

**Exhibit No.:** \_\_\_\_\_  
**Issue(s):** Asbury AAO/Storm URI  
Effect on Taxes Liability  
**Witness/Type of Exhibit:** Riley/Rebuttal  
**Sponsoring Party:** Public Counsel  
**Case No.:** EO-2022-0040 and EO-2022-0193

## **REBUTTAL TESTIMONY**

**OF**

**JOHN S. RILEY**

Submitted on Behalf of the Office of the Public Counsel

**EMPIRE DISTRICT ELECTRIC COMPANY**

CASE NOS. EO-2022-0040 AND EO-2022-0193

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Denotes Confidential information that has been redacted

May 13, 2022

**PUBLIC**



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**REBUTTAL TESTIMONY**

**OF**

**JOHN S. RILEY**

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

**FILE NOS. EO-2022-0040 & EO-2022-0193**

1 **Q. What is your name and what is your business address.**

2 A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102

3 **Q. By whom are you employed and in what capacity?**

4 A. I am employed by the Missouri Office of the Public Counsel (“OPC”) as a Utility Regulatory  
5 Supervisor.

6 **Q. What is your educational background?**

7 A. I earned a B.S. in Business Administration with a major in Accounting from Missouri State  
8 University.

9 **Q. What is your professional work experience?**

10 A. I was employed by the OPC from 1987 to 1990 as a Public Utility Accountant. In this capacity  
11 I participated in rate cases and other regulatory proceedings before the Public Service  
12 Commission (“Commission”). From 1994 to 2000 I was employed as an auditor with the  
13 Missouri Department of Revenue. I was employed as an Accounting Specialist with the  
14 Office of the State Court Administrator until 2013. In 2013, I accepted a position as the Court  
15 Administrator for the 19<sup>th</sup> Judicial Circuit until April, 2016 when I joined the OPC as a Public  
16 Utility Accountant III. I have also prepared income tax returns, at a local accounting firm, for  
17 individuals and small business from 2014 through 2017.

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1 **Q. Are you a Certified Public Accountant (“CPA”) licensed in the State of Missouri?**

2 A. Yes. As a CPA, I am required to continue my professional training by attending Missouri  
3 State Board of Accountancy qualified educational seminars and classes. The State Board of  
4 Accountancy requires that I spend a minimum of 40 hours a year in training that continues  
5 my education in the field of accountancy. I am also a member of the Institute of Internal  
6 Auditors (“IIA”) which provides its members with seminars and literature that assist CPAs  
7 with their annual educational requirements.

8 **Q. Have you previously filed testimony before the Missouri Public Service Commission?**

9 A. Yes I have. A listing of my case filings is attached as Schedule JSR-R-1

10 **Q. What is the purpose of your rebuttal testimony?**

11 A. I provide the Commission with more accurate summation of the assets and liabilities involved  
12 with the Asbury accounting authority order (“AAO”) than Empire does and prove that this  
13 request for securitization for the abandoned plant is unnecessary given the fact that the AAO  
14 balance is negative. Costs and revenues associated with this Asbury AAO are included in  
15 the Company’s revenue requirement the Commission used for setting Empire’s current rates,  
16 even though the plant has not been operational since December 12, 2019. It is time to  
17 recognize the financial impact on Empire’s ratepayers for funding a set of assets and liabilities  
18 that were neither used nor useful for providing electric service to them. I also express my  
19 concerns about the Company’s quantification of the Storm Uri costs that Empire is seeking to  
20 securitize. Additionally, there are also tax benefits associated with both of these events that  
21 are neither expressed in Empire’s revenue requirement for the traditional method of recovery  
22 of such costs through general rates or in Company witness testimony, which should be  
23 reflected in the amounts that the Commission ultimately decides to authorize Empire to  
24 securitize.

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1 **Q. How are you organizing your testimony?**

2 A. The Asbury asset balances presented by the Company for securitization are quite a bit  
3 different than the calculations that I have assembled. There are a lot of moving parts to this  
4 retirement and I am going to present them in pieces where I can show the differences between  
5 what the Company witness Ms. Charlotte T. Emery offers and my calculations.

6 **Q. What is your ultimate conclusion about what amount the Commission should authorize  
7 Empire to securitize for Asbury?**

8 A. Taking into consideration all of the asset and liability balances that have been included in rates  
9 since the retirement of Asbury and the Commission imposed January 1, 2020 AAO start date,  
10 the AAO balance that the Company seeks to securitize is actually a negative number.

