BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

INITIAL BRIEF OF STAFF

Respectfully Submitted,

Jeffrey A. Keevil
Deputy Counsel
Missouri Bar No. 33825

Travis J. Pringle
Chief Deputy Counsel
Missouri Bar No. 71128

Attorneys for Staff of the
Missouri Public Service Commission

May 10, 2024

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**

INITIAL BRIEF OF STAFF

COMES NOW Staff of the Missouri Public Service Commission and submits the following Initial Brief pursuant to the schedule previously ordered by the Commission:

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?

Yes. The rate of return based upon current securitized utility tariff bond rates that customers would be responsible for through a securitization case is expected to be 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. Securitizing Rush Island unrecovered costs appears to be a fair and equitable approach to setting customer rates in regard to unrecovered Rush Island investment into the future.[1]

a. What constitutes traditional financing and recovery?

For purposes of comparing recovery of the Rush Island investment through securitization versus traditional ratemaking, traditional financing and recovery should assume a 15-year amortization

[1]Ex. 110, Majors Rebuttal, page 19, lines 9-14.

and a rate of return at the weighted average cost of capital ("WACC") which would be recovered through base rates.[2]

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

Given recent precedent of the appeals process in securitization cases in Missouri, and an active market where moving quickly at the end of an appeal may be advantageous, the utility's obligation to engage with the finance team on all facets of the process should begin immediately following the issuance of the financing order. This may help mitigate risk of lack of collaboration on long lead-time items such as running an RFP process for lead and joint underwriters, communicating with rating agencies, preparing the rating agency presentation, and developing the registration statement. Additionally, certain fixed costs may become final during this process, thereby limiting the finance team's ability to review and collaborate on such costs, if not involved early. While it may be understood that this is appropriate, clarification in the financing order is important to mitigate the risk of Ameren Missouri taking irrevocable steps before the financing order becomes non-appealable.[3]

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. . ."?

No. The language pertaining to the finance team's role should not be reduced in the financing order from what the Commission included in prior Financing Orders. The right to review is important to ensuring the finance team can provide an oversight function throughout the issuance process and is a vital component of ensuring an adequate process[4]. The Commission's language from previous financing orders should not be changed as proposed by Ameren Missouri, as such

[2] Ex. 110, Majors Rebuttal, page 19, lines 15-19; Ex. 112, Davis Surrebuttal, page 5 lines 1-10.
[3] Ex. 112, Davis Surrebuttal, page 15 line 19 through page 16 line 7; see also Tr. Vol. 3 pp. 203-204.
[4] Ex. 112, Davis Surrebuttal, page 15 lines 4-15.

change could be perceived as taking from the finance team a right that previously existed; including that language is helpful to not create any expectation that the finance team has no right to review information which may be necessary in order to provide input and collaborate meaningfully.[5] Changing this language could be perceived as changing the responsibility of the utility, and there is no value in changing the past practice.[6]

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"?

No. The language pertaining to the finance team's role in the underwriter selection process should not be reduced in the Financing Order from what the Commission included in prior Financing Orders. Ensuring a complete underwriter selection process with a complete syndication team is important to accessing a broad universe of investors and achieving the lowest cost.[7]

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?

By using a 15-year amortization and inclusion of the unamortized balance in rate base at the WACC for purposes of comparison, it is assumed that Ameren Missouri would seek this recovery in a future rate case.[8]

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?

[5] Tr. Vol. 3 p. 200.
[6] Tr. Vol. 3 p. 201.
[7] Tr. Vol. 3, pp. 223 – 226.
[8] Ex. 110, Majors Rebuttal, page 19, lines 7-19.

Absent securitization, the likely method of recovery would be an amortization of a regulatory asset for the Rush Island energy transition costs.[9] The regulatory asset balance would decrease over time as the balance is amortized. Then, in future rate cases the payment amount to be recovered would reflect the decreased balance of the asset. It is not known for certain what return, if any, the Commission would allow on the Rush Island energy transition costs regulatory asset.

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

In a previous securitization case[10], the Commission decided to use a defined WACC as the discount rate.[11] Beyond the utility WACC, additional discount rates have been analyzed in other instances to evaluate NPV savings; however, the amount of NPV savings is not materially impacted by the discount rate as currently modeled. The Commission should use the WACC for Ameren Missouri in this case.[12]

2. Post Financing Order Process/Procedure

Staff did not have an opportunity to address this issue or sub-issues in its testimony, as these proposals were first proposed in the Surrebuttal Testimony of OPC witness David Murray. Accordingly, Mr. Murray's Surrebuttal Testimony from page 12 to the end of his testimony, and Exhibits DM-S-8 and DM-S-9, are subject to a pending objection/motion to strike.[13]

Although this testimony should be struck, a quick review of this testimony reveals that Mr. Murray's complaints relate primarily to prior securitization cases involving Liberty and EMW (Evergy Missouri West) rather than the current case involving Ameren Missouri.

[9] Ex. 110, Majors Rebuttal, page 19. See also Ex. 112, Davis Surrebuttal, page 5 lines 1-10.
[10] Case No. EO-2022-0040 and EO-2022-0193
[11] Ex. 111, Majors Surrebuttal, page 2, line 18 through page 3, line 7.
[12] Ex. 111, Majors Surrebuttal page 3 lines 5-7.
[13] Tr. Vol. 3 pp. 248-250.

His complaints seem to center around not having been part of the Finance Team, or not being given all the information he believes he should have received in the issuance advice letter/post financing order process, or not being given such information in a more timely manner. However, the securitization statute, 393.1700 RSMo., does not even contemplate OPC involvement. 393.1700.2(3)(h) RSMo. provides:

> As the actual structure and pricing of the securitized utility tariff bonds will be unknown at the time the financing order is issued, prior to the issuance of each series of bonds, an issuance advice letter shall be provided to the commission by the electrical corporation following the determination of the final terms of such series of bonds no later than one day after the pricing of the securitized utility tariff bonds. **The 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 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.** Neither the designated representative or representatives from the commission staff nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market although they shall be permitted to attend all meetings convened by the electrical corporation to address placement of the bonds to market. The form of such issuance advice letter shall be included in the financing order and shall indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the commission may require. Unless an earlier date is specified in the financing order, the electrical corporation may proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth business day after the commission receives the issuance advice letter, the commission issues a disapproval letter directing that the bonds as proposed shall not be issued and the basis for that disapproval. The financing order may provide such additional provisions relating to the issuance advice letter process as the commission considers appropriate and as are not inconsistent with this section. **[Emphasis added.]**

Notably absent from the above is any reference whatsoever to OPC, whether as being designated to provide input and collaborate, or to provide the Commission with an opinion on the reasonableness of the pricing, terms, and conditions of the bonds.

