

**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)	<u>Case No. ER-2019-0374</u>
Service Provided to Customers in its)	
Missouri Service Area)	

**PUBLIC COUNSEL'S RESPONSES
TO EMPIRE'S OBJECTIONS TO EVIDENCE**

COMES NOW the Office of Public Counsel (Public Counsel) and for its responses to Empire's May 6, 2020, objections to evidence that Public Counsel has offered in this case, states:

1. Empire bases its objections on orders the Commission entered in response to a motion Public Counsel filed on December 9, 2019, and a series of subsequent pleadings. On December 9, 2019, Public Counsel moved the Commission to include in this case isolated adjustments for Asbury after Empire represented that it believed Asbury would "be retired no later than March of 2020." In its December 19, 2019, response to that motion Empire stated it would retire Asbury on March 1, 2020. In its December 26, 2019, reply to Empire's response Public Counsel expanded its motion to include the alternative relief of extending the ordered true-up cutoff date to March 1, 2020.

2. In its January 28, 2020, order the Commission ruled on Public Counsel's motion, as expanded by its reply, *i.e.*, whether to order isolated adjustments or to extend the ordered true-up period to March 1, 2020, to capture the impacts on Empire's cost-of-service of the about 200 MWs of baseload capacity at Asbury permanently no longer being available to Empire for providing electric service to Empire's customers. Based on what was before it then, the Commission denied Public Counsel's motion, and directed the "parties [to] file a list of suggested

items or categories to address impacts resulting from Asbury’s retirement for inclusion in an Accounting Authority Order, no later than April 3, 2020.”¹

3. Although it said in its order, but not in its ordering paragraphs, “Asbury’s retirement is best addressed in Empire’s next rate proceeding,” the Commission did not order that it would not consider the impacts on Empire’s cost-of-service caused by Empire shutting Asbury down. .

4. By its February 19, 2020, order denying Public Counsel’s January 30, 2020, motion for reconsideration, the Commission again, based on what was before it then, denied Public Counsel’s motion for reconsideration.

5. While it is still Public Counsel’s position that the Commission erred by denying Public Counsel’s motion, all of the evidence to which Empire is objecting is relevant to events *before* the January 31, 2020, end of true-up period; and they show that Empire last shut Asbury down on December 12, 2019, with no intention of ever restarting Asbury again. This is a materially different circumstance than what was presented to the Commission when it ruled on Public Counsel’s motion.²

6. If Public Counsel had known before the Commission ruled on its motion that Empire finally shut Asbury down three days after Public Counsel filed its motion, Public Counsel would have withdrawn its motion because the date when Empire finally shut Asbury down—December 12, 2019—is *before* the Commission-ordered true-up cutoff date of January 31, 2020. Likewise, it would not have filed a motion for reconsideration.

¹ In its January 3, 2020, *Response to Public Counsel’s Reply to Empire*, Staff requested the Commission to “not extend the true-up cutoff date or modify the ordered procedural schedule in the present rate case (ER-2019-0374); [] permit the parties to identify all known and measurable material impacts resulting from the retirement of Asbury in pre-filed testimony; [] permit the parties to identify all material impacts not known and measurable by the true-up cutoff date for recommendation for inclusion in an accounting authority order; and [] grant such other and further relief as the Commission considers just in the circumstances.”

² It should not be lost on the Commission that Empire did not make the Commission aware that it had shut Asbury down for the final time (on December 12, 2019) before the Commission ruled on Public Counsel’s motion (on January 28, 2020), even when Empire filed its response to Public Counsel’s motion on December 19, 2019.

7. In this case both Empire and Staff are including the impacts of Asbury in their determinations of Empire's cost-of-service based on how Empire historically operated that generating unit before it finally shut Asbury down. In at least one respect they differ, Staff has included an eighteen-day burn coal supply inventory in Empire's cost-of-service, but Empire has included a sixty-day inventory. Empire is in no position to argue that true-up period evidence bearing on Empire's investment in and costs relating to Asbury is irrelevant.

8. As to Empire's claim it is relying on Commission statements to the effect that it does not want to deal with Asbury's retirement in this case, as addressed above, the Commission's orders did nothing more than deny Public Counsel's motion and direct the parties to provide a list of what to include in an accounting order for Asbury. When the Commission made those statements it was unaware—because of Empire's silence—that Empire had shut Asbury down for the final time on December 12, 2019. And Public Counsel has doggedly and pointedly made the Commission, Empire, and the other parties aware that it views that the impacts on Empire's cost-of-service due to Empire's election to render Asbury no longer used and useful by finally shutting it down are among the all relevant factors that the Commission must consider when setting rates in this case.

9. Moreover, Empire's objections are also not well taken because Empire's own witnesses testify regarding Asbury impacts, and the testimony to which Empire is objecting is testimony of Public Counsel witnesses responding to their testimony.

10. Further, Empire is not objecting to the direct testimonies of Public Counsel witnesses Lena Mantle, Ex. 203HC, Geoff Marke, Ex. 206HC, and John Robinett, Ex. 217C, all of whom testify in their direct testimony regarding impacts on Empire's cost-of-service and fuel adjustment clause and Empire retiring Asbury. Nor is Empire objecting to Staff's cost of service

report where it addresses Empire’s retirement of Asbury. In fact, part of Empire’s objection to Public Counsel witness John Robinett’s rebuttal testimony is his reference to and restatement of the recommendation he made in his direct testimony—Ex. 218, p. 1, ll. 9-12.

Wherefore, for all the foregoing reasons, including that Empire finally shut Asbury down on December 12, 2019, *before* the Commission-ordered true-up cutoff date of January 31, 2020, Public Counsel prays the Commission to overrule Empire’s objections to its exhibits filed on May 6, 2020, and admit each of those exhibits into evidence. If the Commission sustains Empire’s objection as to any of the exhibits and does not admit it into evidence, Public Counsel offers each such exhibit into the record as an offer of proof of what the evidence would be if admitted.

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

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 8th day of May 2020.

/s/ Nathan Williams