11 **Q. How does your amount compare to that of Company witness Charlotte Emery?**

12 A. The total balance presented on her schedule CTE-1 and CTE-2 is \$145,019,637. The Missouri  
13 specific amount is \$144,295,459 (CTE-2 composite below)

Description	Total Asbury (Retired Plant) Proposed ER-2022- 0193
(a)	
Net Retired Asbury Plant	\$ 159,414,474
Asbury Environmental Regulatory Assets	1,494,657
Asbury Fuel Inventories	1,532,832
Asbury ADIT (NPV Value utilizing 13 Years)	(4,747,535)
Asbury Excess ADIT	(12,177,195)
Asbury AAO Liability	(41,677,324)
Additional Asbury Decommissioning Costs (Phase 2) <b>(1)</b>	3,541,054
Additional Asbury Decommissioning Costs (Phase 3) <b>(1)</b>	7,436,214
Additional Asbury Asset Retirement Obligation Costs - Asbestos	2,807,540
Additional Asbury Asset Retirement Obligation Costs - CCR Impoundment	18,473,530
<b><u>Total Asbury Energy Transition Costs to Securitize: (2)</u></b>	<b>\$ 136,098,248</b>
Empire proposed carrying cost @ 6.77%	\$ 5,287,122
Financing costs of \$3,287,122 allocated @ 88.53%	\$ 2,910,089
Company proposed Missouri specific securitization	<b>\$ 144,295,459</b>

1 Note that the amounts for the first six lines—Net Retired Asbury Plant, Asbury Environmental  
 2 Regulatory Assets, Asbury Fuel Inventories, Asbury ADIT (NPV Value utilizing 13 Years),  
 3 Asbury Excess ADIT, and Asbury AAO Liability—are amounts specifically for Missouri,  
 4 whereas the remainder of the schedule is on a Missouri state jurisdictional cost basis.

5 **Q. Was it easy for you to verify the amounts on Ms. Emery’s schedules CTE-1 and CTE-2?**

6 A. There is little in the way of explanation in the direct testimony of Empire’s witnesses to clarify  
 7 the line items in the main schedule. My impression is that Ms. Emery would like the  
 8 Commission to accept her presentation on its face and without detailed documentation or

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1 narrative supporting how she arrived at her \$144 million dollar amount. In Empire's still  
2 pending general rate case, Case No. ER-2021-0312 I testified that Empire's AAO balances  
3 were not accurate and went to great lengths to substantiate OPC's adjustments. Empire did  
4 not present support in the record for its totals in that case and it has yet to do so in this case  
5 either.

6 **Q. Where did you find support for the line items in Ms. Emery's schedules?**

7 A. Witness Emery states in her direct testimony, "As included in Company witness Tisha  
8 Sanderson's Direct Testimony filed in ER-2021-0312 the net rate base balance of the  
9 respective Missouri AAO was approximately \$90 million. The company utilized this amount  
10 as our starting balance and has further estimated the balance through April 2022"<sup>1</sup> A major  
11 problem with this starting point is that a thorough explanation as to why Empire chose a rate  
12 base amount different than the AAO balance is lacking. Empire holds out a \$159,414,474  
13 proposal, but indicated in Ms. Sanderson's rate case testimony that \$156,824,597 was the rate  
14 base amount, even though all indications are that \$155,044,297 is the Asbury plant amount in  
15 the AAO.

16 **Q. Would you please step through each line item in the combination Ms. Emery's Schedule  
17 CTE-2 composite above, and provide your adjustments and resulting amount for each?**

18 A. Starting with the retired Asbury plant of \$159,414,474, this balance does not receive a proper  
19 explanation in Company testimony. Sanderson indicates that the amount of plant in base rates  
20 is \$156,824,597<sup>2</sup> but even this total contradicts the basic math in her AAO Figure 4. To  
21 uncover some of the extra amounts added to this balance, a review of Company workpapers  
22 from ER-2021-0312 is necessary. Company's adjustment RB ADJ 9 Asbury Stranded Assets

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<sup>1</sup> Emery direct, EO-2022-0193, page 11, lines 5-8 with reference to Sanderson testimony ER-2021-0312, p.24, figure 6.

<sup>2</sup> Sanderson direct, ER-2021-0312, page 24, figure 6, column (c), line 1

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1 from the answer to OPC data request 1308. (**Schedule JSR-R-02**), indicates that \$1,673,601  
2 was added to the Asbury balance to seek reimbursement for unfinished projects.

3 **Q. Should these costs for unfinished projects be included in the Asbury retired plant**  
4 **balance?**

5 A. No. This balance is the combination of two incomplete projects on nonoperational property  
6 and should be considered Construction Work in Progress (“CWIP”)<sup>3</sup> that was abandoned, and  
7 should be excluded from the Asbury AAO balance<sup>4</sup>. The total cost of these two projects does  
8 not fall under the “Energy transition costs” outlined in §393.1700, RSMo, because the costs  
9 were initiated to continue the operation of the plant, and these projects were discontinued due  
10 to abandonment, not because of abandonment.<sup>5</sup>

11 **Q. Is there any other amounts that have been included in the Asbury balance that do not**  
12 **belong in the AAO amount?**

13 A. Yes. Ms. Sanderson included a tracker amount of \$1,207,280 that was established in the ER-  
14 2019-0374. The description of this regulatory asset is below:

15 New Regulatory Assets/Trackers and Regulatory Liabilities/Trackers will be  
16 established with the balances specified in Appendix B. All amounts included  
17 associated with the new regulatory assets for the Asbury and Iatan units will  
18 be booked against the accumulated depreciation reserve in Empire’s next  
19 general rate case. All amounts associated with the new regulatory asset  
20 associated with the Riverton units will be amortized for ratemaking purposes  
21 starting with Empire’s next general rate proceeding, with the amortization  
22 period to be determined in that proceeding. Any amount of proceeds from  
23 sales of ash at the retired Riverton units will be offset against the new

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<sup>3</sup> Answer to OPC data request 1308 When asked what was included in the Asbury balance presented in the Sanderson testimony “(2) the unrecovered CWIP related to balances related to ARO costs in the amount of \$1,673,601.”