Several of Mr. Murray's proposals – or sub-issues under this issue – amount to Mr. Murray's attempt to impose additional requirements on Staff's financial advisor above and beyond those contained in the consulting services contract between the Commission/Staff and the financial advisor. The Commission should not countenance Mr. Murray's attempt to effectively amend or renegotiate the contract at this stage, i.e. months after the contract was negotiated and executed and after it has been partially performed. As the Contract Notification provided by Mr. Murray himself (Schedule DM-S-8 to Murray's Surrebuttal Testimony) provides in section 3.1c: "Any change to the contract, whether by modification and/or supplementation, must be accomplished by a written amendment signed and approved by and between the duly authorized representative of the Contractor [financial advisor] and the MoPSC on or prior to the effective date of such modification. . . .no other method and/or no other document, including correspondence from the MoPSC, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract." The Commission should not effectively order a change in the contract after it has been executed and partially performed, regardless of Mr. Murray's opinion. While Mr. Murray's recommended changes should not be adopted at all, *if* they were to be adopted – even in part – such adoption should occur at the beginning of the process on a going-forward basis rather than mid-way through a contract, so the contractor is fully informed of the requirements expected from the beginning.[14]

[14] Tr. Vol. 3 p. 232.

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

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

The pre-issuance review process, including structuring of the bonds, as well as marketing and pricing of the bonds, should consider market conditions at the time (including review of relevant market reference points). The finance team should be apprised of market conditions and, subsequently, investor demand for the bonds throughout the issuance process. Disclosing such information in the issuance advice letter is uncommon[15] and may have adverse implications,[16] particularly if investors perceive such review as implying a greater likelihood that the issuance advice letter may be rejected by the Commission.

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

No. It must first be recognized that Staff's financial advisor's letter – to Staff – is not a "*certification*."[17] Obtaining certifications from the issuer and underwriter can be a valuable tool, including as utilized by the finance team to ensure all facets of the process are vetted. However, in the event public disclosure of such letters limits the available universe of underwriters to issue the bonds, it may have adverse impacts on marketing and pricing. The Staff's Financial Advisor's contract outlines its scope and recipients of certain of its work product. The Commission has determined such information to be confidential work product by external consultants pursuant to 20 CSR 4240-2.135(2)(A)5, which specifically provides that "any person may submit to the commission, without first obtaining a protective order, information designated as confidential if that information is . . . Reports, work papers, or other documentation related to work produced by

[15] Tr. Vol. 3 p 207.
[16] Tr. Vol. 3 p. 208.
[17] Tr. Vol. 3 pp. 169-170.

internal or external auditors, consultants, or attorneys." In the present situation, the letter at issue is not simply *related to* such work, it *is* the work. As Mr. Davis testified at the hearing, "a lot of the information contained in those letters are proprietary trade secret information, it's – you know, I think it is effectively the secret sauce of the process that we go through and something that others could seek to replicate if they were to work through that type of process"[18] and "[t]he process, everything that we go through is part of the issuance review process with Staff, the items that we, you know, look at and review as part of that process could form a roadmap, you know, effectively for competitors to come in and try to replicate the process."[19]

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?

No. The letter provided to staff by the financial advisor should meet all the requirements outlined in the contract with the Commission/Staff. Various aspects of the review and timeline of delivering the letter to staff within two business days may not provide ample time and opportunity to adequately include, disclose [and obtain approvals] to outline all information relied upon, including information that is not independently verified and/or conveyed verbally during the marketing and pricing process.

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?

This issue should be directed to Ameren Missouri, however, in the event Ameren Missouri is ordered to provide the Issuance Advice Letter to interested parties, such parties should adhere to adequate confidentiality limitations and not include market participants.

[18] Tr. Vol. 3 p. 175.
[19] Tr. Vol. 3 p. 176.

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

The Commission may review all transaction costs associated with the securitization, including the cost of the process and needed oversight (with the benefit of Staff's Financial Advisor). Of note, Staff's Financial Advisor's contract and terms were entered into directly with the Missouri Public Service Commission, and are subject to review prior to payment.

3. Prudence of Retirement

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

Yes. Ameren Missouri's decision to comply with the District Court's modified Remedy Order to retire Rush Island plant no later than October 15, 2024 is reasonable and prudent.[20]

b. 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?

No. It is not prudent or reasonable to make decisions that lead to violations of federal law.[21] Ameren Missouri knew, or should have known, the improvements at Rush Island would trigger NSR. This conclusion is not based on hindsight analysis.[22]

Generally, the decisions of a utility carry a "presumption of prudence." ***Matter of Union Electric,*** 27 Mo. P.S.C. (N.S.) 183 (1985). Under the "presumption of prudence," a utility's costs are "presumed to be prudently occurred…However, the presumption does not survive a showing of inefficiency or improvidence" that creates "serious doubt as to the prudence of an expenditure." ***Id***. at 193, quoting ***Anaheim, Riverside, Etc. v. Fed. Energy Reg. Com'n,*** 669 F.2d 799, 809

[20] Ex. No. 102, Eubanks Rebuttal, pg. 3, ln. 8-10.
[21] Ex. 110, Majors Rebuttal, pg. 13, ln. 22-23.
[22] Ex. No. 111, Majors Surrebuttal, pg. 19, ln. 29-31.

(D.C. Cir. 1981). If such a showing is made, the presumption drops out and the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. ***Id. Office of Public Counsel v. Missouri Public Service Com'n,*** 409 S.W.3d 371, 376 (Mo. banc 2013).

In addition to the general principles above, in order to disallow a utility's recovery of costs from its ratepayers, "a regulatory agency must find both that (1) the utility acted imprudently (2) such imprudence resulted in harm to the utility's ratepayers… Ultimately, the PSC's standards for the recoverability of ANG's costs arise from the statutory mandate that all charges made by a gas company be just and reasonable. Section 393.130.1. It would be beyond this statutory authority for the PSC to make a decision on the recoverability of costs, based upon a prudency analysis of gas purchasing practices, without reference to any detrimental impact of those practices on ANG's charges to its customers, such as evidence that the costs which ANG is seeking to pass on to its customers are unjustifiably higher than if different purchasing practices had been employed." ***State ex rel. Ass'd Nat. Gas Co. v. Pub. Serv. Com'n of State of Mo.*****,** 954 S.W.2d 520, 529-530 (Mo. App., W.D. 1997).

Finally, a finding of whether a utility's decisions were prudent at the time must not be based upon hindsight, but instead "whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company." ***State ex. Re. Associated Natural Gas v. Public Serv. Comm'n***, 954 S.W.2d 520, 528-529 (Mo. App. W.D. 1997).

