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 Issuance of Securitized Utility Tariff Bonds for Energy Transition Costs related to Rush Island Energy Center.	))))	File No. EF-2024-0021

AMEREN MISSOURI'S STATEMENT OF POSITIONS

COMES NOW Ameren Missouri, by and through counsel, and for its Statement of Positions, states as follows:

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?

a. What constitutes traditional financing and recovery?

As the Commission found in File No. EO-2022-0193, "[t]he traditional method of ratemaking would occur through a general rate case and would entail amortization of the costs to be recovered over a period of years with the company being allowed to recover its carrying costs during the period of amortization."[1] The Company's unrecovered investment in the Rush Island Energy Center is currently financed through a mix of debt and equity as is a utility's traditional method of financing its long-term investments.[2] Those financing costs are reflected in the revenue

[1] File No. EO-2022-0193, *Report and Order*, August 18, 2022, p. 39.
[2] File No. EF-2024-0021, Mitchell J. Lansford Sur-Surrebuttal Testimony, p. 2, ll. 16-22.

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requirement upon which rates are based and are equal to (and will continue to be equal to) the Company's weighted average cost of capital ("WACC") applied to the unrecovered investment, absent a refinancing at a lower cost of capital like through the issuance of securitized utility tariff bonds as requested in this case.[3] The WACC approved for the Company in its last rate case was 6.82%.[4]

Staff witness Keith Majors agrees that the appropriate comparison is to use the WACC as the carrying costs. "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."[5]

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

Ameren Missouri anticipates beginning to engage with the finance team after the financing order becomes final and no longer subject to appeal.

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. . ."?

The language proposed by Ameren Missouri tracks the requirements of the statute. Section 393.1700.2(3)(h), RSMo. (Cum. Supp. 2024) provides that "[t]he commission shall have the authority to designate a representative or representatives from commission staff, who may be advised by a financial advisor or advisors contracted with the commission, *to provide input to the electrical corporation and collaborate with the electrical corporation in all facets* of the process undertaken by the electrical corporation to place the securitized

[3] File No. EF-2024-0021, Mitchell J. Lansford Direct Testimony, p. 13, ll. 3-4.
[4] Id., p. 13, ll. 4-5.
[5] File No. EF-2024-0021, Keith Majors Rebuttal Testimony, p. 19, ll. 9-12.

utility tariff bonds to market so the commission's representative or representatives can provide the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis" (emphasis added).

While there is no formal "right to review" pursuant to the securitization statute, in order to provide their input and to collaborate, Ameren Missouri will provide the finance team with relevant materials and agrees that some ability of review is necessary to provide such input. This was the standard adopted by the Commission for the Liberty and Evergy transactions, and there is no need to change the practice adopted by the Commission in each of those cases.

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"?

Ameren Missouri is surprised by this issue because it does not see a difference between the two proposals. The language suggested by the Staff comes from the Liberty and Evergy financing orders and Ameren Missouri agrees with the Staff's position. The paragraph in the proposed financing order was modified to clarify the process because the prior financing orders in those cases contained a few grammatical errors.

For context, the bonds will be sold by a group of underwriters engaged by Ameren Missouri with input from and in collaboration with the finance team. This group is known as the syndicate. The economics refer to the total amount of compensation paid to the entire syndicate of underwriters and the allocations refers to the percentage of such compensation allocated to each underwriter in the syndicate. Ameren Missouri will seek input from and collaborate with the finance team during the underwriter selection process, including

determining the number of underwriters in the syndicate, the overall economics, and the final allocations.

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?

Ameren Missouri would recover the costs through the traditional financing and recovery methods identified by the Commission in its *Report & Order* in the Liberty securitization of Asbury case, which is also described in the response to part a above.

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?

This question, raised by the Office of the Public Counsel ("OPC"), is irrelevant to the standard the Commission must apply in deciding whether securitization produces net present value benefits for customers. See the response to part a above.

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

The utility's WACC is the appropriate discount rate to be applied in quantifying the net present value of benefits as required by the statute, just as was ordered by the Commission in Liberty's securitization case concerning the early retirement of its Asbury plant and as is required for similar analyses of other long-term customer costs in the Commission's rules for Integrated Resource Planning.[6] If customers were to collectively have a discount rate below the utility's WACC (which they do not) customers would be willing and should demand that they pay for the Company's outstanding approximately $11 billion in rate base up front instead of over time (which

[6] File No. EF-2024-0021, Mitchell J. Lansford Surrebuttal Testimony, p. 14, ll. 13 – 21.

they are not and do not).[7] As noted above, the Company's most recently recognized WACC before the Commission is 6.82%.[8] Consistent with the Company's direct testimony and as recommended by OPC in its rebuttal testimony, subsequent updates to the Company's WACC for changes only in the cost of debt would result in a WACC of 6.88% as of December 31, 2023.[9]

2. Post Financing Order Process/Procedure

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

The securitization requires that the Issuance Advice Letter ("IAL") indicate the final structure of the bonds and the best available estimate of the total ongoing financing costs. Ameren Missouri included a form of IAL attached to the proposed financing order that includes such information as well as the initial securitized utility tariff charge to be assessed to customers and other information specific to the bonds. Ameren Missouri believes the information proposed to be provided in the form of IAL meets the requirements of the securitization statute and is sufficient to help the Commission address whether the issuance of the securitized utility tariff bonds has achieved the objectives laid out in the financing order and statute. The proposed IAL is also consistent with the IALs delivered in the Liberty and Evergy cases. That said, if there are additional items specific to the bonds to be issued, consistent with the requirements of the securitization statute, that the Commission would like it to address, Ameren Missouri will consider them and potentially add them if it submits a new form of financing order after the hearing.

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

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[7] Id., p. 13 l. 12 to p. 14, l. 6.
[8] Supra, Lansford Direct, p. 14, ll. 2 – 8.
[9] Supra, Lansford Surrebuttal, p. 11, ll. 3 – 11.

A comparison of historical securities pricing is not required by the securitization statute. That said, Ameren Missouri anticipates that the finance team created by the proposed financing order will evaluate comparable securities in developing the structure and marketing plan, but including something like this list in the IAL does not, by itself, offer much value and is not information that is specific to the bonds to be issued. It is Ameren Missouri's view that the IAL should be consistent with what is required by the statute and prior Commission securitization orders.

In looking at Witness Murray's testimony, he specifically suggests evaluating comparable U.S. Treasuries, comparable maturity AAA bonds and other recent utility securitization bond transactions. The bonds will be priced off of U.S. Treasuries (i.e., the U.S. Treasury is the benchmark), so there will always be a spread difference. In fact, pricing will be measured by number basis points each tranche prices over the benchmark U.S. Treasury.

Similarly, Witness Murray's suggestion to include reference to a "comparable maturity AAA bond" offers little guidance as to whether the bonds will achieve the objectives of the financing order and statute. As of today, there are only two AAA rated corporate securities (Johnson & Johnson and Microsoft) and they are well known, liquid assets. In addition, the securitized utility tariff bonds will be amortization bonds whereas most AAA corporate bonds are bullet maturities. These differences mean that investors purchasing utility securitization bonds do not consider them to be comparable securities. Therefore, it is Ameren Missouri 's view that they are not the best comparable security. Lastly, while interesting, it is very difficult to compare a securitization bond offering to other similar transactions that were priced on a different date where the market conditions were different and from a different state. For these reasons, while comparable securities can be informative for developing a structuring and marketing, they should not be included in the

IAL and used to determine whether the sale of the bonds achieved the objectives of the financing order and statute because it is not information that is specific to the bonds to be issued.

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

It is Ameren Missouri 's belief that underwriters will not support this. As a result, Ameren Missouri does not support this position. Ameren Missouri's objective is to get the lowest securitized utility tariff charges at the time of pricing and under the terms of the financing order, so anything that discourages underwriter participation should be viewed negatively. Ameren Missouri does not want to limit the pool of potential underwriters willing to participate in the transaction, and therefore suggests not changing precedent.

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?

Ameren Missouri doesn't have a position on this issue.

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?

Workpapers were required to be filed with the submission of the IALs in the Liberty and Evergy cases, and Ameren Missouri anticipates the same requirement for this transaction. That said, the final workpapers will not be available until after the bonds are priced and the final terms are known, so if the financing order requires they be filed, Ameren Missouri will file them with the IAL.

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

Ameren Missouri doesn't have a position on this issue.

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?

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?

The Company's conclusions that the replacement of boiler components on Rush Island Units 1 and 2 (the "Rush Island Projects") would not trigger any permitting requirements under the Missouri State Implementation Plan ("SIP"), including the requirement to obtain New Source Review ("NSR") permits, were reasonable and prudent based on what the Company knew or should have known at the time, despite the federal courts' later different interpretation of the law.

