear to be based on financing costs associated with

²⁸⁸ Exhibit 8, Emery Surrebuttal at Schedule CTE-2, line 7 (upfront financing costs included in amount securitized); line 14-15 (ongoing financing costs included in revenue requirement but not amount securitized); Exhibit 8; Emery Surrebuttal at Schedule CTE-2 Asbury lines 15-16 (upfront financing costs included in amount securitized); lines 22-23 (ongoing costs included in revenue requirement but not amount securitized).

²⁸⁹ Exhibit 107, Davis Rebuttal at 6:14-16.

²⁹⁰ Exhibit 107, Davis Rebuttal at 7:17-21.

²⁹¹ Exhibit 107, Davis Rebuttal at 7:17-21.

²⁹² Exhibit 6, Hall Direct at 5:3-6 & Schedule KSH-1. Exhibit 7, Hall Direct at 15:14-18. Liberty Witness Hall’s testimony was adopted and incorporated by Liberty Witness Emery. Exhibit 8, Emery Surrebuttal at 2:4-5 & n.1.

²⁹³ Exhibit 8, Emery Surrebuttal at Schedule CTE-1 line 22.

²⁹⁴ Exhibit 7, Emery Direct at Schedule CTE-1 line 9.

two separate financing orders.²⁹⁵ This would therefore total approximately \$6.9 million in upfront financing costs for both cases.

Staff estimates Liberty's financing costs will be lower because some financing costs are based on a percentage of the securitization itself, and Staff recommends lower securitization amounts for both Uri and Asbury.²⁹⁶ Moreover, if the Commission issues a single financing order authorizing a single bond offering, duplicative fixed financing costs can be avoided.²⁹⁷ Staff estimates up front financing costs on a consolidated basis to be approximately \$3.9 million.²⁹⁸

Liberty did not estimate the financing costs associated with the Commission's responsibilities under the statute, such as retaining counsel, financing advisors, or other consultants.²⁹⁹ Assuming the Commission grants Staff's request to designate a Staff representative, and to be advised by a financial advisor or advisors,³⁰⁰ the Commission's expenses for Staff's advisors and bond counsel would not exceed \$2,310,484, plus out-of-pocket expenses, assuming the Uri and Asbury are securitized together.³⁰¹ If Uri and Asbury are not securitized together, additional duplicative costs could be incurred. Adding \$2.3 million to the previously identified upfront financing costs of \$3.9 million brings the estimated total upfront financing costs to be approximately \$6.2 million.

²⁹⁵ See, Exhibit 6, Hall Direct, *and* Exhibit 7, Emery Direct.

²⁹⁶ Issues I, II, and III above.

²⁹⁷ Exhibit 107, Davis Rebuttal at 6:10-23; *see also*, Exhibit 7, Emery Direct at 3:3-7.

²⁹⁸ Exhibit 118.

²⁹⁹ Exhibit 6, Hall Direct at 5:11-15; Exhibit 7, Emery Direct at 15:21-16:2.

³⁰⁰ See, Section VI below.

³⁰¹ Exhibit 112, McMellen Uri Workpapers; Exhibit 113; McMellen Asbury Workpapers.

2. Ongoing Financing Costs

For ongoing financing costs associated with Uri, Liberty estimates approximately \$410,850 per year, which equates to approximately \$34,237 per month.³⁰² For ongoing financing costs associated with Asbury, Liberty estimates approximately \$346,599 per year, which equates to \$28,883 per month.³⁰³ However, if the Commission issues a single financing order authorizing a single bond offering, duplicative fixed financing costs can be avoided.³⁰⁴ Liberty estimates that a significant portion of its ongoing financing costs are fixed.³⁰⁵ Assuming that Uri and Asbury bonds are issued together on a consolidated basis with a 13 year recovery in beginning in 2022, Staff's estimated ongoing financing costs are approximately \$** [REDACTED] ** per month.³⁰⁶

3. Total Financing Costs

In all, upfront financing costs associated with Uri and Asbury in a consolidated offering would likely be approximately \$6.2 million as identified above, plus approximately \$35,000 per month in ongoing financing costs.

V. **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?**

³⁰² Exhibit 8, Emery Surrebuttal at 9:1-10 & Schedule CTE-1 (noting Exhibit 6, Hall Direct at 7:7-9 & Schedule KSH-1 inadvertently omitted servicing fees).

³⁰³ Exhibit 7, Hall Direct at 17:18-20.

³⁰⁴ Exhibit 107, Davis Rebuttal at 6:10-23; *see also*, Exhibit 7, Emery Direct at 3:3-7.

³⁰⁵ Exhibit 8, Emery Surrebuttal at Schedule CTE-2 Storm Uri, lines 2-9 (fixed upfront costs); lines 10-13 (variable upfront costs); lines 17-21 and 23-24 (fixed ongoing costs; Exhibit 8, Emery Surrebuttal at 9:1-10 & Schedule CTE-1, lines 5-13 (fixed upfront costs), lines 16-19 (variable upfront costs), lines 28-32 and 34-35 (fixed ongoing costs), and lines 27 and 33 (variable ongoing costs).