Ameren Missouri's decision in not seeking NSR permits due to the regained generation capacity at Rush Island was imprudent. As detailed in the United States District Court Memorandum

Opinion and Order in the liability phase (District Court Opinion),[23] the District Court found that the NSR violations, and the motivation to complete the projects, was to increase the capacity and availability of the Rush Island units.[24] The purpose of the 2007 and 2010 projects, to increase the availability of the Rush Island units, was clearly documented in contemporaneous documents including Ameren Missouri's own representations to the Commission.[25] As stated by the District Court, "The evidence shows that Ameren should have expected an emissions increase related to each project, and such an emissions increase occurred."[26]

The District Court went on to thoroughly detail, using evidence contemporaneous to Ameren Missouri's decision making prior to the completion of the projects, how Ameren Missouri's overall decision making applied to its NSR violations.[27] For example, regarding the New Source Review Prevention of Significant Deterioration (NSR/PSD), the District Court found:

> This standard for assessing PSD applicability was well-established when Ameren planned its component replacement projects for Units 1 and 2. Ameren's testifying expert conceded that the method used by the United States' experts—which showed that Ameren should have expected the projects to trigger PSD rules—has been "well-known in the industry" since 1999.
> But Ameren did not do any quantitative PSD review for the project at Unit 1 and performed a late and fundamentally flawed PSD review for Unit 2. And
> Ameren did not report its planned modifications to the EPA, obtain the requisite permits, or install state-of-the-art pollution controls.
> The evidence shows that by replacing these failing components with new, redesigned components, Ameren should have expected, and did expect, unit availability to improve by much more than 0.3%, allowing the units to operate hundreds of hours more per year after the project. And Ameren should have expected, and did expect, to use that increased availability (and, for Unit 2, increased capacity) to burn more coal, generate more electricity, and emit more SO2 pollution. [28]

[23] Ex. 110, Majors Rebuttal, Schedule KM-r2.
[24] Ex. 111, Majors Surrebuttal, pg. 9, ln. 17-19.
[25] Ex. 102, Eubanks Rebuttal, pg. 35, ln. 17 – pg. 39, ln. 31.
[26] Ex. 110, Majors Rebuttal, Schedule KM-r2, pg. 137.
[27] Ex. 111, Majors Surrebuttal, pg. 12, ln. 4-11.
[28] Ex. 110, Majors Rebuttal, Schedule KM-r2, pg. 3-4.

The District Court then concluded that "Ameren should have expected, and did expect, the projects at Rush Island to increase unit availability (and, for Unit 2, to increase capacity), which enabled Ameren to run its units more, generate more electricity, and emit significantly more pollution."[29]

In addition to the above, the District Court found that:

> …Ameren should have expected the 2007 and 2010 boiler upgrades to increase the availability of the units, thereby resulting in more than 40 tons per year of increased SO2 emissions. At both units, these availability improvements resulted from eliminating significant outages and derates that had been plaguing the boilers prior to the upgrades. Removing the problems that had been limiting their pre-project availability should have been expected to increase their post-project operations and emissions. In addition, for at least the 2010 boiler upgrade, Ameren should have expected the new economizer, reheater, and air preheaters to increase the maximum megawatt generating capability of the unit, resulting in increased annual emissions.[30]

The increased availability and hours of operation for Units 1 and 2 at Rush Island actually increased by an amount greater than that required to trigger PSD. This was supported by the United States' emissions experts at trial, who explained how the evidence demonstrated that these increases would "be expected to, and did, far exceed the 40-tons-per-year PSD threshold for SO2 [sulfur dioxide]."[31] The District Court found that Ameren Missouri should have expected availability gains and emissions increases to result in a substantial increase in the overall availability of Rush Island Unit 1, and that Ameren Missouri "should have expected a net emissions increase of 414.5 tons per year of SO2 due solely to the improvements in equivalent availability that Ameren Missouri should have expected from the replacement of the economizer, reheater, and air preheater."[32]

[29] *Id*, Schedule KM-r2, pg. 5.
[30] *Id*, Schedule KM-r2, pg. 59, para. 185.
[31] *Id*, Schedule KM-r2, pg. 59, para. 187.
[32] *Id*, Schedule KM-r2, pg. 82, para. 258.

In the end, the District Court found that "The emissions evidence shows an increase related to the projects should have been expected and actually occurred."[33] In addition, the District Court found that Ameren Missouri "does not have a legitimate process for assessing PSD applicability" due to Ameren Missouri's own fundamental misunderstanding of the PSD program, and its own internal methods that "does not comply with the rules, EPA's instructions, or case law."[34]

It is clear that Ameren Missouri knew, or should have known, improvement of Rush Island trigger NSR. Ameren Missouri's decision to not obtain the relevant NSR permits was not prudent at the time, and has caused actual harm to ratepayers. However, the exact amount of that harm caused to ratepayers is unknown at this time.

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

No. Because the harm to customer will not be fully known until long after this case, Staff recommends the Commission acknowledge Ameren Missouri's failure to plan for the outcome of the litigation by preserving prudence issues related to the Rush Island Reliability projects, potential future remedies ordered by the federal courts, and potential capacity shortfalls for a future rate proceeding.[35]

The standards outlined earlier regarding prudency apply here, as well. Staff has three main concerns related to Ameren Missouri's decisions to retire Rush Island and costs associated with that decision that Ameren Missouri may attempt to recover from ratepayers in later rate cases:

(1) The DOJ is seeking additional remedies other than just the retirement of the Rush Island retirement.

[33] *Id*, Schedule KM-r2, pg. 154, para. 5.
[34] *Id*, Schedule KM-r2, pg. 176, para. 1.
[35] Ex. 102, Eubanks Rebuttal, pg. 40, ln. 4-8.

(2) Ameren Missouri's recent 2023 IRP suggests that in the ** [redacted] ** Ameren Missouri will be short on capacity for MISO Resource Adequacy purposes.

(3) There are required transmission projects ("Rush Island Reliability Project") underway which will not be securitized under Ameren Missouri's proposal.[36]

A number of contemporaneous documents have been presented showing that Ameren Missouri understood the risk of NSR violations, including:

- March 11, 2004, Hunton and Williams slides: Slides mention the potential for suits brought by environmental groups and listing of challenged projects.
- May 27, 2007, AmerenUE Environmental Compliance Strategy Analysis - Kick-off Meeting. "It was suggested that a scenario which considered the impact of a New Source Review violation finding be analyzed. Corporate Planning agreed to work with Legal to review this issue. Legal will provide their views on this possibility to AmerenUE for their consideration. Based on that information AmerenUE will provide the team direction on whether additional analysis is to be performed." In response to Staff Data Request No. 0011.1, Ameren Missouri was unable to locate documents that would indicate whether any such analysis was performed.
- July 16, 2008 Coal Risks presented to Executive Leadership (Slide 17): ** [redacted] . **
- August 7, 2008 Fuel Risk; Slide 5: "NSR discussions continue and would be affected by recent court decisions."

[36] *Id*, pg. 5, ln. 7-13.

- October 17, 2008, AmerenUE Rush Island Power Plant Flue Gas Desulurization Project. "B&V should advise AmerenUE of latest NSR settlement results that are likely to illustrate emission limits." Staff has requested the B&V deliverable.
- May 13, 2009 Conference Memorandum discussed by Judge Sippell in the remedy phase:

  Ameren's documents indicate that Ameren was aware of the possibility that NSR would be triggered at Rush Island. For example, on May 1, 2009, Ameren met with engineering firm Black & Veatch to review contracting strategies and to allow Black & Veatch to "understand internal AmerenUE drivers." May 13, 2009 Conference Memorandum (Pl. Ex. 1111), at AMERM-00319195. Included among the "Questions for thought" discussed at that meeting was "**What is the tolerance for risk?**" Id. at AM-REM-00319198, 319222. The Conference Memorandum summarizing the discussion of that question identified that ''**NSR is likely the biggest potential issue.**'' Id. at 319199. Addressing a question about cash flow for any FGDs at Rush Island, the May 2009 Conference Memo identified that ''**NSR or EPA will likely be the driver to shift the schedule early.**'' Id. [**Emphasis added.**]
- June 11, 2009 Email from Anthony Artman to Susan Knowles. "The Missouri Office of Public Counsel (OPC) asked Mark why they would ever consider advancing the timing on scrubbers or installing scrubbers based on these results. Mark then used the 114 inquiry as an example of what might cause us to install scrubbers as early as 2013. Then questions came up about the 114 inquiry. Mark explained what was going on and Mike added a few comments. After the meeting was over Mark then approached OPC with the idea of maybe supporting us in the process if it came to forcing us to install scrubbers and possibly loose [sic] our allowances. They seemed to be receptive to the concept."[37]

In addition to the above, and despite receiving the court ruling in January 2017, ** [redacted]

[37] *Id*, pg. 18, ln. 4-34, pg. 19, ln. 1-15.