Just like every utility operating coal-fired electric generating units, Ameren Missouri has performed boiler component replacements like the Rush Island Projects for decades.[10] For Ameren Missouri, just like every public utility, projects like these are necessary to ensure system reliability. Because of the harsh conditions in which they operate, coal-fired boilers require regular maintenance in order to remain available.[11] It is routine—both at Ameren Missouri and at all other electric utilities in the industry—to repair or replace components as they wear in order to maintain the availability and reliability of the overall unit.[12] Replacement of various boiler components, including boiler tube assemblies (e.g., economizers, superheaters, reheaters, waterwalls[13]) and

[10] File No. EF-2024-0021, Direct Testimony of Mark C. Birk, p. 2, l. 23 to p. 3, l. 9; id., p. 10, l. 17 to p. 12, l. 2.
[11] Id., p. 10, L. 21 to p. 11, l. 13.
[12] Id., p. 2, l. 23 to p. 3, l. 2.
[13] The "waterwalls" are the boiler tubes forming the four vertical walls of the boiler, surrounding the combustion zone. The "lower slope" of a boiler is a section of the waterwalls located at the bottom of the boiler, which slope inward from the vertical waterwalls in a "v" shape.

ancillary equipment (air preheaters, fans, pumps, pulverizers, etc.) is a regular occurrence for coal-fired electric generating units at Ameren Missouri and within the rest of the industry.[14] Ameren Missouri performed such projects at scheduled outages that took place for Rush Island Unit 1 in 2007 and for Rush Island Unit 2 in 2010, just as it had done many times before, and as all utilities had done many times before, over the years.[15]

Before Ameren Missouri undertook the Rush Island Projects, the Environmental Services Department ("ESD") at Ameren Services Company reviewed the projects for permitting implications—just as ESD had done for similar projects in Missouri and in Illinois countless times before.[16] Because Rush Island is located in Missouri, the applicable law was written and administered by the Missouri Department of Natural Resources ("MDNR") and approved by EPA as a state plan for implementing the Clean Air Act (i.e., a "State Implementation Plan" or "SIP").[17] Once EPA approves a SIP, the SIP (and not the federal EPA regulations) apply to the sources in that state.[18] This made MDNR, not EPA, the relevant permitting authority for Rush Island and all other sources in Missouri.[19]

ESD's review of the Rush Island Projects for permitting requirements followed the normal process for such compliance evaluations.[20] ESD's Air Quality Group identified the projects, considered their nature and scope, and evaluated whether such work would trigger any permitting requirements under the applicable Missouri law (i.e., the federally-approved SIP).[21] ESD's

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[14] Supra, Birk Direct, p. 3, ll. 2-5; Direct Testimony of Steven C. Whitworth, p. 20, ll. 6-11 and SCW-D6.
[15] Supra, Birk Direct, p. 14, l. 15 to p. 15, l. 15.
[16] Id., p. 5, ll. 13-21; supra, Whitworth Direct, p. 20, l. 18 to p. 22, l. 11; id., p. 23, ll. 17-22; Surrebuttal Testimony of Steven C. Whitworth, p. 1, l. 13 to p. 2, l. 6; id., p. 3, ll. 1-20.
[17] Supra, Birk Direct, p. 3, ll. 20-22; supra, Whitworth Direct, p. 4, ll. 12-16.
[18] Supra, Holmstead Direct, p. 5, ll. 12-23; supra, Moor Direct, p. 20, ll. 3-7.
[19] Supra, Whitworth Surrebuttal, p. 7, ll. 18-23 and p. 8, ll.19-22; supra, Holmstead Direct, p. 11, ll. 3-10.
[20] Supra, Whitworth Direct, p. 20, l. 17 to p. 25, l. 5; id., p. 47, l. 7 to p. 48, l. 9.; supra, Whitworth Surrebuttal, p. 1, l. 12 to p. 4, l. 21.
[21] Supra, Whitworth Direct, p. 25, l. 8 to p. 28, l. 26 (Unit 1); id., p. 36, l. 1 to p. 39, l. 29.

permitting decisions for Rush Island were based on the knowledge and experience of the ESD professional staff, the text of the Missouri SIP, MDNR and EPA guidance, the shared knowledge and experience of the utility industry in Missouri and nationwide, and the input of lawyers at Hunton & Williams—recognized experts on NSR compliance.[22]

ESD evaluated the Rush Island Projects against the permitting requirements established by Missouri for that purpose.[23] Under the Missouri SIP written and administered by MDNR, and approved by EPA as consistent with the CAA, (10 CSR 10-6.020(2)(M) (2006)) if there was an increase in potential emissions caused by a change to the source (i.e., a "modification"), then the Missouri SIP required consideration of whether that increase would be significant (i.e., a "major modification") triggering New Source Review permitting requirements.[24] But if there was no change that would cause an increase in potential emissions (i.e., no "modification"), then the permitting inquiry was at an end and no permit was required for the work.[25] This was the test for permitting set forth in the text of the SIP, in guidance provided by MDNR, and confirmed under oath by MDNR.[26] It is undisputed that the Rush Island Projects did not increase potential emissions.[27]

Ameren Missouri's understanding of the law led it to identify three criteria concerning permitting for projects at existing sources in Missouri such as Rush Island. First, consistent with the discussion above, no permits were required unless the project would increase the source's

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[22] Supra, Birk Direct, p. 25, ll. 14-21; supra, Whitworth Direct, p. 4, ll. 3-11; id., p. 5, l. 16 to p. 8, l. 18; id., p. 27, l. 9 to p. 28, l. 26 (Unit 1); id., p. 38, l. 16 to p. 39, l. 29 (Unit 2); supra, Whitworth Surrebuttal, p. 6, l. 10 to p. 7, l. 7; supra, Holmstead Direct, p. 30, l. 22 to p. 31, l. 14.
[23] Supra, Whitworth Direct, p. 25, l. 9 to p. 27, l. 21 (Unit 1 outage); id., p. 38, l. 16 to p. 39, l. 3 (Unit 2 outage).
[24] Supra, Holmstead Direct, p. 11, l. 12 to p. 13, l. 18
[25] Supra, Whitworth Direct., p. 12, l. 15 to p. 13, l. 10; supra, Whitworth Surrebuttal, p. 5, ll. 1-15; supra Holmstead Direct, p. 11, l. 12 to p. 13, l. 18.
[26] Supra, Whitworth Direct, p. 13, l. 11 to p. 15, l. 16; supra, Holmstead Direct, p. 13, l. 19 to p. 15, l. 23; Schedule JRH-D2; Schedule JRH-D3.
[27] Supra, Birk Direct, p. 8, l. 1 to 9, l. 8.

potential emissions. Second, if there was such an increase in potential emissions, then an NSR permit would be required if that project would also cause an increase in actual annual emissions by more than 40 tons per year. Third, no permit would be required (regardless of emissions impact) for maintenance, repair or replacement activities that were routine for the industry.[28]

Ameren Missouri's understanding of the relevant criteria for determining when NSR permits apply was widely shared at the time. Ameren Missouri, the other utilities in Missouri, and MDNR shared this understanding of the permitting requirements under the Missouri SIP.[29] The criteria employed by both MDNR and the regulated parties in Missouri were also similar to those adopted by EPA's Office of Air and Radiation—the "program office" responsible for implementing the Clean Air Act's NSR program and developing the federal NSR regulations that would apply in the absence of an approved state implementation plan.[30] Finally, the criteria employed by Ameren Missouri (and MDNR and others in Missouri) were the same criteria used throughout the utility industry at the time.[31]

Ameren Missouri had a reasonable understanding of the law.[32] No party to this case contends otherwise.[33] Moreover, ESD reasonably applied that understanding to decide no permits were required for the Rush Island Projects, including because they would not increase potential emissions and because both Ameren Missouri and the industry as a whole had routinely completed such projects without obtaining NSR permits for decades.

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[28] Supra, Whitworth Direct, p. 29, ll. 1-18; supra, Whitworth Direct, p. 7, l. 7 to p. 8, l. 18 and Schedule SCW-D9, Schedule SCW013, Schedule SCW-D3, Schedule SCW-D9, Schedule SCW-D11, Schedule SCW-D12, Schedule SCW-D13, Schedule SCW-D14.
[29] Supra, Birk Direct, p. 3, l. 22 to p. 4, l. 2; supra, Whitworth Direct, p. 13, l. 11 to p. 15, l. 16; id., p. 48, ll. 10-15.
[30] Supra, Birk Direct, p. 4, ll. 11-15.
[31] Supra, Holmstead Direct, p. 4, l. 13 to p. 5, l. 2; id., p. 38, l. 2 to p. 39, l. 9.
[32] Id., p. 3, l. 15 to p. 5, l. 2; id., p. 26, l. 6 to 28, l. 5; id., p. 38, l. 2 to p. 46, l. 9; supra, Moor Direct, p. 4, l. 17 to p. 6, l. 20; id., p. 19, l. 12 to p. 45, l. 11; id., p. 10, ll. 10-24; File No. EF-2024-0021, Surrebuttal Testimony of Karl R. Moor, p. 4, l. 4 to p. 7, l. 20.
[33] Supra, Whitworth Surrebuttal, p. 18, l. 21 to p. 19, l. 6; id., p. 21, l. 6 to p, 22, l. 13; supra, Moor Surrebuttal, p. 4, l. 24 to p. 6, l. 10.

