BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Qualified Extraordinary Costs	)))))	**Case No. EO-2022-0040**
In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Energy Transition Costs Related to the Asbury Plant	))))))	**Case No. EO-2022-0193**

STAFF'S STATEMENT OF POSITION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and submits the following as its Statement of Position for the above captioned cases:

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

The Commission should authorize Liberty to finance $262,376,407 using securitized utility tariff bonds.[1] As discussed below, this is the amount of securitized utility tariff costs that are just and reasonable and in the public interest to finance through securitization, and there are quantifiable net present value benefits to securitizing these costs compared to traditional or customary ratemaking.

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

[1] McMellen Rebuttal at page3, lines 14-20 and Table 1, pages 6 line 23 through page 7 line 4 and Table 2.

The Commission should authorize Liberty to finance $193,378,314 in qualified extraordinary costs associated with Winter Storm Uri.[2] Staff's recommendation to securitize Winter Storm Uri costs is made regardless of whether the Commission issues a consolidated order allowing recovery of Uri and Asbury costs together; under either scenario, using most reasonable assumptions, securitization provides quantifiable net present value benefits to ratepayers.[3]

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

The Commission should authorize Liberty to finance $68,998,093 in energy transition costs for Asbury.[4] Staff's recommendation to securitize Asbury costs is dependent on cost savings associated with a single financing order consolidating Winter Storm Uri and Asbury financing.[5] As discussed below, while consolidation of Winter Storm Uri and Asbury in a single financing order entails some risk associated with delays from appeal, such as exposure to interest rate volatility, and continued accrual of carrying costs, those risks are generally outweighed by savings associated economies of scale, including avoiding duplication of upfront and ongoing financing costs that would otherwise be incurred in separate transactions, and the issuance of a larger overall deal that could potentially result in greater investor interest.[6]

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[2] McMellen Rebuttal at page 3, lines 14-20 and Table 1.

[3] Davis Rebuttal at page 4, lines 5 through 16 and footnote 7, and page 9, line 18 through page 10, line 17 and Schedule MD-1. There is one scenario where discounting the cost of the securitization by the long-term debt rate of 4.65% instead of the 6.77% WACC, would imply an illustratively higher NPV cost of securitization of approximately $4 million. Davis Rebuttal at page 4, footnote 7.

[4] McMellen Rebuttal at page 6, line 23 through page 7 line 4 and Table 2.

[5] Davis Rebuttal at page 4, lines 5 through 16 and footnote 7, Schedule MD-1.

[6] Davis Rebuttal at page 9, line 18 through page 10, line 17 and Schedule MD-1 (last two columns).

2) Storm Uri:

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

In the absence of securitization, Staff would recommend that Liberty recover 95% of its extraordinary fuel and purchased power costs associated with Winter Storm Uri, consistent with its Fuel Adjustment Clause, and as adjusted to offset extraordinary costs by higher than normal customer revenues received by Liberty during Winter Storm Uri and to reflect a disallowance for revenues that Liberty's Riverton 11 would have generated during Winter Storm Uri.[7] As of December 31, 2021, Staff estimates these costs to be approximately $193,378, 314.[8]

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

Absent securitization, Liberty should be permitted to defer its extraordinary fuel and purchased power costs outside of an immediate FAC recovery, using an accounting authority order (AAO).[9] Staff would recommend recovery of those, subject to the adjustments identified above, amortized over a ten-year period due to the magnitude of the costs, with carrying costs at the short-term debt rate reflected in Liberty's FAC or Liberty's long-term debt rate.[10]

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"?

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[7] McMellen Rebuttal at page 2, line 20 through page 3 line 21 and Table 1; Bolin Rebuttal at page 4, line 20 through page 5, line 3.
[8] McMellen Rebuttal at page 3, lines 16-17.
[9] Bolin Rebuttal at page 4, lines 1-15.
[10] Bolin Rebuttal at page 4, lines 12-19.

This issue is the same as Issue 2 B above, and its inclusion here reflects the failure of the parties to agree to the phrasing of the issue. Staff's position for Issue 2C is therefore the same as its position for Issue 2B.

