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MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL AND BUSINESS ANALYSIS DIVISION

AUDITING DEPARTMENT

REBUTTAL TESTIMONY

OF

KEITH MAJORS

UNION ELECTRIC COMPANY,
d/b/a AMEREN MISSOURI

CASE NO. EF-2024-0021

Jefferson City, Missouri
February 2024

** Denotes Confidential Information **

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UNION ELECTRIC COMPANY,
d/b/a AMEREN MISSOURI

CASE NO. EF-2024-0021

Q. Please state your name and business address.

A. Keith Majors, Fletcher Daniels Office Building, 615 East 13th Street, Room 201, Kansas City, Missouri, 64106.

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

A. I am a Utility Regulatory Audit Unit Supervisor within the Auditing Department, within the Financial and Business Analysis Division of the Staff ("Staff") of the Missouri Public Service Commission ("Commission").

Q. What is your educational background and work experience?

A. I attended Truman State University in Kirksville, Missouri, where I earned a Bachelor of Science degree in Accounting in May 2007. I have been employed by the Staff of the Commission since June 2007 within the Auditing Department.

Q. Have you previously filed testimony before this Commission?

A. Yes. A listing of the cases in which I have previously testified, or authored a Staff recommendation or memorandum, and the issues which I addressed in those filings, is attached as Schedule KM-r1 to this rebuttal testimony.

Q. What knowledge, skills, experience, training and education do you have concerning the topics on which you are testifying here?

A. I have acquired knowledge of the ratemaking and regulatory process through my employment with the Commission and through my experience and analyses in numerous prior

rate cases. I have assisted, conducted, and supervised audits and examinations of the books and records of public utility companies operating within the state of Missouri. I have participated in examinations of electric, industrial steam, natural gas, water, and sewer utilities. I have participated in in-house and outside training, and attended seminars on technical and general ratemaking matters while employed by the Commission.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of this rebuttal testimony is to respond to the direct testimony of Ameren Missouri witnesses and the applicable issues:

- Mitchell J. Lansford – qualified securitization costs
- Mark Birk – prudence of Rush Island Energy Center ("Rush Island") decision-making
- Karl Moor – prudence of Rush Island decision-making
- Jeffrey R. Holmstead – prudence of Rush Island decision-making
- John J. Reed – prudence of Rush Island decision-making
- Steven C. Whitworth – prudence of Rush Island decision-making

EXECUTIVE SUMMARY

Q. Please provide a brief summary of your rebuttal testimony in this proceeding.

A. My rebuttal testimony will address the various components of the Energy Transition Costs being requested in the securitization petition. Specifically, Staff recommends the following:

- Inclusion of the net book value of Rush Island. Net book value is defined as total original cost of plant with estimates of additions through retirement, less reserve for depreciation with estimates of additions for additional accruals.

- Abandoned capital projects – to the extent these costs can lawfully be recovered by Ameren Missouri, Staff recommends inclusion of the actual physical projects that would have been used and useful and in service in the near future. Staff recommends exclusion of costs related to a study for the installation of environmental equipment that was never used and useful nor would have been in the near future.

- Materials and supplies – Staff recommends inclusion of materials and supplies that are now not of use or obsolete in the amount to be securitized.

- ** [redacted] ** - Staff recommends exclusion of these costs from the amounts to be securitized. These amounts have the potential to be recovered through regulatory lag, or the net costs could be requested to be deferred and amortized in a future rate case.

- Community Transition costs – Staff recommends exclusion of these costs from the amounts to be securitized. These amounts are charitable contributions, which are not included in the cost of service.

I have included as Schedule KM-r4 a summary of Staff's recommendation of the amounts to be securitized. These amounts are subject to change as some of the information provided to Staff by Ameren Missouri was based on estimates and projections.

RUSH ISLAND

Q. Briefly, what is the Rush Island Clean Air Act Litigation?

A. In 2011, the United States Environmental Protection Agency ("EPA") filed a case against Ameren Missouri for violating the Clean Air Act ("CAA") for not having the proper emission controls at Rush Island. After several rounds of litigation, Ameren Missouri was found in violation of the CAA and its operating permit by completing the Rush Island projects without obtaining the required permits, installing best-available pollution control technology, or otherwise meeting applicable requirements by the United States District Court, Eastern District of Missouri, Eastern Division ("District Court"). The United States Court of Appeals for the Eighth Circuit ("Court of Appeals") upheld the lower court's rulings finding

that Ameren Missouri was liable under the applicable federal regulations. Consequently, Ameren Missouri made the decision to retire Rush Island. The undisputed facts of the case are described in further detail in the direct testimonies of the Ameren Missouri witnesses in this case.

