

**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)	<u>Case No. EF-2024-0021</u>
Issue of Securitized Utility Tariff Bonds)	
for Energy Transition Costs related to)	
Rush Island Energy Center)	

PUBLIC COUNSEL’S POSITIONS ON THE LISTED ISSUES

1. Net Present Value Benefits

Would issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges be just and reasonable and in the public interest and be expected to provide quantifiable net present value benefits to customers as compared to financing and recovering of components of Rush Island energy transition costs using traditional financing and recovery?

OPC Alternative Statement of Issue: Would issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges be just and reasonable and in the public interest and be expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of Rush Island energy transition costs that would have been incurred absent the issuance of securitized utility tariff bonds?

OPC Position: No. Missouri law, as acknowledged by the Commission in its Amended Report and Order, as corrected, in File Numbers, EO-2022-0040 and EO-2022-0193, establishes that if utility plant is not used and useful, the utility is not entitled to a return on such plant. (OPC witness Murray Rebuttal, p. 3, lns. 8 – 13). While not allowing a return would mean neither a return on common equity capital nor a return on debt capital, due to the fact the Commission had relied on scenarios in recent securitization cases in which the utility company may be allowed a debt return, Mr. Murray also analyzed this scenario. Even if the Commission allowed Ameren Missouri to recover a debt return of 4.05% on the Rush Island regulatory asset, securitization would be more costly than established ratemaking principles in Missouri. (OPC witness *Murray Surrebuttal*, p. 10, lns. 5-12).

a. What constitutes traditional financing and recovery?

OPC Position: Traditional financing for a significant capital investment such as Rush Island consists of a mix of long-term capital, which includes common equity and long-term debt (OPC witness *Murray Rebuttal*, p. 11, ln. 18 – p. 12, ln. 4).

Traditional recovery depends on the status of the Rush Island plant. If it is prudent investment and it is used and useful, Rush Island is included in rate base and recovered through depreciation expense with an allowed rate of return on the undepreciated

balance. If Rush Island is no longer used and useful, traditional recovery constitutes a recovery of the remaining balance through a straight-line amortization with no return on the unamortized balance. OPC witness *Murray*.

- b. At what time should the obligation of the utility to engage with the finance team on all facets of the process commence?**

OPC Position: OPC takes no position at this time but may take a position in briefing following the evidentiary hearing.

- c. Should the language related to the finance team role be modified from prior financing orders from “the right to review, provide input, and collaborate” to “the right to provide input . . . and collaborate. . .”?**

OPC Position: OPC takes no position at this time but may take a position in briefing following the evidentiary hearing.

- d. Should the finance team’s involvement and scope on underwriter selection be modified from “the size, selection process, participants, allocations and economics of the underwriter and any other member of the syndicate group” to “the selection process for the underwriters, including with respect to allocations and economics”?**

OPC Position: OPC takes no position at this time but may take a position in briefing following the evidentiary hearing.

- e. How would Ameren Missouri finance and recover from its customers the components of Rush Island energy transition costs that would have been incurred absent the issuance of securitized utility tariff bonds?**

OPC Position: Rush Island’s undepreciated plant balance has already been financed by debt, equity, and accumulated deferred income taxes (“ADIT”). OPC has not independently investigated the financing of the other components, but if the costs have already been incurred and included in rate base, then they are assumed to be financed similarly to Rush Island’s undepreciated balance, with the exception of ADIT. OPC witness *Murray*.

Safe closure and decommissioning, ARO, water treatment and monitoring and community transition costs have yet to be incurred so they have not been financed.

- f. Absent securitization, which method of recovery more accurately and reliably estimates ratepayer payments? Absent securitization, what return, if any, would the Commission allow on the Rush Island energy transition costs regulatory asset?**

OPC Position: An amortization of the regulatory asset, and if a return is allowed on the regulatory asset, the return should be applied to the declining balance, which results in higher ratepayer payments at the beginning of the amortization and lower ratepayer

payments at the end of the amortization. The Commission would not allow a return any higher than a debt return under traditional recovery. OPC witness *Murray*.

