

# Exhibit No. 137

*Exhibit No.:*  
*Issue:* *Asbury Unrecovered Investment*  
*Witness:* *Mark L. Oligschlaeger*  
*Sponsoring Party:* *MoPSC Staff*  
*Type of Exhibit:* *Surrebuttal Testimony*  
*Case No.:* *ER-2021-0312*  
*Date Testimony Prepared:* *January 20, 2022*

**MISSOURI PUBLIC SERVICE COMMISSION**  
**COMMISSION STAFF**  
**FINANCIAL AND BUSINESS ANALYSIS DIVISION**

**SURREBUTTAL TESTIMONY**  
**OF**  
**MARK L. OLIGSCHLAEGER**

**THE EMPIRE DISTRICT ELECTRIC COMPANY,**  
**d/b/a Liberty**

**CASE NO. ER-2021-0312**

*Jefferson City, Missouri*  
*January 2022*

1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **MARK L. OLIGSCHLAEGER**

4 **THE EMPIRE DISTRICT ELECTRIC COMPANY,**  
5 **d/b/a Liberty**

6 **CASE NO. ER-2021-0312**

7 Q. Please state your name and business address.

8 A. Mark L. Oligschlaeger, P.O. Box 360, Suite 440, Jefferson City, MO 65102.

9 Q. Have you previously contributed to Staff's Cost of Service Report filing in this  
10 case dated October 29, 2021, and submitted rebuttal testimony on December 20, 2021?

11 A. Yes, I have.

12 Q. What is the purpose of your surrebuttal testimony?

13 A. The purpose of this testimony is to respond to the rebuttal testimony filed in this  
14 case by The Empire District Electric Company, d/b/a Liberty ("Empire" or "EDE") witness  
15 Frank C. Graves regarding the issue of ongoing rate treatment of unrecovered costs associated  
16 with the retired Asbury Generating Unit ("Asbury").

17 Most of Mr. Graves' rebuttal testimony is a restatement of points he already included in  
18 his direct testimony on this issue, which I have adequately addressed in my rebuttal testimony  
19 filing. Therefore, I have limited my response to Mr. Graves' rebuttal to only a few areas.

20 **ASBURY UNRECOVERED INVESTMENT**

21 Q. Throughout his rebuttal testimony, Mr. Graves repeatedly emphasizes that  
22 no party to this case is directly challenging the prudence of the decisions made by Empire over  
23 the years in regard to Asbury's construction, operation, and retirement. What is your response?

1           A.     While Mr. Graves is correct that no party is directly basing its position on the  
2 unrecovered Asbury costs issue on a prudence challenge, this does not mean that the Asbury  
3 costs must therefore be included in rates. While costs indeed should be judged to be prudent  
4 prior to inclusion in rates, more than a simple finding of prudence is usually required to meet  
5 the standard for rate inclusion for a particular cost.

6           Q.     Please provide some examples of “prudently incurred” costs that nonetheless are  
7 not generally included in rates.

8           A.     There are at least several types of such costs, as follows:

9                   (1) Unadjusted test year costs. Costs incurred by a utility within an  
10 ordered test year, update period or true-up period are always subject to  
11 adjustment in order to annualize or normalize the cost in order to be  
12 included in prospective rate levels. This is true even if there has been no  
13 challenge to the prudence of the amount of the utility’s costs incurred  
14 within the applicable period. As a result of the adjustment process, some  
15 level of “prudent” test year/update period/true-up costs will be justifiably  
16 removed from rates within a general rate proceeding.

17                   (2) Costs traditionally disallowed by the Commission. There are  
18 a number of cost categories that have been routinely denied rate recovery  
19 by the Commission for many years, such as charitable contributions,  
20 lobbying costs and certain types of incentive compensation. These  
21 exclusions have been judged appropriate based upon various policy  
22 considerations, and these policies have been consistently applied by the  
23 Commission even if the costs in question may be judged to be “prudently  
24 incurred” from the utility or any other perspective.

