

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

In the Matter of the Petition of Union Electric)
Company d/b/a Ameren Missouri for a)
Financing Order Authorizing the Issue of)
Securitized Utility Tariff Bonds for Energy)
Transition Costs related to Rush Island)
Energy Center)

File No. EF-2024-0021

INITIAL BRIEF OF MIDWEST ENERGY CONSUMERS GROUP

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COMES NOW, the Midwest Energy Consumers Group, (“MECG”), and for its Initial Brief, respectfully states:

I. Introduction

Under the Missouri securitization law, Ameren Missouri can seek to securitize certain costs related to the closure of its Rush Island Energy center.¹ “Section 393.1700 allows utilities to petition the Commission for a financing order approving recovery of energy transition costs or qualified extraordinary costs through securitization. Energy transition costs relate to the retirement or abandonment of a power plant. § 393.1700.1(7).”² Any securitization order issued by the Commission must find that the costs sought to be securitized were prudently incurred and that “recovery of such costs ‘is just and reasonable and in the public interest,’”³

In the context of Liberty-Empire’s recent securitization proceeding, the Western District Court of Appeals has explained that “Just and reasonable rates ... allow public utilities to recover expenses that are (1) fair to both investors and ratepayers and (2) prudently incurred.”⁴ Furthermore, the Court cautioned that “[w]hat is just and reasonable depends on the facts and

¹ Mo. Rev. Stat. § 393.1700 *et. seq.*
² *Matter of Empire District Elec. Co. v. Public Service Commission*, 672 S.W.3d 868, 880 (Mo. Ct. App. W.D. 2023).
³ *Matter of Empire District Elec. Co. v. Public Service Commission*, 672 S.W.3d 868, 880 (Mo. Ct. App. W.D. 2023).
⁴ *Id.* (citing *Spire Mo., Inc. v. Pub. Serv. Comm’n* , 618 S.W.3d 225, 232 (Mo. banc 2021)).

circumstances of each particular case.”⁵

II. Allocation of Revenue Requirement

The Commission should allocate the securitized costs among the customer classes through a uniform percentage applied to the base components of all customers’ bills as outlined in the testimony of Maurice Brubaker.⁶ Although the Commission has previously utilized a voltage-adjusted kWh charge to recover securitized costs, doing so for the energy transition costs related to Rush Island is neither just and reasonable nor fair to customers based on the facts and circumstances in this case.

A. How these Rush Island costs would be reflected in a rate case.

Here, recovering the charge as a uniform percentage more closely tracks how the underlying costs would be included in rates. As a fundamental principal of ratemaking, the method of cost recovery should be related to the nature of the cost itself.⁷ For example, fuel costs are variable costs that are related to the energy produced and are typically allocated to and recovered from customers on the basis of kWh.⁸ Fixed costs – such as depreciation, return on investment, and associated taxes – do not vary with kWh consumption, and so, should not be recovered from customers on the basis of their kWh purchases. In this case, the major component of the amount to be securitized is the net plant in service of Rush Island energy center – approximately \$475 million.⁹

Parties agree that the underlying costs at issue in this case are “fixed costs”.¹⁰ Though Ameren Missouri’s initial testimony was supportive of a kWh basis because that is what was done

⁵ *Id.* (citing *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 86 S.W.3d 376, 384 (Mo. App. 2005)).

⁶ Brubaker Rebuttal, Ex. No. 550, p. 10.

⁷ Brubaker Rebuttal, Ex. No. 550, p. 5.

⁸ *Id.* at 6.

⁹ Brubaker Rebuttal, Ex. No. 550, p. 6.

¹⁰ Brubaker Rebuttal, Ex. No. 550, p. 6.

in the prior Securitization cases for Liberty-Empire and Evergy Missouri West, in his Surrebuttal testimony, Mr. Wills acknowledges that the cost allocation approach advocated by Mr. Brubaker “would unquestionably be another reasonable alternative for the Commission to consider.”¹¹ During the hearing, Ameren Missouri’s Mr. Wills testified that fixed costs are not normally recovered through an energy only allocation.¹² These costs would be recovered through the customer charge, energy, and demand components of a customer’s bill.