Although lengthy, I have included the United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:11-CV-00077-RWS decision as Schedule KM-s2, referred to here as the "District Court Opinion". This case was appealed to the Court of Appeals Case No. 19-3220. The Court's opinion is attached to this document as Schedule KM-s3, and is referred to here as the "Court of Appeals Opinion".

The District Court opinion is the most important document relevant to this issue. This 195 page document explains in great detail how Ameren Missouri engaged in faulty and imprudent decision making given the facts and circumstances known at the time the Rush Island improvements were planned and installed.

Q. Concerning the retirement of the Rush Island Generating Station, please summarize your rebuttal testimony on this issue.

A. I respond generally to Ameren Missouri witnesses Birk, Moor, Holmstead, Reed, and Whitworth. Through these witnesses, Ameren Missouri seeks to re-litigate its loss at the Court of Appeals concerning the violations of the CAA.

I discuss these testimonies in general, their deficiencies, and their implicit denial that Ameren Missouri was not the victor in these proceedings. These witnesses' testimonies are tantamount to revisionist history. For the most part, Ameren Missouri filed the same testimony as that filed in the prior rate case, Case No. ER-2022-0337, on the topic of Rush Island. These testimonies and the opinions proffered differ with the findings of the District Court and

the Court of Appeals. However, I am advised by Staff Counsel that the Commission is bound by the determinations of the federal courts on these questions; Ameren Missouri cannot re-litigate them here.

Staff witness Claire M. Eubanks supports Staff's recommendations and responds to Ameren Missouri witnesses concerning Rush Island in her testimony in this case.

Q. Why did Ameren Missouri file this testimony?

A. Ameren Missouri filed a petition[1] seeking a Financing Order for authorization to issue Securitized Utility Tariff Bonds ("Securitization Bonds")[2] to finance its Energy Transition Costs and Financing Costs incurred as a result of the early retirement of its Rush Island Energy Center. As noted in its petition, Ameren Missouri seeks a determination by the Commission that Rush Island's retirement is reasonable and prudent and in its customers' best interest.

Q. Throughout the testimony of Ameren Missouri witnesses Birk, Moor, Holmstead, Reed, and Whitworth, the witnesses discuss the prudence of Ameren Missouri's actions and decision-making surrounding the CAA violations and litigation. Do you believe this question should be the focus of Ameren Missouri's petition?

A. No. Ameren Missouri has chosen to make the prudence surrounding the CAA violations a focus of the vast majority of the testimony filed in this case. In fact, only one Ameren Missouri witness, Matt Michels, focuses on the question of the prudence of retiring Rush Island given the current facts and circumstances. Most of the testimony is a duplication of Ameren Missouri's testimony in the prior rate case, Case No. ER-2022-0337.

[1] *Ameren Missouri's Verified Petition for Financing Order Allowing Issuance of Securitized Utility Tariff Bonds and Request for Deferral Authority,* dated November 21, 2023.
[2] Capitalized terms or phrases herein have the meaning given them in Section 393.1700, unless otherwise specified.

The actual question before the Commission, as identified in Paragraph 15 of the petition in question, is whether or not the early retirement or abandonment of Rush Island is deemed reasonable and prudent.

Q. Is it your testimony that the prudence concerning the CAA violations should not be relevant to the current petition at question?

A. Not entirely. As a result of the CAA violation and resulting litigation, Ameren Missouri is faced with either retiring Rush Island or installing $811 million[3] of environmental equipment. Ameren Missouri has determined through its analysis that the continued operation of Rush Island is an overall benefit to its customers in only 3 out of 48 scenarios, or 6.25%. This analysis is independent of any of the decision making prior to the decision of whether or not to retire Rush Island.

Q. Is your rebuttal testimony in this case substantially the same as your testimony concerning Rush Island filed in Case No. ER-2022-0337?