- g. What discount rate should be applied to estimated ratepayer payments for purposes of estimating the quantifiable net present value benefits to customers?**

OPC Position: A range of discount rates of 4% to 6.82%, with the most weight given to the securitized bond rate, which should be within this range. (OPC witness *Murray* Rebuttal, p. 16, lns. 5 – 11).

2. Post Financing Order Process/Procedure

- a. What information should be included in the Issuance Advice Letter?**

- i. Should the Issuance Advice Letter include a comparable securities pricing analysis as recommended by OPC witness Murray?**

OPC Position: Yes. The yield achieved on securitized bonds does not provide meaningful information on its own. Requiring disclosure of pricing compared to the price of other comparable securities should assist in confirming certifications that the “structuring, marketing and pricing of the Securitized Utility Tariff Bond resulted in the lowest charge consistent with market conditions.” The disclosure of such additional information is also consistent with improving the transparency of the securitization process to retail customers. OPC witness *Murray*.

- b. Should the certification letters provided by the underwriters and Staff’s financial advisor be redacted rather than classified as confidential in their entirety?**

OPC Position: Yes. The classification of entire documents filed by parties certifying that ratepayers will pay the lowest possible cost causes public skepticism. OPC witness *Murray*.

- c. Should the Commission require Staff’s financial advisor to identify information he/she relied upon, but did not independently verify, for purposes of providing his/her opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds?**

OPC Position: Yes. Public confidence in oversight is increased by ensuring that the Commission’s financial advisor independently verified material information supporting his/her opinion that the “structuring, marketing and pricing of the Securitized Utility Tariff Bond resulted in the lowest charge consistent with market conditions.” OPC witness *Murray*.

- d. Should the Commission order Ameren Missouri to provide the Issuance Advice Letter and supporting workpapers to other interested parties at the same time it provides information to Staff's Finance Team?**

OPC Position: Yes. Other parties should be allowed to review the details supporting Ameren Missouri's and the Finance Team's calculations and conclusions that the securitized bonds achieve quantifiable NPV benefits to customers. Additionally, the Issuance Advice Letter contains the final updated costs that are included in upfront and ongoing financing cost. OPC and any other parties should be allowed sufficient time to review this information to ensure the costs, inputs and methodology are consistent with the Commission's order. OPC witness *Murray*.

- e. Should the Commission order Staff's financial advisor to provide a detailed accounting and explanation for fees in excess of \$1.561 million?**

OPC Position: Yes. It is unclear what additional duties and responsibilities the Staff's financial advisor must complete in this case compared to previous securitization cases. Ameren Missouri's retail customers should know why they may be requested to pay more than other retail customers in other comparable securitization transactions in Missouri. OPC witness *Murray*.

3. Prudence of Retirement

Is it reasonable and prudent for Ameren Missouri to abandon or retire Rush Island during September 1 through October 15 of 2024?

OPC Position: OPC takes no position at this time but may take a position in briefing following the evidentiary hearing.

- a. Did Ameren Missouri make reasonable and prudent decisions respecting whether to obtain New Source Review (NSR) permits prior to either or both of the 2007 and 2010 Rush Island planned outages projects and afterward, including its conduct of the NSR litigation? If any of its decisions in this regard were unreasonable and imprudent, did any such imprudent decisions harm customers and if so, in what amount?**

OPC Position: No. Ameren Missouri did not seek legal advice specific to the 2007 or 2010 Rush Island modifications regarding NSR permits, and, as Judge Sippel stated, "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." *United States v. Ameren Mo.*, 421 F. Supp. 3d 729, 794 (finding of fact no. 393) citing to *Ameren Missouri*, 229 F.Supp.3d at 915-916, 1010-14.