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

Liberty should not be allowed to collect more than 95% of its extraordinary fuel and purchased power costs associated with Winter Storm Uri.[11] The 95/5 sharing mechanism is required under Liberty's Fuel Adjustment Clause (FAC), and that sharing mechanism has not been adjusted in any general rate case since 2008.[12] In addition, the 95/5 sharing mechanism is an essential element to the Commission finding Liberty's FAC as just and reasonable, as it protects ratepayers by providing Liberty with sufficient incentive to be prudent in its decisions by not allowing all costs to simply be passed through to ratepayers.[13] Finally, even in the absence of Liberty's FAC, some sharing of extreme costs associated with natural disasters is consistent with previous Commission decisions on how to set just and reasonable rates to recover natural disaster costs.[14] Adjusting Liberty's application to adjust for the 95/5 sharing mechanism results in a disallowance of $9,670,109.89.[15]

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

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[11] McMellen Rebuttal at page 3, lines 6-7; Bolin Rebuttal at page 4, line 20 through page 6, line 6; Mastrogiannis Rebuttal at page 5, line 16 through page 9, line 11.
[12] Mastrogiannis Rebuttal at page 8, lines 2 through 6; page 6 lines 9 through page 7, line 16.
[13] Mastrogiannis Rebuttal at page 6 footnote 2 and page 7, lines 4-21.
[14] Bolin Rebuttal at page 5, line 4, through page 6,
[15] Mastrogiannis Rebuttal at page 5, lines 16-19.

While Liberty experienced extraordinary costs during Winter Storm Uri, it also experienced higher than normal revenues based on higher than normal kilowatt-hour (kWh) sales.[16] This $ 3 million in higher than normal sales revenues are not subject to the FAC adjustment mechanism must be considered together with Liberty's higher than normal costs associated with Winter Storm Uri if Liberty's recovery for Winter Storm Uri is to be just and reasonable.[17]

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?

Liberty's recovery for Winter Storm Uri costs should be adjusted to account for revenues that Liberty could have received from running its Riverton 11 unit on fuel oil.[18] Staff's adjustment is based on the hours of fuel oil onsite at Riverton 11 before Winter Storm Uri, and the day ahead locational market prices published by the Southwest Power Pool (SPP) integrated resource market at Liberty's Riverton node.[19] Liberty lists Riverton 11 in its current IRP as a peaking unit with dual fuel capabilities to be used during emergency situations as backup when natural gas is interrupted.[20] Despite Liberty listing Riverton 11 in this way, Liberty has not tuned Riverton 11 for winter conditions.[21] At the time of Winter Storm Uri, Riverton 11 had not been tuned for years, and when it had been tuned, it was not tuned for winter temperatures.[22] By failing to tune Riverton 11 to run as

[16] Lange Rebuttal at page 33, lines 1-14.
[17] Lange Rebuttal at page 33, line 1 through page 34, line 2.
[18] Hull Rebuttal at page
[19] Hull Rebuttal at page 7, lines 4-17 and Attachment 3.
[20] Hull Rebuttal at page 6, lines 12-17.
[21] Hull Rebuttal at page 6, lines 12-17; page
[22] Hull Rebuttal at page 6, line 20 through page 7, line 2.

a unit with dual fuel capabilities in conditions Liberty said it could, Liberty failed to earn approximately potential revenues from running Riverton 11.[23] In an abundance of caution, Staff's exact calculation of the Riverton 11 disallowance is listed as confidential because it is derived from confidential information, but the disallowance exceeds $ 2 million.[24]

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

Other than Staff's concerns about Liberty's planning based on Riverton 11, discussed in issue 2F above, Staff does not recommend a disallowance based on Liberty's resource planning.

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

Staff does not recommend a disallowance for income tax deductions for Winter Storm Uri costs.[25] The tax savings, if any, associated with Winter Storm Uri are not currently known.[26] Moreover, the exact amount of taxes that Liberty will be required to pay on securitized utility tariff charges are also unknown.[27] Regardless of the Commission's decision, the tax consequences, if any, resulting from the timing differences resulting from the financing of qualified extraordinary costs for Winter Storm Uri should be accounted for in a future ratemaking reconciliation under Section 393.1700.2(3)(c)k financed with bonds and the qualified extraordinary costs.[28]

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[23] Hull rebuttal at page 8, lines 9 through 11.
[24] Hull Rebuttal at page 7, lines 4-17.
[25] Bolin Surrebuttal at page 5, lines 1-16.
[26] Riley Rebuttal at page 21, lines 9-13 (identifying amount Liberty "expects" to claim).
[27] Bolin Surrebuttal at page 5, lines 12-16.
[28] Bolin Rebuttal at page 6, lines 11-17

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

Liberty should be allowed to securitize approximately $11,212,773 in accrued carrying costs associated with Winter Storm Uri qualified extraordinary costs.[29] The Commission should use Liberty's FAC short-term borrowing rate of 0.30% per month, which is 3.58% per year,[30] or Liberty's long-term debt rate of 4.65%, given the relatively short period of time that Winter Storm Uri costs have accrued, rather than Liberty's full weighted average cost of capital (WACC).[31]

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?