<sup>4</sup> RSMo §393.135

<sup>5</sup> §393.1700(7)(b) Pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28,2021

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1 regulatory assets/trackers, and any coal ash sales proceeds for Asbury will be  
2 booked to the accumulated depreciation reserve in Empire's next general rate  
3 case

4 This is a tracker balance which infers that the amount will fluctuate. The balance should also been  
5 addressed in the ER-2021-0312 case yet I found no language addressing this asset or any possible  
6 offsetting ash sales. No Company witness has offered to update this amount nor have they provided  
7 proper justification for its inclusion.

8 **Q. What do you believe should be the retired plant balance for purposes of calculating an**  
9 **AAO and securitization amount?**

10 A. The retired Asbury plant balance should be the amount that Sanderson illustrated in her Case  
11 No. ER-2021-0312 direct testimony in Figure 4. Sanderson listed in Figure 4 of that same  
12 direct testimony a Plant Balance of \$217,663,073 and accumulated depreciation of  
13 \$62,618,776 as of January 1, 2020, for a net balance of \$155,044,297.

14 **CASH WORKING CAPITAL ADJUSTMENT TO RATE BASE (ASBURY)**

15 **Q. What adjustments are you proposes to this original Asbury asset balance for purposes**  
16 **of what Empire should recover from its customers through rates, or securitization?**

17 A. As in any rate case, Cash Working Capital ("CWC") is an adjustment to net plant.<sup>6</sup> I have  
18 identified certain taxes and interest that relate directly to the AAO assets that need to be  
19 recognized in the net plant balance. I performed the CWC calculations in the same manner  
20 that Staff did in the Empire's yet pending general rate case, Case No. ER-2021-0312.

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<sup>6</sup> CWC has two adjustment components: a fuel, expense and property tax adjustment and the other is an income tax and interest deduction. I have combined them on one line

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1 In developing Empire's current and prior rates, the revenue requirements included a rate of  
2 return on both the net Asbury plant value and the value of 60 days' burn of coal.<sup>7</sup> These have  
3 been tracked in the AAO. For the first nine months of 2020, the rate of return was 7.484%,  
4 which is the ROR the Commission established in Case No. ER-2016-0023. The last three  
5 months of 2020 were calculated at 6.77% which was the established ROR in Case No. ER-  
6 2019-0374. That rate will be used until new rates from Case No. ER-2021-0312 take effect.  
7 Empire has filed rate sheets in that case with an effective date of June 1, 2022. The Net  
8 Operating Income from those two assets were calculated; then a tax formula was applied. The  
9 calculated income tax was then given a 45.04 revenue lag and a 365 expense lag. This expense  
10 lag is the same lag the Commission ordered in the last Spire case, Case No. GR-2021-0108,  
11 for expenses that are collected for through rates, but not yet paid out. This same methodology  
12 was applied to the \$3,947,465 worth of 60 days' burn of coal assigned to the Asbury plant. A  
13 365 day expense lag was used due to the coal being completely depleted on Dec 12, 2019.  
14 No coal was either purchased or on hand on January 1, 2020, the AAO start date. This type  
15 of situation would not normally occur in a general rate case, but due to the AAO the coal was  
16 paid for by ratepayers, but never purchased or consumed by the Company. Staff's expense  
17 lags for property tax and interest payments and payroll were used for the final three  
18 components. These were all calculated for a year and then extended to 30 months to represent  
19 the expected time when new rates will go into effect that do not continue to collect amounts  
20 from customers as if Asbury were used and useful.

21 **Q. Would you please quantify your CWC adjustments to the regulatory assets of the AAO?**

22 A. Yes. They follow.

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<sup>7</sup> Case No. ER-2021-0312, Sanderson workpaper Asbury Revenue Requirement, Fuel Inventory Summary Tab and Figure 6, Column (c) of her direct testimony - \$3,947,465

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<u>Regulatory Asset</u>	<u>CWC</u>
Taxes on Asbury	\$3,912,517
Taxes on the coal profits	\$150,667
coal inventory	\$8,650,899
Property taxes	\$2,668,031
payroll	(\$654,436)
interest	\$1,002,389
total <u>reduction</u> to the regulatory assets	\$15,730,066

1

2 (Schedule JSR-R-03)

3 **ASBURY ENVIRONMENTAL REGULATORY ASSETS**

4 Q. Ms. Emery has included a \$1,494,657 line item on her CTE-2 schedule on the line with the  
5 description “Asbury Environmental Regulatory Assets for environmental costs. In her  
6 workpaper “Asbury Environmental cost Reg Assets”, a footnote states: “(1) – Amounts  
7 settled and paid at January 2020 were approved in ER-2019-0374 to be included in this  
8 case...”<sup>8</sup> Do you agree with this inclusion?

