Exhibit No.:	_______________
Issue(s):	Asbury AAO Balances/ Storm URI Tax Benefit
Witness/Type of Exhibit:	Riley/Surrebuttal
Sponsoring Party:	Public Counsel
Case No.:	EO-2022-0040 and EO-2022-0193

SURREBUTTAL TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

THE EMPIRE DISTRICT ELECTRIC COMPANY

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

May 27, 2022

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 Financial Order the 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

AFFIDAVIT OF JOHN S. RILEY

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:

1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 27th day of May 2022.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI
TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #15637121

My Commission expires August 8, 2023.

Tiffany Hildebrand
Notary Public

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OF

JOHN S. RILEY

THE EMPIRE DISTRICT ELECTRIC COMPANY

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

Q. Are you the same John S. Riley who prepared and prefiled rebuttal testimony in these cases on behalf the Office of the Public Counsel?

A. Yes.

Q. Why are you filing surrebuttal testimony?

A. This testimony responds to the Staff's rebuttal testimony on several issues. First, the adjustments provided in rebuttal testimony should recognize that the general rate schedule tariff sheets from Case No. ER-2021-0312 will become effective June 1, 2022. For my rebuttal testimony, I had extended my calculation to the end of June so I provide adjustments to some of my calculations. I will also address some of Staff's line item balances as well as its lack of inclusion of some costs and rate base items for the Asbury Accounting Authority Order ("AAO") consideration.

I also explain my calculation of the tax impact of Storm Uri on the amount that the Commission could allow Empire to securitize for Storm Uri.

ASBURY AAO BALANCES

Q. Would you provide a brief history of the Asbury AAO?

A. The Commission ordered the AAO in its Amended Report & Order in Case No. ER-2019-0374. The plant was included in rates due to the retirement falling outside the test year established in the case. In short, the Commission felt that the impact of excluding all costs and rate base associated with Asbury could not be measured at that time. To quote part of that decision:

> " However, even if OPC is correct and the retirement of Asbury should be set as the day it last generated power in December 2019, the retirement still occurred after March 31, 2019, the end of the test year. OPC ignores the essential reason the Commission initially rejected its request to true-up isolated adjustments for Asbury. When determining if events outside the test year should be included, the Commission considers whether the proposed adjustments are known and measurable and are representative of the conditions anticipated during the time rates will be in effect.
>
> Regardless of whether Asbury retired on December 12, 2019, or after March 1, 2020, the impacts of the Asbury retirement are not known or measurable."[1]

The Global Stipulation and Agreement, in paragraph 25, lists several categories of rate base and expenses to track within the AAO.

a) Rate of return on Asbury Plant,
b) Accumulated Depreciation,
c) Accumulated and Excess Deferred Income Tax,
d) Fuel inventories assigned to the Asbury Plant,
e) Depreciation expense,
f) All non-fuel/ non-labor operating and maintenance expense,
g) All labor charges for maintaining and operating the Asbury Plant,
h) Property taxes assigned to the Asbury Plant,
i) Any costs associated with the retirement of the Asbury Plant, including Dismantlement and decommissioning – Non-Empire labor excluded

The Commission, in its Amended Report and Order, also granted OPC's request to track:[2]

a. Cash Working Capital and income tax gross up associated with Asbury
b. Any fuel or SPP revenues or expenses associated with Asbury that do not flow through the [fuel adjustment clause ("FAC")], and
c. Revenues from scrap value or value of items sold.

[1] *Amended Report and Order*, Case No. ER-2019-0374, page 116, line 3-11.
[2] Page 120.

Q. What did Staff do, or not do, with regard to the Asbury AAO?

A. It appears from Staff's workpapers that it leaned very heavily on the Company's calculations and did little to verify what Empire presented. Staff also apparently did not follow the Commission's order concerning the tracking of the AAO categories since the categories excluded by Empire were also the ones excluded by Staff.

Q. Which categories did Staff exclude?

A. First of all, Staff was silent on Cash Working Capital ("CWC"). It is not difficult to identify and isolate the components of CWC that are directly related to the rate base/expense items in this AAO. Cash working capital calculations specific to Asbury consist of amounts developed in the AAO liabilities. The CWC components specific to Asbury are payroll, income taxes, fuel, property taxes and interest.

Staff's next exclusion was labor expense. Staff provides no explanation for this exclusion. The Company footnotes its workpapers with "**labor expense baseline is zero as these employees are being retained and their time is still an incurred cost; therefore no AAO liability is incurred**" As I testified in rebuttal, this is a misappropriation. There are labor costs associated with a <u>retired plant</u>. Those costs were built into rates and ratepayers are paying for these Asbury employee positions until June 1, 2022, when new rates from Case No. ER-2022-0312 take effect. Empire's assertion that these employees have been retained and, therefore, are not a liability associated to Asbury is completely wrong. The labor associated to Asbury until June 1 provided no value to ratepayers, but were funded by them. These employees moved from working at Asbury should be providing value to the other operations and, therefore, are labor associated with those operations, not Asbury. After June 1 those employees are no longer a liability associated to Asbury, so I am not extending my adjustment past June 1.