[redacted] .” **[38]

Had Ameren Missouri begun planning for an unfavorable outcome from the Courts earlier it may have considered the impact of a nearer term retirement on its transmission system, developed a tighter expectation on the cost of such upgrades, and avoided an increase in market and construction costs. Ameren Missouri’s break-even analysis presented in this case assumed ** [redacted] ** for the transmission upgrades. The current expected cost is ** [redacted] . **[39] With potential future remedies from the courts on the horizon, and the lack of taking into account changing seasonal constructs, this calls into questions Ameren Missouri’s break-even analysis, and whether the increase in costs for transmission projects that was previously known remains accurate today.[40]

Staff will propose an adjustment in a future rate proceeding to reflect any portion of the Rush Island Reliability Project it deems imprudent.[41]

4. Amount to Finance

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

$3,936,152.[42]

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

[38] *Id*, pg. 24, ln. 6-12.
[39] *Id*, pg. 25, ln. 5-10.
[40] Transcript Vol. 4, pg. 209, ln. 15-24.
[41] ***Ex. 102, Eubanks Rebuttal***, pg. 25, ln. 14-15.
[42] Ex. 111, Majors Surrebuttal, Schedule KM-s1, line 4.

Yes. Ameren Missouri's own evaluation of the preliminary scrubber studies showed that the preliminary work was of limited benefit to a future project, would not substantially shorten the project schedule, and could not be relied upon by the actual project engineers in the case that Ameren Missouri were to actually commence the project.[43]

5. Planning for NSR Outcome

a. 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?

No. Ameren Missouri knew for several years that there was the potential of an unfavorable court ruling that could lead to severe consequences. For many years, Ameren Missouri did not plan at all for the potential outcome that could include the near-term retirement of Rush Island. Even after it did evaluate plans that included the near-term retirement of Rush Island, and included them as contingency plans if its preferred resource plan at the time became obsolete, it did not choose one of those plans even after its preferred resource plan became obsolete. A plan that contemplated a natural gas-fired, combined cycle plant in the near-term or a natural gas-fired, combined cycle plant in the near-term combined with renewable additions, either after or simultaneously, as a contingency plan for the potential near-term retirement of Rush Island may have allowed Ameren Missouri to get ahead of the situation they are currently in. Presumably, more proactive planning for Rush Island and stakeholder discussion on that matter may have allowed for a smoother transition following the federal court's order.[44]

The Company knew for several years that there was the potential of an unfavorable court ruling that could lead to severe consequences. For many years, Ameren Missouri did not plan at all for the potential outcome that could include the near-term retirement of Rush Island. Even after it did

[43] Ex. 111, Majors Surrebuttal, page 8, lines 6-10. See, in general, Ex. 111, Majors Surrebuttal, page 4 line 17 through page 8 line 10.
[44] Ex. 104, Forston Rebuttal, pg. 6, ln. 4-16.

evaluate plans that included the near-term retirement of Rush Island, and included them as contingency plans if its preferred resource plan at the time became obsolete, it did not choose one of those plans once its preferred resource plan became obsolete. A plan that contemplated a natural gas-fired, combined cycle plant in the near-term or a natural gas-fired, combined cycle plant in the near-term combined with renewable additions, either after or simultaneously, as a contingency plan for the potential near-term retirement of Rush Island may have allowed Ameren Missouri to get ahead of the situation they are currently in. Presumably, more proactive planning for Rush Island and stakeholder discussion on that matter may have allowed for a smoother transition once the federal court ruled.[45]

Had Ameren Missouri begun planning for an unfavorable outcome from the federal courts earlier, it may have considered the impact of a nearer term retirement on its transmission system, developed a tighter expectation on the cost of such upgrades, and avoided an increase in market and construction costs.[46] Ameren Missouri understood that its resource adequacy capacity position after the retirement of Rush Island would be tight in the coming years;[47] however, the harm to customers will not be fully known until long after the conclusion of this case.[48]

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

Yes. Staff recommends the Commission acknowledge Ameren Missouri's failure to plan for the outcome of the litigation by holding ratepayers harmless from the costs above ** [redacted] **

[45] *Id*, pg. 6, ln. 4-16.
[46] Ex. 102, Eubanks Rebuttal, pg. 25, ln. 5-8.
[47] *Id*, pg. 22, ln. 1-2.
[48] Ex. 103, Eubanks Surrebuttal, pg. 5, ln. 18-19. Ms. Eubanks' surrebuttal testimony was provisionally admitted during the evidentiary hearing, pending the Commission's ruling on Ameren Missouri's motion to strike portion of Ms. Eubanks surrebuttal testimony. See Transcript – Volume 4 (Evidentiary Hearing – Jefferson City, MO – April 16, 2024), pg. 336, ln. 23-24. Specifically, Ameren Missouri moved to strike Ms. Eubanks' testimony from pg. 1, starting at ln. 22, through pg. 4, ln. 13. The portion of Ms. Eubanks' testimony cited to here is not subject to Ameren Missouri's motion to strike.

associated with the Rush Island Reliability projects, and preserving the issues with potential future remedies and potential capacity shortfalls for a future rate proceeding.[49] Staff's concerns regarding short-term capacity, the Rush Island Reliability Project, and the potential future remedies related to Ameren Missouri's violation of the Clean Air Act are all appropriate issues for the Commission to consider at the time that the future harm can be calculated.[50]

6. Net Plant

a. What is the net plant in service of the retired Rush Island Plan if retired September 1, 2024?

Staff did not evaluate the net plant in service balance as of September 1, 2024. As noted by Ameren Missouri witness Lansford, the exact date the plant will retire "is subject to some of the MISO processes"[51] that are not within Ameren Missouri's control.[52]

b. What is the net plant in service of the retired Rush Island Plan if retired October 15, 2024?

The net plant in service balance of the retired Rush Island plant, if retired on October 15, 2024, is $468.9 million.[53] Staff derived this number from Mr. Lansford's testimony, which itself is based on the plant records and general ledgers.[54] These amounts appear to be an accurate representation of the actual plant values.[55] And while these are numbers are currently just projections,[56] as noted by Staff witness Keith Majors, the securitization statute does require that the projected numbers be reconciled once the final costs are incurred. § 393.1070.2.(3)(c)k.