9 A. The Commission recognized these as legitimate costs and I have no problem with the  
10 Commission ordering these cost to offset the depreciation reserve. However, I have some  
11 concerns with the Company claiming that an environmental asset is stranded and needs direct  
12 recovery when the workpapers that address this particular cost also includes several tabs that  
13 outline the growth and final balance of \$20,867,831 for the Asset Retirement Obligation

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<sup>8</sup> Excel spreadsheet answer to OPC Data Request 1308

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1 (“ARO”)<sup>9</sup> costs estimated for the Coal Combustion Residual (“CCR”) impoundment.<sup>10</sup> This  
2 liability account has been continually adjusted and revised for new estimates and amounts.  
3 The spreadsheet tabs are included in the Asbury Environmental Cost Reg Asset workpaper.  
4 (Schedule JSR-R-04) The balance of this account, which is an estimate of expected costs for  
5 the CCR impoundment, has incurred actual liabilities of just short of \$5.5 million. Since I  
6 have identified amounts on this Schedule CTE-2 that have no documentation, and other  
7 amounts that have been clearly identified as excluded costs yet were included in the total  
8 labeled, “Energy Transition Costs”<sup>11</sup>, I cannot be sure that the \$1,494,657 is a stand alone cost  
9 outside of the CCR Impoundment line item.

#### 10 **COAL INVENTORY DEDUCTION**

11 **Q. What are your adjustments to the next line item which is described as “Asbury Fuel**  
12 **Inventories”?**

13 A. The fuel inventory, which I refer to as the 60 days’ burn of coal the Commission included in  
14 Empire’s revenue requirement in its last rate case and tracked in the AAO. The Company has  
15 confused coal amounts from two different cases. The company did not include the  
16 Commission’s AAO balance for coal inventory in CTE-2. Instead, it seeks to add a coal  
17 inventory adjustment recognized in a different, case. A stipulated coal inventory amount from  
18 a fuel adjustment clause (“FAC”) case, Case No. ER-2020-0311. The amount in question  
19 was included in a Stipulation and Agreement; however, the disposition of that inventory  
20 amount was not to be addressed until Empire’s next general rate case.

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<sup>9</sup> AROs are financial estimates of the cost to satisfy a legal obligation to clean up a site after the retirement of a long lived asset

<sup>10</sup> Ash pond reclamation

<sup>11</sup> I will point out later in testimony that the Phase 2, \$4 million Black & Veatch Memo included expenses that the Company lists separately. Also he Black and Veatch Memo clearly identifies that nearly half of \$8,400,000 should be reduced as salvage.

1 **Q. Would you elaborate?**

2 A. In a recent FAC docket, the Company sought to make an adjustment to its coal inventory  
3 which was stipulated to the next general rate case. The parties filed that agreement on October  
4 2, 2020, and the Commission approved and ordered them to comply with it on October 7,  
5 2020.

6 2. Pursuant to this Stipulation, Empire is no longer seeking recovery  
7 of the \$1,925,886 coal inventory adjustment in this Fuel & Purchased  
8 Power Adjustment Clause (“FAC”) docket. Empire shall reverse its  
9 initial entry of the inventory adjustment. The coal inventory  
10 adjustment will be deferred to FERC Account 182.3, Other Regulatory  
11 Assets, for future ratemaking consideration in Empire's next general  
12 rate case. No determination regarding the prudence of this adjustment  
13 is determined in this FAC docket.<sup>12</sup>

14  
15 Empire’s next general rate case was Case No. ER-2021-0312; however, I cannot find any  
16 specific reference to this coal adjustment in the Stipulation & Agreements in that case. This  
17 coal inclusion in the Company Schedule has nothing to do with the AAO amount in question.  
18 I am not familiar with the nature of the adjustment, but it may be a basemat adjustment to the  
19 final coal inventory located at Asbury. If a basemat adjustment were the case then the  
20 adjustment would be a reduction. Regardless, an unreviewed adjustment like this does not  
21 belong and should not be addressed in this case.

22 **Q. Then what coal inventories value should be included in the amount to be securitized?**

23 A. The value of the 60 days’ burn of coal that the Commission included in the last rate case and  
24 that was to be tracked in the Asbury AAO. The amount that was identified by the Company  
25 and was included in Sanderson’s testimony was \$3,947,465. This is the 60 days’ burn of fuel

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<sup>12</sup> Case No. ER-2020-0311, Global Stipulation & Agreement, section 2. Sanderson refers to this adjustment in her direct testimony, ER-2021-0312, p 19 &20 however, the balance is now \$1,532,832

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1 inventory for Asbury. Staff included in the Case No. ER-2019-0374 rate case which the  
2 Commission included in Empire's rate base and which Public Counsel opposed.