A. Yes. Although most of Staff's recommendations in this case are not impacted by District Court opinion, Staff disputes Ameren Missouri's conclusions concerning Rush Island and therefore must respond.

Q. Does Staff dispute Ameren Missouri's decision to retire Rush Island?

A. No. Staff does not dispute the decision to retire Rush Island, which is separate and distinct from the history and decisions leading up to the current situation. Consequently, Staff does not recommend any adjustment to the amount of net book value of Rush Island included with the amounts requested to be securitized.

Q. Please briefly explain the Rush Island violations of the Clean Air Act.

[3] Direct Testimony of Matt Michels, page 5.

A. Rush Island is subject to the Clean Air Act of 1970 enacted by the United States Congress. The New Source Review ("NSR") provisions within the Clean Air Act of 1970 have authority over increases in harmful pollutants such as sulphur dioxide, at issue here. The Prevention of Significant Deterioration Program ("PSD") is designed to prevent significant increases in pollution, in part, by requiring major emitters of pollution to install state-of-the-art pollution controls.

As the District Court noted, "[w]hen it enacted the PSD program, Congress required all new major-emitting facilities to comply with PSD requirements by installing state-of-the-art pollution controls at the time of construction. Recognizing the expense and burden of installing such controls, however, Congress did not require facilities then in existence to immediately install pollution controls. Rather, Congress allowed these facilities to continue to operate without installing such controls on the condition that if they ever modified their facilities, they would calculate the impact of those modifications, report the planned modifications to the EPA, obtain the requisite permits, and install the required pollution control technologies at that time. PSD rules apply to "major modifications," which occur when there is a "physical change" or change in the method of operation of a major stationary source that would significantly increase net emissions."[4] The District Court also noted, "An increase of 40 tons or more per year of sulfur dioxide ("SO2"), the pollutant discussed in this case, is "significant" under the regulations. 40 C.F.R. § 52.21(b)(23)(i)."[5]

The "major modifications" at issue were the 2007 and 2010 improvements to Rush Island Units 1 and 2, respectively. The specific boiler components at issue in the major

[4] District Court Opinion, page 2.
[5] Ibid.

modifications were the economizer, reheater, lower slopes, and air preheaters that were replaced at Rush Island Unit 1 in 2007, and the economizer, reheater, and air preheaters that were replaced at Rush Island Unit 2 in 2010.

The District Court performed a thorough examination of all the decisions made with the information known by Ameren Missouri at the time of the projects. The District Court concluded that Ameren Missouri failed to evaluate the project with the NSR and PSD requirements in mind. After the finding by the District Court, Ameren Missouri's two choices regarding Rush Island were to install flue gas desulphurization ("FGD") equipment to control SO2, or retire the units. Ameren Missouri chose to retire the units, which is scheduled to occur no later than October 15, 2024.

Q. On pages 9-14 of his direct testimony, Mr. Reed discusses the Missouri prudence standard. What is that standard?

A. Mr. Reed discusses a recent Liberty Utilities Fuel Adjustment Clause ("FAC") case in which the Commission identified the prudence standard.[6] This is essentially the same standard that Mr. Reed discussed in his rebuttal testimony in the prior Ameren Missouri rate case, Case No. ER-2022-0337. This case was Liberty Utilities the *Report and Order* that authorized securitization of "energy transition costs" associated with the retirement of its Asbury coal-fired electric generating plant and extraordinary costs incurred during the weather event of February 2021, known as Winter Storm Uri.[7]

[6] In the Matter of the Ninth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of The Empire District Electric Company, EO-2021-0281, Conclusions of Law, Section H.
[7] File No. EO-2022-0040 and File No. EO-2022-0193, Report and Order, Issue Date: August 18, 2022, at 28-29.