While Liberty's WACC of 6.77% may be useful for illustrative purposes, it is not sufficient to determine a net present value benefit to ratepayers using only one scenario.[32] The Commission should also use Liberty's short-term or long-term cost of debt as the discount rate for determining the quantifiable net present value benefits to ratepayers of securitization.[33] Liberty's short-term cost of debt is 3.58% per year.[34] Its long-term cost of debt is currently 4.65%.[35] Using most reasonable assumptions, there is a net present value benefit to securitization, as identified below at Issues 5.

3) Asbury:

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

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[29] McMellen Rebuttal at page 3, lines 16-22 and Table 1.
[30] McMellen Rebuttal at page 4, lines 8-16.
[31] McMellen Rebuttal at page 8, lines 1-3.
[32] Davis Rebuttal at page 8, line 23, through page 9, line 8.
[33] Davis Rebuttal (corrected) at page 5, lines 11-14.
[34] McMellen Rebuttal at page 4, lines 8-16.
[35] McMellen Rebuttal at page 8, lines 1-3.

In the absence of securitization, Staff would recommend that Liberty would recover based on a sharing between shareholders and ratepayers of the responsibility for the unrecovered capital costs of Asbury.[36] Staff's most recent estimate of these unrecovered capital costs, with certain adjustments, is $68,998,093.[37]

B) What is the appropriate method of customary[38] ratemaking absent securitization?

Absent securitization, Staff would recommend a thirteen year recovery period.[39] In Liberty's most recent rate case, Staff recommended no return on the undepreciated Asbury amounts.[40] However, as noted below, on a net present value basis the difference between a recovery of Asbury and a recovery of and on Asbury over 13 years is only approximately $1.8 million.[41] Moreover, to the extent the Commission would approve a rate of return on Asbury, the interest rate on bonds would be expected to have a much lower rate than the weighted average cost of capital return that might have been ordered in future general rate cases.[42]

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"?

[36] McMellen Rebuttal at 2, lines 21-23.
[37] McMellen Rebuttal at page 7, Table 2.
[38] [sic]. The statute uses "traditional" ratemaking when referring to energy transition costs. § 393.1700.2(1)(f), RSMo (Supp. 2021).
[39] McMellen Rebuttal at page 6, lines 21-22; Davis Rebuttal at page 3, line 14 through page 4, line 4.
[40] McMellen Rebuttal at page 10, lines 12-17 and Schedule ACM-r2.
[41] Davis Rebuttal at Schedule MD-1, line 23 ($60,775,158 less $58,947,777).
[42] McMellen Rebuttal at page 10, line 18 through page 11, line 3.

This issue is the same as Issue 3B above, and its inclusion here reflects the failure of the parties to agree to the phrasing of the issue. Staff's position for Issue 3C is therefore the same as its position for Issue 3B.

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.[43]

E) Was it reasonable and prudent for Liberty to retire Asbury?[44]

Staff does not support a prudence disallowance based on the timing of the Asbury retirement.[45] It is reasonable for Liberty to recover the amounts Staff has identified for Asbury.[46]

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

As part of the Asbury environmental asset, Staff does not recommend the asset retirement obligations (AROs) for asbestos removal or for coal combustion residuals (CCR) impoundment be securitized.[47] Staff's position would not preclude future Liberty recovery of AROs for asbestos removal and CCR impoundment once those amounts are actually known and supported by documentation.[48] Staff included a balance of $1,426,482 (Missouri jurisdictional) pertaining to removal of asbestos at the Asbury plant and to the CCR impoundment.[49]

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[43] *See*, Davis Rebuttal at Schedule MD-2 line 7.
[44] Section 393.1700.1(7)(a)
[45] McMellen Rebuttal at page 5, line 18, through page 6, line 3.
[46] McMellen Rebuttal at page 5, line 19 through page 6, line 3; Schedule ACM-r2 at page 3 of 18 ("There can be unique situations in which it is reasonable that customers should contribute towards cost recovery of assets following their retirement. Staff's position is that the Asbury retirement is one of those rate instances.").
[47] Bolin Surrebuttal at page 1, line 21, through page 3, 16.
[48] Bolin rebuttal at page 9, line 16, through page 10, line 5.
[49] Bolin Surrebuttal at page 1, line 21, through page 2, line 4.