3 **Q. How has Empire tracked the Asbury coal inventory for this Asbury AAO?**

4 A. Empire witness Ms. Emery has included a version of the coal inventory as an addition to the  
5 plant balance, which increases the amount that Empire is seeking to securitize.

6 **Q. Do you agree that the coal inventory should be an addition to the securitization amount  
7 balance?**

8 A. Absolutely not. The Commission left the retired Asbury plant in rates. It decided that a 60  
9 days' burn supply of coal should also be included in rates, and the impact on Empire's  
10 customers tracked. It is well documented that Empire had no burnable coal inventory on site  
11 past December 12, 2019. Attempting to add an amount into its securitization total would be  
12 to infer that the 60 days' burn supply of coal was actually a purchased by the Company, when  
13 we know that was not the case. Earlier in my testimony, I adjusted CWC for the nonpayment  
14 of the coal amount. The point here is that the Commission matched a level of coal with a  
15 generation plant that it included in rates. Like the operation of the plant, the coal level is  
16 fictitious, but Empire's ratepayers' underwriting of it is not. This is a deduction because of  
17 who financed the \$3,947,465. Empire's ratepayers paid for the coal that doesn't exist, and  
18 should now have that cost eliminated. Any positive number for coal included in the Energy  
19 Transition Costs is wrong.

20 **ACCUMULATED DEFERRED INCOME TAX BALANCES (ADIT & EXCESS ADIT)**

21 **Q. Why is Empire's ADIT balance shown on Ms. Emery's schedule much smaller than  
22 yours shown on Schedule JSR-R-07?**

23 A. I am not sure, but it appears to me that Empire believes that the securitization statutes, in  
24 particular §393.1700.2(3)(c)m, RSMo, allow or require that some sort of Net Present Value

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1 (“NPV”) of ADIT, not the actual amount from the rate base, should be calculated and  
2 included in the amount to be securitized as energy transition costs. Empire includes a  
3 \$4,474,535 ADIT balance to offset Asbury assets. Instead, I have included a Company  
4 generated balance of \$32,201,280 for Asbury ADIT to deduct from the Asbury rate base.

5 **Q. Does the amount you included for Asbury ADIT mean that you disagree with Empire?**

6 A Yes, I do not believe the Company’s calculations are appropriate. I see this recalculation as  
7 a confiscatory act, but that is my uninformed opinion as I have not sought the advice of  
8 counsel regarding what this new law requires or allows. Regardless of whether Empire is  
9 correct on this point, the fact of the matter is that the NPV argument is not relevant at this  
10 time.

11 **Q. Why not?**

12 A. Basically, in this case, the Company is arguing “**if** we securitize these Energy Transition Costs  
13 this is the amount.”

14 What I’m pointing out to the Commission is the question to ask and answer is: “Do you have  
15 enough net assets to make securitization even feasible?” I answer this question by following  
16 an approach that considers: 1. The assets in question. 2. The costs that should offset those  
17 assets and 3. The balance eligible for securitization. The Commission has to settle up this  
18 Asbury AAO in the context of ratemaking, not by the securitization statute. If when the dust  
19 settles the Commission finds that there are enough net assets to proceed to the securitization  
20 step, then, and only then, does the Commission need to address the meaning of  
21 §393.1700.2(3)(c)m, RSMo.

22 Let me sum this up just to be clear: The Commission does not have to concern itself with a  
23 NPV of anything until it settles out this AAO balance. Assets less (liabilities/expenses and

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1 all the ADITs) equal net assets. I contend that once the balance of the AAO is decided, the  
2 ratepayer will be better off without securitization of Asbury.

3 **Q. What was the amount of Excess ADIT that the Company included in its calculations?**

4 A. \$12,177,195.

5 **Q. What is your Excess ADIT amount?**

6 A. \$16,934,393.

7 **Q. Why do they differ?**

8 A. I accepted the stipulated amount in Appendix D of the ER-2019-0374. I do not know, but  
9 the reduced amount that the Company includes in its schedule may be due to amortizing.  
10 There shouldn't be any amortization calculated. Once the plant associated with the deferred  
11 taxes is retired, the clock stops on the deferred taxes as well. The balance was \$16.9 million  
12 for the start date of the Asbury AAO tracking, and it should not change.

13 **ASBURY DECOMMISSIONING AND ARO COSTS**

14 **Q. Do you dispute the Missouri jurisdictional "Additional Asbury Decommissioning Costs**  
15 **(Phase 2)" listed amount of \$3,541,054?**

16 A. No. Company witness Drew W. Landoll had listed \$4 million as the total company cost  
17 estimate for completing Phase 1 & 2 of the demolition<sup>13</sup>.

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<sup>13</sup> The Emery Schedule presents a column for total Company amounts and then allocates the amounts to Mo. Jurisdictional. For simplicity, I have referred to these amounts in the total company column but will be allocated in my schedule.