The reasonableness of Ameren Missouri's permitting decisions does not rest solely on the solid foundation that existed at the time.[34] The reasonableness of ESD's permitting decisions has also been confirmed by the actions of MDNR and by decisions reached by other courts. First, MDNR inspectors witnessed the projects in progress—in the course of inspecting Rush Island for compliance—and nevertheless certified the plant as in compliance with all applicable requirements.[35] This confirms that Ameren Missouri made a reasonable decision—it was the same decision the regulators made. Second, other federal courts have ruled that projects similar to those at Rush Island did not require NSR permits. This too illustrates the reasonableness of ESD's permitting decisions.[36]

After ESD reasonably concluded that the Rush Island Projects did not require permits, Ameren Missouri proceeded with the work. The 2007 projects on Unit 1 took place between February and May 2007. The 2010 projects on Unit 2 took place between January and April 2010.[37] After the fact—that is, after the permitting decisions had been made and the time to get a preconstruction permit had expired—EPA's enforcement branch alleged that Ameren Missouri had violated the law. EPA did not, however, disclose the basis for these claims.[38] Through the

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[34] See supra, describing the permitting decisions as based upon knowledge and experience of the ESD professional staff, the text of the Missouri SIP, MDNR and EPA guidance, the shared knowledge and experience of the utility industry in Missouri and nationwide, and the input of lawyers at Hunton & Williams—recognized experts on NSR compliance.

[35] Supra, Whitworth Direct, p. 14, ll. 10-20. This understanding was reinforced when Missouri refused to join in with EPA's lawsuit, discussed below. Supra, Whitworth Surrebuttal, p. 16, ll. 13-22.

[36] See Pennsylvania DEP v. Allegheny Energy, Inc., No. 05-885, 2014 WL 494574 (W.D. Pa. Feb. 6, 2014) (finding lower slope replacement and reheater replacement to be excluded from NSR as "routine maintenance, repair and replacement") and National Parks Conservation Association v. TVA, No. 3:01-cv-71, 2010 WL 1291335 (E.D. Tenn. Mar. 31, 2010) (economizer replacement and superheater replacement excluded from NSR as "routine maintenance, repair and replacement"). These decisions from the federal courts in Pennsylvania and Tennessee came after those courts had declared, in 2008 and 2009, that the standard for RMRR was routine in the industry. Those earlier declarations of the RMRR standard by these courts were part of the body of law that Ameren Missouri relied upon in making its permitting decisions for the Rush Island Projects. That neutral federal judges in Pennsylvania and Tennessee reached the same conclusions that Ameren Missouri did, applying the same legal standard for RMRR that Ameren Missouri did, illustrates the reasonableness of Ameren Missouri's permitting decisions in 2005-2010. Supra, Moor Surrebuttal, p. 46, ll. 10-20.

[37] Supra, Birk Direct, p. 15, ll. 9-15.

[38] Supra, Moor Direct, p. 58, l. 1 to p. 60, l. 2.

course of the litigation, Ameren Missouri learned that EPA's allegations were based upon new interpretations of the law that had not been endorsed or approved by the relevant EPA program office.[39] EPA had made similar claims against other utilities across the country, none of which were regulated under the relevant Missouri SIP.[40] Those cases had gone badly for EPA, as Ameren Missouri was well aware.[41]

Here, however, EPA's case fared differently. Once EPA stopped flip-flopping on what projects it alleged to be violations and finally settled on pursuing the Rush Island Projects,[42] EPA was able to convince the District Court it should adopt EPA's new litigation positions.[43] When it made the relevant permitting decisions, Ameren Missouri did not anticipate (i.e., we now only know this based on hindsight) that a court would later take a different view of the permitting requirements than Ameren Missouri, MDNR, EPA's program office, other utilities, and the majority of the courts held.[44] But the District Court did just that, and on that basis held Ameren Missouri liable for failing to obtain permits from MDNR seven to ten years earlier.[45]

The outcome of the NSR litigation does not retroactively render Ameren Missouri's permitting decisions unreasonable or imprudent. The necessary elements for liability under the Clean Air Act are entirely different from the prudence question this Commission faces. The Clean Air Act is a strict liability statute, where liability does not turn on fault, negligence, reasonableness, or prudence.[46] The elements of an NSR violation were explained by the District Court as follows:

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[39] Supra, Birk Direct, p. 4, ll. 5-13.
[40] Supra, Whitworth Direct, p. 17, l. 28 to p. 20, l. 3; Schedule SCW-D4, Schedule SCW-D5, Schedule SCW-D6.
[41] Supra., Birk Direct, p. 4, ll. 15-18; supra, Whitworth Direct, p. 20, ll.11-14 and SCW-D10, SCW-D11, SCW-D12, SCW-D13, SCW-D14, SCW-D15, SCW-D16, SCW-D17, SCW-D18.
[42] Supra, Birk Direct, p. 20, l. 13 to p. 21, l. 16.
[43] Supra, Moor Surrebuttal, p. 3, l. 18 to p. 4, l. 11
[44] Supra, Birk Direct, p. 25, ll. 1-7; supra, Whitworth Direct p. 48, l.16 to p. 50, l.8; id., p. 54, ll. 5-15; supra, Whitworth Surrebuttal, p. 6, l. 10 to p. 7, l. 7; supra, Holmstead Direct, p. 54, ll. 20-22.
[45] Supra, Whitworth Surrebuttal, p. 21, l. 6 to p. 22, l. 13 (discussing the different emissions tests); id., p. 29, l. 9 to p. 30, l. 6 (discussing District Court's RMRR rulings); Supra, Moor Surrebuttal, p. 53, ll. 15-19.
[46] Supra, Holmstead Direct, p. 53, ll. 15-19.

(1) Ameren Missouri is a "person" under the applicable law and the "owner and operator" of Rush Island;

(2) Rush Island Units 1 and 2 are each a "major emitting facility," a "major stationary source," and an "electric steam generating unit" under the applicable CAA provisions;

(3) EPA provided sufficient pre-filing notice of the violations to Ameren Missouri and the State of Missouri and provided notice of the filing of this case to the State;

(4) At the time of the projects, Rush Island was in an area designated as attainment for SO2; and

(5) "[W]hether the projects were major modifications under the law," which is defined in the NSR rules as a "physical change or change in the method of operation" that "would result" in a "significant net emissions increase" which, for SO2, is 40 tons per year.

The elements of a CAA violation as set forth by the District Court in its liability opinion stand in stark contrast to the current prudence inquiry before this Commission. To determine whether a decision is prudent requires the Commission to examine whether the utility acted reasonably, given the information reasonably available to it at the time, without consideration of any hindsight. The Staff acknowledges that the District Court's test for NSR liability and the Commission's test for prudence are fundamentally different.[47]

Because the District Court was not required to focus on what Ameren Missouri knew or should have known at the time of its permitting decisions, the District Court heavily relied on data, analyses, and case law that was not available at the time of Ameren Missouri's permitting decisions to hold Ameren Missouri liable.[48] In other words, the District Court relied on hindsight—which means that its decisions cannot be considered to have resolved the question of prudence.[49]

Finally, although the District Court found Ameren Missouri liable, it never found that Ameren Missouri had acted in bad faith or lacked a legitimate basis for its position on the legal

[47] Supra, Moor Surrebuttal, , p. 13, l. 12 to p. 15, l. 23.
[48] Id., p. 15, l. 24 to p. 17, l. 13.
[49] Id.

requirements.[50] The District Court never said Ameren Missouri's understanding of the law, which it had used to determine permitting did not apply, was unreasonable.[51] The District Court did write that the emissions evaluations it presented at trial were not "reasonable under the law," but in context that simply meant that the Company's evidence did not conform to what the District Court declared—years after the fact—the NSR regulations to require in any emissions calculations.[52] The District Court decisions therefore did not (and could not) resolve the issue of prudence before this Commission.

The undisputed evidence therefore shows that Ameren Missouri made reasonable and prudent decisions in concluding that the Rush Island Projects did not require NSR permits under the Missouri SIP. The evidence also shows that no harm to customers has occurred as a result of Ameren Missouri's permitting decisions. Had the Company sought NSR permits and installed scrubbers pursuant to such permits, customers would have been worse off as a result.[53] Specifically, had Ameren Missouri made a different decision – that is, to get NSR permits for the Rush Island Projects – and then scrubbed the plant, customer revenue requirements on an NPVRR basis would have been between $531 million to $770 million *higher* as a result.[54]

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[50] Supra, Birk Direct, p. 5, ll. 3-5; supra, Moor Surrebuttal, p. 17, l. 14 to p. 18, l. 16.

[51] File No. EF-2024-0021, Mark C. Birk Surrebuttal Testimony, p. 3, ll. 8-13; supra, Holmstead Direct, p. 54, ll. 12-19; supra, Moor Surrebuttal, p. 17, l. 14 to p. 18, l. 16.