There are several cases in which the Commission identifies the prudence standard. The Commission discussed the prudence standard in the Report and Order in Case No. ER-2010-0355, a Kansas City Power & Light rate case:

> The prudence standard is articulated in the *Associated Natural Gas Case* as follows:
>
> [A] utility's costs are presumed to be prudently incurred.... However, the presumption does not survive —a showing of inefficiency or improvidence.
>
> . . . [W]here some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. (Citations omitted).
>
> In the [Union Electric] case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard:
>
> [T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[8]

The Commission continued in that *Report and Order*:

> 18. As stated above, under the prudence standard, the Commission presumes that the utility's costs were prudently incurred.[9] This means that utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent.[10]
>
> 19. Staff or any other party can challenge the presumption of prudence by creating —a serious doubt as to the prudence of an

[8] See State ex. Re. Associated Natural Gas v. Public Serv. Comm'n, 954 S.W.2d 520, 528-529 (Mo. App. W.D. 1997).
[9] See State ex. Re. Associated Natural Gas v. Public Serv. Comm'n, 954 S.W.2d 520 (Mo. App. W.D. 1997); State ex rel. GS Technologies Operating Co. Inc. v. Public Serv. Comm'n, 116 S.W.3d 680 (Mo. App. W.D. 2003 (citations omitted).
[10] See Union Electric, 66 P.U.R.4th at 212.

expenditure. Once a serious doubt has been raised, then the burden shifts to KCP&L to dispel those doubts and prove that the questioned expenditure was prudent.

20. In a prior case involving a prudence review and construction audit, the Commission stated:[11]

The Federal Power Act imposes on the Company the ―burden of proof to show that the increased rate or charge is just and reasonable. Edison relies on Supreme Court precedent for the proposition that a utility's cost are [sic] presumed to be prudently incurred. However, the presumption does not survive ―a showing of inefficiency or improvidence. As the Commission has explained, ―utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent . . . However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent."

21. Thus, in the first instance, it is the parties challenging the decisions and expenditures of a utility that have the initial burden of defeating the presumption of prudence accorded the utility.[12] Under the prudence standard, the Commission looks at whether the utility's conduct was reasonable at the time, under all of the circumstances. In applying this standard, the Commission presumes that the utility's costs were prudently incurred.[13]

22. Once the presumption of prudence is dispelled, the utility has the burden of showing that the challenged items were indeed prudent.[14]

23. The Commission has adopted a standard of reasonable care requiring due diligence for evaluating the prudence of a utility's conduct.[15] The Commission has described this standard as follows:[16]

[11] In the Matter of Union Electric Company, 27 Mo.P.S.C. (N.S.) 183, 193 (1985) (quoting Anaheim, Riverside, etc. v. Federal Energy Regulatory Commission, 669 F.2d 779 (D.C. Cir. 1981)) (citations omitted).
[12] State ex rel. Associated Natural Gas Company v. Public Service Commission, 954 S.W.2d 520, 528-529 (Mo. App., W.D. 1997).
[13] State ex rel. GS Technologies Operating Company, Inc. v. Public Service Commission, 116 S.W.3d 680 (Mo. App., W.D. 2003).
[14] Associated Natural Gas, supra, 954 S.W.2d at 528-529.
[15] Union Electric, 27 Mo.P.S.C. (N.S.) at 194.
[16] Ibid.

> The Commission will assess management decisions at the time they are made and ask the question, "Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?"

Q. In his direct testimony, Mr. Reed discusses how the Commission has evaluated prudence in past cases. How did the Commission evaluate prudence in the past?

A. As Mr. Reed stated, the Commission, in the Callaway rate case[17], further recognized that the prudence standard is not based on hindsight, but upon a reasonableness standard:

> The Commission determines that the appropriate standard to be used in this case was enunciated by the New York Public Service Commission in Re: *Consolidated Edison Company of* New York, Inc., 45 P.U.R., 4th, 1982. In that case at page 331, the New York Commission rejected an earlier "rational basis" standard in favor of reasonable care standard:
>
> More recently, and in cases more directly on point, we have articulated the standard against which a utility's conduct in circumstances such as these should be measured as follows:
>
> "…the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in the reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company. Case 27123, Re: Consolidated Edison Company of New York, Inc., Opinion 79-1, January 16, 1979."

Q. You claim that Ameren Missouri's actions or inactions were imprudent based on the opinion of the District Court. What evidence do you have of this imprudence?

[17] Case Nos. EO-85-17 and ER-85-160.

A. In examination of the 195 page opinion of the District Court, the court found that Ameren Missouri chose not to consider the increase in availability and therefore increase in emissions caused by the improvements at Rush Island. This line of decision making led to the Notice of Violation from the EPA, the years of litigation of the violations, and ultimately the premature retirement of Rush Island 15 years prior to its 2039 retirement date.