³⁰⁶ Exhibit 107C, Davis Rebuttal at Schedule MD-1 line.

The purpose of the securitization statute is to provide quantifiable net present value benefits to customers compared to traditional or customary ratemaking.³⁰⁷

Assuming the Commission authorizes Liberty to recover the same costs it would have authorized Liberty to recover under traditional ratemaking, then under most reasonable assumptions, securitization provides quantifiable net present value benefits of up to \$29 million.³⁰⁸ Given uncertainty and volatility in interest rates, cost of capital, and various related costs of securitization, Liberty should be required to demonstrate the ultimate amounts of quantifiable net present value savings in its Issuance Advice Letter.³⁰⁹

If, however, the Commission authorizes recovery of more costs under securitization than it would under traditional ratemaking, then the quantifiable net present value benefits are no longer as clear.³¹⁰ In making its decision, the Commission should generally assume in the absence of evidence to the contrary that a utility's cost of traditional financing is already included in the utility's general rates.³¹¹

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

³⁰⁷ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

³⁰⁸ Exhibit 118 at 2 (Scenario 2 consolidated, rounding up \$28,749,489 to \$29 million). This estimate does not include the financing costs associated with the Commission's responsibilities under the statute, as the range is currently unknown, but that amount would not exceed approximately \$2.3 million, implying net present value benefits of up to \$26.7 million. See, Exhibit 112; Exhibit 113.

³⁰⁹ Tr. 534:6-10 (certificates from underwriters); Tr. 535:9-12 (certificates from Liberty).

³¹⁰ Issue II and Issue III above.

³¹¹ See, Tr. at 625:4-8.

In the context of deciding whether securitization provides quantifiable net present value benefits, the securitization statute does not specify the discount rate to use.³¹² The term “net present value” is not defined by statute, so its plain and ordinary meaning as derived from the dictionary governs.³¹³ Black’s Law Dictionary defines net present value as “[t]he present value of net cash flow from a project, discounted by the cost of capital. This value is used to evaluate the project's investment potential.”³¹⁴

The securitization statute is new in Missouri, and there are no court decisions construing it. Other states’ approaches to utility securitization decisions may be persuasive or illustrative, even though they are not binding on the Missouri Commission or Courts, and even though they may be based on statutory provisions that may differ from Missouri’s. The Public Utility Commission of Texas (PUC) analyzed an early securitization proposal using more than one discount rate, even where the Texas statute specified a discount rate based on the interest rates on the bonds.³¹⁵ The Supreme Court of Texas affirmed the PUC’s decision to rely on more than one discount rate.³¹⁶

³¹² § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

³¹³ *Pub. Serv. Comm’n v. Union Elec. Co.*, 552 S.W.3d 532, 541 (Mo. banc 2018).

³¹⁴ Black’s Law Dictionary PRESENT VALUE (11th ed. 2019); see also, *Webster’s Third New International Dictionary*, 1794 (3rd ed. 1976), which defines “present value” as “the principal of a sum of money payable at a future date that drawing interest at a given rate will amount to the given sum at the date on which this sum is to be paid ,at 6% interest the *present value* of \$106 due one year hence is \$100>.” *Webster’s Third New International Dictionary* is “the institutional dictionary of choice” for the Supreme Court of Missouri. *AAA Laundry & Linen Supply Co. v. Director of Revenue*, 425 S.W.3d 126, 131-32 (Mo. banc 2014).

³¹⁵ *TXU Elec. Co. v. Pub. Util. Comm’n of Tex.*, 51 S.W.3d 275, 277 (S. Ct. of Tex., 2001) (*per curiam*)(interpreting rate Tex. Util. Code Ann. § 39.301 (West)).

³¹⁶ *TXU Elec. Co. v. Pub. Util. Comm’n of Tex.*, 51 S.W.3d 275, 277 (S. Ct. of Tex., 2001) (*per curiam*)(interpreting rate Tex. Util. Code Ann. § 39.301 (West)).

The actual interest rate on bonds is not currently known. Consequently, the net present value determination should be performed under a number of alternative cases.³¹⁷ Generally, if the weighted average cost on the bond issuance exceeds the discount rate used to determine the net present value of benefit to ratepayers, securitization may not satisfy the statutory requirement.³¹⁸ In contrast, if the interest rate exceeds the discount rate under securitization, it may provide a net present value benefit.³¹⁹

Here, Liberty's weighted average cost of capital of 6.76% may be a useful reference point for the customer cost of capital.³²⁰ However, Staff proposes a discount rate at Liberty's long-term cost of debt for Winter Storm Uri costs and Liberty's weighted average cost of capital for Asbury retirement costs.³²¹ Staff analyzed a variety of scenarios and assumptions. Under most reasonable assumptions, using a discount rate based on Liberty's weighted average cost of capital of 6.76% for Uri and Asbury costs results in net present value benefits to customers.³²² Under most reasonable assumptions, using a discount rate based on Liberty's long-term cost of debt of 4.65% for Uri costs and based on Liberty's weighted average cost of capital of 6.76% for Asbury costs, for a weighted blended interest rate of approximately 5.2%, results in net present value benefits to customers.³²³ However, if a discount rate based on Liberty's long-term cost of debt of 4.65% is used for the discount rate for net present value of securitization,

³¹⁷ Exhibit 107, Davis Rebuttal at 8:23-26.

