

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

In the Matter of The Empire District)	
Electric Company's Request for Authority)	
to File Tariffs Increasing Rates for Electric)	<u>Case No. ER-2019-0374</u>
Service Provided to Customers in its)	
Missouri Service Area)	

PUBLIC COUNSEL'S RESPONSE TO COMMISSION ORDER

COMES NOW the Office of Public Counsel ("Public Counsel") and, for its response to the Commission's ordered paragraph 2—"The parties will file a list of suggested items or categories to address impacts resulting from Asbury's retirement for inclusion in an Accounting Authority Order, no later than April 3, 2020—of its January 28, 2020, *Order Denying Public Counsel's Motion to Modify the Test Year, and Order to File Suggestions for Inclusion in an Accounting Authority Order*, states:

1. It remains Public Counsel's position that the Commission must treat Asbury as no longer used and useful—Empire's costs of and investment in Asbury excluded from Empire's cost-of-service—when setting rates in this case. Subsequent to this Commission's February 19, 2020, order denying Public Counsel's motion asking the Commission to reconsider its order denying OPC's motion to modify test year to include isolated adjustments for Asbury and shortly before pre-filing surrebuttal testimony on March 27, 2020, Public Counsel learned from Empire submissions to the Commission in the Commission's electronic filing and information system (EFIS) that Empire's Asbury power plant last generated power on ** _____ **.

Public Counsel witness John A. Robinett testifies about that in his surrebuttal prefiled on March 27, 2020, where he included copies of four of Empire's submissions. As the Commission is aware the true-up cutoff date it ordered for this case is January 31, 2020.

2. As Public Counsel stated in its December 26, 2019, reply to Empire’s response to Public Counsel’s Motion to Modify the Test Year to Include Isolated Adjustments Related to Retirement of Asbury, no party is in a better position than Empire to identify the categories of costs and revenues for which isolated adjustments should be made due to Empire’s retirement of its Asbury power plant, the FERC accounts and subaccounts where they should be posted, and the amounts to post. As then, Public Counsel is able to identify the following categories¹:

- a. Annualized, normalized fuel costs (coal, other fuels, and additives);
- b. Annualized, normalized SPP revenues;
- c. Annualized, normalized operations and maintenance expenses;
- d. Return of Empire’s capital investment in Asbury (includes depreciation);
- e. Return on Empire’s capital investment in Asbury;
- f. Property taxes;
- g. Cash working capital;
- h. Income tax gross-up; and
- i. accumulated deferred income taxes

And, Public Counsel still does not oppose including any other material isolated adjustments specific to Empire retiring Asbury that Public Counsel has not included in the above list²; however,.

WHEREFORE, as ordered, Public Counsel responds to the Commission’s order as set forth above.

¹ Public Counsel’s list is premised on its understanding that the Commission is requesting a list based on the assumption that “[t]he Commission will address the impacts of Asbury’s retirement in Empire’s next rate proceeding,” and should not be understood as a concession that Public Counsel concurs that the Commission should not address the impacts of Asbury’s retirement in this case.

² To the extent they are affected by Commission decisions in this case, the amounts should be based on those decisions.

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3rd day of April 2020.

/s/ Nathan Williams