[52] Supra, Holmstead Direct, p. 53, l. 19 to p. 54, l. 11. The District Court did say in its 2019 remedy decision that it had found in the 2017 liability decision that the failure to obtain permits for the Rush Island Projects "was not reasonable." This language from the remedy decision is mere *dicta*, not a holding, as it simply purports to describe the prior findings in the liability decision. Id., p.10, l. 18 to p. 11, l. 10; supra, Moor Surrebuttal, p. 24, l. 6 to 28, l. 26. The liability decision discusses how Ameren Missouri had a different view of the applicable law than the District Court did, but does not suggest that Ameren Missouri's understanding of the law was unreasonable or that it imprudently relied upon that understanding in making its permitting decisions. Supra, Moor Surrebuttal, p. 17, l. 16 to p. 18, l. 22.

[53] File No. EF-2024-0021, Matt Michels Surrebuttal Testimony, p. 42, l. 20 to p. 43, l. 3.

[54] Id., p. 42, ll. 14-19. And if selective catalytic reduction units would end up being required, had Rush Island been scrubbed and remained open instead of retiring, a different NSR permitting decision that led to scrubbers would have increased revenue requirements even more, by between $724 and $963 million. Id., p. 43, ll. 9 – 14.

As phrased, Issue 3.a includes Ameren Missouri's "conduct of the NSR litigation." Ameren Missouri does not agree that the conduct of the litigation is at issue here. No one has challenged or questioned the conduct of the litigation. In fact, Staff agrees that Ameren Missouri was reasonable in pursuing its defenses to EPA's claims.[55] The actions of the District Court also showed Ameren Missouri's position was reasonable: after two trials and the entry of its liability and remedy decisions, the District Court stayed its order pending Ameren Missouri's appeal—recognizing that its legal rulings had resolved issues of first impression over which reasonable minds could differ.[56]

Ameren Missouri's response to the District Court's remedy order concerning Rush Island is addressed below, under issue 3.b.

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?

Ameren Missouri's decision not to invest as much as a billion dollars to retrofit the nearly 50-year-old Rush Island plant with scrubbers, and to instead retire it after the U.S. Eighth Circuit Court of Appeals upheld the federal District Court's decision, was prudent, reasonable, and in the best interest of the Company's customers.[57] In deciding not to retrofit the plant and to retire it instead, the Company's analysis that underlies the retirement decision determined that retirement would result in lower costs to customers in 45 of the 48 scenarios modeled by Company witness Michels.[58] In fact, in every single scenario where there was any level of carbon regulation, the

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[55] Eubanks Deposition, File No. ER-2022-0337, p. 47, ll. 5-12; 48, ll. 5 – 15.
[56] Supra, Moor Surrebuttal, p. 19, l. 10 to p. 20, l. 2.
[57] Supra, Michels Direct, at Sch. MM-D1, p. 3, indicating that the overnight cost of adding scrubbers was estimated as of December 2021 to be as much as $941 million); (At p. 4, fn. 1 (indicating that the estimates do not include additional allowance for funds used during construction ("AFUDC")). AFUDC would add another $75 million or more to the estimated costs. File No. EF-20224-0021, Michels Surrebuttal Testimony, p. 24, ll. 11-13. Updated cost estimates developed this year place the overnight cost at more than one billion dollars ($1.059 billion, without AFUDC); id., p. 24, ll. 8-10.
[58] Supra, Michels Direct, p. 5, l. 19 to p. 6, l. 2.

Company's decision to retire the plant rather than to retrofit it is estimated to save customers hundreds of millions of dollars on a net present value of revenue requirement ("NPVRR") basis.[59]

While as discussed in connection with Issue 3.a the Staff and OPC are debating issues around the decisions on the NSR permits for the 2007 and 2010 projects, even the Staff agrees that retiring the plant in accordance with the federal District Court's modified remedy order was a prudent decision. Indeed, Staff agrees that nearly all of the sums sought to be securitized by the Company should in fact be securitized, meaning that the Staff necessarily agrees that the retirement of Rush Island is "reasonable and prudent and in the public interest." Section 393.1700.1(7)(a), RSMo.[60] Staff witness Keith Majors puts it this way: "it's reasonable to retire this unit now as opposed to incurring the billion dollars to retrofit the unit."[61] And the evidence will show that OPC witness Seaver's analysis that he claims demonstrates that Rush Island should have been retrofitted and not retired is crude, conceptually flawed, and is just plain wrong. Among other things, Mr. Seaver fails to account for the financing costs (i.e., "AFUDC"[62]) that would have to be reflected in rates had the Company scrubbed the plant instead of retiring it, and Mr. Seaver also completely fails to account for the significant cost of operating such scrubbers and the reduction in revenues operation of scrubbers would have caused.[63]

b. (continued) If the decisions were not reasonable and prudent, were customers harmed and, if so, in what amount?[64]

While there is no credible evidence whatsoever that the retirement versus retrofit decision was not reasonable and prudent, in a hypothetical world where that would not have been the case,

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[59] Id., Sch. MM-D1 (Showing NPVRR savings for customers by retiring the plant in each of the 36 scenarios where carbon regulation at some level was assumed).
[60] All statutory references are to the Revised Statutes of Missouri (Cum. Supp. 2024), unless otherwise indicated.
[61] File No. EF-2024-0021, Keith Majors' Deposition, p. 58, ll. 9-11 (March 12, 2024).
[62] Allowance for Funds Used During Construction.
[63] Supra, Michels Surrebuttal, p. 34, l. 9 to p. 38, l. 20.
[64] This question is a part of Issue 3.b.

the evidence is overwhelming that customers have not been harmed. OPC witness Seaver, in his rebuttal testimony claimed, among other things, that had Rush Island not been retired certain other resources the Company is adding or plans to add[65] would not be needed and that consequently, the retirement decision analysis was lacking for not accounting for these additions. In response, Company witness Michels updated his original analysis (that underlies the Company's December 2021 decision to retire the plant) to account for the issues Mr. Seaver raised. That updated analysis makes it even clearer now, with the benefit of hindsight (which Mr. Seaver uses), that customers were not harmed by the decision not to retrofit the plant with scrubbers but to retire it instead.

Specifically, accounting for all of the Company's planned resource additions, including added renewables (which have nothing to do with the Rush Island retirement[66]) and other additions that might not have been made or not made when they are now planned (like new simple cycle gas-fired generation planned for addition in 2027), customer rates are expected to be *lower* by *about a billion dollars or more* on an NPVRR basis in the case where Rush Island is retired in 2024 and these other additions are made.[67] In summary, the evidence reflects two separate analyses – one completed at the time the original retirement decision was made and one completed recently with the most current information available, that show that the Company's decision to retire Rush Island in 2024 and not retrofit it with scrubbers to keep it open is expected to economically benefit customers by hundreds of millions if not more than a billion dollars.[68]

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[65] Mr. Seaver uses hindsight to draw these conclusions, which cannot be used in any event in judging the prudence of a decision. *See, e.g., Amended Report and Order*, File Nos. EO-2022-0040 & EO-2022-0193, p. 29, (Iss. Oct. 2, 2022 ("A utility's decisions must be judged bases on what was known or reasonably knowable at the time of the decision being made by the utility. Information that was not known or reasonably knowable … cannot be considered….").

[66] Supra, Michels Surrebuttal, p. 34, ll. 12 – 22.

[67] Id., p. 26, Table 3. Depending on the assumptions, the expected benefit on an NPVRR basis of not scrubbing Rush Island but instead retiring it in 2024 ranges from $975 million to as much as $2.066 billion.

[68] As demonstrated by Matt Michels' Sur-Surrebuttal Testimony, which responds to new criticisms of his direct case analysis not raised until Staff filed rebuttal testimony, the Company has properly modeled carbon regulation and

4. Amount to Finance

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

$12,968,798.[69]

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

No. The scrubber studies at issue, the cost of which are recorded to construction work in progress ("CWIP"), were prudently incurred in good faith and constitute energy transition costs just as the Commission concluded with respect to the CWIP associated with Liberty's abandoned capital projects that the Commission included energy transition costs in the Asbury securitization case.[70] Ameren Missouri's abandoned capital projects are the same type of energy transition costs, as explained by Mark Birk.[71] There is no legal impediment to including such costs and, just as was true in the Liberty case, there is no sound reason not to do so.

The scrubber studies at issue, which total approximately $9 million, were undertaken as part of Ameren Missouri's ongoing environmental compliance planning at a time when it appeared proposed EPA regulations would require scrubbing all of the Company's coal plants, including Rush Island. Fortunately, the final rules were less stringent than expected and the Company was able to avoid investing hundreds of millions of dollars in scrubbers and to comply by other means.[72]

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even if one assumes no carbon regulation at all, the benefit of retirement versus retrofitting would still range from $914 million to nearly $1.8 billion on a NPVRR basis. Michels Surrebuttal Testimony, p. 13, l. 20 to p. 14, l. 21. Staff's rebuttal testimony claims about whether MISO's seasonal construct were adequately accounted for were addressed in Mr. Michels' surrebuttal testimony and, as noted, in the analysis where the seasonal construct was fully accounted for, retirement instead of retrofitting benefitted customers by roughly a billion to more than two billion dollars on a NPVRR basis. Supra, Michels Surrebuttal, p. 15, l. 3 to p. 16, l, 8.

[69] Supra, Lansford Surrebuttal, Sch. MJL-S5.

[70] File No. EO-2022-0193, Report & Order, p. 67.