³¹⁸ Exhibit 107, Davis Rebuttal at 14:6-11.

³¹⁹ Exhibit 107, Davis Rebuttal at 14:6-11.

³²⁰ Exhibit 107, Davis Rebuttal at 5:11-14.

³²¹ Exhibit 107, Davis Rebuttal at 5:11-14.

³²² Exhibit 118.

³²³ Exhibit 118.

and an approximate 5.2% blended interest rate is used for the carrying cost and net present value of a thirteen-year recovery period in rates after an accounting authority order, then securitization may no longer provide a net present value benefit.³²⁴

An important caveat to the above net present value analysis is that Liberty's long-term cost of debt and weighted average cost of capital is not a static number, and could likely change in the next thirteen years.³²⁵ In contrast, once an interest rate is set for securitized utility tariff bonds, that interest rate will likely not vary.³²⁶ To the extent that interests rates on securitized utility tariff bonds are generally lower than a utility's cost of debt and weighted average cost of capital, this generally implies a likely benefit to ratepayers from securitization.³²⁷

VI. 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)?

The securitization statute authorizes the Commission to designate one more representatives from Commission Staff, who may be advised by a financial advisor or advisors contracted with the Commission, "to provide input to the electrical corporation and collaborate with the electrical corporation in all facets of the process undertaken by

³²⁴ Exhibit 118 (Scenario 4). The Commission may consider that even if the Commission now does not order a return on Asbury, a future Commission is not bound by its own precedent in a future rate case, and may reach a different conclusion in a different case. *Office of Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.2d 371, 376 (Mo. banc 2013); *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003).

³²⁵ See, § 393.150, RSMo (authorizing utility to file rate case).

³²⁶ Exhibit 19, Niehaus Direct at 6:6 ("Nearly all rate reduction bonds have been fixed-rate bonds").

³²⁷ Tr. 531:18-532:4 (describing how interest rates for securitization increase, "one would expect that the utilities [sic] cost of capital would also increase, given they're both referencing similar investor bases and tied to the same treasury base rate calculation.")

the electrical corporation to place the securitized utility tariff bonds to market.”³²⁸ The Commission representative(s) and financial advisor(s) are to “provide the Commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis.”³²⁹ The representative(s) and financial advisor(s) are authorized to attend all meetings convened by the electrical corporation to address placement of the bonds to market.³³⁰ The only limit on the authority of the representative(s) and financial advisor(s) is that neither of them “shall have the authority to direct how the electrical corporation places the bonds to market.”³³¹

The statute contains ratepayer protection provisions, but the Commission can better achieve those protections by designating representatives and financial advisors to actively protect ratepayer interests after the issuance of the financing order. Securitization must provide quantifiable net present value benefits to ratepayers.³³² Securitized utility tariff bonds must also be structured and priced to result in the lowest securitized utility tariff charges consistent with market conditions at the time the bonds are priced.³³³ At the time of the Commission’s financing order, the interest rate on the securitized utility tariff bonds is only an estimate, the financing costs are only estimates, and the market conditions at the time of pricing are not yet known.³³⁴

Because the financing order is based on estimated interest rates, estimated financing costs, and estimated market conditions, there is a precarious balancing of

³²⁸ § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021).

³²⁹ § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021).

³³⁰ § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021).

³³¹ § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021).

³³² § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

³³³ § 393.1700.2(3)(c)c, RSMo (Cum. Supp. 2021).

³³⁴ Exhibit 107, Davis Rebuttal at 7:17-21.

shareholder and ratepayer interests from the time the financing order is issued to the time the issuance advice letter is filed. Achieving the quantifiable benefits and lowest securitized utility tariff charges requires granting Liberty flexibility to establish repayment schedules, coupons, financing costs, and other bond terms and conditions based on rating agency feedback and underwriter recommendations.³³⁵ In addition to the flexibility granted to Liberty, a financing order grants Liberty unprecedented authority to bind all of its current and future ratepayers to irrevocable and nonbypassable securitized utility tariff charges.³³⁶

In granting Liberty such flexibility and authority, though, the Commission should also recognize that Liberty and other parties may not have a natural incentive to protect the interests of ratepayers.³³⁷ To balance ratepayer protection with the authority granted to Liberty in a financing order, the Commission should therefore designate one or more representatives, who should be advised by one or more financial advisors.³³⁸

Moreover, the Commission should ensure that the role of the representative(s) and financial advisor(s) is sufficient to protect ratepayer interests, because Liberty's proposal does not contain sufficient ratepayer protections.³³⁹ The Commission's designated representative(s) and financial advisor(s) should be involved in all facets of the bond issuance process.³⁴⁰ If the representative(s) and advisor(s) are limited to collaborating on

³³⁵ Exhibit 107, Davis Rebuttal at 13:18-26.

³³⁶ § 393.1700.2(3)(c)d, RSMo (Cum. Supp. 2021).