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

As stated below for Issue 3Q, Liberty used the proper amount of $1,532,832 to offset the coal inventory amount of $3,947,465 to reduce the Asbury AAO balance.[50]

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

Staff's valuation of the offset to account for ADIT associated with Asbury is $22,306,686.[51] Staff recommends using $12,313,459 as the offset to account for Excess ADIT (EADIT).[52] Liberty in effect has inappropriately discounted ADIT twice in its calculations, reducing the value of its calculated ADIT from more than $36 million to only $4.7 million.[53] The amounts reflected in the securitization balance for ADIT and Excess ADIT (EADIT) should reflect the values from the ER-2019-0374 case offset by the customer collections received for these items since rates went into effect for that case.[54]

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

The value of the Asbury AAO regulatory liability is $75.8 million.[55]

J) What are the likely Asbury decommissioning costs?

At this point, Liberty's proposed $12.4 million (Total Company) in decommissioning costs for phases 2 and 3 of Liberty's decommissioning plan are only projected.[56] The Commission should find that $1,364,002 (Missouri Jurisdictional) in decommission costs

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[50] McMellen Surrebuttal at page 1, line 22 through page 2 line 7.
[51] Bolin Rebuttal at page 11, lines 15 through page 12, line 1. -19.10, lines 16-22.
[52] Bolin Rebuttal at page 12, lines 2-8.
[53] Bolin Rebuttal at page 11, lines 3-14.
[54] Bolin Surrebuttal at page 4, lines 12 through 22.
[55] *See*, Davis Rebuttal at Schedule MD-2, line 11.
[56] Bolin Rebuttal at page 7, lines 1-4.

are most likely.[57] Liberty's projections failed to reflect any salvage value that Liberty will receive from the demolished assets.[58]

K) What are the likely Asbury retirement obligations?

The Commission should not include any asset retirement obligation (ARO) for Asbury in Liberty's proposed securitization.[59] An ARO is an obligation, legal or non-legal, associate with the retirement of a tangible, long-lived asset for the cost of returning a piece of property to its original condition.[60] Liberty's proposed AROs are estimates, and Liberty did not provide documentation to support its estimates.[61]

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

Staff does not propose an adjustment from Liberty's proposed Cash Working Capital.[62]

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

Staff does not propose a disallowance of the remaining cost of the Air Quality Control System.[63]

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

Staff does not recommend a disallowance for income tax deductions for Asbury beyond the ratepayer credit to reflect the net present value (NPV) of the tax benefits

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[57] Bolin Surrebuttal at page 3, lines 12-15.
[58] Bolin Rebuttal at page 8, lines 1-8.
[59] Bolin Rebuttal at page 9, lines 16-17.
[60] Bolin Rebuttal at page 9, lines 8-9.
[61] Bolin Rebuttal at page 9, lines 21-22.
[62] McMellen Rebuttal at page 2, line 18, through page 3, line 13.
[63] McMellen Rebuttal at page 2, line 18, through page 3, line 13.

associated with ADIT.[64] Moreover, the exact amount of taxes that Liberty will be required to pay on securitized utility tariff charges are unknown.[65] Regardless of the Commission's decision, the tax consequences, if any, resulting from the retirement of Asbury should be accounted for in a future ratemaking reconciliation under Section 393.1700.2(3)(c)k financed with bonds and the qualified extraordinary costs.[66]

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

The Commission should not order a disallowance for labor at Asbury.[67]

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

Staff does not propose a disallowance of amounts for abandoned environmental capital projects.[68]

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

Liberty used the proper amount of $1,532,832 to offset the coal inventory amount of $3,947,465 to reduce the Asbury AAO balance.[69] The $3,947,465 figure is the baseline balance to be compared to the actual monthly balances for coal inventory.[70] The $1,532,832 figure reflects the Missouri jurisdictional amount to be included in the AAO as unrecoverable coal at Asbury.[71]