7. Basemat Coal Inventory

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

[49] Ex. 102, Eubanks Rebuttal, pg. 40, ln. 4-8.
[50] Ex. 103, Eubanks Surrebuttal, pg. 5, ln. 18-22 and pg. 6, ln. 1-2.
[51] Transcript Vol. 6 (Evidentiary Hearing – Jefferson City, MO – April 17, 2024), pg. 70, ln. 17-20.
[52] *Id*, ln. 23-24.
[53] Ex. 111, Majors Surrebuttal, Schedule KM-s1, line 3.
[54] Transcript Vol. 6, pg. 74, ln. 10-12.
[55] *Id*, ln. 14-16.
[56] *Id*, ln. 16.

The value of the basemat coal inventory at Rush Island is $1.9 million.[57] This amount, used by Staff and Ameren Missouri, is based on the background calculations that supported the amounts in a Stipulation and Agreement in Case No. ER-2008-0318.[58] This basemat valuation has been used in several rate cases since 2008.[59] Staff clarified its position at trial, indicating that the initial $1.9 million used current prices.[60] Using prices at the 2008 valuation results in a value of $1.4 million.[61] Further, as noted by Staff witness Keith Majors, this number is a more accurate representation of the cost.[62]

However, the original cost of $0.5 million is an appropriate alternative to the amount used by Staff and Ameren Missouri.[63] Staff was unaware of the Report and Order in ER-77-154 used by OPC witness John Riley to come up with alternative amount of $0.5 million.[64] Though Staff does find the calculated historical valuation of $562,436 to be an appropriate alternative amount, it's not clear that this, or any specific prior valuation, was ever meant to be used to securitize basemat coal at Rush Island.[65]

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

Yes, consistent with the Amended Report and Order in Case No. EO-2022-0040 and EO-2022-0193.[66] As noted in the Commission's decision in EO-2022-0040:

> The basemat coal was acquired by Liberty over the years and was included in the company's rate base along with the rest of its coal pile inventory. It would have recovered the value of that coal as an expense when the coal was burned. But, since the

[57] Ex. 111, Majors Surrebuttal, Schedule KM-s1, line 5.
[58] *Id*, pg. 8, ln. 18-20.
[59] *Id*, pg. 8, ln. 20.
[60] Transcript Vol. 6, pp 141, ln. 3-16.
[61] *Ibid*, ln. 5.
[62] *Id*, pg 143, ln. 8-15.
[63] Ex. 111, Majors Surrebuttal, pg. 8, ln. 12-20.
[64] *Id*, ln. 17-18.
[65] *Id*, pg. 9, ln. 1-9.
[66] Ex. 110, Majors Rebuttal, pg. 18, ln. 4-12.

> basemat coal was never burned, Liberty never recovered its cost. Consequently, the value of the basemat coal, $1,532,832, falls within the statutory definition of energy transition costs and may be securitized.[67]

The above language is also present in the Commission's Amended Report and Order in EO-2022-0193.[68] In addition, as noted by Ameren Missouri's witness Mr. Lansford, these are just estimates and the actual amount is not currently known; once the actual amount is known, any difference between the estimate here and the actual amount will be reconciled as part of a future rate review.[69]

As the Commission had done in past securitization cases, Staff recommends that the Commission continue its precedent of including the value of basemat coal inventory in the amounts authorized for financing using securitized utility tariff bonds.

8. NPV of Tax Benefits/ADIT

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

i. If retired September 1, 2024?

Staff did not evaluate the net present value balance as of September 1, 2024. As noted by Ameren Missouri witness Lansford, the exact date the plant will retire "is subject to some of the MISO processes"[70] that are not within Ameren Missouri's control.[71]

[67] Case No. EO-2022-0040, *In the Matter of the Petition of The Empire District Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Qualified Extraordinary Costs*, Amended Report and Order, pg. 52.
[68] Case No. EO-2022-0193*, In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Energy Transition Costs Related to the Asbury Plant*, Amended Report and Order, pg. 52.
[69] Transcript Vol. 6, pg. 117, ln. 17-25; *see also* § 393.1072.2.(3)(c)k.
[70] Transcript Vol. 6 (Evidentiary Hearing – Jefferson City, MO – April 17, 2024), pg. 70, ln. 17-20.
[71] *Id*, ln. 23-24.

ii. If retired October 15, 2024?

The net present value of tax benefits associated with the Rush Island plant, if retired on October 15, 2024, is $49.1 million.[72]

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

Ameren Missouri's recommendation concerning ADIT is consistent with the provisions of the securitization statute. Staff's calculations are consistent with Ameren Missouri's. The calculation captures the net present value (NPV) of the future reductions to rate base included in the cost of service absent securitization, and reduces the overall amount to be securitized.[73]

The securitization statute, under § 393.1700.2(3)(c)m, states the following regarding ADIT:

> In a financing order granting authorization to securitize energy transition costs or in a financing order granting authorization to securitize qualified extraordinary costs that include retired or abandoned facility costs, a procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned or to be retired or abandoned electric generating facility, or in connection with retired or abandoned facilities included in qualified extraordinary costs. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from rate base in future general rate cases and the net tax benefits relating to amounts that will be recovered through the issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that would otherwise be issued. The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds;

Unlike in the securitization of Empire's Ashbury plant in EO-2022-0193, in which Staff calculated an amount of the actual return of those deferred taxes paid by customers, the credit here is a reduction in rate base (the valuation caused or created by the ADIT).[74]

[72] Ex. 111, Majors Surrebuttal, Schedule KM-s1, line 7.
[73] Ex. 110, Majors Rebuttal, pg. 19, ln. 1-5.
[74] Transcript Vol. 6, pg. 177, ln. 23-25, and pg. 178, ln. 1-4.

In the securitization of Ashbury, the taxes that had to be paid back to the IRS were added in as a charge on the securitization tariffs as amounts that would be paid by ratepayers for the next 13 or so years.[75] For Rush Island, there's no additional taxes to calculate, so the benefit is being recognized as an offset to the securitization amount.[76]

Though not the same approach as that used for Ashbury, the approach employed by Staff and Ameren Missouri in regards to Rush Island is just as compliant with the statute as the approach taken in regards to Ashbury. The primary difference here is that there are no additional taxes to calculate.

9. Asset Retirement Obligations. What amount of asset retirement obligations should be financed using securitized utility tariff bonds?

Staff recommends the ash pond closure expense of $0.14 million be included as the closure is related to the retirement of Rush Island. That is because the ash ponds currently do not exist, and there's no question that the ponds are not already being incurred and paid for in rates.[77] The water treatment and monitoring costs are projected to be incurred through 2032 and should be treated as routine costs that are included in cost of service in the rate case process.[78]

The total amount requested by Ameren Missouri, $4,764,398,[79] includes ongoing expenses requiring groundwater monitoring and treatment.[80] These expenses are not tied to securitization, but are instead expenses that any former or current coal plant incurs.[81] While the ash pond close expense is related to the retirement of Rush Island, the water treatment and groundwater

[75] *Id*, pg. 178, ln. 5-10.
[76] *Id*, pg. 178, ln. 11-15.
[77] *Id*, pg. 231, ln. 5-7.
[78] Ex. 110, Majors Rebuttal, pg. 23, ln. 5-8.
[79] Ex. 2, Lansford Surrebuttal, pg. 28, ln. 10-18.
[80] Transcript Vol. 6, pg. 209, ln. 17-20.
[81] Transcript Vol. 6, pg. 209

monitoring costs are not.[82] Because the water treatment and groundwater monitoring costs are projected to be incurred through 2032, these should be treated as routine costs that are included in cost of service through the rate case process.[83] And though current projections may just be through 2032, the Coal Combustion Residual (CCR) rule referenced by Ameren Missouri during the hearing requires thirty years of post-closure care; this requirement is not relieved if the securitized funds are exhausted.[84] As Ameren Missouri's own witness, Mr. Williams, stated during the evidentiary hearing, the CCR rule does not kick in when a plant retires; it is an ongoing retirement as soon as the plant is in operation.[85]

Due to the uncertain duration of how long Ameren Missouri will need to conduct water treatment and groundwater monitoring following the closure of Rush Island, and the lack of testimony regarding whether any of these costs regarding water treatment and groundwater monitoring are already being incurred and paid for,[86] the asset retirement obligations beyond the ash pond closure expense of $0.14 million should be treated as routine costs included in the cost of service in the rate case process.