To get a sense of the impact on customers of the improper kWh allocation for these fixed costs compared to the uniform percentage approach by Mr. Brubaker, we can compare the two methods. As background, for these kinds of fixed costs associated with generation – Section 393.1620.2 RSMo discusses how it would be allocated in a rate case:

In determining the allocation of an electrical corporation's total revenue requirement in a general rate case, the commission shall only consider class cost of service study results that allocate the electrical corporation's production plant costs from nuclear and fossil generating units using the average and excess method or one of the methods of assignment or allocation contained within the National Association of Regulatory Utility Commissioners 1992 manual or subsequent manual.

During the hearing, Mr. Brubaker compared his uniform percentage approach to both the average and excess method and to the voltage adjusted kWh approach. For the residential and large primary customer classes he discussed in his example, the base rate allocation [proposed by Brubaker in this case] and the average and excess demand shares [as dictated by Section 393.1620.2 in a rate

¹¹ Wills Surrebuttal, Ex. No. 20, p. 18.

¹² Tr. Vol. 8, p. 81.

case] are similar, but the energy (kWh) basis yields dramatically different results.¹³ He testified:

For example, rounding out to whole numbers, for residential customers the base rate share's 51 percent. It's also 51 percent under average and excess. And for large primary, it's eight percent under base revenues and seven percent under average and excess.

In contrast, for a large primary, instead of seven or eight percent, the energy allocator is eleven percent, so it's 40 percent greater. And for a residential, it's pretty much the reversed. The energy factor would be 43 percent, which is 20 percent less than the average and excess or the base rate. So, much bigger. Much larger differences.¹⁴

In a table format for comparison, this looks as follows:

| Customer Class | Uniform Percentage (Brubaker's method) | Average and Excess (Section 393.1620.2) | kWh (energy allocator) |
|----------------|--|---|------------------------|
| Residential | 51% | 51% | 43% |
| Large Primary | 8% | 7% | 11% |

Using the voltage adjusted kWh energy allocator for securitized costs makes large energy users pay 40% more for these costs than they would if the Rush Island plant was allocated according to the Average and Excess method.¹⁵ In contrast, the uniform percentage approach advocated by Mr. Brubaker yields results closely aligned with the Average and Excess method. This extreme differential makes an energy allocator unreasonable based on the specific facts and circumstances in this docket. For this case, the voltage adjusted kWh recovery should be rejected. Instead, for

¹³ Tr. Vol. 8, p. 143.

¹⁴ Tr. Vol. 8, p. 143, lines 7-19.

¹⁵ Tr. Vol. 8, p. 143, lines 14-15.

the recovery of these fixed costs related to generation a uniform percentage charge to all customers should be adopted as a just and reasonable outcome in these circumstances.

B. Prior securitization recovery methods approved in Missouri are distinguishable.

As discussed above, the specific circumstances in this case – i.e. that the costs to be securitized are “fixed” in nature make this case distinguishable from the prior Liberty-Empire and Evergy West cases where a kWh allocator was adopted. In those cases, the majority of the costs were related to extraordinary variable costs incurred by those utilities in February 2021 during winter storm Uri.¹⁶ The nature of those costs were variable rather than fixed and would ordinarily be recovered through the fuel adjustment clauses of the respective utilities.¹⁷ So when the Commission chose to adopt a kWh recovery in those cases, there was some relationship between the nature of the underlying securitized costs and how it was recovered. For the Rush Island costs considered in the present case, these are fixed costs that should not be recovered on the basis of energy alone. As Mr. Wills testified, fixed costs are not normally recovered through an energy only allocation.¹⁸ While the Commission may have been persuaded in the Liberty-Empire and Evergy Missouri West securitization cases that a voltage adjusted kWh allocation was appropriate, under the facts and circumstances in evidence in this Rush Island case, such an allocation would be unjust and unreasonable. Instead, the Commission should implement the uniform percent charge for recovery of these securitized costs.