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[64] McMellen Surrebuttal at page 4, lines 1-8.
[65] *See* Bolin Surrebuttal at page 5, lines 12-16.
[66] Bolin Rebuttal at page 6, lines 11-17
[67] McMellen Surrebuttal at page 4, lines 1-8.
[68] McMellen Rebuttal at page 2, line 18, through page 3, line 13.
[69] McMellen Surrebuttal at page 1, line 22 through page 2 line 7.
[70] McMellen Surrebuttal at page 2, lines 16-20.
[71] McMellen Surrebuttal at page 3, lines 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. McMellen Surrebuttal at page 3, lines 9-10.

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

Staff's proposed adjustments for decommissioning and asset retirement obligations (AROs) are addressed in issues 3J and 3K above, respectively. Staff does not recommend further adjustments beyond those.[72]

S) What is the amount of depreciation expense?

Depreciation expense through April 2022 is $24,349,929. Asbury was effectively retired in December 2019.[73] Amounts from January and February 2020 should be accounted for in the calculation of the Asbury AAO regulatory liability.[74]

T) What are the appropriate carrying costs for Asbury?

Liberty should be allowed to securitize approximately $1,987,723 in accrued carrying costs associated with Asbury.[75]

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

Staff does not support Liberty's proposal to use Liberty's WACC of 6.77% for calculating carrying costs on amounts to securitize for Asbury.[76] Given the short period of time the carrying costs are proposed to be applied (May through December 2022), Liberty's long-term debt rate of 4.65% is more appropriate.[77]

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?

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[72] McMellen Rebuttal at page 2, line 18 through page 3, line 13.
[73] McMellen Rebuttal at page 9, lines 13-20.
[74] McMellen Rebuttal at page 9, line 21, through page 10, line 3.
[75] McMellen Rebuttal at page 3, lines 16-22 and Table 1.
[76] McMellen Rebuttal at page 7, line 18 to page 8, line 3.
[77] McMellen Rebuttal at page 8, lines 1-3.

Staff proposes using Liberty's WACC of 6.77% for Asbury.[78]

4) What are the estimated upfront and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri and the energy transition costs associated with Asbury?[79]

Staff estimates approximately $3,539,568 in up-front financing costs for Winter Storm Uri financing[80] and approximately $2,890,269 in up-front financing costs for Asbury financing.[81] Financing Uri and Asbury costs together would avoid duplicative fixed costs, benefitting ratepayers.[82]

Staff estimates approximately $309,296 in annual ongoing financing costs for Winter Storm Uri financing[83] and approximately $346,599 in annual ongoing financing costs for Asbury financing.[84]

At this time, up-front and ongoing financing costs are only an estimate, used to determine whether financing through securitization provides quantifiable net present value benefits to ratepayers.[85] Actual financing costs may change as a result of various factors.[86]

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[78] Davis Rebuttal at page 5, line 11-14.
[79] Section 393.1700.2(3)(c)a
[80] McMellen Rebuttal at page 3, Table 1.
[81] McMellen Rebuttal at page 7, Table 2.
[82] Davis Rebuttal at page 6, lines 9–15. Staff and Liberty have stipulated that the benefits of consolidating Uri and Asbury together would outweigh the risks of issuing separate financing orders, recommending that the Commission issue a consolidated financing order.
[83] Davis Rebuttal at page 6, lines 16–21; Emery Surrebuttal at page 9, lines 1–10 (adding approximately $110,000 to the estimate from Schedule KSH-1 in EO-2022-0040 to reflect servicing fees).
[84] Davis Rebuttal at page 6, lines 16–21.
[85] Davis Rebuttal at page 7, line 13–15.
[86] Davis Rebuttal at page 7, lines 14–17. Provisions of the financing order to minimize financing costs is discussed below at Issue 6.