10. Safe Closure Costs. What amount of safe closure costs should be financed using securitized utility tariff bonds?

Staff recommends inclusion of safe closure costs in the amount of ** [redacted] ,**[87] whether or not any safe closure costs are attributable to portable toilets.[88]

[82] Ex. 110, Majors Rebuttal, pg. 23, ln. 5-6.
[83] *Id*, pg. 23, ln. 6-8.
[84] Transcript Vol. 6, pg. 209 ln. 24-25, pg. 210, ln. 2-15.
[85] *Id*, pg. 261, ln. 25, pg. 262, ln. 1-4.
[86] *Id*, pg. 231, ln. 3-9.
[87] Ex. 101, Cunigan Surrebuttal, pg. 1, ln. 11-12.
[88] Mr. Williams estimated the total toilet costs to be roughly $10,000. *See* Transcript Vol. 6, pg. 294, ln. 12.

11. Decommissioning Costs. What amount of decommissioning costs should be financed using securitized tariff bonds?

Staff recommends inclusion of ** [redacted] ** of decommissioning costs, with the conditions that Ameren Missouri continues to provide bids and cost updates as they become available. Ameren witness Mr. Williams indicated that Ameren Missouri has no problem with Staff's conditions.[89]

12. Material and Supplies. What amount of material and supplies inventory should be financed using securitized utility tariff bonds?

Staff recommends $18.3 million in materials and supplies inventory should be financed using securitized utility tariff bonds. These materials, including any portable toilets, were directly assigned to Rush Island.[90]

13. Community Transition Costs. What amount of community transition costs should be financed using securitized utility tariff bonds?

Zero. These expenses, if incurred, are of a charitable nature. To Staff's knowledge, no utility that has retired a large generating facility has requested charitable donations to be flowed through customer rates. If Ameren Missouri chooses to make these contribution, it can do so, enjoy the benefit of reduced overall tax liability,[91] and potentially benefit from a resulting tax deduction. After all, these costs are not required under state or federal law.[92] There's nothing in the securitization statute that directly points to this nature of cost,[93] and it's clear that such costs do not fit the definition of "energy transition costs" under § 393.17000.1.(7), which are defined as:

> (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but

[89] Transcript Vol. 6, pg. 299, ln. 20-25, pg. 300, ln. 1-5.
[90] *Id*, pg. 268, ln. 11-12.
[91] Transcript Vol. 8, pg. 16, ln. 13-17.
[92] Transcript Vol. 8, pg. 15, ln. 24-25, pg. 16, ln. 1-3.
[93] Transcript Vol. 8, pg. 25, ln. 14-20.

are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;

(b) Pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021;

Since these costs do not meet the definition of "energy transmission costs," and charitable contributions and the associated tax deductions are not included in cost of service, they should not be included in securitization.[94]

While Staff agrees that it is good policy for Ameren Missouri to be mindful of the potential impact of the closing of Rush Island will have on the local community, these concerns should not be addressed **only** if the Commission decides to securitize these community transition costs.[95]

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?

Staff did not evaluate the upfront financing costs as of September 1, 2024. Staff included estimated upfront financing costs assuming an October 15, 2024 retirement date of $6.5 million.[96] This estimate excludes expenses for Ameren Missouri's witnesses Holmstead and Moore. The testimony of Mr. Moore and Mr. Holmstead is largely the same as that filed in Ameren Missouri's most recent rate case, Case No. ER-2022-0377. Ratepayers have paid these expenses through rate

[94] Ex. 110, Majors Rebuttal, pg. 21, ln. 15-19.
[95] Transcript Vol. 8, pg. 27, ln. 22-24.
[96] Ex. 111, Majors Surrebuttal, Schedule KM-s1, ln. 13.

case expense in the prior rate case and should not be responsible for these duplicative costs to the extent Ameren Missouri seeks to include expenses for these witnesses through securitization.[97]

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?

Staff takes no position on this issue, but reserves the right to respond to the arguments from other parties in Staff's Reply Brief.

16. Allocation of Revenue Requirement

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

Although other parties to this case – most notably the industrial intervenors – have chosen to portray the Staff allocation approach as being simply that of Staff, it should be recognized that the allocation of costs to classes based on the loss-adjusted energy consumption of those classes was first proposed in this case by Ameren Missouri; in fact, Mr. Wills, on behalf of Ameren Missouri, testified as follows in his Direct testimony:

> Q. How does Rider SUR [Ameren Missouri's proposed tariff] allocate this revenue requirement to the various customer classes?
>
> A. The costs are allocated to classes based on the loss-adjusted energy consumption of those classes. The Company is mindful that two other electric utilities in Missouri – Liberty Utilities and Evergy – have preceded it in instituting securitization tariffs. The Company chose to mirror the cost recovery framework ordered by the Commission in the Liberty securitization case and agreed to among the parties to Evergy's case.[98]

Staff's recommended allocation, which is consistent with Ameren Missouri's direct-recommended allocation, is that any authorized SUTC costs be allocated to the classes and

[97] Ex. 110, pg. 22, ln. 19-22.
[98] Ex. 19, Wills Direct, page 5, lines 14 – 21.

billed to customers on the on loss-adjusted energy consumption.[99] "Loss adjusted energy," refers to adjusting metered kWh which are metered at different voltages when billed to a consistent voltage to reflect the amount of energy that is needed to provide a kWh of energy at the applicable metered voltage.[100] This allocation and billing approach results in a high level of bond payment stability and customer charge stability, regardless of the months in which semi-annual payments are due.[101] As energy is the most basic unit sold by an electric utility, allocation on energy is reasonable; Ameren Missouri testifies that the retirement of Rush Island creates an "energy need;" Ameren Missouri testifies that its decisions to retire coal-fired generation and certain oil and natural gas units are driven by environmental policy goals and legislation, not by a traditional capacity objective of meeting system peak demand;[102] and customers can and do switch among rate classes and rate schedules, and rate classes and rate schedules come and go over time. Unreasonable outcomes are likely without sufficient tariff provisions that – as yet – have not been developed. Each of these reasons supports allocation of costs to classes based on the loss-adjusted energy consumption of those classes.[103] Furthermore, the loss-adjusted energy approach has been adopted for Evergy Missouri West Schedule SUR and Liberty SUTC. [104]