Further, Ameren Missouri did not seek an applicability determination from the EPA for New Source Review ("NSR") permitting under the Prevention of Significant Deterioration ("PSD") program. There are many instances prior to 2007 of utilities

inquiring with the EPA about applicability determination for NSR permitting and receiving a response that a permit is required for the project. There are also many instances prior to 2007 of utilities being told by their state agency overseeing implementation of EPA-approved SIPs that a permit is not needed for the project, only to be told by the EPA about the same project that the state agency was wrong, and that the EPA will require an NSR permit for the project. The NSR regulatory environment between 1990 and 2007 was dominated by concerns by utilities and other industries about the vague, unclear, and unevenly applied standards and aspects of the NSR permitting decisions under the PSD program by the EPA. A reasonable and prudent decision would have been to exercise caution and assume a high probability of the EPA requiring an NSR permit for the planned projects at Rush Island Unit 1 and Unit 2. OPC witness *Seaver*.

- b. Were Ameren Missouri's decisions regarding whether to continue to operate Rush Island instead of retiring or retrofitting it with flue gas desulfurization equipment reasonable and prudent? If the decisions were not reasonable and prudent, were customers harmed and, if so, in what amount?**

OPC Position: No. Commencing before 2007 and 2010 when it decided to make major modifications to Rush Island, Ameren Missouri either should have abandoned Rush Island without making those major modifications or it also should have installed flue gas desulfurization equipment when it made those modifications, like it did at its Sioux coal plant in 2008, and had stated was a planned possibility at Rush Island. Ameren Missouri could have also reduced the scope of work of the maintenance projects for Unit 1 and Unit 2, thereby returning the operating capacity of the units to near original levels, while not increasing the operating capacity beyond them. The unreasonable decision of Ameren Missouri to continue running Rush Island after proceeding with the major modification projects for Unit 1 and Unit 2 and without seeking EPA applicability determination has caused the Company to prematurely retire the plant. The amount calculated for harm to customers is \$34 million. OPC witness *Seaver*.

4. Amount to Finance

- a. What amount of abandoned Rush Island capital project costs should be financed using securitized utility tariff bonds?**

OPC Position: Ameren Missouri should not be allowed to finance the full amount of abandoned capital projects for Rush Island using securitized utility tariff bonds. The capital projects should not be included in energy transition costs in this case; instead, these costs should be addressed in Ameren Missouri's next general rate case. If the abandoned capital projects are to be financed through securitization, Ameren Missouri's customers would be repaying Ameren for its investments in these abandoned projects but also the bond interest on this. That interest over 15 years is not economical or beneficial to Ameren Missouri's customers. Through the rate case, the abandoned projects can be reviewed for prudence and relevancy. The Commission can also permit Ameren Missouri to recover the costs of the abandoned projects with no return on

through a 5-year amortization period, just like the commission did in case No. ER-77-154. OPC witness *Payne*.

b. Should Staff's proposed exclusion of the costs of the abandoned Rush Island scrubber studies be adopted?

OPC Position: Staff's proposed exclusion of the costs of the abandoned Rush Island scrubber studies should be adopted. Ameren Missouri should not be allowed to finance the full amount of the abandoned capital projects through securitization, this includes the Rush Island scrubber studies. The capital projects should be addressed in the next general rate case. Through this, the relevancy and prudence of the Rush Island scrubber studies can be assessed. OPC witness *Payne*.

5. Planning for NSR Outcome

Did Ameren Missouri make reasonable and prudent decisions respecting its planning for the Rush Island NSR litigation's outcome? If not, did any such imprudent decisions harm customers and if so, in what amount?

OPC Position: OPC takes no position at this time but may take a position in briefing following the evidentiary hearing.

a. Should the Commission order the hold harmless remedy recommended by Staff witness Eubanks regarding the cost of Rush Island Reliability Projects?

OPC Position: OPC takes no position at this time but may take a position in briefing following the evidentiary hearing.

6. Net Plant

What is the net plant in service balance of the retired Rush Island plant:

a. If retired September 1, 2024?

OPC Position: The net plant-in-service balance if the Rush Island plant is retired on September 1, 2024, is \$447,398,779. Please refer to Schedule JAR-R-3 attached to the rebuttal testimony of OPC witness *John A. Robinett*, for the calculation of net plant-in-service. Mr. Robinett used the starting point of the depreciation study from Case Number ER-2022-0337 and brought the numbers forward without additions or retirements and calculated a remaining undepreciated plant value of \$447,398,779. This is consistent with the Commission's order in Case No. ER-2022-0130 for the net present value estimate Mr. *Robinett* provided for the Sibley retirement.