³³⁷ Exhibit 107, Davis Rebuttal at 12:4-6.

³³⁸ Exhibit 107, Davis Rebuttal at 11:3-11.

³³⁹ Exhibit 107, David Rebuttal, at 11:3-6. The proposed financing orders filed by Liberty with its case merely track the language of Section 393.1700.2(3)(h), RSMo (Cum. Supp. 2021), and contain nothing of substance beyond parroting the terms of the statute.

³⁴⁰ Exhibit 107, Davis Rebuttal at 12:23-13:12; § 393.1700.2(3)(h).

the structure and pricing of the bonds, and not the marketing process, the result could be securitized utility tariff bonds that do not satisfy the requirement that bonds provide for the lowest securitized utility tariff charges consistent with market conditions at the time they are priced.³⁴¹ The representative(s) and advisor(s) should be authorized to review upfront and ongoing financing costs; the structure, form, and implementation of true-ups and other credit protections; and the structural elements to obtain the highest possible credit ratings and lowest cost of capital.³⁴² The Commission's financing order should make clear that the role of representative(s) and advisor(s) in the marketing process will not be limited in any way, as the process used to market bonds can vary widely and failure to adequately market the bonds could result in securitized utility tariff charges that do not meet the requirements of Section 393.1700.2(3)(c)c, RSMo (Cum. Supp. 2021).

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

The Commission is authorized to include in any financing order “conditions that the commission considers appropriate and that are not inconsistent with this section.”³⁴³ In addition to its general authority to issue a financing order subject to conditions, the Commission may “provide such additional provisions relating to the issuance advice letter process as the commission considers appropriate and as are not inconsistent with this section.”³⁴⁴

³⁴¹ Exhibit 107, Davis Rebuttal at 12:23-13:8; § 393.1700.2(3)(c)c, RSMo (Cum. Supp. 2021).

³⁴² Exhibit 107, Davis Rebuttal at 12:7-10.

³⁴³ § 393.1700.2(3)(c)o, RSMo (Cum. Supp. 2021).

³⁴⁴ § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021).

The Commission should authorize a financial advisor contracted with the Commission to advise the designated Staff representative(s), consistent with Staff's position on Issue VI above.³⁴⁵ The designated Staff representative(s) and financial advisor(s) should be involved in reviewing all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the underwriter and any other member of the syndicate group size, selection process, participants, allocations and economics; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Liberty and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond maturities; (8) reporting templates; (9) the amount of any equity contributions; (10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges.³⁴⁶

It is undisputed that both Liberty and its underwriters should be required to certify to the Commission that the proposed securitization meets the statutory requirement that securitized utility tariff bonds as structured provide quantifiable net present value benefits to ratepayers, compared to traditional recovery.³⁴⁷ It is undisputed that both Liberty and its underwriters should be required to certify to the Commission that the securitized utility tariff bonds are structured, marketed, and priced to provide the lowest securitized utility tariff charges consistent with market conditions at the time the bonds are priced.³⁴⁸

³⁴⁵ Exhibit 107, Davis Rebuttal at 10:3-11.

³⁴⁶ Exhibit 107, Davis Rebuttal at 10:9-11.

³⁴⁷ Tr. 534:6-10 (underwriters); Tr. 535:9-12 (Liberty).

³⁴⁸ Tr. 561:15-562:1.

The certifications from Liberty and its underwriters should set forth all calculations used to support the certification, and it should state all assumptions made in the certification, describe the actions taken in the process of structuring, marketing and pricing of the bonds (and any actions not taken that would be normal or expected market practice), state all assumptions made in the certification, and provide unqualified certifications.³⁴⁹ The Commission's designated representative(s) and financial advisor(s) can assist the Commission in understanding the process described in the certifications and can help ensure that the certificates meet the requirement that securitized utility tariff bonds provide quantifiable net present value benefits to customers and are structured such that they achieve the lowest securitized utility tariff charges consistent with market conditions at the time they were priced.³⁵⁰ The representative(s) and financial advisor(s) can also advise the Commission on the reasonableness of any assumptions and calculations made in the certifications.³⁵¹

Rejection of an issuance advice letter is a drastic mechanism.³⁵² The Commission should therefore order its designated representative(s) and financial advisor(s) to file regular status reports, which should include any unresolved concerns of the representative(s) or financial advisor(s).³⁵³ The Commission should clarify that it may provide feedback to these status reports as necessary, and require Liberty to respond to any concerns. This is a less drastic mechanism than outright rejection of an issuance

³⁴⁹ Tr. 339:22-340:10.

³⁵⁰ Exhibit 107, Davis Rebuttal at 11:19-12:3.

³⁵¹ Exhibit 107, Davis Rebuttal at 11:22-12:3.

³⁵² Exhibit 107, Davis Rebuttal at 8:8-11.