Mr. Brubaker's proposal contains numerous problems. While bondholders require two bond payments of equal size each year, Mr. Brubaker's requested allocation would result in funds for payments varying in size from 6% - 43%, under normalized conditions, with experienced

[99] Ex. 106, Sarah Lange Rebuttal, p 2, L 7 – L 19.
[100] Ex. 106, Sarah Lange Rebuttal, p 2, footnote 2.
[101] Ex. 107, Sarah Lange Surrebuttal p 5 L 3 – p 7 L 4.
[102] Although the industrial intervenors allege that, in a general rate case plant would be allocated based on a capacity allocation, Mr. Wills testified at the hearing that even capacity allocation in a rate case relies heavily on class **energy** requirements – the basis of Staff's/Ameren Missouri's allocation. Tr. Vol. 8 pages 94 – 99. Furthermore, Rush Island will have no capacity value upon its retirement; other than possibly metered energy sales, no allocation other than loss-adjusted energy sales is reasonable in this case. Ex. 106, Sarah Lange Rebuttal, p 7 L 1-6.
[103] Ex. 106, Sarah Lange Rebuttal p 2 L 17 – p 3 L 9.
[104] Ex. 106, Sarah Lange Rebuttal p 3 L 10-11.

volatility under actual weather and other factors unquantifiable.[105] If the Commission adjusted Mr. Brubaker's requested allocation to better align funds for payments with semi-annual payment requirements, it is expected that the magnitude of the percentage adjustment applied under Mr. Brubaker's request would be up to nearly 40%, with a charge of 2.15% for the first 6 months of a year, and a charge of 1.57% for the following 6 months, prior to the implementation of true-ups.[106] Actually-experienced bills for customers across all classes vary substantially, and Mr. Brubaker's flat percentage proposal or some derivative thereof would only exacerbate the problem.[107] As Ms. Lange stated at the hearing

> I think as a practical matter what Mr. Brubaker has proposed, it can't be done. Having a set percentage that runs year round, I don't think there's any way that could be implemented. So the answer to that, to stick closer to his proposal, would be to adjust the percentage applicable during the year to account for the volatility [in] revenue during the year. I think, frankly, *that's going to have the biggest impact on large general service and small primary service customers* even more so than residential small general service customers. It also has impact within the large power service, simply because their rates are very seasonal. You know, there are differences in what residential customers pay summer to non-summer. There are huge differences in what non-residential customers pay summer to non-summer and especially when you have so many customers in large general and small primary classes that are on hours use rates and that have these elements of seasonal demands, seasonal energy charges. I think they have a hard time knowing what their bill is going to be next month, much less once you factor in what percentage gets applied to that, I mean, based on my preliminary analysis of what are normalized numbers. I think it's in my testimony that we should expect that that rate is going to swing, you know, the percentage rate could double on itself and half itself on the various six months of the year.[108] (emphasis added)

and

> So while it's easy to kind of think of classes as having, you know, saying an equal percentage charge sounds really simple, in reality, within each class, from LPS down to residential and especially for the large general service and small primary service customers, which is where the majority of the industrial customers in the State of Missouri actually are housed for Ameren Missouri purposes, you have a

[105] Ex. 107, Sarah Lange Surrebuttal p 3 L 2 – p 4 L 4.
[106] Ex. 107, Sarah Lange Surrebuttal p 4 L 5 – p 5 L 2.
[107] Tr. Vol. 8 pp. 132 – 137.
[108] Tr. Vol. 8 page 136 L 8 through page 137 L 9.

> really complex rate design that you're charged - most customers charge the same amount every month as part of their customer charge within their class, but then energy charges vary by time of the year.
>
> For LGS and SPS customers, energy charges vary very drastically depending on their load factor, their non-coincident demand, and other factors such that I know I just looked at within the LP class, the large power service class, we have customers who are paying as low as five cents per kWh and customers who are paying close to 12 cents per kWh on an annual basis and that is even more volatile month to month. And so, when you get into LGS and SPS where, again, there's a tremendous diversity of customers, you could have customers who might be paying an average of four cents per kWh in the winter month and might be paying 20 cents per kWh in the summer month. So when you try to apply a flat percentage to those, not only do you have tremendous volatility customer to customer, but that compounds on itself and you have tremendous volatility month to month. [109]

As of March 7, 2024, Ameren Missouri was not aware of a utility securitized tariff bond rate in any jurisdiction that is billed in the manner requested by Mr. Brubaker.[110] Mr. Brubaker's requested allocation is not accompanied by proposed tariff language available in this case to implement this allocation.[111] Mr. Brubaker's requested allocation does not address transaction costs, true-ups, or the timing of bond payments.[112] Since Mr. Brubaker did not submit an actual tariff proposal, if his proposal is followed an actual, complete tariff will need to be written before any bonds can be issued.[113] Even Mr. Brubaker admitted that yet another Commission hearing could be necessary to resolve disagreements among the parties regarding tariff language.[114] His proposed allocation approach is based on an equal percentage of base rates,[115] yet what is or is not meant by "base" rates or charges is not defined and if a party has an issue regarding what to

[109] Tr. Vol. 8 page 132 L 16 through page 133 L 19.
[110] Ex. 107, Sarah Lange Surrebuttal p 7 L 5 – p 7 L 11.
[111] Ex. 107, Sarah Lange Surrebuttal p 2 L 10 – 12.
[112] Ex. 107, Sarah Lange Surrebuttal p 2 L 13 – p 3 L 1.
[113] Tr. Vol. 8, page 100 lines 19-20, Mr. Wills testified "we would certainly have to draft new – new things that haven't been drafted yet" and regarding timing at page 101 lines 13-14 that "the final tariffs are in a tight window around the bond issuance."
[114] Tr. Vol. 8 page 145.
[115] Tr. Vol. 8 page 88.

include for purposes of allocating a securitization charge, when that debate or hearing would happen is unknown[116] - yet there is very little time for such determination. There simply is no time or process for resolving the inevitable disputes.

To the extent that the Commission may enter an order to allocate any SUTC charge to individual customers as a percentage of a bill, Staff refers the Commission to its recommended tariff language that "Charges under Rider SUR are payable in full and are not eligible for any discount," and would clarify that this language should be interpreted or explicitly modified so that any charge if applied as requested by Mr. Brubaker would not be subject to discounts, and would be assessed on the basis of the non-discounted bill.[117]

As Ameren Missouri did not have any Special Contract customers within the meaning of Section 393.1700 subsections (17) and (19), there are no customers or classes of customers to exclude from allocation of any SUTC authorized in this case.[118]

17. Tariff

Should the tariff changes recommended by Staff be adopted?

Yes. Staff's recommended tariff, subject to the modifications described below, is reasonable should the Commission authorize a SUTC in this case. This tariff is substantially similar to the Liberty SUTC tariff resulting from File Nos. EO-2022-0040 and EO-2022-0193, and is appended to Sarah Lange Rebuttal testimony as Schedule SLKL d-2.[119, 120] In addition to the items addressed separately below, and its substantive modification to a formula consistent with the Liberty SUTC tariff, Staff's recommended tariff incorporates tariff language that "Charges under

[116] Tr. Vol. 8 page 103.
[117] Ex. 106, Sarah Lange Rebuttal, Schedule SLKL d-2, page 1.
[118] Ex. 106, Sarah Lange Rebuttal, p 8 L 6 – 10.
[119] Ex. 106, Sarah Lange Rebuttal, p 14, L 10 – L 14.
[120] Schedule SLKL d-2 should have been labeled SLKL r-2; Ms. Lange corrected this labeling error on the stand at the hearing, but for ease of reference herein the d-2 reference has been maintained.