C. The Commission Staff’s criticisms of the uniform percentage approach are unfounded.

In its testimony and at hearing, Staff attempted to dissuade the Commission from adopting Mr. Brubaker’s uniform percent approach by floating a few imagined concerns. Each of those is

¹⁶ Brubaker Rebuttal, Ex. No. 550, p. 7.

¹⁷ *Id.*

¹⁸ Tr. Vol. 8, p. 81.

unfounded and was addressed during the evidentiary hearing. First, Mr. Brubaker testified that the uniform percent approach is not some novel, untested way of collecting securitized charges.¹⁹ It has been done in other jurisdictions.²⁰ Second, Staff's concern about the size of two equal bond payments being a problem for bondholders is unfounded. Mr. Brubaker testified in his experience that there were no issues with collecting and paying the bonds based on this basic structure.²¹ Bondholders are concerned about getting the money, not the specific mechanism.²² Third, Staff's concern about volatility in bills associated with an equal percentage charge is overstated. As Mr. Brubaker noted, this percentage at issue in this case is approximately 1.8% as compared to the 4 or 5 % gross receipts tax that customers pay on their bills now, so there would be less volatility for collecting securitization payments from customers than already exist in terms of paying for gross receipts tax.²³ Fourth, Staff's concern about the complexity of tariffs is imagined. Mr. Brubaker testified his method is more direct and less complicated than the method proposed by the Staff: stating "[i]t's a simple matter of calculating the percentage and then applying that to the customer's bills on a monthly basis."²⁴ Mr. Wills agreed that Ameren Missouri would be able to implement Mr. Brubaker's recommendation. In sum, Staff's criticism of the uniform percentage allocation of these securitized costs in this case are overstated, imagined, and unfounded.

Furthermore, the way that a uniform percentage charge would be allocated also tracks with the provisions with in the securitization statute related to allocation among the customer classes at Section 393.1700.2(3)(c)h, RSMo.:

A financing order issued by the commission, after a hearing, to an electrical corporation shall include all of the following elements:

¹⁹ Tr. Vol. 8, p. 140.

²⁰ *Id.*

²¹ Tr. Vol. 8, p. 141.

²² Tr. Vol. 8, p. 152.

²³ Tr. Vol. 8. P. 153.

²⁴ Tr. Vol. 8, p. 141.

...

h. How securitized utility tariff charges will be allocated among retail customer classes. The initial allocation shall remain in effect until the electrical corporation completes a general rate proceeding, and once the commission's order from that general rate proceeding becomes final, all subsequent applications of an adjustment mechanism regarding securitized utility tariff charges shall incorporate changes in the allocation of costs to customers as detailed in the commission's order from the electrical corporation's most recent general rate proceeding;²⁵

Both Mr. Brubaker and Ameren Missouri's Mr. Wills testified that the changes after a rate case would need to be adjusted by taking the output of the rate case base revenues and then plugging those new base revenues into the formula in the securitized utility tariff.²⁶ This kind of process would be totally consistent with Section 393.1700.2(3)'s directive to incorporate changes as detailed in the Commission's order from the electrical corporation's most recent general rate proceeding. This process is "just basic math."²⁷

III. Conclusion

What is just and reasonable depends on the facts and circumstances of each case.²⁸ Here, the specific facts and circumstances make a voltage adjusted kWh allocation of these Rush Island costs unreasonable, and so, it should be rejected. Instead, the Commission should rely on the uniform percent charge approach proposed in the testimony of Mr. Brubaker. His method has been implemented in other jurisdictions and, of the approaches for the Commission to consider in this case, most closely aligns with how the Rush Island costs would be allocated in a general rate case.

WHEREFORE, MECG submits its Initial Brief.

Respectfully,

/s/ Tim Opitz

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²⁵ Section 393.1700.2(3)(c)h, RSMo.

²⁶ Tr. Vol. 8, pp. 149-150.

²⁷ Tr. Vol. 8, p. 149, line 25.

²⁸ *Id.* (citing *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 86 S.W.3d 376, 384 (Mo. App. 2005)).

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Certificate of Service

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 10th day of May 2024:

/s/ Tim Opitz