³⁵³ Exhibit 107, Davis Rebuttal at 13:13-17.

advice letter, and it is not inconsistent with the provisions of Section 393.1700, RSMo (Cum. Supp. 2021).³⁵⁴ While Liberty witnesses note their preference for expedited decision-making in the marketing process,³⁵⁵ Staff's proposal allows some feedback and response process where possible. It also allows Liberty more time to respond to Commission feedback and concerns than would otherwise be allowed under the issuance advice letter process, which requires a Commission order no later than noon on the fourth business day after the Commission receives the issuance advice letter.³⁵⁶

For the avoidance of doubt, the Commission's financing order should specify that the designate Staff representative(s) and financial advisor(s) shall have the right to representation by counsel. The right of a litigant to be represented is "fundamental and well accepted in Missouri."³⁵⁷ The right applies in civil cases, and it is part of the due process of law.³⁵⁸ Nothing in Section 393.1700, RSMo (Cum. Supp. 2021) purports to prohibit designated Staff representative(s) and financial advisor(s) from being represented by counsel. In the absence of statutory language specifically prohibiting legal representation for the designated Staff representative(s) and financial advisor(s), the Commission should affirm that designated Staff representative(s) and financial advisor(s) do have authority to engage counsel. Moreover, to the extent the cost of engaging counsel is an ordinary expense just as any other expense associated with performance of the

³⁵⁴ Exhibit 107, Davis Rebuttal at 8:8-14; § 393.1700, RSMo (Cum. Supp. 2021).

³⁵⁵ Exhibit 20, Niehaus Rebuttal at 5:23-6:13.

³⁵⁶ § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021).

³⁵⁷ *Magerstadt v. La Forge*, 303 S.W.2d 130, 133 (Mo. 1957).

³⁵⁸ *Magerstadt v. La Forge*, 303 S.W.2d 130, 133 (Mo. 1957).

commission's responsibilities, the Commission should clarify that the costs of engaging counsel is a financing cost to be paid by Liberty.³⁵⁹

VIII. How should securitized utility tariff charges be initially allocated among retail customer classes?

The Commission's financing order must contain a provision stating "[h]ow securitized utility tariff charges will be allocated among retail customer classes."³⁶⁰ 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."³⁶¹

Unlike traditional rate cases, Liberty is not seeking approval of a tariff in this case.³⁶² In fact, the securitization statute does not expressly contemplate the filing of what the Commission may normally call a compliance tariff in response to a financing order; instead, the statute refers to an "issuance advice letter" that contains the initial securitized utility tariff bonds and other information that would normally be required in a tariff.³⁶³ The term "advice letter" appears to come from other states, such as California, that use an "advice letter" procedure where the Commission would normally use a tariff file-and-suspend procedure or waiver procedure.³⁶⁴ For purposes of clarification, Staff

³⁵⁹ § 393.1700.1(8)(f); 393.1700.2(3)(b), 393.1700.2(3)(h), 393.1700.2(4)(a)-(b), RSMo (Cum. Supp. 2021).

³⁶⁰ § 393.1700.2(3)(c)h, RSMo (Cum. Supp. 2021).

³⁶¹ § 393.1700.2(3)(c)h, RSMo (Cum. Supp. 2021).

³⁶² Exhibit 7, Emery Direct at 24:1-6.

³⁶³ *E.g.*, § 393.1700.2(3)(h), RSMo (Cum. Supp. 2021) (emphasis added).

³⁶⁴ *E.g.*, West's Cal. Code Forms, Pub. Util. § 5:3 (5th ed.) (describing advice letters procedure used for transmitting tariff pages when tariff amendment made pursuant to formal decision of the CAPUC, to amend tariff rules that do not result in increased rates, to make "minor" increases to tariff rates, or to deviate from tariff rates or rules with respect to individual customers).

recommends that the Commission order Liberty to include a compliance tariff with its issuance advice letter.

The Commission generally has discretion in determining the theory or method it uses in allocating costs, and it can make pragmatic adjustments called for by particular circumstances to set just and reasonable rates.³⁶⁵ Cost allocation is a discretionary determination frequently delegated to expert administrative agencies like the Commission.³⁶⁶ Quoting the United States Supreme Court, Missouri Courts have held that “[a]llocation of costs is not a matter for the slide-rule. It involves judgment of myriad facts. It has no claim to an exact science.”³⁶⁷ While Section 393.1655 is not directly relevant to the outcome of this case,³⁶⁸ it is relevant to establish that the Missouri Legislature has recognized that class cost of service allocation decisions can be based on consideration of public policy interests, rather than a strict mathematical calculation.³⁶⁹

³⁶⁵ *State ex rel. Public Counsel v. Pub. Serv. Comm’n*, 274 S.W.3d 569, 586 (Mo. App. W.D. 2009); *State ex rel. U.S. Water/Lexington v. Pub. Serv. Comm’n*, 795 S.W.2d 593, 597 (Mo. App. W.D. 1990).

³⁶⁶ *Spire Mo., Inc. v. Pub. Serv. Comm’n*, 607 S.W.3d 759, 771 (Mo. App. W.D. 2020)

³⁶⁷ *Spire Mo., Inc. v. Pub. Serv. Comm’n*, 607 S.W.3d 759, 771 (Mo. App. W.D. 2020) (*quoting Nat’l Ass’n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 825-27, 103 S. Ct. 2727, 77 L.Ed. 2d 195 (1983)). The Supreme Court quoted an earlier decision, *Colorado Interstate Gas Co. v. Fed’l Power Comm’n*, 324, U.S. 581, 589, 65 S.Ct. 829, 833 L.Ed. 1206 (1945), in reaching its holding.