Per Ameren Missouri Witness Birk's direct testimony at page 22, Ameren Missouri made the decision to retire the Rush Island facility in December 2021. Mr. *Robinett* therefore omitted plant in service additions and projected additions related to Rush

Island after December of 2021. As discussed by Mr. Lansford at page 20 of his surrebuttal testimony, the value of actual additions and projected additions is in excess of \$27 million. OPC witness *Robinett*.

b. If retired October 15, 2024?

OPC Position: The net plant-in-service balance if the Rush Island plant is retired on October 15, 2024, is 442,820,805. Please refer to Schedule JAR-R-3 attached to the rebuttal testimony of OPC witness *John A. Robinett*, for the calculation of net plant-in-service. Mr. Robinett used the starting point of the depreciation study from Case Number ER-2022-0337 and brought the numbers forward without additions or retirements and calculated a remaining undepreciated plant value of \$442,820,805. This is consistent with the Commission's order in Case No. ER-2022-0130 for the net present value estimate Mr. *Robinett* provided for the Sibley retirement.

Per Ameren Missouri Witness Birk's direct testimony at page 22, Ameren Missouri made the decision to retire the Rush Island facility in December 2021. Mr. Robinett therefore omitted plant in service additions and projected additions related to Rush Island after December of 2021. As discussed by Mr. Lansford at page 20 of his surrebuttal testimony, the value of actual additions and projected additions is in excess of \$27 million. OPC witness *Robinett*.

7. Basemat Coal Inventory

What is the value of basemat coal inventory at Rush Island?

OPC Position: The Commission Staff and Ameren have been valuing the basemat coal foundation at Rush Island at \$1,923,660 since a stipulation and agreement agreed to in 2008.

Based on Ameren Missouri's estimated 53,000 tons of basemat coal and the findings by the Missouri Public Service Commission in a 1977 Commission Report & Order attached to Mr. *John S. Riley*'s rebuttal testimony, where coal was valued at \$10.612 per ton, the value of the basemat should be \$562,436. OPC witness *Riley*.

a. Should the value of basemat coal inventory be included in the amounts authorized for financing using securitized utility tariff bonds?

OPC Position: The basemat coal should not be included in the energy transition costs for several reasons. The Commission can address this balance in the next general rate case. The Commission can reclassify this unrecovered fuel and include it in the Rush Island land accounts or the Commission can determine that the stipulated \$1,923,660 has been an overcollection for 16 years and the \$562,436 balance has been reimbursed. OPC witness *Riley*.

8. NPV of Tax Benefits/ADIT

a. What is the net present value of tax benefits associated with the Rush Island plant:

i. If retired September 1, 2024?

OPC Position: The NPV of ADIT would be \$89,128,306 per Mr. Lansford's September 1, 2024, workpaper calculations. OPC witness *Riley*.

ii. If retired October 15, 2024?

OPC Position: The NPV of ADIT at October 15 would be \$87,311,890 per Mr. Lansford's October 15 dated workpapers. OPC witness *Riley*.

b. How should accumulated deferred income taxes (ADIT) and excess ADIT be accounted for and treated in this case?

OPC Position: The Securitization Statutes direct the NPV of ADIT to be a reduction to the securitized bond balance:

The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds.

OPC witness *Riley*.

9. Asset Retirement Obligations

What amount of asset retirement obligations should be financed using securitized utility tariff bonds?

OPC Position: EPA groundwater and treatment costs are not asset retirement obligations, but are addressed under this issue. Groundwater monitoring and treatment costs are required by an EPA rule based on remedying historical actions related to burning coal and are not relevant in energy transition considerations. The Company is required to continue groundwater monitoring treatment activities on the Rush Island site for an unspecified period of time after decommissioning Rush Island, which could potentially exceed 30 years. Therefore, all costs associated with groundwater monitoring and treatment costs should be removed from securitization and considered for recovery in general rate case proceedings. OPC witness *Schaben*.