[71] Supra, Birk Surrebuttal, p. 50, l. 8 to p. 51, l. 3.

[72] Id., p. 49, l. 11 to p. 50, l. 2; p. 51, l. 15 to p. 52, l. 6.

While Staff witness Majors "questions the usefulness" of the studies, he completely ignores the fact that the studies would have formed the starting point had the Company needed to install scrubbers because they are plant and site specific studies for Rush Island itself and the plant has not changed in any significant way that would render the studies obsolete.[73] While their usefulness is not the test of whether they qualify as energy transition costs and should therefore be securitized, the only evidence from an engineer with direct experience in adding scrubbers at a large coal plant – from Mr. Birk – supports the usefulness of the studies had scrubbers been needed. That the Company made a prudent decision in its customers' best interest not to scrub the plant should not then be used as a reason to in effect punish the Company financially by forcing it to write of the scrubber study costs that were prudently incurred as part of its obligation to serve customers.

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?

Yes, the Company's planning was reasonable and prudent in all respects, despite Staff's supposition and speculation to the contrary.

The Staff has posited two speculative theories that (a) have nothing to do with the question the Staff says is the only question to be addressed in this case,[74] and (b) are misleading and completely unsupported by the facts in any event.

Staff's first theory is that had the Company, in its resource planning dating back to 2011, made express assumptions about a possible loss of the NSR case (yet when such a loss might occur, what the remedy might be, etc. are completely lacking from Staff's theory), the Company "might"

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[73] Id., p. 52, l. 19 to p. 53, l. 11.
[74] *See* File No. EF-2024-0021, Claire M. Eubanks Rebuttal Testimony, p. 3, l. 19 to p. 4 l. 30 (Claiming that only the question for decision in this case is whether the retirement is "reasonable and prudent," citing Section 393.1700.1(7)(a) and indicating the Commission need not decide other prudence questions).

be in a different resource planning position now.[75] Staff's second theory is that different planning might have had an impact on (i.e., apparently Staff claims it might have lowered) the costs of transmission upgrades needed to ensure transmission system reliability once Rush Island is no longer in operation. Neither theory holds water.

As for the first theory, in its 2020 IRP,[76] the Company analyzed specific alternative resource plans that assumed that the NSR litigation would be lost, that the plant would not be scrubbed in that event, and that it would instead retire in 2024.[77] Put another way, the Company analyzed a circumstance that matches precisely what, as it turned out, is happening. The key takeaways from its 2020 IRP analysis for that scenario were:

- Retrofitting the plant with scrubbers if the NSR case were lost instead of retiring it would cost customers hundreds of millions of dollars in extra costs on a NPVRR basis;[78] and
- The Company would not need to add dispatchable generation capacity post-a 2024 Rush Island retirement until the 2040s.[79]

No party – including the Staff – took issue with those conclusions. Staff neither claimed the 2020 IRP was deficient in some way in terms of the Company's planning around a possible NSR case loss, nor did the Staff express any concerns about the Company's planning around a possible NSR case loss.[80] This indicates that the planning reflected no major non-compliance with the integrated resource planning rules (see definition of "deficiency" at 20 CSR 420-22.020(9)) and reflected no major concerns with the planning itself nor a concern about whether the planning would fulfill the fundamental objective of resource planning (see definition of "concern" at 20

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[75] File No. EF-2024-0021, Brad J. Fortson Rebuttal Testimony, p. 6, ll. 13 and 16 (Different planning "may" have allowed….).

[76] References to the "IRP" are references to the Company's triennial integrated resource plan filings, in 2011, 2024, 2017, 2020, and 2023, as applicable.

[77] Supra, Michels Surrebuttal, p. 6, l. 15 to p. 7, l. 17.

[78] Id., Page 8 of Sch. MM-S8 (Plan R NPVRR v. Plan S NPVRR – retiring Rush Island better for customers by $541 million).

[79] Id., Table 9.4 of Schedule MM-S7 (Plan R – next dispatchable resource in 2043).

[80] Id., p. 10, ll. 13 – 19.

CSR 4240-22.020(6)). Put another way, the planning clearly met the Commission's rule's fundamental resource planning objective, including its requirement that planning use minimization of NPVRR as the primary criterion in choosing a preferred resource plan. 20 CSR 4240.22.010(2), (2)(B). Simply stated, the 2020 IRP concluded that if the NSR case was lost the right decision was to retire the plant and not scrub it, and that the loss of Rush Island would not create a capacity deficit.

Despite this, the Staff speculates that different planning in earlier IRPs (2017, 2014, even 2011 when the NSR litigation had only just begun) "may have allowed" avoiding the "current situation." While the Staff is vague and opaque about what this "situation" is, the Company assumes the Staff's reference is to a now identified need for additional dispatchable generation sooner than prior planning (e.g., resource planning conducted in 2020 and 2022) had indicated. But the Staff's claim that different planning around Rush Island might or would have avoided the needs that exist today is demonstrably untrue.

The first reason it is untrue is that, as noted, the 2020 IRP planning occurring less than four years ago did not indicate that a retirement of Rush Island in 2024 would create a "situation", i.e., a need for more or earlier dispatchable resources. The second reason it is untrue is that when the Company again examined its resource needs, post-the decision to retire Rush Island and changed its preferred resource plan (less than two years ago, in June 2022), that analysis too did not demonstrate that additional dispatchable resources would be needed anytime in the 2020s. To the contrary, that analysis did not show such a need until about a decade later, at the end of 2031.[81] Less than two years ago, the retirement of Rush Island in 2024 did not suggest the existence of a "situation" that Staff, using hindsight, points to now.

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[81] Id., p. 11, l. 17 to p. 12, l. 8.

And while MISO had not yet implemented a seasonal capacity construct by June 2022 when the Company conducted the 2022 analysis and changed its preferred resource plan, the Company, using the information that MISO had provided as of that time, did account for the seasonal construct Ms. Eubanks points to in her surrebuttal testimony.[82] And even accounting for that seasonal construct (given what the Company knew about it at the time) the planning did not suggest a need for more dispatchable resources until the end of 2031.

The third reason the Staff's contention is untrue is that circumstances (we now know with hindsight) continued to change after these recent (2020, 2022) resource planning exercises and different planning at an earlier time could not have accounted for them because those circumstances had not yet arisen. While at the time of the 2022 change in preferred resource plan it was thought (according to MISO information) that the planning reserve margin under a seasonal construct would be 15.9% in the winter, when it was actually implemented MISO increased it by nearly two-thirds, to 25.5%, leading to a need for an additional 750 megawatts that the 2022 analysis simply did not show.[83] Similarly, changes since 2022 in MISO's existing and future unit accreditation have further created an additional 300 megawatt need for additional winter capacity, again that was not indicated by the 2022 analysis using the best information available at that time.[84] Those two changes alone, which were not foreseen even less than two years ago, increased capacity needs by 1,000 megawatts – nearly the size of the previously planned combined cycle plant slated to replace Sioux by the end of 2032. Moreover, while not driving a "capacity need" in the sense of meeting a formal MISO resource adequacy requirement, we have experienced unusually severe and extreme winter weather on two separate occasions since the submission of the 2020 IRP -

[82] Id., p. 15, ll. 3 – 19.
[83] Id., p. 17, Table 1. See the related discussion at id., p. 16, l. 10 to p. 18, l. 2.
[84] Id.

Winter Storms Uri and Elliot, which resulted in high profile and impactful grid reliability events in different parts of the country.[85] One such event was an anomaly; two suggests a pattern and a new planning reality. This new pattern of extreme winter weather and the severe impact of capacity availability in the MISO market and on the cost of relying on that market assuming it can deliver has created a planning reality for utilities that was largely unthinkable as late as the time of the 2020 IRP, if not later, and certainly not on planners' radars in 2014 or 2017.

The Staff's speculation that the Company's earlier planning was lacking is even more offensive when applied to claims that the Company could have avoided the "current situation" had it planned differently around Rush Island in the 2014 and 2017 IRPs. Why? Because the Company did study alternative resource plans that would have had Rush Island retire (un-scrubbed) in 2024 in both of those IRPs.[86] No, it did not develop those alternative resource plans *because* of a possible NSR loss, but that makes no difference at all because the Company did in fact consider what would happen to its resource planning and needs (and what it would cost customers) if in fact Rush Island retired in 2024 – which is in fact exactly what is happening now.

Those analyses demonstrate that changing the label placed on the alternative plan that had Rush Island retiring in 2024 would *not have changed anything about the Company's resource planning or decisions* in or after 2014 or in or after 2017 or in or after 2020. Different planning at any of those times would not have indicated that more dispatchable resources should be added. Different planning in 2014 would still not have called for such additions.[87]

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[85] Id., pp. 19-20.
[86] Id., p. 6, l. 15 to p. 7, l. 9.
[87] According to the 2014 IRP there would have been a small capacity shortfall in 2025 had Rush Island retired in 2024 and should Noranda's 495-megawatt peak load still remained as of 2025 but even then, the Company would not have built more dispatchable resources in the 2020s on that basis because the shortfall was small. Noranda's load long ago left the system and by the time of the 2017 IRP, the planning indicated that retiring Rush Island in 2024 would not require dispatchable resources before the late 2030s. Id., p. 7, ll. 3-9; p. 8, ll. 1 – 15; Sch. MM-S5, page 10 (Table 9.4) (Plan M, with Rush Island retiring in 2024, no need for dispatchable generation until 2037 – 20 years later).