³⁶⁸ “Securitized utility tariff charges shall not be utilized or accounted for in determining the electrical corporation's average overall rate, as defined in section 393.1655 and as used to determine the maximum retail rate impact limitations provided for by subsections 3 and 4 of section 393.1655.” § 393.1700.3(2), RSMo (Cum. Supp. 2021).

³⁶⁹ “If the difference between (a) the electrical corporation's class average overall rate at any point in time while this section applies to the electrical corporation, and (b) the electrical corporation's class average overall rate as of the date rates are set in the electrical corporation's most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under subsection 5 of section 393.1400, reflects a compound annual growth rate of more than two percent for the large power service rate class, the class average overall rate shall increase by an amount so that the increase shall equal a compound annual growth rate of two percent over such period for such large power service rate class, **with the reduced revenues arising from limiting the large power service class average overall rate increase to two percent to be allocated to all the electrical corporation's other customer classes through the**

The Commission retains a similar level of discretion in securitization cases, as the securitization statute does not prescribe how the Commission must allocate securitized utility tariff charges among the classes as long as the allocation is “just and reasonable and in the public interest.”³⁷⁰ The only limitation is that securitized utility tariff charges must be allocated among all of a utility’s current and general retail customers.³⁷¹

Here, the Commission should allocate securitized utility tariff charges among all of Liberty’s rate classes on the basis of loss-adjusted energy for each of the following reasons.

1. 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.

Liberty has no customers receiving service under special contracts as of August 21, 2021.³⁷² As a result, all of Liberty’s rate classes must pay securitized utility tariff charges. The classes identified in Liberty’s direct are no longer accurate, and the rates for electrical vehicles (EV) service are excluded.³⁷³ The class allocation factors proposed by Liberty do not reflect those resulting from the conclusion of the case in ER-2021-0312, which Liberty acknowledged should be updated.³⁷⁴ As a result,

application of a uniform percentage adjustment to the revenue requirement responsibility of all the other customer classes.” § 393.1655.6, RSMo (Cum. Supp. 2021) (emphasis added).

³⁷⁰ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

³⁷¹ § 393.1700.2(3)(c)h, RSMo (Cum. Supp. 2022).

³⁷² Exhibit 108, Lange Rebuttal at 11:3-6.

³⁷³ Exhibit 108, Lange Rebuttal at 5:1-3.

³⁷⁴ Exhibit 108, Lange Rebuttal at 5:4-6 & n.4 (quoting DR 55, in which Liberty responded that it was Liberty’s intent, subject to and in accordance with an order of the Commission in ER-2021-0312, to update the calculations in Ms. Hall’s testimony at page 12-13 to reflect the surrebuttal testimony of Mr. Lyon in ER-2021-0312 and the Class Usage values agreed upon in ER-2021-0312 in the January 28, 2022, Non-Uniform Partial Stipulation and Agreement).

Liberty's proposal is not authorized by Section 393.1700.1(16), RSMo (Cum. Supp. 2021), and is therefore unlawful.

- a. Winter Storm Uri costs should be allocated on the basis of loss-adjusted energy, consistent with Liberty's fuel adjustment clause.**

Winter Storm Uri costs should be allocated on the basis of energy, consistent with its fuel adjustment clause (FAC).³⁷⁵ Extraordinary Winter Storm Uri costs were caused by Liberty's difficulties in obtaining natural gas to fire its units.³⁷⁶ Traditionally, these same fuel costs would be recovered through Liberty's fuel adjustment clause.³⁷⁷ Under Liberty's fuel adjustment clause, Liberty recovers fuel costs from customers on the basis of energy consumption, as adjusted for losses.³⁷⁸ If Liberty had generated more energy, it would have lowered the cost of obtaining energy to serve Liberty's load during Winter Storm Uri.³⁷⁹

- 2. 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.**

Asbury retirement costs should also be allocated on the basis of energy, adjusted for losses. The decision to retire and replace of Asbury "was predicated on the provision of benefits to ratepayers."³⁸⁰ The benefits Liberty identifies are expected to flow to customers through decreased Southwest Power Pool (SPP) expense, which is allocated

³⁷⁵ Exhibit 108, Lange Rebuttal at 32:11-15.

³⁷⁶ Exhibit 108, Lange Rebuttal at 29:8-30:19.

³⁷⁷ Exhibit 108, Lange Rebuttal at 30:20-22.

³⁷⁸ Exhibit 108, Lange Rebuttal at 30:20-22; 32:7-10.

³⁷⁹ Exhibit 108, Lange Rebuttal at 30:23-25.