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1 Q. **Do you dispute the Missouri jurisdictional “Additional Asbury Decommissioning Costs**  
2 **(Phase 3)” amount of \$7,436,214?**

3 A. Yes. The Black and Veatch Memo, that accompanies Mr Landoll’s testimony, explains  
4 the parameters of the study and details the expected costs estimates also lists the expected  
5 salvage values from the demolition. The memo listed a total cost (before salvage) of Phase  
6 3 of \$8.4 million total company, but went on to list a line item of \$4,705,000 for Salvage  
7 Value. It went on to give a total cost of the phase of an estimated \$3.8 million. This was  
8 the balance after the \$8.4 less the salvage of \$4.7 plus additional owner costs of \$134,000.  
9 (Confidential Schedule JSR-R-06)<sup>14</sup> The problem with the \$7,436,214 is that it is based on  
10 all of these foregoing total company costs, but does not include a reduction for net salvage.  
11 Granted, these are estimates but Empire paid Black & Veatch to provide some educated  
12 estimates and the consultants clearly designated salvage as a reduction to the cost of the  
13 Phase 3 expenses. I have reduced the line item to \$3.8 million

14 Q. **Do you dispute the Missouri jurisdictional “Additional Asbury Asset Retirement**  
15 **Obligation Costs – Asbestos” of \$2,807,540?**

16 A. Yes. It appears to ignore that Black & Veatch included the cost of asbestos removal in its  
17 Phase 2 & 3 Asbury decommissioning cost estimates. Therefore, this is a duplicative entry.

18 The following is from Empire witness Landoll’s direct testimony on Page 14 at lines 11-  
19 20:

20 Q. What activities are involved in Phase 2?

21 A. Over the next year, we anticipate performing the following scopes of work:

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<sup>14</sup> Mr. Landoll lists the Black and Veatch Memo as confidential, however, Ms. Emery list the phase 3 and phase 4 estimates in her CTE-2 schedule

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- 1 a. Asbestos identification and quantification study;
- 2 b. Unit 1 engineering for isolation of the utilities;
- 3 c. Construction work to isolate and repower the Asbury Renewable Operations
- 4 Center from Unit 1;
- 5 d. continued compliance-driven modifications;
- 6 e. certain risk register mitigations; and
- 7 f. on-going development of demolition plans and associated work specifications;
- 8 **g. Removal of asbestos. (Emphasis added).**

9 It should also be noted that \$8.4 million (\$7,436,214 Missouri jurisdictional) earmarked  
10 for Phase 3 includes considerable sum for “Cleanup/Abatement of Hazardous Waste.”

11 **Q. Do you dispute the Missouri jurisdictional “Additional Asbury Asset Retirement**  
12 **Obligation Costs - CCR Impoundment” of \$18,473,530?**

13 A. I have some concerns with whether Empire has treated costs consistently. To begin, on  
14 line 2 of the CTE-2 schedule, Empire includes \$1,494,657 as an unrecovered regulatory  
15 asset. Those costs were for asbestos removal and ash pond work at the Asbury plant.  
16 Earlier in my testimony I questioned whether these costs were already included in the CCR  
17 Impoundment estimates. One of the reasons I questioned the handling of this asset cost is  
18 because I found where the Company failed to properly identify cost items that it attempted  
19 to include in this schedule. Having this environmental asset listed separately, and yet be  
20 included in the approximately \$21 million Impoundment is a legitimate concern.

21 I have included all four pages of the Company workpaper “Asbury Environmental Reg  
22 Assets” as **Schedule JSR-R-04**. The second page indicates that Empire already has  
23 incurred liabilities for the Asbury CCR Impoundment of \$5,448,730.50. This liability is  
24 removed on page 3 and 4 yet the overall impoundment estimate is not reduced to reflect

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1 this liability resolution. Admittedly, I don't have an alternative estimate to replace the  
2 Company ARO, however, the Company had requested in the last cases that the balance of  
3 \$1,494,656 be included in the cost of service as a regulatory asset and that case was settled.  
4 It stands to reason that this environmental regulatory asset should either be removed from  
5 the calculation or be absorbed into the CCR ARO estimate.

6 **ASBURY AAO LIABILITIES**

7 **Q. Since your calculations of the liabilities differs from Empire's, would you step**  
8 **through each line of your adjustments as shown on your Schedule JSR-R-07**

9 A. Yes. I've based my format on the framework of Figure 4 from Company witness Ms. Tisha  
10 Sanderson's direct testimony in Case No. ER-2021-0312. I first calculated them through  
11 June of 2021, and then extended the calculations through June 2022. I will briefly describe  
12 how I produced each line item.

13 **Return on Asbury** – I started with the original plant in service amount of \$155,044,297.  
14 I disregarded the Company inclusion of \$2,277,616 since the Asbury plant that is  
15 earmarked for use with the wind farm distribution has already been established. After  
16 reducing the balance for the Deferred Taxes the total plant to calculate the Return was  
17 \$102,507,856. Using the 7.484% for the first nine months of 2020 and 6.77% from  
18 thereafter, the balance that the ratepayers have funded through June of this year will be  
19 \$17,898,384.