Q. Did Staff miscalculate or fail to substantiate Empire numbers for anything else related to the Asbury AAO?[3]

A. Yes, specifically, "Asbury Fuel Inventories" of a positive $1,532,832. As I pointed out in my rebuttal testimony, this was a contested amount from a FAC case, and has nothing to do with the AAO. To compound the problem, Staff followed Empire's attempt at including this amount as an addition. The original $3,947,465 for 60 days' burn supply of coal from the ER-2019-0374 case is an asset amount to be used as a reduction. This should not be a point of contention with Staff since one of Staff witness McMellen's workpapers substantiates the $3.9 million as the amount of included coal, and it is known that coal was never purchased or actually existed at Asbury at any time after December 12, 2019, which is before the January 1, 2020, start date of the AAO.

Q. Do you have different ADIT and Excess ADIT balances than Empire and Staff prior to making Net Present Value calculations?

A. Yes. In this case, both Empire witness Emery and Staff witness Bolin have developed differing amounts for the Company ADIT balance. No one seems to dispute the original Company assessments brought forward in Figure 5 & 6 of Sanderson's direct testimony in the ER-2021-0312 case. The ADIT adjustment related to Asbury was $32,275,034[4] and the Excess ADIT was $16,934,393.

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[3] Avoiding differences of opinion as in retired plant balance.
[4] I have updated my original ADIT amount of $32,201,280 to reflect this true-up balance of $32,275,034.

Q. Why are your ADIT and Excess ADIT balances different from those of Staff and Empire?

A. The deferred tax balances should not be amortized, nor should they be subject to the NPV calculation. The balances to be considered are those from January 1, 2020. Once the plant is no longer used and useful the clock stops on amortization and depreciation reductions to the assets. There is no continued reduction in deferred taxes after January 1, 2020, and the depreciation amounts built into the AAO liabilities represent a dollar amount that is being collected in rates until June 1, 2022, and should offset the Asbury AAO regulatory asset balance.

Q. Are there any other AAO categories that you view contain errors as opposed to differences of opinion?

A. Yes. Property taxes. As I pointed out in my rebuttal testimony, property taxes are assessed (become a liability) each January 1 and are payable by December 31 of that same year. This AAO started January 1, 2020, and has carried on into 2022. That is three years of property taxes liability—January 1st of 2020, 2021, and 2022. Now for CWC, the tax calculation would be for 29 months, however, on a cost basis there are three years of taxes due. $2,860,004 X 3 years equals $8,580,012.

Q. What other AAO amounts do Staff and Empire not address?

A. Neither Company nor Staff mention a <u>return on</u> the other asset recognized in the AAO. That would be the coal inventory. The coal inventory was provided a rate of return in the rate case and ratepayers are paying in rates for that revenue requirement now. That return paid by the ratepayers should be acknowledged in this AAO.[5] This is not a far-fetched concept. Not only should return on the $3.9 million worth of coal be included, but return of it as well and the tax markup on both should be calculated as well. Staff included neither return of nor the tax markups of each. Staff may be just adhering to a narrow interpretation of the AAO and only considered the Asbury plant ROR, but it should embrace the complete calculation on all the assets of the AAO so that customers receive the amounts due back to them.

Q. Did Staff or Empire include any amounts that you did not?

A. Yes. Staff included the Company entry of $3,936,502 for Non-labor Asbury Retirement/ Decommissioning Costs. I believe this number should be substantiated and tracked just as the AAO language directs. But as I have pointed out before, these costs should not be included in the final AAO calculation but addressed in the next general rate case along with the other expenditures and impoundment costs that will be incurred.

Q. To what is your "tax on Abandonment" line on your Schedule JSR-S-01 referring?

A. There is an income tax loss associated with the early retirement of the Asbury plant in the 2020 consolidated tax return of which Empire is a part, as well as all the Asbury related equipment and furniture that was discarded in the last three months of 2019.

Q. How does this tax on Abandonment amount fit into the Asbury AAO?

A. It falls under the line (i) "Any costs associated with the retirement of the Asbury Plant." The tax savings created by the abandonment is as real as the calculation of deferred tax on

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[5] That coal is also a CWC component.

a new asset in rate base. After viewing the line item "loss on abandonment" the calculation is simple. Loss multiplied by the composite tax rate should be the adjustment. As I stated in my rebuttal testimony, the Company is attempting to sell bonds to collect money upfront and paying no tax themselves due to this tax savings. Ratepayers should not be denied the benefit of this obvious tax advantage.