25                   (3) Non-recurring costs. Even if costs were prudently incurred  
26 within a test year, if those particular costs are not expected to recur into the  
27 future the costs should be removed from the ratemaking process.

28                   (4) Costs associated with retired assets. These costs are routinely  
29 excluded from rates going forward because no benefit to ratepayers is  
30 possible from an asset no longer in service. This point holds true regardless  
31 of whether the original investment in the asset was prudently made or not,  
32 or whether the asset in question was fully depreciated as of the time of its  
33 retirement.

1 Q. What does this listing of prudent cost types routinely denied rate recovery  
2 demonstrate in regard to the Asbury issue in this case?

3 A. It demonstrates that the underlying prudence of costs in question is just one  
4 factor to take into account in determining whether such costs should be allowed in rates or not.  
5 Prudence should not be viewed as a “golden ticket” guaranteeing rate treatment to particular  
6 costs. Rate recovery questions must be considered in their overall context.

7 Q. Does Mr. Graves appear to agree with this point in his rebuttal testimony  
8 concerning a different ratemaking standard?

9 A. Yes. In reference to arguments from other parties that Asbury should be denied  
10 full rate recovery because the asset is no longer used and useful, Mr. Graves testifies at page 7  
11 of his rebuttal testimony that “the ‘used and useful’ standard must be applied in a very limited  
12 way often in conjunction with other considerations..”. Staff agrees that no single ratemaking  
13 standard, whether prudence, used and useful, known and measurable, matching, etc., is  
14 absolutely controlling in regard to utility cost recovery decisions to the exclusion of all others.  
15 To illustrate this, Empire’s argument that prudently incurred costs associated with an asset that  
16 is no longer used and useful must be allowed rate recovery is to give the prudence standard a  
17 much higher priority than other applicable standards. Staff asserts that the prudence arguments  
18 repeatedly made by Empire in this case regarding the Asbury issue likewise should be applied  
19 in a “limited way,” and in conjunction with other considerations, such as “used and useful.”

20 Q. What is Empire’s position regarding prudent investments no longer in service?

21 A. At page 8 of his rebuttal testimony, Mr. Graves states prudent investments  
22 no longer in service can be included in rates as long as “the regulator reasonably balances

1 consumers' interest in fair rates against investors' interest in maintaining financial integrity and  
2 maintaining a reasonable opportunity to recover a fair return on prudent utility investments.”

3 Q. Do you believe that Staff's position in this case regarding unrecovered Asbury  
4 costs meets this test?

5 A. Yes. Staff is proposing a sharing of the remaining unrecovered costs of Asbury  
6 between customers and investors in this case. Empire's position of requiring customers to  
7 pay in rates a full recovery of both a retired coal unit and its replacement wind additions is  
8 entirely shareholder-centric, and maximizes utility/shareholder interests at the expense of  
9 customer interests.

10 Q. At page 13 of his rebuttal testimony, Mr. Graves references the recent actions of  
11 other public utility commissions as supporting Empire's position to fully recover Asbury costs  
12 in this case. Do you agree with that characterization?

13 A. No, as discussed at pages 7 – 12 of my rebuttal testimony. The documentation  
14 reviewed by Staff regarding the cases cited by Mr. Graves in his direct testimony in this  
15 proceeding generally does not support the specifics of Empire's ratemaking request in this case  
16 for full recovery of Asbury costs.

17 Q. At pages 19 – 20 of his rebuttal testimony, Mr. Graves opines that adoption of  
18 the Staff's and other parties' position on Asbury costs in this case would result in a negative  
19 incentive for utilities to keep uneconomic assets in service for longer time periods. Could there  
20 also be negative incentives resulting from adoption of Empire's position on this issue?

21 A. Yes. If Empire's position of fully recovering both the Asbury plant and the new  
22 wind farm investment in rates is adopted, this would seem to provide a roadmap for utilities to,  
23 after retiring generating assets, to include both the retired assets and the replacement generation

1 assets in rates. Given that utilities already are commonly viewed as being biased towards  
2 decisions to “grow” rate base, the utilities’ ability to achieve further increases to rate base  
3 through this specific scenario would be problematic from an incentives perspective.