Q. Did the District Court or the Appeals Court consider prudence in either of their opinions?

A. I am not an attorney, but the words "prudent" or "prudence" do not appear in either opinion. However, Judge Rodney W. Sippel found that Ameren Missouri violated the Clean Air Act under the "preponderance of the evidence" established by the United States:

> After consideration of the testimony given at trial, the exhibits introduced into evidence, the parties' briefs, and the applicable law, I make the following findings of fact and conclusions of law, which largely adopt those proposed by the United States. As discussed below, I conclude the United States has established that Ameren should have expected, and did expect, the projects at Rush Island to increase unit availability (and, for Unit 2, to increase capacity), which enabled Ameren to run its units more, generate more electricity, and emit significantly more pollution. The United States has also established that Ameren actually emitted significantly more pollution as a result of the projects. Ameren has failed to establish that either the routine maintenance or demand growth defenses apply to shield it from liability. As a result, I conclude that the United States has established by a preponderance of the evidence that Ameren violated the PSD and Title V provisions of the Clean Air Act.[18]

Therefore, while I cannot say the District Court explicitly evaluated the prudence of Ameren Missouri's decision making, the District Court did an excruciatingly thorough

[18] District Court Opinion, page 5.

examination of Ameren Missouri's actions and decisions surrounding the violations of the Clean Air Act.

The District Court did find that Ameren Missouri's conduct was not reasonable as noted in Judge Sippel's September 30, 2019 *Memorandum Opinion and Order* regarding the remedy phase:[19]

> 393. I have already concluded that a reasonable power plant operator would have known that the modifications undertaken at Rush Island Units 1 and 2 would trigger PSD requirements. I have also concluded that **Ameren's failure** to obtain PSD permits **was not reasonable**. Ameren Missouri, 229 F.Supp.3d at 915-916, 1010-14.
>
> 394. After the liability trial in this case, I found that **at the time** of the Rush Island modifications, "the standard for assessing PSD applicability was well-established." It was also "well-known" that the types of unpermitted projects Ameren undertook **risked** triggering PSD requirements. Id. at 915. [Emphasis Added.]

The unfortunate outcome of this litigation has impacted and will impact Ameren Missouri and its customers for years to come. I find it somewhat hard to comprehend why five Ameren Missouri witnesses recommend the Commission set aside both the District Court and the Court of Appeals rulings and find Ameren Missouri was not to blame when the District Court found Ameren Missouri's decision making was not reasonable. It is not prudent or reasonable to make decisions that lead to violations of federal law.

Q. What are some of the specific facts the District Court identified that show imprudent decision making?

[19] 421 F.Supp.3d 729 (E.D.Mo. 2019), page 794

A. Contrary to the testimony of the various Ameren Missouri witnesses, the District Court found that Ameren Missouri should have expected improvements in availability at the time NSR and PSD should have been evaluated:

> 257. Ameren also **should have expected** Unit 2's long-term average equivalent availability to increase from 92% to 95%. Because there is a 2-3% variation in long-term forecasts, Ameren understood that Unit 2's highest annual availability after the 2010 boiler upgrade would be 97-98%. Koppe Test., Tr. Vol. 3-A, 76:17-22, 79:7-14; Meiners Test., Tr. Vol. 7-B, 54:14-55:6; Hausman Test., Tr. Vol. 4-B, 65:9–19.[20] [Emphasis added.]
>
> 268. In addition to improving the availability of both units, the 2010 boiler upgrade **should have been expected** to increase the capability of Rush Island Unit 2. As described further below, because Unit 1 experienced a capability increase after the 2007 boiler upgrade, Ameren should have expected – and did expect – a similar increase to occur after the 2010 boiler upgrade at Unit 2. Koppe Test., Tr. Vol. 3-B, 19:20-25.[21] [Emphasis added.]
>
> 279. Based on his review of Ameren's documents and data, Mr. Koppe confirmed that Ameren **should have expected, and did expect,** an increase in Unit 2's capability of at least 22 MW (gross) as a result of replacing the economizer, reheater, and air preheater. That additional capability would result from eliminating the effects of pluggage and allow Unit 2 to burn more coal per hour. Koppe Test., Vol. 3-B, 33:14-34:1; *see also* Vol. 3-A, 27:18-25, 29:2-8, Vol. 4-A, 46:23- 47:18.[22]

The District Court noted that Ameren Missouri failed to communicate with the EPA concerning the improvements:

> 394. Prior to undertaking the Unit 1 project, Ameren did not communicate with permitting authorities about whether a New Source Review permit would be required. Whitworth Test., Tr. Vol. 11-A, 106:3-7.[23]

[20] District Court Opinion, page 81.
[21] Ibid, page 84.
[22] Ibid, page 88.
[23] Ibid, page 117.