Differences between Staff's estimation and Liberty's estimate of financing costs primarily reflects the securitization amounts proposed by Staff, as some variable fees are calculated as a percentage of the aggregate securitization amount.[87]

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

Under most reasonable assumptions, issuance of bonds and the imposition of charges would provide quantifiable net present value benefits to Liberty's customers, compared to recovery of those same costs that would be incurred absent the issuance of bonds.[88] Assuming Staff's proposed numbers, the quantifiable net present value benefit to Liberty's ratepayers would be approximately $38 million ($25 million on a net present value basis).[89]

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

Staff proposes using the 6.77% customer weighted average cost of capital (WACC) from Liberty's recent case ER-2019-0314 to determine carrying costs under an AAO and as the discount rate.[90] Alternatively, a blended discount rate of 5.16%, comprising the long-term debt of 4.65% for Winter Storm Uri and 6.77% WACC for

[87] Davis Rebuttal at page 7, lines 3–8.
[88] Davis Rebuttal at page 4, lines 5–16 and footnote 7.
[89] Davis Rebuttal at page 4, lines 5–16. Alternative calculations based on different discount rates are identified in Issue 5A.
[90] Davis Rebuttal at page 4, lines 5–16.

Asbury, weighted by the respective recovery amounts, would yield quantifiable net present value benefits to Liberty's ratepayers of approximately $28 million on a net present value basis.[91]

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

The Commission should designate one or more Staff representatives to provide input to and collaborate with Liberty in all facets of the process undertaken by Liberty to place bonds to market.[92] The Commission should further authorize a financial advisor contracted with the Commission to advise the designated Staff representatives.[93] As discussed in Issue 7 below, the Commission should make clear that the designate Staff representative and financial advisor shall have the right to legal counsel in all proceedings. An actively involved designated staff, in consultation with dedicated financial advisor and legal counsels, can ensure that the structuring, marketing, and pricing of the bonds are designed to achieve the requirement of the securitization statute to provide ratepayers with quantifiable net present value benefits compared to traditional rate recovery, and to provide ratepayers with the lowest securitization charges consistent with the market conditions at the time the bonds are priced.[94]

Under Liberty's proposal, ratepayers are not directly protected, even though ratepayers would be irrevocably responsible for all charges associated with

[91] Davis Rebuttal at page 4, footnote 7.
[92] Davis Rebuttal at page 10, lines 3 through 11.
[93] Davis Rebuttal at page 10, lines 3 through 11.
[94] Davis Rebuttal at page 10, lines 3 through 11.

securitization.[95] Liberty and other parties involved may not otherwise have a natural incentive to protect the interests of ratepayers.[96] A Staff representative, under the advisement of dedicated financial advisors and legal counsels, can ensure ratepayer interests are protected and that potential conflicts are mitigated.[97]

The financing order should direct that designated Staff representative(s) and financial advisor(s), advised by legal counsel, must be involved in all facets of the bond structuring, marketing, and pricing processes. [98] Further, involvement in all other facets could benefit the ratepayer. The bond issuance should be consistent with the Commission's financing order. Designate Staff representatives, with dedicated financial advisors and legal counsel, can advise the Commission whether the issuance is consistent with the financing order by reviewing upfront and ongoing financing costs; the structure, form, and implementation of true-ups and other credit protections; and structural elements.[99] The financing order should also provide that the designated Staff representatives and financial advisors, advised by legal counsel, have sufficient time and access to information to be effectively involved and collaborate in the pre-issuance review process.[100]

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[95] Davis Rebuttal at page 11, lines 5 through 6.
[96] Davis Rebuttal at page 12, lines 4-6.
[97] Davis Rebuttal at page 10, lines 3 through 11.
[98] Davis Rebuttal at page 10, lines 9 through 11.
[99] Davis Rebuttal at page 12, lines 7 through 10.
[100] *See* Davis Rebuttal at page 11, line 3 through page 12, line 10; *and* Niehaus Surrebuttal at page 6 lines 8-11. The solution to Liberty Witness Niehaus' concern about "impeding the marketing timeline" is to provide more timely information to designated Staff representatives, financial advisors, and legal counsel. It would defeat the purpose of the statute to use "marketing timeline" excuses to order the Staff representative, financial advisors, and legal counsel to provide input to and collaborate in something less than "all facets" of the marketing process.