4 Q. In his rebuttal testimony, Mr. Graves refers several times to long-term savings  
5 expected to result to customers as a result of the Asbury retirement and additional wind  
6 investment, even if full rate recovery of the remaining Asbury investment is granted to Empire.  
7 Please comment.

8 A. Again, this argument was addressed in my rebuttal testimony. Mr. Graves seems  
9 to assume that the claim that customers will pay less in the long run as a result of the Asbury  
10 retirement its replacement by new wind capacity is a “given.” However, these studies were  
11 necessarily before-the-fact analyses that involve a multitude of complex assumptions  
12 carried forward for many years into the future. In fact, as noted in the rebuttal testimony  
13 of Office of the Public Counsel witness Lena M. Mantle in this case, the actual construction  
14 cost of the three wind farms for which inclusion in rates is sought is materially greater than the  
15 value that had been assumed in Empire’s prior cost savings analyses. This change alone, all  
16 else being equal, means that the expected savings from the combined effect of the Asbury  
17 retirement and its replacement by wind resources will be less than originally estimated by  
18 Empire. For this reason, ratemaking decisions regarding Asbury unrecovered costs in the  
19 present day should not be entirely premised upon expectations of future customer savings that  
20 may or may not be achieved.

21 Q. At pages 23-24 of his rebuttal testimony, Mr. Graves seems to imply that costs  
22 associated with early retirement of coal generating units are not a good potential fit with  
23 securitization treatment. Do you agree?

1           A.     Not at all. The securitization law recently enacted in Missouri was specifically  
2 written to apply to electric utilities with unrecovered coal generator costs following unit  
3 retirement.<sup>1</sup> In addition, I am aware that securitization has been used and is being used in other  
4 jurisdictions as a way of mitigating customer rate impacts attributable to early coal unit  
5 retirements. In light of its common and expected use in relation to coal unit retirements,  
6 Mr. Graves provides no real substantive insight as to why this would not have been an  
7 appropriate avenue for Empire to pursue in relation to Asbury.

8           Q.     Are you suggesting that Empire should be ordered to consider or implement  
9 securitization of the unrecovered costs of Asbury?

10          A.     No. The Missouri statute governing utility securitization is quite clear that the  
11 Commission does not have the authority to order a utility to undergo securitization against its  
12 will. It should be noted, however that the securitization statute only allows use of this  
13 ratemaking treatment when securitization can be demonstrated to be less costly to customers  
14 than more “normal” ratemaking methods would entail.

15          Q.     Does that conclude your surrebuttal testimony?

16          A.     Yes, it does.

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<sup>1</sup> The Missouri law also allows electric utilities to securitize certain extraordinary costs, such as those associated with natural disasters or unusual weather events.



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

In the Matter of the Request of The Empire            )  
District Electric Company d/b/a Liberty for            )  
Authority to File Tariffs Increasing Rates for        )  
Electric Service Provided to Customers in its        )  
Missouri Service Area                                        )

Case No. ER-2021-0312

**AFFIDAVIT OF MARK L. OLIGSCHLAEGER**

STATE OF MISSOURI        )  
                                      )  
COUNTY OF COLE        )        ss.

COMES NOW MARK L. OLIGSCHLAEGER, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Surrebuttal Testimony of Mark L. Oligschlaeger* and that the same is true and correct according to his best knowledge and belief.

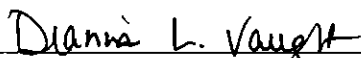
Further the Affiant sayeth not.

  
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MARK L. OLIGSCHLAEGER

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 14th day of January, 2022.

DIANNA L. VAUGHT  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Cole County  
My Commission Expires: July 18, 2023  
Commission Number: 15207377

  
\_\_\_\_\_  
Notary Public