10. Safe Closure Costs

What amount of safe closure costs should be financed using securitized utility tariff bonds?

OPC Position: Ameren Missouri executed additional projects on the Rush Island site necessary for transmission reliability as the coal plant is decommissioned. The activities included in the Company's safe closure cost estimate are temporary and provide more value to the site where a switchyard will remain. Additionally, if transmission upgrade projects occur concurrently or overlap with actual decommissioning activities, there's no way of knowing if the portable toilets are being used in decommissioning or transmission reliability projects. It doesn't make sense to securitize portable toilet costs over 15 years. Therefore, safe closure costs should be reduced by Ameren Missouri's estimate of \$4,407,500. Actual costs should be addressed within the next general rate case when actual expenditures are available. OPC witness *Schaben*.

11. Decommissioning Costs

What amount of decommissioning costs should be financed using securitized utility tariff bonds?

OPC Position: Since Ameren Missouri only offers estimates within a broad range of possible decommissioning costs, none of the estimated costs should be included in securitization. However, if decommissioning estimate costs are allowed, based on the broad -30% and +30% accuracy range of Black and Veatch's decommissioning estimation report, no more than \$29,750,000 in decommissioning costs should be included in securitization. OPC witness *Schaben*.

12. Materials and Supplies

What amount of materials and supplies inventory should be financed using securitized utility tariff bonds?

OPC Position: Ameren should not be allowed to recover the \$44,553.27 amount it lists for nonexistent assets. Further, Ameren Missouri should not be allowed to recover the inventory balance related to materials and supplies of \$18,259,888.74 (amount excluding zero quantities items) it lists for inventory that is neither used nor useful after it retires Rush Island. The total inventory balance can fluctuate by the time the Company closes Rush Island, which means the amount could be over or under what the Company is currently wanting to include in this case. In addition to these items being unusable¹, Ameren Missouri's retail customers should not have to repay Ameren Missouri for these items over 15 years, with interest. Instead of securitization, the Company should wait and ask for recovery of these inventory balances in a future general rate case. After it closes Rush Island the Company will have a more precise

¹ EF-2024-0021, Jim Williams, Page 10, Line 17.

number for the materials and supplies inventory balances. OPC witness *Payne*.

13. Community Transition Costs

What amount of community transition costs should be financed using securitized utility tariff bonds?

OPC Position: None. They are not a cost imposed on the community; instead, they represent the loss of a community benefit. OPC witness *Riley*.

14. Upfront Financing Costs

What amount of upfront financing costs should be financed using securitized utility tariff bonds if

- (a) Rush Island is retired September 1, 2024, and**
- (b) if Rush Island is retired October 15, 2024?**

OPC Position: OPC takes no position at this time but may take a position in briefing following the evidentiary hearing.

Should the costs associated with Company witnesses Holmstead and Moore be included or excluded from the upfront financing costs?

OPC Position: OPC did not take a position on this issue, but does not oppose their exclusion.

15. DOE Loan Funds

Should Ameren Missouri issue the securitized utility tariff bonds to the U.S. Department of Energy under the Energy Infrastructure Reinvestment program or issue the bonds in the customary manner to public investors?

OPC Position: If Ameren Missouri's issuance of securitized utility tariff bonds to the U.S. Department of Energy displaces its eligibility for other proceeds from the DOE's EIR Program, then no. If Ameren Missouri's issuance of securitized utility tariff bonds to the U.S. DOE does not displace eligibility of proceeds for other funding needs and the cost savings exceed extra costs for potential delayed investment of the securitized proceeds, then yes. OPC witnesses *Robinett* and *Murray*.

16. Allocation of Revenue Requirement

How should the securitized utility revenue requirement be allocated to customers?

OPC Position: OPC takes no position at this time but may take a position in briefing following the evidentiary hearing.

17. Tariff

Should the tariff changes recommended by Staff be adopted?

OPC Position: No. Neither the compliance tariff sheets proposed by Staff witness Sarah Lange nor Company witness Steven Wills accurately and clearly describe the securitization charge and how it is to be calculated. (Mantle surrebuttal, pg. 2). The Commission should order the parties to develop accurate and clear compliance tariff sheets with specifics from the Commission’s financing order. (Mantle surrebuttal, pg. 3). OPC witness *Mantle*.