Q. What was the legal standard used by the Court of Appeals to determine PSD liability?

A. I am not an attorney, but in the Court's Opinion, the federal legal standard was summarized:

> There are two ways to establish PSD liability. The United States can satisfy its burden by proving either that: (1) the source should have expected an emissions increase related to the project (the expectations approach); or (2) an emissions increase related to the project actually occurred (the actual emissions approach). *Ameren SJ Decision*, 2016 WL 728234, at *16; *see also 40 C.F.R. § 52.21(a)(2)(iv)(b), (c).*[24]

The Court continued:

> Under the expectations approach, courts must determine what a source should have expected at the time of the project. To prevail, the United States "must show that at the time of the projects [defendant] expected, or should have expected, that its modifications would result in a significant net emissions increase." *Ameren SJ Decision*, 2016 WL 728234, at *13 (citing cases and quoting *United States v. Ala. Power Co.*, 730 F.3d 1278, 1282 (11th Cir. 2013) (internal quotations omitted)).[25]

Here, the Court specifically found Ameren Missouri should have known emissions would increase with the improvements at Rush Island:

> The core facts of this case show that before Ameren performed the challenged projects, problems with the components at issue were limiting the units' performance. Replacing those components would improve performance and result in additional use and pollution. That was what Ameren should have expected before the work began. The evidence shows that is what Ameren *did* expect. The evidence also shows that is exactly what happened.[26]

[24] Ibid, page 134.
[25] Ibid, page 135.
[26] Ibid, page 137.

The Court put to rest any argument of reliance on hindsight when it stated "Ameren should have expected a significant net emissions increase and should have obtained a permit before beginning work."[27]

Q. What did the Court of Appeals find concerning Ameren Missouri's actions?

A. The Court of Appeals affirmed the findings of the United States District Court for the Eastern District of Missouri – St. Louis:[28]

> In summary, the district court "entered[ed] a finding of liability against Ameren," concluding that the Rush Island Unit 1 and 2 projects described above were major modifications under the CAA [Clean Air Act], Ameren violated the PSD [Prevention of Significant Deterioration] program's requirements "by failing to obtain a preconstruction permit and install best available pollution control technology," and Ameren violated Title V of the CAA. *Id.* At 1017.[29]

Additionally, I am advised by Staff Counsel that the decisions of the federal courts with respect to these matters are binding on the Commission.

RUSH ISLAND ORIGINAL COST OF PLANT

Q. On page 4 of his direct testimony, witness Lansford describes the net original cost of Rush Island. Do you agree with his recommendations?

A. Yes. Staff recommends the amounts identified as of June 30, 2023, projected through September 1, 2024, are approximate values of the amounts to be securitized. Staff recommends the actual plant additions necessary to operate the plant also be included in the securitization, as they will be used and useful as of the retirement date.

[27] Ibid, page 155.
[28] *United States v. Ameren Mo. (Ameren III)*, 229 F. Supp. 3d 906 (E.D.MO.2017).
[29] Quoting *United States v. Ameren Mo. (Ameren III)*.

Ameren Missouri reduced the estimated plant additions from $4.3 million to $1.8 million[30] and Staff has reflected this reduction.

Q. On page 5 of his direct testimony, witness Lansford identifies $12.9 million of abandoned construction work in progress ("CWIP") expenditures that Ameren Missouri is requesting through this securitization. Does Staff agree with the inclusion of these expenditures?

A. Not entirely. I am not an attorney, but I have been advised by legal counsel that it may be unlawful to include abandoned CWIP under Sec. 393.135, RSMo in the amount to be securitized.