The Staff's second theory, that different (presumably "better") planning might have lowered the ultimate cost of necessary transmission upgrades, fares no better when the actual *evidence* is examined. Staff, contradicting its own claim about the scope of the decision the Commission needs to make in this docket, asks the Commission to "acknowledge" imprudence on the Company's part and to then order customers be "held harmless" from transmission upgrade costs above **__________**. The Staff's basis? That because this is the amount of the "base" (middle) assumed transmission upgrade costs from the 2020 IRP and actual upgrade costs are expected to cost more **____________** it must somehow have been poor planning on the Company's part that led to the difference. But there is no evidence whatsoever that a failure to plan earlier or to plan differently has imprudently increased the cost of these upgrades.

Ameren Missouri has included estimated transmission upgrade costs in its resource planning – for possible retirements of each of its four major coal plants – since (and including) the 2011 IRP.[88] These estimates change because the transmission system is extremely dynamic and what upgrades would be needed at what time (and thus what they would cost) depends on a variety of factors, including loads, other changes in the broader transmission grid, and other generating resource additions and retirements (including the type).[89] The Company's December 2021 retirement versus retrofit analysis used a base transmission upgrade cost estimate should Rush Island retire.[90] But the Company also specifically considered how high transmission upgrade costs would have to get before they would change the retire versus retrofit decision. That figure was $386 million – more than twice the actual expected cost – meaning even at a cost of up to $386 million, retirement and not retrofitting the plant would remain the right choice.

[88] Id., p. 31, ll. 1-8.
[89] *Id.*, p. 31, ll. 10-19.
[90] *Id.*, p. 31, l. 19 to p. 32, l.8.

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Moreover, the speculation that if only the Company had conducted transmission upgrade planning sooner it could have installed the upgrades for less is both unsupported and wrong-headed. If, hypothetically, the Company had thrown in the towel on the NSR litigation earlier (before it actually lost the case, e.g., in 2017 or 2019[91]) and installed transmission earlier, that would have meant the plant would have needed to retire earlier. And if the plant needed to retire earlier, it would have had to move to SSR[92] status earlier while the transmission upgrades were undertaken. And if that had occurred, its generation would have been significantly reduced earlier, thus lowering the margins it contributed and that *lowered revenue requirements for customers*. From 2020-2022 alone, those margins totaled $360 million, far more than any $49 million increase in transmission upgrade costs "caused" by Ms. Eubanks' hypothetical "the Company should have planned better" theory.[93]

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

For the reasons just discussed, the answer is a resounding "no." Not retiring the plant until it had to, and thus delaying the need to incur transmission upgrade costs, delivered huge margins for customers that far outstripped any cost increases (if there were any – there is no proof that there were) for the transmission upgrades. Customers were not harmed by the Company's planning and decisions. To the contrary, they benefitted.

6. Net Plant

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

a. If retired September 1, 2024?

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[91] The years of the federal District Court's liability and remedy decisions, respectively)
[92] System support resource status, the status it has been on since September 1, 2022, pending completion of the transmission upgrades.
[93] Id., p. 33, ll. 1-19 (**______________________________**).

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$473,297,424[94]

b. If retired October 15, 2024?

$468,926,131[95]

The only party taking issue with these figures, OPC witness Robinett, presents various starting points for his plant balances without making any definitive recommendation about which of the resultant numbers is the appropriate basis for determining the amount to securitize. Further, the Commission should not lose sight of the fact when the plant retires the actual net plant balance will be known.[96] This means that whatever difference between the Company's estimates and the actual net plant will be reconciled in a future rate case so that customers pay exactly the right amount.

It is also important to recognize that Mr. Robinett inexplicably and arbitrarily simply omitted certain elements of plant which when omitted, reduces the benefit of securitization for customers.[97] When those arbitrary omissions are accounted for, we get exactly the balances calculated in Company witness Lansford's Surrebuttal Schedules MJL-S2 and MJL-S6. OPC has completely failed to demonstrate why its figures are superior to those being used by both the Company and the Staff.[98]

7. Basemat Coal Inventory

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

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

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[94] Supra, Lansford Surrebuttal, Schedule MJL-S1.
[95] Id., Schedule MJL-S5.
[96] Id., p. 17, ll. 12 – 19.
[97] Id., p. 17, l. 20 to p. 18, l.
[98] Id., p. 22, ll. 1-4.

Since the first coal delivery at Rush Island, the Company has accounted for basemat coal in accordance with the Uniform System of Accounts.[99] Since a 2008 rate review, the Company's rates have been set based upon a basemat coal valuation equal to the valuation the Company seeks to include as energy transition costs in this case, $1.934 million. Because the basemat will no longer serve a purpose (i.e., providing a foundation for the usable coal pile) upon the retirement of Rush Island it, like other Rush Island assets, squarely fits the definition of energy transition costs in Section 393.1700 and thus the Company's basemat coal valuation of $1.924 million should be included in energy transition costs and securitized via issuance of securitized utility tariff bonds.[100] Only OPC contends otherwise, and it does so based on two novel and flawed theories. OPC's position that seeks to exclude basemat coal inventory from energy transition costs has already been rejected by the Commission in the Asbury securitization case.

Undeterred, OPC has come up with a new theory in this case, that is, because the Company's rates over the years were set including a return on this component of coal inventory, somehow the Company has already "recovered" the basemat coal inventory. This is plainly wrong under the most basic of ratemaking principles.[101] Basemat coal is a rate base item just like the rest of the coal pile or other capital assets at the plant. Utility rates are properly set by applying the utility's cost of capital to all of its rate base, including basemat coal, because the Company year after year after year must finance that rate base so long as it exists. That the Company included the value of basemat coal in rate base for all of those years only means that the Company earned a return on the capital invested in that coal – the real costs of financing its investment. But the Company did not receive a return of that capital through any form of amortization or depreciation

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[99] Id., Sch. MJL-S5 and p. 24, ll. 1-11.
[100] Id.
[101] Id., p. 24, ll. 12-23.

of the costs, making OPC's claim that the Company already "recovered' the basemat coal costs untrue.

Finally, OPC's alternative to denying full recovery is to instead rely on OPC's own valuation of basement coal. A valuation OPC has never presented before the Commission in any rate review after 2008, when the valuation relied on by the Company and Staff was established. The valuation during the 2008 rate review was a point in time valuation based upon the weighted average cost of the Company's coal, an approach always taken in ratemaking. While there unavoidably is some uncertainty around both the final quantity and price of the basemat coal once Rush Island is retired, ultimately the Company will use all useable coal at the site and write-off what isn't usable. Using OPC's lower estimate, if it turns out to be lower than the ultimate expense, will simply reduce the benefit of securitizing the Company's estimated basemat coal inventory value and, in the end, the actual write-off and the estimated basemat coal inventory included in energy transition costs will be reconciled so that customers pay no more and no less than the actual cost of unusable coal.

8. NPV of Tax Benefits/ADIT

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

See b. and c. below.

i. If retired September 1, 2024?

$49,634,010[102]

ii. If retired October 15, 2024?

$49,178,167[103]

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[102] Id., Schedule MJL-S1.
[103] Id., Schedule MJL-S5.

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

When the plant retires (here, presuming a September 1st retirement date[104]) the Company will have ADIT of approximately $112 million recorded on its books.[105] This balance reflects amounts owed to the taxing authority in future periods. Similarly, the Company will have excess ADIT of approximately $26 million[106] recorded on its books resulting from a change in tax law that reduced the statutory tax rate.[107] The Company has previously reflected these amounts in its revenue requirements used to set rates for customers and, today, the $138 million offsets its rate base in general rate proceedings (and lowers revenue requirement) in acknowledgement that those amounts have been received from customers but not yet paid.[108]

The securitization statute requires that a rate base offset for these liabilities in general rate proceedings will no longer exist after issuance of securitized utility tariff bonds subject to the statute.[109] The Company and Staff's calculations of the amount needed to offset energy transition costs in this case related to ADIT reflect the net present value of the rate base offset customers would have otherwise received had no securitization taken place (the net present value of exactly what the statute requires is "taken away" in future general rate proceedings).[110] Liberty's Asbury securitization case did not contain an evidentiary record that established these facts, which led to a failure to recognize how ADIT should be handled in a securitization case.[111] The evidentiary

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[104] The figures are slightly different if the plant retires on October 15, 2024, but we are referencing the figures for a September 1, 2024 retirement since those are the figures that Mr. Riley focuses on in his rebuttal testimony.
[105] Supra, Lansford Direct p. 21 l. 19 – 20 and p. 22 l. 1-2.
[106] Id. p. 22 l. 2 – 4.
[107] The Company will pay the Internal Revenue Service $112 million and will return the $26 million to customers via an amortization in base rates.
[108] Supra, Lansford Direct p. 17 l. 9 - 13
[109] Id., p. 20 l. 7 - 12
[110] Id., p. 20 l. 12 - 21
[111] Id., p. 22 l. 12 - 18

record in this case does establish these facts, leading the Staff to recognize the proper handling of ADIT and causing the Staff to agree with the Company's position.[112]