An effective pre-issuance review process should ensure that all possibilities are explored to achieve the lowest cost issuance, including, but not limited to, adapting the marketing timeline and go-to-market strategy to conditions at the tie, while ensuring ratepayer interest are protected.[101] In traditional ratemaking, the Commission reviews costs on an ongoing basis. Unlike traditional costs, the proposed utility securitization is an irrevocable charge that cannot be refinanced without incurring significant additional financing costs. This may be problematic absent oversight as competing interests of utilities and underwriters may not be completely aligned with the rate payer. For example, pricing higher may also allow the deal to complete the issuance more quickly, allowing the utility to get the underlying liability off-balance sheet more quickly and underwriters, who do not have a fiduciary duty to the ratepayer or the utility, to move to the next deal, as well to address a security mispricing.[102]

The financing order should also specify that Staff representatives and financial advisors, advised by legal counsel, must be involved in the selection of underwriters and other deal participants.[103] Involvement in the selection process can maximize perspective and insights, and obtain the best views of all relevant underwriters to inform the strategy and approach to the issuance process.[104] Involvement in the selection process will help Staff representatives and financial advisors, advised by legal counsel, advise the Commission whether the process described and the certificates given in certifications

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[101] Davis Rebuttal at pages 10 through 12.

[102] *See* Davis Rebuttal at page 12, lines 4 through 6; *see also*, Niehaus Surrebuttal at page 5 through 6 (emphasizing speed of marketing timeline).

[103] Davis Rebuttal at page 10, lines 9 through 11.

[104] Davis Rebuttal at page 10, lines 19 through 22.

provided by Liberty and by underwriters[105] meet the statutory objectives of the securitization statute.[106] The Staff representatives and financial advisors, advised by legal counsel, can advise the Commission on the reasonableness of any assumptions made in any certification by underwriters and by Liberty.[107] Given the underwriting team that will be involved in the structuring of this transaction may be different from the corporate bond underwriters Liberty typically interacts with, this involvement will be useful.

7) What other conditions, if any, are appropriate and not inconsistent with Section 393.1700, RSMo (Supp. 2021), to be included in the financing order?[108]

Principally, the Commission should ensure the financing order provides some level of specificity in the level of involvement it is empowered to have. Proposing Commission involvement absent more specific prescriptions may result in the issuance advice letter being the only tool by which this responsibility may be exercised, and the rejection thereof would be catastrophic for the deal.

The Commission should order delivery of a certification from both the underwriters and from Liberty certifying that the proposed securitization meets the statutory requirement that the securitized utility tariff bonds as structured comply with the requirement that securitization provide quantifiable net present value benefits to ratepayers, and that the bonds are structured, marketed, and priced to provide the lowest securitized utility tariff charges consistent with market conditions at the time the bonds

[105] Staff recommends an underwriter certification as an additional condition of authorizing Liberty to securitize Uri and Asbury costs. *See* Staff's Statement of Position on Issue 7. Liberty also proposes certifications from both Liberty and the underwriters to the Commission in connection with the issuance advice letter. Mosindy Surrebuttal at page 3, lines 14-19.
[106] Davis Rebuttal at page 11, line 22, through page 12, line 3.
[107] Davis Rebuttal at page 11, lien 22, through page 12, line 3.
[108] Section 393.1700.2(3)(c)o

are priced.[109] Not only is this consistent with the underlying purpose of the statute,[110] this requirement provides any designated Staff representatives and financial advisor the ability to assist the Commission in ensuring the underwriter's process described and certification given meet those statutory objectives.[111]

To the extent not already addressed in the Commission's order regarding Issue 6 above, the Commission should order that any designated Staff representatives and financial advisors be involved in the selection of the underwriter and any other member of the syndicate group.[112]

Finally, the Commission must clarify that the right of its designated Staff representatives and financial advisors to be represented by legal counsel. Other participants will be represented by legal counsel; to ensure a level playing field, Staff representatives and financial advisors must be represented by legal counsel, too. Nothing in 393.1700 prohibits designated Staff representatives and financial advisors from representation by legal counsel.

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[109] Davis Rebuttal at page 11, line 19 through page 12 line 3. Liberty also proposes certifications from both Liberty and the underwriters to the Commission in connection with the issuance advice letter. Mosindy Surrebuttal at page 3, lines 14-19.
[110] Section 393.1700.2(3)(c)c requires the Commission's financing order to find that the proposed structure and pricing of the securitized utility tariff bonds "are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order." Section 393.1700.2(3)(c)b requires the financing order to find that the issuance of bonds is "expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds."
[111] Davis Rebuttal at page 11, line 19 through page 12, line 3.
[112] Davis Rebuttal at page 10, lines 9 through 11.

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 6th day of June, 2022, to all parties and/or counsels of records.

/s/ Curt Stokes
Curt Stokes