20 **Revenue from Scrap Removal** – I've made no changes to this amount and I'm assuming  
21 this is an actual amount collected prior to the 2021 case

22 **Depreciation Expense** – Depreciation was calculated using Staff's depreciation rates from  
23 Empire's 2019 case of \$11,179,375 per year less the remaining plant expense established  
24 in the 2021 case of \$314,035 per year. The result is \$10,865,340 per year. Taking the

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1 monthly average and extending it out for 30 months provides a total depreciation expense  
2 for the AAO period of \$27,163,350.

3 **Other O&M Expenses** – This was Company provided figure of \$5,931,161 that was  
4 extended out to June for a total amount of \$9,885,268. I would expect the Company’s  
5 actual expenses now are quite a bit lower; however, this is the amount built into rates, so  
6 the Company is benefiting from some regulatory lag.

7 **Labor Expense** – This was originally included in the Appendix D portion of the Global  
8 Stipulation and Agreement filed in Case No. ER-2019-0374. The Company chose to  
9 exclude this in its liability total. A brief explanation for the exclusion was that the  
10 employees were reassigned so the expense was reassigned. This is misappropriated logic.  
11 The ratepayers were funding this labor expense at Asbury. To have the Company claim  
12 that the expense doesn’t apply to Asbury anymore and, therefore, should not be considered,  
13 disregards the fact that Empire can still pay these employees from Asbury designated labor  
14 funds. Thirty months of labor expense amounts to \$7,229,700.

15 **Return on Coal Inventory** – I’ve inserted this line item to reflect the Rate of Return on  
16 nearly \$4 million of nonexistent coal. As in the case of Asbury, the balance was multiplied  
17 by the 7.484% for nine months of 2020 and then 6.77% for the remaining 21 months.  
18 Return on the balance for the 30 months is \$689,247.

19 **Fed/State Income tax on profits** – I’ve also inserted this amount since no revenue  
20 requirement calculation could survive without one. This is a lump sum calculation where  
21 I extended out the interest amounts for both Asbury and the coal inventory, deducted it  
22 from the ROR of both Asbury and the coal, and then applied the 23.84% income tax factor.

23 **Property Taxes** – I used the original amount provided by Ms. Sanderson and extended it  
24 out three years. Property taxes included in rates are calculated by the taxing authority on  
25 the first day of the year; however, that amount is due on the last day of the year. There is

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1 no prorating of these taxes. Taxes were extended out three years, 2020, 2021, and 2022,  
2 and not calculated for 30 months. The total is \$8,580,012.

3 **Non labor Asbury Retirement Costs** – I discussed this type of cost previously in this  
4 testimony. There are decommissioning and CCR impoundment cost estimates built into  
5 the Company presentation. There was also a Stipulation and Agreement from the last case.  
6 This should not be a line item in this presentation.

7 **Tax avoidance on Asset Abandonment in 2019 & 2020** – This isn't the same as the  
8 calculations performed earlier to develop a revenue requirement tax. This is the tax benefit  
9 that Empire enjoys because it wrote off Asbury in 2020 and all the furniture, fixtures and  
10 equipment associated with Asbury in the last three months of 2019. **(Confidential**  
11 **Schedule JSR-R-06)** This isn't going to show up on a Staff Income Tax Schedule, but it  
12 is a benefit directly associated with the retirement of Asbury, and it should be included in  
13 the AAO totals just as much as the deferred taxes mentioned earlier. The write down  
14 directly associated to the Asbury plant for tax years 2019 and 2020 was \*\*\_\_\_\_\_\*\*.  
15 I applied the composite tax rate of 23.84% to that total and included a \*\*\_\_\_\_\_\*\*  
16 tax benefit to the liability total of this case.

17 **Q. What is the total amount of your liability adjustment against the Asbury AAO assets?**

18 A. The total amount is \$90,498,564. and when the gross up factor 1.313 is applied, the amount  
19 to deduct is \$118,824,615.

20 **Q. What is the balance of the Asbury AAO after all your adjustments are made?**

21 A. Deducting CWC, coal inventory, ADIT, Excess ADIT, AAO Liabilities, the Empire  
22 District Electric Co. has an AAO balance of a negative \$32,593,522. Factor in the WACC  
23 in a similar fashion as witness Emery has done on her Schedule, then by December 31 of  
24 this year the ratepayer will be owed additional \$1,471,054 dollars.

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1 **Q. Should anyone involved in this case be surprised by your AAO balance?**

2 A. No. In the ER-2021-0312 case, I had explained my calculations and presented a positive  
3 \$10 million balance for the Asbury AAO. What's different now is that the liabilities and  
4 CWC have continued to accumulate, the fuel inventory balance has been corrected, and the  
5 ADIT balance was updated to the Company calculation. New rates formulated in that 2021  
6 case are not in place yet, so every cost item that the ratepayer is still funding is building a  
7 larger balance. The "clock" is still ticking for ratepayers to be reimbursed.