³⁸⁰ Exhibit 106, Luebbert Rebuttal at 3:5-7.

to customers through the fuel adjustment clause (FAC) “on the basis of loss adjusted energy usage.”³⁸¹ Because the benefits of Asbury’s retirement will be allocated on the basis of loss-adjusted energy usage, the costs of Asbury’s retirement should also be allocated on the basis of loss-adjusted energy usage.³⁸²

Liberty’s decision to retire Asbury was tied directly to Liberty’s decision to pursue wind energy.³⁸³ In October 31, 2017, Liberty filed an application for approval of a customer savings plan, or CSP.³⁸⁴ Under its CSP, Liberty proposed to retire Asbury and replace it with 800 megawatts (MW) of nameplate capacity wind generating assets.³⁸⁵ Liberty’s IRP, filed in 2019, again tied the retirement of Asbury to its decision to pursue wind energy. In that IRP, Liberty “determined that retiring Asbury in 2019 and replacing it with a mix of solar and storage would result in PVRR [present value revenue requirement]³⁸⁶ savings relative to operating the plant until 2035....”³⁸⁷

As part of its CSP docket, Liberty commissioned a Generation Fleet Savings Analysis (GFSA) indicating that “Asbury should be retired since there were less expensive ways for Liberty to serve its load.”³⁸⁸ An important aspect of the Generation Fleet Savings Analysis was that Liberty generating units are sold in the SPP Integrated Marketplace

³⁸¹ Exhibit 106, Luebbert Rebuttal at 3:7-10.

³⁸² Exhibit 106, Luebbert Rebuttal at 3:10-12.

³⁸³ Exhibit 108, Lange Rebuttal at 25:12-27:6; Exhibit 106, Luebbert Rebuttal at 3:15-21.

³⁸⁴ Exhibit 106, Luebbert Rebuttal at 3:16-17 (citing case EO-2018-0092).

³⁸⁵ Exhibit 106, Luebbert Rebuttal at 3:17-19. Following the conclusion of the CSP case, Liberty filed an application for a certificate of convenience and necessity (CCN) to acquire three wind projects with a nameplate capacity of 600 MW. Exhibit 106, Luebbert Rebuttal at 3:19-21 (citing Case Numbers EA-2019-0010 and EA-2019-0118).

³⁸⁶ Exhibit 16, Graves Direct at 9:20.

³⁸⁷ Exhibit 16, Graves Direct at 21:14-18.

³⁸⁸ Exhibit 3, Doll Direct at 16:1-8; Exhibit 106 Luebbert Rebuttal at 4:14-5:25.

(IM) regardless of the need to serve Liberty's native load or fulfill existing bilateral contracts.³⁸⁹ "The results of the GFSA, and Liberty's subsequent IRP [integrated resource plan] analyses, were heavily influenced by the ability of Liberty to earn off-system sales revenues."³⁹⁰

Liberty earns off-system sales revenues through its participation in the SPP IM.³⁹¹ As an SPP IM participant, Liberty offers its various generating resources to SPP.³⁹² In turn, SPP decides which generating units to dispatch.³⁹³ Liberty receives revenue when one of its generators is selected and run by SPP.³⁹⁴ In exchange, Liberty purchases energy from the SPP IM to meet its own retail customers' load requirements.³⁹⁵ If Liberty sells more energy than it purchases to serve its own load, it earns off system sales revenue.³⁹⁶

Consistent with its positions in the cases identified above, Liberty here argues that securitization of Asbury retirement costs is directly tied to its decision to pursue wind energy, arguing that "it is encouraging (rather than penalizing) utility decisions of this kind, finding system improvements where retirements and the proposed replacement with other lower cost resources will create lower going-forward costs for customers than would have otherwise been incurred with the continued operation of Asbury."³⁹⁷

³⁸⁹ Exhibit 106, Luebbert Rebuttal at 5:27-6:2.

³⁹⁰ Exhibit 106, Luebbert Rebuttal at 6:2-4.

³⁹¹ Exhibit 106, Luebbert Rebuttal at 6:7-8.

³⁹² Exhibit 106, Luebbert Rebuttal at 6:7-8.

³⁹³ Exhibit 106, Luebbert Rebuttal at 6:8-9.

³⁹⁴ Exhibit 106, Luebbert Rebuttal at 6:9-11.

³⁹⁵ Exhibit 106, Luebbert Rebuttal at 6:11-12.

³⁹⁶ Exhibit 106, Luebbert Rebuttal at 6:12-14.

³⁹⁷ Exhibit 16, Graves Direct at 55:7-11.

In retiring Asbury early, Liberty sought to meet its capacity requirements with new investments in wind generation, resulting in high capital and low production costs.³⁹⁸ The wind generation pursued by Liberty results in increased capacity costs but an overall decrease in total company revenue requirement, via decreased net costs of participation in the SPP Integrated Market.³⁹⁹ As a result, classes with relatively high energy consumption per customer will be the biggest beneficiaries of both reduced operating costs and reduced costs of obtaining energy to serve load.⁴⁰⁰ Therefore, allocating the cost of Asbury on the basis of loss-adjusted energy, consistent with allocation of the benefits of the wind generation that replaced it, “is the only reasonable resolution.”⁴⁰¹

3. 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.