Rider SUR are payable in full and are not eligible for any discount." To the extent that the Commission may enter an order to allocate any SUTC charge to individual customers as a percentage of a bill, this language should be interpreted or explicitly modified so that any charge if applied as requested by Mr. Brubaker would not be subject to discounts, and would be assessed on the basis of the non-discounted bill.[121] Staff's recommended tariff also clarifies the billing of the charge for customers under the "Net Metering Easy Connection Act," clarifies the billing of the charge for customer-generators under any other provision of law, and clarifies application of partial payments to the securitized utility tariff charge. [122]

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?

Yes. The tariff should include a clarifying statement that the voltage adjustments used in the SUTC should be kept consistent with the voltage adjustments used in the FAC, in the event that additional voltage service levels are introduced at some time over the life of the SUTC. [123]

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

Staff did not have an opportunity to address this change in its testimony, as this change was proposed in the Surrebuttal Testimony of OPC witness Lena Mantle. Staff does not oppose this recommendation.

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

[121] Ex. 106, Sarah Lange Rebuttal, Schedule SLKL d-2, page 1; Ex. 106, Sarah Lange Rebuttal page 18 L 1 – 8.
[122] Ex. 106, Sarah Lange Rebuttal, p 18, L 9 – L 16.
[123] Ex. 106, Sarah Lange Rebuttal, p 15, L 1 – L 8.

Staff did not have an opportunity to address this change in its testimony, as this change was proposed in the Surrebuttal Testimony of OPC witness Lena Mantle. Staff does not oppose this recommendation.

d. Clarify the application of the SUTC in the event of a new or modified territorial agreement?[124]

Yes.[125] From time to time, utilities may request additional authority to serve a larger geographic area, or to exchange certificated areas with another investor owned utility, a municipal utility, or a cooperative utility. Further, utilities may merge or be acquired. A well-designed tariff will include necessary details to guide the applicability of the SUTC to customers and entities under each of these circumstances. In general, the SUTC must remain non-bypassable, even if a premise or customer ceases service with Ameren Missouri and initiates service with a different utility, whether or not regulated by this Commission. However, in the event that an entire existing customer base of a different utility is merged with the customer base of Ameren Missouri, it would not be appropriate for the separate customer base to become responsible for the Ameren Missouri SUTC.[126]

Staff's proposed tariff contains language regarding this matter under the section titled "Applicability and Non-Bypassability of Charge."[127] It should be recognized that Staff's proposed tariff language is not intended to apply to the situation where an Ameren Missouri customer moves out of Ameren Missouri's service territory; what is at issue is if there is a change of supplier case or territorial agreement case. [128] It is intended to apply in "[t]hose instances where a Commission

[124] See also related discussion below under section of brief regarding a customer's obligation to pay Rush Island securitization charges.
[125] Ex. 106, Sarah Lange Rebuttal, p 15, L 9 – p 18 L 16.
[126] Ex. 106, Sarah Lange Rebuttal, p 17 L 20 – L 31.
[127] Ex. 106, Sarah Lange Rebuttal, Schedule SLKL d-2, page 1.
[128] Tr. Vol. 8 pages 123-125.

order is changing [the] circumstances around who is served by Ameren Missouri."[129] It should also be recognized that this is what was done in both the prior Liberty and Evergy securitization cases.[130]

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?

Staff has included these investments in the net plant in service to be securitized. However, Staff does not have any specific position on these investments.[131]

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?

As Judge Clark noted at the hearing, "the Commission's decisions on . . . [the] other issues will ultimately determine the amount to be securitized, which is the Question 19."[132] In other words, the answer to the question posed by this issue is a fall-out from the Commission's decisions on the other issues addressed elsewhere in this brief. If the Commission adopted each of Staff's recommendations, as set forth in Staff's surrebuttal testimony the total Rush Island energy transition costs to securitize would be $490,969,074[133], assuming the Rush Island retirement occurs October 15, 2024.

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

See argument and discussion under "Upfront Financing Costs" section of this brief.

[129] Tr. Vol. 8 page 128 lines 11-12.
[130] Tr. Vol. 8 page 131.
[131] Ex. 111, Majors Surrebuttal, Schedule KM-s1, lines 1-2.
[132] Tr. Vol .8, p. 161.
[133] Ex. 111, Majors Surrebuttal, Schedule KM-s1, line 12.

20. Does an Ameren Missouri customer only have an obligation to pay Rush Island securitization charges that customer incurs when Ameren Missouri 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? [134]

Yes. Consistent with the effective Evergy SUTC tariff and the securitization statute, Staff's recommended tariff language includes a provision to ensure that the non-bypassability requirements of the securitization statute are fully implemented.[135] From time to time, utilities may request additional authority to serve a larger geographic area, or to exchange certificated areas with another investor owned utility, a municipal utility, or a cooperative utility. Further, utilities may merge or be acquired. A well-designed tariff will include necessary details to guide the applicability of the SUTC to customers and entities under each of these circumstances. In general, the SUTC must remain non-bypassable, even if a premise or customer ceases service with Ameren Missouri and initiates service with a different utility, whether or not regulated by this Commission. However, in the event that an entire existing customer base of a different utility is merged with the customer base of Ameren Missouri, it would not be appropriate for the separate customer base to become responsible for the Ameren Missouri SUTC.[136]

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?

[134] See also related discussion above under Tariff section discussion, subsection d.
[135] Ex. 106, Sarah Lange Rebuttal p 15 L 9 – p 16 L 17.
[136] Ex. 106, Sarah Lange Rebuttal p 17 L 20 – 31.

If the Commission decides to allow such carrying costs, they should be calculated at the most current rate of long-term debt, consistent with the Liberty Utilities Order.[137] This rate is currently 4.051%.[138]

WHEREFORE, Staff prays that the Commission issue its order finding in favor of Staff on each of the issues set forth herein and making such further orders as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Jeffrey A. Keevil
Jeffrey A. Keevil
Missouri Bar No. 33825
P. O. Box 360
Jefferson City, MO 65102
(573) 526-4887 (Telephone)
(573) 751-9285 (Fax)
Email: jeff.keevil@psc.mo.gov

/s/ Travis J. Pringle
Travis J. Pringle
Missouri Bar No. 71128
Chief Deputy Counsel,
P.O. Box 360
Jefferson City, MO 65102
573-751-5700 (Voice)
573-526-1500 (Fax)
travis.pringle@psc.mo.gov

Attorneys for the Staff of the
Missouri Public Service Commission

[137] Ex. 110, Majors Rebuttal, page 20, lines 3-25; Tr. Vol. 8, p. 188.
[138] Ex. 112, Davis Surrebuttal, page 6, line 12.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 10th day of May 2024.

/s/ Jeffrey A. Keevil