OPC has ignored the evidentiary record in this case and seeks to selectively apply only part of the outcome from the prior Liberty case.[113] Acceptance of OPC's position would leave the Company approximately $50 million to pay its $112 million tax obligation to the IRS and $26 million deferred tax liability that it owes to customers over the next 15 years ($38 million short of the net present value of the Company's future obligations). This is an unreasonable recommendation and outcome. Comparatively, the Company and the Staff's calculations would leave the Company with approximately $88 million – the NPV of its actual obligations of $138 million over the next 15 years. Given these facts, the amount the Company should refund back to customers via a reduction in energy transition costs is $50 million (the difference between the net present value of future payments of $88 million and the $138 million nominal value of future payments is the $50 million that should be refunded to customers in this case).[114]

In the Liberty case, amounts were incorporated into the securitized utility tariff charge via ongoing financing costs for the income tax shortfall, which ended up complicating the securitization process.[115] Inclusion of income tax amounts as ongoing financing fees is not necessary if the Commission accepts the Company and the Staff's position based on the record in this case. However, if the Commission does not accept the Company and the Staff's position in this case, it would need to complicate the securitization process by adding amounts to ongoing financing costs to be collected through the securitized utility tariff charge equaling a net present

[112] Supra, Lansford Surrebuttal p. 28 l. 2 - 7
[113] Id., p. 28 l. 10 - 18
[114] Supra, Lansford Direct p. 21 l. 17.
[115] Supra, Lansford Surrebuttal p. 28 l. 10 - 18

value of $38 million to cover the income tax shortfall that would otherwise exist.[116] Any other solution deprives Ameren Missouri of the funds to pay future taxes and return excess ADIT to customers.

9. Asset Retirement Obligations

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

$4,764,398[117]

By definition, these ARO amounts fulfill an obligation to return a piece of property back to its original condition upon retirement of an asset. Here, these costs are for water treatment and monitoring.[118] These are the same costs that this Commission allowed to be securitized in the Liberty case for Asbury's retirement.[119] If these costs qualify as an Energy Transition Cost, which the Commission has already found that they properly do, they should be included in the amount securitized in this case.

10. Safe Closure Costs

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

Energy transition costs should include $4.408 million of costs to safely close the plant in preparation for a broader decommissioning/demolition of the plant buildings and structures.[120] The Company developed the scope of the safe closure work and its estimated cost based on the experience of Power Operations employees who have been involved in numerous coal plant

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[116] Supra, Lansford Direct p. 22 l. 12 - 15
[117] Supra, Lansford Surrebuttal, p. 28 l. 10 - 18
[118] Id., p. 34, l. 13-15.
[119] Id., p. 34, l. 15 to p. 35, l. 3. Citing File No. EO-2022-0193, Report & Order, August 28, 2022.
[120] File No. EF-2024-0021, Jim Williams Direct Testimony, Sch. JW-D1. The safe closure costs cover a different scope of work than the demolition/overall decommissioning scope of work that is the subject of the Black & Veatch Demolition Estimate report included as Schedule JW-D2 to Company witness Jim Williams's direct testimony.

closures over the past several years, including most recently at the Company's Meramec Energy Center. These include Company witness Jim Williams, who provided direct and surrebuttal testimony on these safe closure costs.[121] Only OPC witness Schaben challenges inclusion of the estimated $4.408 million in energy transition costs.[122] Ms. Schaben's challenge is based on a flawed premise, that is, the incorrect premise that incurring these costs will somehow provide "value" to an adjacent transmission switchyard that is today not part of the power plant itself and that will remain in place as an integral part of the post-Rush Island transmission system. This is false.[123] If a transmission switchyard did not exist today or was not going to exist tomorrow post-the plant's closing, all of the safe closure activities would be undertaken anyway. Consequently, the safe closure costs have nothing to do with the adjacent transmission infrastructure and are occasioned entirely by the plant's retirement, fitting them squarely within the definition of energy transition costs.

It is also important to note that while the Company's estimate is developed based on its actual experience and that there is no evidence that it is not reasonable, to the extent actual safe closure activity costs are higher or lower than the estimate, the actual costs will be reconciled in a future rate review to the estimate, meaning customers will pay no more and no less than the actual costs. Given that financing and recovery of costs is less costly for customers using securitization, it is in customers' interest to finance them via securitization rather than using traditional financing and recovery, even if there is some uncertainty regarding what the actual costs will be.

11. Decommissioning Costs

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

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[121] Id., p. 6, l. 6 to p. 7, l. 10; Jim Williams Surrebuttal Testimony, p. 7, ll. 1-10.
[122] Staff, the only other party to make a recommendation on the proper level of energy transition costs to securitize supports inclusion of the $4.407 million in energy transition costs.
[123] Supra, Jim Williams Surrebuttal, p. 8, l. 11 to p. 10, l. 9.

Energy transition costs should include **__________** of other decommissioning/demolition costs, as estimated by engineering firm Black & Veatch.[124] The Black & Veatch estimate was developed in a manner that was similar to the manner used by Black & Veatch in developing estimated decommissioning costs for Liberty's Asbury Plant, estimates which were accepted by the Commission in the Asbury securitization case for inclusion in energy transition costs. Black and Veatch estimated the cost of the key decommissioning activities, and estimated the salvage value of plant components that could be salvaged as part of the demolition process. To be clear, the scope of the decommissioning work and any "salvage" (in the context OPC attempts to use, "salvage" meaning reuse of materials or supplies at Rush Island or transfer of such items to another plant) has nothing to do with the Black & Veatch scope or estimate, which deals with salvaging materials as part of the demolition and has nothing to do with materials and supplies.[125]

Like for the safe closure costs, only OPC questions inclusion of the Black & Veach estimated costs in energy transition costs. But OPC's concerns would have applied equally to the Black & Veatch estimated costs approved by the Commission for Asbury. And as noted with respect to safe closure costs, any variance between the estimated costs will be reconciled to actual costs in a future rate case, ensuring that customers will neither under- nor over-pay. And, as was true of safe closure costs, given that financing and recovery costs is less costly for customers using securitization, it is in customers' interest to finance them via securitization rather than using traditional financing and recovery, even if there is some uncertainty regarding what the actual costs will be.

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[124] The Staff, the only other party to make a recommendation on the proper level of energy transition costs to securitize supports inclusion of the $42.5 million in energy transition costs.
[125] Supra,Williams Surrebuttal, p. 6, l. 1 to p. 7, l. 16.

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12. Materials and Supplies

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

Energy transition costs should include $18.3 million of other materials and supply inventory.[126] The Company conducted an engineering analysis and review of its total materials and supplies inventory – which totaled $21.9 million – and determined that while $3.6 million of the inventory could be used elsewhere, $18.3 million of inventory was expected to be unusable.[127] What the actual unusable inventory will be will depend on whether, as each item is examined through and after the plant's closure, a use for it can be found at another plant. The Company does not currently expect this to be true for the $18.3 million.

OPC is the only party questioning the inclusion of this estimated amount in energy transition costs. As earlier discussed, any variance between the estimated costs will be reconciled to actual costs in a future rate case, ensuring that customers will neither under- nor over-pay. It consequently makes more sense to include the estimated sum because financing and recovering whatever the final sum turns out to be, will be less costly for customers than including an under-estimated amount in energy transition costs now only to have to recover additional sums via a future rate review.

13. Community Transition Costs

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

$3,677,365.[128]

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[126] Supra, Lansford Surrebuttal, Sch. MJL-S4.
[127] Supra, Williams Direct, p. 10, l. 12 to p. 11, l. 2.
[128] Supra, Lansford Direct, p.7, l. 20.

The early retirement of Rush Island leaves the Jefferson County School District and the local community without the tax base previously provided by the Company's coal inventory at the energy center. In order to ease the transition, it is in the public interest for the Commission to take modest steps to mitigate the undisputed and direct negative impacts of the energy transition event that is occurring with the closure of Rush Island, which is disproportionately impacting the Company's customers and communities in the Jefferson County area. The Commission should include $3,677,365 in the securitized revenue requirement.[129] This amount is only a partial offset to the lost tax base but will be used to help maintain bridge funding for schools and identify and implement initiatives to support the surrounding community with economic development opportunities.[130]

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

September 1, 2024 retirement – $6,604,272[131]

October 15, 2024 retirement – $6,587,660[132]

It is appropriate to include the costs associated with witnesses Jeff Holmstead and Karl Moor. Their expert testimony is essential to provide the Commission context around what the Company knew or should have known at the time it made decisions around the Rush Island Projects. The Staff's assertion that these testimonies were not needed ignores the utility's right to vigorously defend its interests in this proceeding, and moreover ignores the Staff's own statements

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[129] Supra, Lansford Direct, p. 7, l 20.
[130] Id., p. 8, l. 1-6.
[131] Supra, Lansford Surrebuttal, Schedule MJL-S1, line 13.
[132] Id., Schedule MJL-S5, line 13.

in the Company's last electric rate review (ER-2022-0337) that this (securitization) case was the right case in which to assess the prudence of the Company's decision making surrounding the events leading to the retirement of Rush Island.[133] The Commission must consider more than the federal courts' rulings in the NSR case, it needs to understand why Ameren Missouri reasonably concluded that it did not need NSR permits for this work. That argument is the focus of both of these witnesses' testimonies. The fact that Holmstead and Moor also testified on the same issues in another case is irrelevant – that testimony has no legal meaning in this case without a witness sponsoring the testimony. Staff's argument is without basis and should be ignored by the Commission.