8 **Q. With an over-collection of \$32.6 million, what is your recommendation to the**  
9 **Commission concerning the AAO and the efforts by the Company to securitize \$144**  
10 **million for Asbury stranded costs?**

11 A. Based on the fact that even when including the requested decommissioning costs, the  
12 balance is below zero, the request for a Financing Order should be denied by the  
13 Commission.

14 **Q. What do you recommend the Commission do with the \$32.6 million negative AAO**  
15 **balance?**

16 A. Well, there is no denying that Empire will be required to eventually demolish and clean up  
17 the site to satisfy several government agencies' regulations. It would be senseless to refund  
18 the money to ratepayers only to have it re-collected from them later due to the ongoing  
19 decommissioning. I suggest that the Commission retain this negative AAO balance to  
20 offset Empire's clean-up costs. The balance should be a regulatory liability, in rate base,  
21 until the next rate case or until Empire has completed its work on rehabilitating the Asbury  
22 site.

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1 **Q. In the case of securitizing Asbury, is it a better alternative than traditional**  
2 **ratemaking?**

3 A. No. The cost of decommissioning can be handled through traditional ratemaking as the  
4 expenses are incurred. Empire does not need to be prepaid.

5 **STORM URI SECURITIZATION**

6 **Q. What is your position on the securitization of costs caused by the February 2021**  
7 **Storm Uri?**

8 A. The OPC staff will be addressing several issues concerning Storm Uri; however, my  
9 adjustment will not be affected by any other OPC Staff adjustment. Per the answer to OPC  
10 data request 1302 (**Schedule JSR-R-08**), the Company expects to claim a Missouri  
11 jurisdictional tax deduction of \$204,500,939 on the 2021 consolidated income tax return.<sup>15</sup>  
12 My position is that the tax benefit enjoyed by the Company for this “loss” on its 2021 tax  
13 returns should be recognize as a reduction to the amount of the securitization.

14 **Q. How much is your adjustment?**

15 A. Based on the Company’s answer to the data request the tax savings due to the storm loss  
16 will be \$48,753,024. Grossed up by the 1.313 factor brings the total to \$64,012,720.  
17 Carrying charges would need to be applied at 6.77% from year end 2021 to the end of 2022  
18 which would add an additional \$4,333,661 to bring the total reduction in the amount to be  
19 securitized by \$68,346,382.

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<sup>15</sup> The income tax calculation is derived from the composite tax rate of 23.84% so I refer to the tax returns in general terms

1 **Q. What is the principle behind deducting a tax loss from the securitization amount?**

2 A. A true deduction in income tax, which in this instance has nothing to do with normalization,  
3 is an increase in income. Staff has never reduced the calculated income tax expense for a  
4 “loss.” Revenue requirement is determined and the income tax calculations are applied. If  
5 the Company were to make more or less than the Commission authorized revenue  
6 requirement, the tax remains the same. The adjustment I am proposing is nothing more  
7 than the tax effect calculation that anyone involved in a rate case performs on any proposed  
8 revenue or expense item.

9 **Q. Were not Empire’s Storm Uri costs an increase in its fuel and purchase power for**  
10 **which it was not compensated through its Fuel Adjustment Clause or general rates?**

11 A. Yes, but then Empire is issuing bonds, which will be guaranteed by its ratepayers to  
12 compensate them for its “loss.” Bond proceeds aren’t taxable, so the Company is  
13 compensated yet still enjoys a tax break for the “loss.”

14 **Q. Will Empire owe tax on the revenues that it will collect from ratepayers to repay these**  
15 **bonds?**

16 A. Staff will calculate tax expense on all the revenues that the Company collects and that  
17 expense will be included in the revenue requirement. So in theory, the Company gets a  
18 deferred tax that doesn’t reduce rate base and which it never has to pay back out of its own  
19 pocket. Sweet.

20 **Q. Would you please explain the carrying charges you applied to the tax savings?**

21 A. The Company has been calculating carrying charges monthly on the full amount of its loss,  
22 at the WACC, since March of 2021. The annual rate is 6.77%. Since revenues and  
23 expenses have to be considered in their entirety in order to calculate an income tax event,  
24 it would only be proper to begin the carrying charges immediately after the end of the year

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1 of the event. In the Asbury portion of this case, Company witness Charlotte Emery  
2 indicated that the expected date of securitization was the end of December, so I calculated  
3 carrying charges at 6.77% for all of 2022.

4 **Q. Would you please summarize your position on Empire's income taxes and Storm Uri?**

5 A. Due to Storm Uri, Empire has encountered deferred cost in the neighborhood of \$204.5  
6 million dollars that it chose to exclude from the revenue requirement calculations in Case  
7 No. ER-2021-0312. That amount will represent a reduction in net taxable revenues on the  
8 Company's income tax returns. The grossed up tax savings will be approximately \$64  
9 million. The associated carry charges for one year will be \$4.33 million. This tax savings  
10 should be an offset to the amount that Company is seeking in securitization of its Storm  
11 Uri costs.

12 **Q. Does this conclude your rebuttal testimony?**

13 A. Yes