If securitization is authorized, should the compliance tariff sheets:

a. Tie the voltage adjustment factors to the similar factors used in the Company’s Fuel Adjustment Clause?

OPC Position: Yes. OPC witness *Mantle*.

b. Include that the name of the securitization charge on the customer bill be labeled “Rush Island plant retirement charge”?

OPC Position: Yes. By specifying a consistent title that customers will see on their bills for as long as securitization lasts, customers will know that this charge is payment for a plant that has been retired. (Mantle surrebuttal, pg. 5). OPC witness *Mantle*.

c. Require the rate be rounded to the nearest fifth decimal point?

OPC Position: Yes. “By requiring the rounding of the rate to the fifth decimal point provided on the tariff sheets, customers should be able to duplicate this charge if they check the calculation of their bill. Absent this requirement, there could be a difference, albeit small, in what the customer calculates based on the tariff sheet and what is calculated by a computer system that can carry the rate out for several more decimal places.” (Mantle surrebuttal, pg. 6). OPC witness *Mantle*.

d. Clarify the application of the SUTC in the event of a new or modified territorial agreement?

OPC Position: Only if the Commission orders that the securitization charge is applicable to both to customers that are new to the Company through new and modified territorial agreement and also to customers that change service providers through a new or modified territorial agreement. *See issue 20*. If the Commission so orders, then the tariff sheet language proposed by Staff should be modified as provided on page 4 of Ms. Mantle’s surrebuttal testimony. OPC witness *Mantle*.

18. Should certain amounts remaining on capitalized software and office equipment/furniture which are identified by OPC witness Schaben be excluded from the costs to be financed using securitized utility tariff bonds?

OPC Position: Yes. The remaining balances of accounts 303, 316.21 and 316.22 should

be excluded from the costs to be financed using securitized utility tariff bonds and recovered in a general rate case. Software in account 303 only has a few months of remaining useful life. Office furniture in account 316.21 has approximately 9 years of remaining useful life. Office equipment in account 316.22 has approximately 3 years of remaining useful life. Securitizing these items over 15 years, and adding carrying costs to items with minimal remaining useful life, does not make sense. Even though the securitization statute contains a true-up mechanism it's very limited and the mechanism for clawing back overpaid securitization amounts is nonexistent. OPC witness *Schaben*.

19. Amount to be Securitized

After resolution of the other issues listed herein, what amounts should the Commission authorize Ameren Missouri to finance using securitized utility tariff bonds?

OPC Position: None, the Commission should not authorize Ameren Missouri to securitize any amount. OPC witness *Murray*.

a. What total amounts of energy transition costs should the Commission authorize Ameren Missouri to finance for Rush Island?

OPC Position: None, the Commission should not authorize Ameren Missouri to securitize any amount. OPC witness *Murray*.

b. What total amount of upfront financing costs should the Commission authorize Ameren Missouri to finance?

OPC Position: Staff's financial advisor costs should be capped at \$1.561 million unless a satisfactory detailed explanation as to justification for charges above this amount are included as an appendix to the Issuance Advice Letter. OPC witness *Murray*.

20. Does an Ameren Missouri customer only have an obligation to pay Rush Island securitization charges that customer incurs when Ameren Missouri is providing electric service to that customer, i.e., are former Ameren Missouri customers who are not served electricity by Ameren Missouri obligated to continue to pay Rush Island securitization charges until Ameren Missouri no longer collects Rush Island securitization charges?

OPC Position: No. As used in § 393.1700.1(16), RSMo, "nonbypassable charges" means that customers cannot avoid the charges by net metering.

21. Carrying Cost Rate

What rate, if any, should be used to determine carrying costs that may occur between the retirement date of Rush Island and the issuance of the securitized bonds?

OPC Position: None. However, as an alternative, the securitized bond rate. OPC witness *Murray*.

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 8th day of April 2024.

/s/ Nathan Williams