An ideal true-up mechanism should ensure adequate collections to meet bond payments, including in rating agency stress test cases.⁴⁰² A true-up that is straightforward to implement, easy to understand, and that requires timely action will benefit ratepayers in the form of valuable support for the bonds, its credit ratings, and the resulting cost of capital.⁴⁰³ Staff’s proposal to allocate costs on the basis of loss-adjusted energy sales will be easier for Liberty to administer.⁴⁰⁴ Tariffs reflecting this cost allocation method and true-up procedures based on this cost allocation method will be less prone to error than

³⁹⁸ Exhibit 108, Lange Rebuttal at 27:1-6.

³⁹⁹ Exhibit 108, Lange Rebuttal at 27:1-6.

⁴⁰⁰ Exhibit 108, Lange Rebuttal at 27:15-17.

⁴⁰¹ Exhibit 108, Lange Rebuttal at 27:17-18.

⁴⁰² Exhibit 107, Davis Rebuttal at 9:9-12.

⁴⁰³ Exhibit 107, Davis Rebuttal at 9:15-16.

⁴⁰⁴ Exhibit 108, Lange Rebuttal at 32: 16-21.

the more complex and vague methods proposed by Liberty.⁴⁰⁵ This will facilitate a faster and less error-prone true-up mechanism, avoiding the kinds of problems that Liberty has experienced with tariff filings in the past.⁴⁰⁶

In addition, Liberty's proposal could lead to rate switching driven by class-level rate differences, and the resulting rate class switching could exacerbate rate differences.⁴⁰⁷ Rate switching could also lead to chronic under-recovery of the amounts required to service the debt on the securitized utility tariff bonds, all else being equal.⁴⁰⁸ Staff Witness Lange illustrates an example, at page 19 of her Rebuttal Testimony, showing that assuming a thirteen year recovery period, as customers switch from one class to another to avoid higher bills, a utility experiences chronic under collection of amounts sufficient to service the debt.⁴⁰⁹

4. Liberty's proposal suffers several deficiencies compared to Staff's proposal.

The Rebuttal Testimony of Staff Witness Sarah Lange illuminates the deficiencies in Liberty's initially proposed cost allocation. The classes identified in Liberty's direct are no longer accurate, and the rates for electrical vehicles (EV) service are excluded.⁴¹⁰ The

⁴⁰⁵ Exhibit 108, Lange Rebuttal at 32:16-21.

⁴⁰⁶ Exhibit 108, Lange Rebuttal at 32:16-21 (noting that Liberty has had to file substitute tariffs in three out of its last four fuel adjustment clause filings in the last two years).

⁴⁰⁷ Exhibit 108, Lange Rebuttal at 18:1-3.

⁴⁰⁸ Exhibit 108, Lange Rebuttal at 18:3-4.

⁴⁰⁹ Exhibit 108, Lange Rebuttal at 18-19. "PBRAF" in the chart refers to Periodic Billing Requirement Allocation Factor (PBRAF). Exhibit 108, Lange Rebuttal at 9:7-8. The "Forecasted Billing Units" reflects a steady movement of 50,000 billing units per year moving from one rate class to another, and the resulting forecasted billing units always being the same amount short as the actual billing units. The "Initial Rate" column also shows the rate differential growing large each year as a result, starting at .0750 versus .0500, but ending at .0798 versus .0446.

⁴¹⁰ Exhibit 108, Lange Rebuttal at 5:1-3.

class allocation factors proposed by Liberty do not reflect those resulting from the conclusion of the case in ER-2021-0312, which Liberty acknowledged should be updated.⁴¹¹ Liberty's initial proposal refers to "distribution" service rates, rather than the term "retail" rates generally used in its and other Missouri tariffs.⁴¹² Liberty's true-up procedure is not fully developed.⁴¹³

For all of the reasons stated above, the Commission should allocate securitized utility tariff costs on the basis of loss-adjusted energy as proposed by Staff.

CONCLUSION

The Commission should issue a single financing order approving Liberty's applications to securitize Winter Storm Uri and Asbury costs, subject to conditions, including that the amount securitized should be between \$265,875,917 and \$266,210,148, reflecting all qualified extraordinary costs, energy transition costs, and upfront financing costs related to the transaction, that the Commission designate one or more Staff members, who may be advised by a financial advisor, that both be allowed representation by counsel, that the conditions requested above in Section VII are granted, and that all securitized utility tariff charges shall be allocated among all of Liberty's current and future retail customers on the basis of loss-adjusted energy, and that the Commission include any other and further relief it deems just and reasonable and in the public interest.

⁴¹¹ Exhibit 108, Lange Rebuttal at 5:4-6 & n.4 (quoting DR 55, in which Liberty responded that it was Liberty's intent, subject to and in accordance with an order of the Commission in ER-2021-0312, to update the calculations in Ms. Hall's testimony at page 12-13 to reflect the surrebuttal testimony of Mr. Lyon in ER-2021-0312 and the Class Usage values agreed upon in ER-2021-0312 in the January 28, 2022, Non-Uniform Partial Stipulation and Agreement).

⁴¹² Exhibit 108, Lange Rebuttal at 5:7-8.

⁴¹³ Exhibit 108, Lange Rebuttal at 5:11 & n.6.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 13th day of July, 2022, to all parties and/or counsels of records.

/s/ Curt Stokes

Curt Stokes