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?

While Ameren Missouri appreciates Renew Missouri's efforts to find an even lower cost way than securitization to finance the unrecovered investment left by Rush Island's early retirement, the reality is that the DOE Energy Infrastructure Reinvestment ("EIR") program is not a viable alternative to securitization. As Darryl Sagel testified in his surrebuttal testimony,

> … the DOE will not *incrementally* fund both the securitized costs and the costs of eligible renewable energy projects to which the proceeds of the bonds are required to be allocated. Funding securitization costs via a DOE loan means we effectively forego the ability to finance investments we will be making using all available sources of lower cost debt (both AAA-rated debt through a securitization transaction and DOE loans for renewables that qualify under the EIR Program).[134]

Ameren Missouri is pursing EIR funds and has made application to the DOE that if approved could fund renewable and energy storage investments (subject to required Commission

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[133] File No. EF-2024-0021, Steven M. Wills Surrebuttal Testimony, p. 10, l. 12-20.
[134] File No. EF-2024-0021, Darryl T. Sagel Surrebuttal Testimony, p. 3, l. 3-8.

approvals).[135] But accessing EIR funds by involving DOE in the contemplated securitization will actually reduce the benefit of the EIR funds the Company expects to receive.[136] This is because *not* involving DOE in the securitization allows the Company to, overall, use less of its highest cost source of capital, that is, funding capital investment at its WACC, and to take full advantage of two available lower cost of capital sources: both the lower-cost securitization bonds *and* the lower cost EIR funds.[137] Our analysis indicates that *not* involving DOE in this securitization would benefit customers by more than $12 million on an NPVRR basis.[138]

While Renew Missouri witness James Owen relied upon an article from the Rocky Mountain Institute that he indicated suggests that this type of financing could provide savings for customers, the article is based on many important assumptions that are not completely grounded in reality, do not reflect the Company's circumstances, or are inconsistent with existing regulatory policy of frameworks.[139]

16. Allocation of Revenue Requirement

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

The Company's position is that both the cost allocation method it proposed, and the method proposed by Missouri Industrial Energy Consumers ("MIEC") witness Brubaker are within the Commission's authority to adopt. The Company recommended its approach premised on driving consistency with the prior Commission securitization decisions. The Company would not have significant concerns, however, if the Commission was persuaded by MIEC's arguments and chose to allocate the costs on the basis of base rate revenues.[140]

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[135] Id., p. 18, ll. 7 – 9 (noting the Company has filed its EIR loan funds application).
[136] Id., p. 3, l. 2-8.
[137] Id., p. 12, l. to p. 14, l. 23.
[138] Id., p. 15, l. 1 to p. 17, l. 2 (Including Table 2, showing $12.6 million of NPV benefit of not involving DOE in the securitization).
[139] Id., p. 23, ll. 5-7.
[140] Supra, Wills Surrebuttal, p. 20, ll. 3 -9.

17. Tariff

Should the tariff changes recommended by Staff be adopted? 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?

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

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

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

The Company will respond to the entirety of Issue No. 17 rather than breaking down its response for each sub-question or issue.

The Staff recommended three tariff changes so that the Company's proposed tariff would conform to the Evergy securitization tariff on these points:

- Future-proof" the tariff by tying the voltage adjustment factors to the similar factors used in the Company's Fuel Adjustment Clause, ensuring that such factors will be updated in future rate reviews,
- Language about the non-bypassability of securitization charges clarifying that securitization charges are not subject to discount, and[141]
- Language about non-bypassability of securitization charges clarifying what happens if future changes are made to the utility's service territory.[142]

The Company agrees with the "future proof" change assuming that the Comission adopts the Company's revenue allocation methodology; otherwise, such future proofing would be unnecessary.[143]

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[141] The first two bulleted items fall within that part of Issue 17 that reads "Should the tariff changes recommended by Staff be adopted?"
[142] This is Issue 17.d.
[143] Supra. Wills Surrebuttal, p. 22, ll. 3- 7.

The Company has no objection to the non-bypassability language change.[144]

The Company disagrees with the third change in part. It does not make sense for customers that leave the Company's system under an approved territorial agreement, even while taking service from another utility, to continue to pay the securitized utility tariff charge. This would generally involve a small number of customers and there would be no mechanism to bill these customers. Nor would there be a practical means of collecting the payments if they were not paid, and certainly the Company could not disconnect them for non-payment. Even if theoretically these practical problems could be solved, it would likely be more costly to develop and implement the solutions than the value of all of the payments that would likely be collected if the charge did follow the customers to their new provider.[145]

With respect to special contract customers, the Company agrees with the Staff's recommendation that the Company's two special contract customers should *not* be excluded from payment of the securitized utility tariff charge, given the terms of those contracts. The proposed tariff filed by the Company should be modified to make that clear.[146]

With respect to Issue 17.b, OPC first presented this recommendation in surrebuttal testimony, and the Company had no opportunity to develop and present evidence on this question. While the Company recognizes that the charge must and will be broken out on a separate line item on the bill that clearly identifies the nature of the charge, the Company does not recommend that the Commission order specific wording for that line item at this time. This treatment would be consistent with past practices.

With respect to Issue 17.c, the Company does not object to OPC's recommendation.

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[144] Id., p. 22, ll. 8 – 9.
[145] Id., p. 22, l. 10 to p. 23, l. 8.
[146] Id., p. 20, ll. 10 – 22.

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?

Once Rush Island is retired, these referenced assets will not have any expected remaining life. And, even if the assets had a remaining life, that fact is no longer relevant because they will have no use upon retirement of the plant. That is, in fact, recognized by the statute when it says that it is applicable to generation plants that retire early. These costs qualify as Energy Transition Costs and should be included in the amount securitized.[147]

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?

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

September 1, 2024 retirement - $512,209,577[148]
October 15, 2024 retirement - $508,294,126[149]

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

September 1, 2024 retirement – $6,604,272[150]
October 15, 2024 retirement - $6,587,660[151]

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?[152]

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[147] Supra, Lansford Surrebuttal, p. 22, ll. 10-17.
[148] Id., Schedule MJL-S1, l. 12.
[149] Id., Schedule MJL-S5, l. 12.
[150] Id., Schedule MJL-S1, l. 13.
[151] Id., Schedule MJL-S5, l. 13.
[152] The Company believes this issue is not in dispute and that with Issue 17.d is not necessary. The Company and OPC will discuss when OPC's primary counsel on this case is available and advise the Commission if this issue can be deleted.

Ameren Missouri does not agree with this recommendation. The Company does not have a mechanism to bill customers that are no longer taking service. Further, it would likely be more costly to develop such mechanisms than the revenue that billing would bring into the Company.[153] The scenario raised in the Staff's testimony dealt with customers traded between Ameren Missouri and another utility (likely a cooperative). As Mr. Wills points out, these typically do not involve large numbers of customers. Sometimes we would obtain new customers and sometimes we would lose customers. Trying to implement the Staff's proposal seems fraught with problems for very little benefit.[154]

Further, it is unclear under what legal authority Ameren Missouri could require individuals who are not customers to pay any charge unrelated to previous service taken from the Company. For individuals who are no longer taking service from a Commission regulated utility. There certainly no authorizing language in the statute that would allow this to be done.

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?

The appropriate carrying costs is the Company's WACC, which is also the Company's actual carrying cost rate relating to long-term investments such as those at Rush Island.[155] The Company has brought this case in a timely manner (close to the actual retirement date) in order to minimize the need for carrying costs, but that does not mean carrying costs should not be granted. Full recovery of prudently incurred costs is just and reasonable, and full recovery of minimized carrying costs is similarly just and reasonable.[156]

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[153] Supra, Wills Surrebuttal, p. 23, 1-8.
[154] Id., p. 22, l. 11 – 23.
[155] Supra, Lansford Surrebuttal, p. 15, l.19-22.
[156] Id., p. 15, l. 7-18.

Further, if a party were to appeal a decision that allows securitization, the Company must finance the entire sum at a cost equal to its WACC during the appeal, something that could take many months if not years. Providing carrying costs at its actual cost of financing is critical to ensure that carrying costs are aligned with actual financing costs that will be incurred. These costs are prudent, and the Company should be allowed to collect them.[157]

WHEREFORE, Ameren Missouri submits its Statement of Positions.

Respectfully submitted,

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[157] Id., p. 17, l. 1-10.

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed to the attorneys of record for all parties to this case as specified on the certified service list for this case in EFIS, on this 8th day of April, 2024.

/s/ James B. Lowery
James B. Lowery