Q. Would you please summarize your differences and agreements with the components of Staff's net Asbury AAO balance?

A. Some of my calculated amounts are different than what Staff presents due to the use of different asset balances, weighted average cost of capital ("WACC"), or timeframes. I am not arguing those differences because I believe that the particulars to those line items can be worked through and some consensus reached. Staff and I differ fundamentally in the fuel (coal) balance and Staff's omission from the AAO balance for labor expense inclusion, Asbury retirement cost and profit and tax calculations. The largest two amounts that Staff did not address that I included were the CWC calculations and the tax effect on the asset abandonment. These two items represent over $32 million in reductions to the AAO balance.

The one obvious agreement between Staff and I is that the CCR Impoundment should not be included in the AAO balance but addressed in a future rate case. This balance has been removed from the Schedule.

Q. What is your updated Asbury AAO balance?

A. With minor adjustments across the spreadsheet calculations and the elimination of the impoundment balance, the balance to consider for securitization is a negative $23,060,115. Factor in the Company's methodology for carrying charges totaling $1,183,380 and the final amount due ratepayers is $24,243,495.

. As I testified in rebuttal, this balance should remain on the books as a regulatory liability that offsets the impoundment and dismantling costs as they are incurred. An updated liability page is included in JSR-S-1.

STORM URI SECURITIZATION COSTS

Q. Does Staff agree with your assertion in your rebuttal testimony that there is a tax reduction offset to the Storm Uri costs that Empire wishes to securitize?

A. I do not know. Staff did not present any adjustment for taxes in the rebuttal testimony of its witnesses.

Q. Why should the Commission include this tax adjustment?

A. If it does not, Empire and its affiliates will enjoy this reduction in Empire's income taxes without ever having to include it in any revenue requirement and, therefore, never having to allow the ratepayer to benefit from the tax windfall intended to offset the losses Empire is asking customers to pay for. If the Commission doesn't accept and make the adjustment against the securitization amount, it is a permanent detriment to the ratepayer.

Q. Why would it be a permanent detriment?

A. Empire has already settled Case No. ER-2021-0312 and the 2021 consolidated tax return has yet to be filed with the IRS. This income tax advantage is not covered by an AAO so reaching back to pull the tax break forward in the next general rate case would appear to be too far a reach.[6] I believe the only platform where the Commission can review and act on this tax deduction is this securitization case.

Q. Can the Commission consider this tax effect in this case?

A. It appears that inclusion of income taxes could be allowed under a couple of different sections of the §393.1700. (7) **"Energy transition costs" …**

> (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, **<u>but are not limited to</u>**, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, **<u>and deferred expenses</u>**, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;
>
> (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;
>
> (8) **"Financing costs"** includes all of the following:
>
> (a) Interest and acquisition, defeasance, or redemption premiums payable on securitized utility tariff bonds;

[6] This tax advantage appears to be in a timeframe that will "fall through the cracks" of traditional ratemaking. It seems that the event will be too far in the past to be dealt with in the next general rate case.

> (b) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to securitized utility tariff bonds;
>
> (c) Any other cost related to issuing, supporting, repaying, refunding, and servicing securitized utility tariff bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of securitized utility tariff bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;
>
> (d) Any taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized utility tariff charge or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued;
>
> **(e) Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable, or accrued;** (emphasis added)

The point to understand here is that the amount to securitize isn't just about fuel and purchase power costs. These costs should be offset by all benefits that may also materialize.

Q. Do you have any insight on what Staff's position may be on your tax adjustment?

A. Yes, Staff has historically not deviated from its traditional income tax calculations within its accounting schedules. Recognizing this windfall will be out of the "norm" of Staff's body of tax thought. That being said, Staff has included this line of thinking where benefits should offset costs that are included in securitization in its rebuttal testimony. To quote: "**there were also additional (excess) revenues received by Liberty during this event.**

Liberty has already received the benefit of these revenues and that gain to Liberty resulting directly from Winter Storm Uri should be offset against the securitization costs[7].”

My tax adjustment falls right in line with that sentence. “Liberty has already received the **benefit**… and that **gain** to Liberty **resulting directly from Winter Storm Uri** should be **offset against the securitization costs**.” (Emphasis added) The only difference between OPC and Staff is that Staff is talking about a revenue windfall and I’m talking about a tax windfall. They are both a benefit realized by the Company due to Winter Storm Uri that should offset the extraordinary costs.

Q. Have you made any changes to the tax adjustment for Storm Uri costs you testified to in your rebuttal testimony?

A. No, but I would like to explain how I calculated it.

Q. How did you calculate it?

A. Schedule JSR-R-08 indicates that Empire expects approximately $204 million as a Storm Uri cost tax reduction on the consolidated group federal income tax return. I merely multiplied that number by the composite tax rate of 23.84% to come up with an initial cost of $48,753,024. The gross up (1.313) will raise the amount to $64,012,721. This amount should offset any amount that the Company is seeking for securitization so the carrying charges allowed in the calculations should be reduced. When the Commission decides on

[7] Amanda McMellen rebuttal, EO-2022-0040/0193, page 5, lines 12-15

the proper rate of return to apply to the balance, less the tax benefit, the balance for securitization will be attained.

Q. Does this conclude you surrebuttal testimony?

A. Yes.