If abandoned CWIP is lawful to include in amounts to be securitized, to the extent the projects would have been completed in the foreseeable future but were abandoned, it would be fair to include those expenditures. On the other hand, Ameren Missouri is requesting $9 million for the preliminary engineering and design costs ("Study") to build a FGD system for Rush Island Units 1 & 2. The work order authorization dates back to March 2011. Staff recommends that these costs should be excluded.

Q. Why does Staff recommend removal of the costs associated with this Study?

A. Hypothetically, if Ameren Missouri were to now build the FGD at Rush Island, I would question the relevance and usefulness of a 13 year old study. The costs in question were for the preliminary engineering and design costs so there is potential that if the scrubbers were to be built new studies would have to be completed making these studies obsolete. There is no evidence that the FGD would be built at any time in the near or distant future. Ameren Missouri's decision not to build the FGD is precisely why Rush Island is being retired.

[30] Response to Staff Data Request 3.2.

On the contrary, the other work orders were 6 years old or less and were related to improvements for safety or obsolete equipment replacements.

BASE MAT COAL INVENTORY

Q. On page 4 of his direct testimony, witness Lansford lists base mat coal inventory as part of the investment to be securitized. Does Staff agree?

A. Yes. The inclusion of base mat coat inventory is consistent with the *Amended Report and Order* in File No. EO-2022-0040 and EO-2022-0193, 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 and 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 ("Liberty Utilities Order").

MATERIALS AND SUPPLIES

Q. On page 6 of his direct testimony, witness Lansford lists the Rush Island materials and supplies as includable securitized costs. Does Staff agree?

A. Yes. These balances, net of transfers to other facilities, should be included in the securitized costs.

NET PRESENT VALUE OF ACCUMULATED DEFERRED INCOME TAXES ("ADIT")

Q. On pages 8 and 15-22 of his direct testimony, witness Lansford discusses the treatment of ADIT related to Rush Island. Does Staff agree with Ameren Missouri's recommended treatment?

A. Yes. Ameren Missouri's recommendation concerning ADIT is consistent with the provisions of the securitization statute. The calculation captures the NPV of the future reductions to rate base included in the cost of service absent securitization, and reduces the overall amount to be securitized. The difference between Ameren Missouri's and Staff's calculation is the reduction of projected improvements through retirement.

SECURITIZATION BENEFITS

Q. In witness Lansford's direct testimony, he discusses the benefits of securitization versus traditional ratemaking. Do you agree with Ameren Missouri's conclusions?

A. Yes. The rate of return based upon current securitized utility tariff bond rates that customers would be responsible for through a securitization case is expected to be much lower than the weighted average cost of capital return that might have been required of customers for the Rush Island retired investment in a general rate case. With that point in mind, securitizing Rush Island unrecovered costs appears to be fair and equitable approach to setting customer rates in regard to unrecovered Rush Island investment into the future.

Q. Do you agree with Ameren Missouri's basis of comparison of recovery through traditional ratemaking, specifically assumption of a 15-year amortization and rate of return at WACC?

A. Yes, this is an appropriate basis of comparison given the original 2039 retirement date.

CARRYING COSTS

Q. On page 8 of his direct testimony, witness Lansford identifies Ameren Missouri's request for carrying costs to be incurred after the retirement of Rush Island

but prior to the bond issuance. Do you agree with Ameren Missouri's request to use the weighted average cost of capital ("WACC") for the calculation of these carrying costs?

A. No. The Commission determined the appropriate carrying costs for securitization of a retired generation facility in the Liberty Utilities Order on page 72:

> As the Commission has concluded above, Missouri law generally holds that for a utility to be able to recover a return on a property, that property must be used and useful. However, the securitization statute specifically includes carrying costs within the definition of energy transition costs that can be recovered through securitization. Nevertheless, nothing is the statute defines carrying costs or mandates that they be included for recovery through securitization. Further, the securitization statute also requires the Commission find that the amount to be securitized is just and reasonable.
>
> Here, Liberty is seeking to recover its full carrying costs on a generation facility that has not been used and useful since its effective retirement in December 2019. The Commission finds that such full recovery is not just and reasonable. Under these circumstances a more limited recovery of carrying costs for the period after the Asbury plant was removed from Liberty's rates, beginning in June 2022 is just and reasonable.
>
> For the same reason, the Commission finds it just and reasonable to allow Liberty to recover those carrying costs at its 4.65 percent cost of long-term debt rather than at is WACC.

