

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of The Empire District )  
Electric Company’s Request for Authority )  
to File Tariffs Increasing Rates for Electric )  
Service Provided to Customers in its )  
Missouri Service Area )

Case No. ER-2019-0374

**PUBLIC COUNSEL’S REPLY TO EMPIRE’S AND STAFF’S RESPONSES TO  
PUBLIC COUNSEL’S MOTION FOR THE COMMISSION TO RECONSIDER ITS  
ORDER DENYING PUBLIC COUNSEL’S MOTION TO MODIFY TEST YEAR**

COMES NOW the Office of Public Counsel (“Public Counsel”) and, for its reply to Empire’s and Staff’s responses to Public Counsel’s motion asking the Commission to reconsider its order denying Public Counsel’s motion to modify the trued-up, updated test year the Commission ordered for this case, states:

1. While Public Counsel is replying here to certain of Empire’s and Staff’s assertions, the Commission should not be distracted from focusing on the fact that when Empire retires Asbury on March 1, 2020, it will no longer incur costs for, or receive energy or capacity revenues from Asbury; costs and revenues that Empire incurred and received during the ordered updated, trued-up test year. Among those costs are Empire’s coal cost to fuel Asbury, and Empire’s operations and maintenance costs at Asbury. Revenues include proceeds from energy sales in the SPP markets. Unless Empire’s Asbury costs and revenues are excluded when determining Empire’s revenue requirement in this case, then rates based on that revenue requirement will be designed to recover ongoing costs, and revenues, that Empire ceased incurring, and realizing, months before those rates take effect. To so design rates would violate the fundamental goal of ratemaking—for Empire’s prospective retail customer revenues to match Empire’s net costs, return of investment, and return on investment *required for it to provide the electric service* for which those retail customers are paying.

2. Empire's assertions in its response are red herrings to Public Counsel's point that the rates Empire's retail customers pay in the future should not be designed for Empire to recover nonexistent costs and revenues for a generating plant that is retired and no longer operational.

First, Empire asserts, "that the cost and expense impacts of the retirement of Asbury will not be known and measurable in time to be adequately addressed in this case." While not all of the changes to Empire's costs due to the retirement of Asbury may be known and measurable at this time, those included in the test year as updated and trued-up are both known and measurable, and must be addressed in this case.

Second, Empire asserts that it "continues to explore all opportunities related to the closure of the Asbury plant," including that "[t]he operations and maintenance for the future wind farms will be based at the Asbury facility, but the final plan for the Asbury facility and other structures on the property is not known at this time." What Empire may do with Asbury after retirement, which Empire admits it has not decided yet, is for a future rate case, not this one because now it is neither known nor measurable.

Third, Empire asserts that, "quite significantly, costs of dismantlement are still under consideration," for which, "[o]n July 18, 2019, Empire engaged Black and Veatch to perform an Asbury Decommissioning Study . . . [that] will identify the costs to decommission and dismantle the facility and [which] is expected to be completed in mid-2020." Like Empire's speculation about the future of Asbury in its second assertion, what it costs to dismantle Asbury is a topic and cost that may be addressed in a future rate case, and need not be addressed in this one. Indeed, based on Empire's representations, it cannot be addressed in this case because the costs of dismantlement are not known yet.

3. In its response Staff asserts, “OPC’s request to move the test year would require all parties to this case to also consider **all relevant factors** for the extended period of the test year, which would require a more extensive discovery process and additional strain on the review already underway.” The Commission is charged by statute to consider all relevant factors when determining rates.<sup>1</sup> What OPC is seeking by its motion is to ensure that the relevant factor of Empire retiring Asbury after January 31, 2020, the end of the updated, trued-up test year, is addressed in this case, as part of the true-up, or by isolated adjustments:

The goal for which Public Counsel filed its December 9, 2019, *Motion to Modify Test Year to Include Isolated Adjustments Related to Retirement of Asbury*, is to include in this case all of the material impacts of Empire retiring its Asbury energy center on Empire’s revenue requirement the Commission uses for setting Empire’s electric rates in this case. Public Counsel is indifferent as to whether that goal is accomplished by isolated adjustments or by changing the procedural schedule to move the true-up cutoff to March 1, 2019—the date which Empire stated in the last sentence of paragraph five of its response that it will retire Asbury—“More specifically, Liberty-Empire will retire the plant on March 1, 2020.”<sup>2</sup>

4. In its response Staff also asserts, “The Commission has ruled on OPC’s request already and, in Staff’s interpretation, has granted the parties a reasonable avenue to address the impact of the Asbury retirement in this present rate case, through use of isolated adjustments and an AAO.” Given that the Commission denied Public Counsel’s motion where Public Counsel “move[d] the Commission to modify the ordered test year to include isolated adjustments related to the retirement of Asbury, as well as updates to September 30, 2019, and true-up through January 31, 2020,” then later alternatively pled for extension of the true-up cutoff date, Public Counsel is unable to agree with Staff as to the effect of the Commission’s order denying Public Counsel’s motion.

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<sup>1</sup> *State ex rel. Util. Consumers Council, Inc. v. Pub. Serv. Com.*, 585 S.W.2d 41, 49 (Mo. 1979) (citing to *State ex rel. Missouri Water Co. v. Public Service Comm’n*, 308 S.W.2d 704, 718-19, 720 (Mo. 1957); § 393.270.4, RSMo.

<sup>2</sup> *Public Counsel’s Reply to Empire’s Response to Public Counsel’s Motion to Modify Test Year to Include Isolated Adjustments Related to Retirement of Asbury*, ¶ 2, filed December 26, 2019.

5. While the Commission has not ordered what items are to be trued-up, by an e-mail dated December 4, 2019, Staff informed Public Counsel that it will update the following items for its true-up audit:

- Plant in Service
- Depreciation Reserve
- Other rate base items (including tracker balances)
- Payroll expense
- Payroll-related benefits
- Fuel and purchased power costs
- Depreciation and Amortization expense
- Rate case expense
- Property Taxes
- Related income tax effects
- Customer growth for revenues
- SPP revenue and expenses
- Capital structure
- Debt costs

Because Empire is retiring Asbury on March 1, 2020, after the January 31, 2020, end of the true-up period, absent an order to include isolated adjustments for Empire's retirement of Asbury on March 1, 2020, or moving the true-up cutoff date to include the retirement of Asbury (Public Counsel is proposing March 1, 2020), the impacts of Empire retiring Asbury will not be included in Empire's revenue requirement in this case. The Commission's Staff recognizes the impropriety of this result in its response when it says, "[The Commission] has granted the parties a reasonable avenue to address the impact of the Asbury retirement in this present rate case, through use of isolated adjustments and an AAO."

**WHEREFORE**, Public Counsel replies to Empire's and Staff's responses as set forth above, and continues to urge the Commission to reconsider its order denying Public Counsel's motion to modify the trued-up, updated test year the Commission ordered for this case to include the impacts on Empire's revenue requirement of Empire retiring Asbury.

Respectfully,

/s/ Nathan Williams

Nathan Williams  
Chief Deputy Public Counsel  
Missouri Bar No. 35512

Office of the Public Counsel  
Post Office Box 2230  
Jefferson City, MO 65102  
(573) 526-4975 (Voice)  
(573) 751-5562 (FAX)  
[Nathan.Williams@ded.mo.gov](mailto:Nathan.Williams@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 11<sup>th</sup> day of February 2020.

/s/ Nathan Williams