Q. Are the circumstances concerning carrying costs in the Liberty Utilities Order similar to those in this case?

A. Yes. In this case, the time between retirement and securitization is projected to be far less than in the case of the retirement of Liberty Utilities Asbury Generating Station. Consequently, the evidence in this case that long-term debt is an appropriate carrying cost is far more convincing.

** [redacted] **

Q. On page 6 of his rebuttal testimony, witness Lansford briefly identifies ** [redacted] ** that may be incurred. Does Staff recommend inclusion of these expenses, should they be incurred?

A. Not in the balance to be securitized. Ameren Missouri has requested a separate deferral mechanism to capture costs currently reflected in rates that will no longer be incurred at the time of retirement. To the extent there are ** [redacted] ** they can recommend an offset of the amount of savings recognized in the deferral.

COMMUNITY TRANSITION COSTS

Q. On page 7 of his rebuttal testimony, witness Lansford identifies Ameren Missouri's request to include charitable contributions to a school district and non-profit organizations in the amount to be securitized. Does Staff agree with the inclusion of these costs?

A. No. These expenses, if incurred, are of a charitable nature. To my knowledge, no utility that has retired a large generating facility has requested charitable donations to be flowed through customer rates. If Ameren Missouri chooses to make these contributions, it can do so and potentially benefit from a resulting tax deduction. Charitable contributions and the associated tax deductions are not included in cost of service.

UPFRONT FINANCING COSTS

Q. Does Staff recommend an adjustment to the upfront financing costs?

A. Yes. These costs include the costs for the development of testimony for this filing. Ameren Missouri procured the services of witnesses Moor, Holmstead, and Whitworth to file testimony defending Ameren Missouri's decisions.

Q. Was Ameren Missouri required to procure the services of witnesses Mr. Moor and Mr. Holmstead?

A. No. These outside witnesses are both former employees of the Environmental Protection Agency ("EPA"). Ironically, both witnesses support Ameren Missouri's claimed prudence in its decisions concerning the permitting and upgrades that were the subject of the EPA complaint and subsequent litigation, in contrast with their former employers.

Both witnesses' services are being provided through the law firm Hunton Andrews Kurth LLP. In the prior rate case, Case No. ER-2022-0337, Mr. Moor was being compensated a flat fee of ** [redacted] ** based on an hourly rate of ** [redacted] ** and Mr. Holmstead was compensated ** [redacted] ** per hour, plus travel and expenses. These costs were passed on to customers through rate case expense. Neither of these witnesses address the mitigation efforts by Ameren Missouri to compensate for the energy, capacity, and system reliability when Rush Island is retired. Ameren Missouri witnesses Mark Birk and Matt Michels address the mitigation efforts, both of whom are employed by Ameren Missouri and do not incur additional expenses.

The testimony of Mr. Moor and Mr. Holmstead is largely the same as that filed in the last prior rate case. Ratepayers have paid these expenses through rate case expense in the prior rate case and should not be responsible for these duplicative costs to the extent Ameren Missouri seeks to include expenses for these witnesses through securitization.

ASH POND CLOSURE AND WATER TREATMENT AND MONITORING COSTS

Q. On page 6 and 7 of his direct testimony, witness Lansford discusses the inclusion of ash pond closure and water treatment and monitoring costs in the securitized costs. Does Staff agree?

A. In part. Staff recommends the ash pond closure expense be included as the closure is related to the retirement of Rush Island. The water treatment and monitoring costs are projected to be incurred through 2032 and should be treated as routine costs that are included in cost of service in the rate case process.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Petition of Union Electric Company d/b/a Ameren Missouri for a Financing Order Authorizing the Issue of Securitized Utility Tariff Bonds for Energy Transition Costs related to Rush Island Energy Center	))))))	**File No. EF-2024-0021**

AFFIDAVIT OF KEITH MAJORS

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

COMES NOW KEITH MAJORS, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing *Rebuttal Testimony of Keith Majors*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

KEITH MAJORS

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Jackson, State of Missouri, at my office in Kansas City, on this 22 day of February 2024.

Notary Public

NOTARY PUBLIC, STATE OF MISSOURI
JACKSON COUNTY
#01404338
NOTARY SEAL
MY COMMISSION EXPIRES
9-7-2027
CHERYL LEVERETT