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

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| 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 |

# The Office of the Public Counsel's Initial Brief

Respectfully submitted,

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**COMES NOW** the Office of the Public Counsel ("OPC") and for its Initial Brief states:

## Introduction

Union Electric Company d/b/a Ameren Missouri is seeking Commission authority to impose non-bypassable[1] (unavoidable) charges on its about 1.2 million retail electric customers totaling approximately $780 million over fifteen years as security for and to fund about $520 million in 15-year bonds it seeks authority to issue in 2024. Through proceeds from the sale of the bonds Ameren Missouri is seeking to recover about $508 million of "energy transition costs" for its Rush Island coal-fired electricity generating resource that it intends to prematurely abandon—permanently cease to operate—in October of 2024. Missouri's securitization statute, codified at § 393.1700, RSMo, provides for an alternative to general ratemaking which allows a utility to get near-term bond proceeds rather than less certain recovery of its investment in and costs incurred for generating plants that it abandons through Commission-approved general rates over time.

To authorize Ameren Missouri to securitize Rush Island "energy transition costs," the Commission must opine that it is both "reasonable" and "prudent" for Ameren Missouri to abandon Rush Island.[2] Further, the Commission must find in its order authorizing securitization "that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest ***and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance***

[1] Unavoidable. "Bypass" verb meanings are: (1) to avoid (an obstruction, city, etc.) by following a bypass; (2) to cause (fluid or gas) to follow a secondary pipe or bypass; and (3) to neglect to consult or to ignore the opinion or decision of: He bypassed the foreman and took his grievance straight to the owner. Dictionary.com, LLC (April 23, 2024) *Dictionary.com*. Accessed 2:30 PM April 23, 2024, at https://www.dictionary.com/browse/bypass.
[2] § 393.1700.1(7)(a), RSMo.

***of securitized utility tariff bonds***." (Emphasis added). § 393.1700.2(3)(c)b, RSMo. The record in this case does not provide sufficient basis for the Commission to opine that Ameren Missouri was "reasonable" and "prudent" in its decisions related to abandoning Rush Island, nor is it sufficient to support a finding that securitization will provide Ameren Missouri's customers with the required "quantifiable net present value benefits." For these reasons the Commission should deny Ameren Missouri's petition for authorization to securitize Rush Island "energy transition costs."

Further, on various grounds Public Counsel disagrees with Ameren Missouri regarding amounts it seeks to include in its quantification of Rush Island "energy transition costs." Those grounds include that the costs do not qualify as "energy transition costs," Ameren Missouri has not quantified them correctly, the record does not support Ameren Missouri's quantification, and Ameren Missouri's customers are better off if the costs are addressed in a rate case rather than securitized.

Public Counsel's argument on the issues presented in this case follow.

## Argument

**Issue No. 3. Prudence of Retirement**
**Is it reasonable and prudent for Ameren Missouri to abandon or retire Rush Island during September 1 through October 15 of 2024?**

OPC position summary: Whether it is prudent for Ameren Missouri to abandon or Rush Island during September 1 to October 15, of 2024 cannot be determined on the record in this case.

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

OPC position summary: In the EPA's Clean Air Act enforcement action Judge Sippel found that Ameren Missouri either knew or should have known that its projects required NSR

permits; therefore, it was unreasonable and imprudent of Ameren Missouri to undertake those projects and continue to operate Rush Island afterward without NSR permits and despite EPA's enforcement action. Ameren Missouri's unreasonable and imprudent actions exposed the public to more than 162,000 tons of excess $SO_2$ emissions.

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

OPC position summary: In the EPA's Clean Air Act enforcement action Judge Sippel found that Ameren Missouri either knew or should have known that its projects required NSR permits; therefore, it was unreasonable and imprudent of Ameren Missouri to continue to operate Rush Island without flue gas desulfurization equipment. Ameren Missouri's unreasonable and imprudent actions exposed the public to more than 162,000 tons of excess $SO_2$ emissions.

Missouri statute—§ 393.1700.1(7)(a), RSMo—requires that to authorize Ameren Missouri to securitize Rush Island energy transition costs the Commission must "deem" Ameren Missouri's early abandonment of Rush Island in October 2024 to be both "reasonable" and "prudent."[3]

Black's Law Dictionary 11th edition defines "reasonable" to mean:

1. Fair, proper, or moderate under the circumstances; sensible
2. According to reason[4]

Black's Law Dictionary 5th edition defines "reasonable" to mean:

> Fair, proper, just moderate, suitable under the circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rational; governed by reason. Thinking, speaking, or acting according to the dictates of reason. Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable. *Cass v. State*, 124 Tex.Cr.R. 208, 61 S.W.2d 500.

In contrast to "reasonable," Black's Law Dictionary 11th edition defines "prudent" to mean, "Sensible and careful, esp. in trying to avoid unnecessary risks; circumspect or judicious in one's

[3] § 393.1700.1(7)(a), RSMo.
[4] *Black's Law Dictionary* 1518 (11th ed. 2019).

activities."[5] The foregoing definitions of "reasonable" and "prudent" show that being "prudent" entails more caution, *i.e.*, less risk than being "reasonable" does.

The primary purpose of the Commission is to protect consumers from the natural monopoly of utilities;[6] therefore, the Commission must evaluate the reasonableness and prudency of Ameren Missouri abandoning Rush Island from the perspective of Ameren Missouri's existing and potential customers. For the Commission to authorize Ameren Missouri to impose unavoidable charges on its customers to service bonds Ameren Missouri issues to recoup its "energy transition costs" for Rush Island through the proceeds of the bonds, the Commission specifically must opine that, from the perspective of Ameren Missouri's customers, it is both reasonable and prudent for Ameren Missouri to abandon Rush Island. Because it is seeking Commission authorization to issue the bonds, Ameren Missouri has the burden of showing the reasonableness and prudency of it prematurely abandoning Rush Island in October 2024.[7] Ameren Missouri has not satisfied that burden.

Ameren Missouri is prematurely abandoning Rush Island because, after a decade of litigation, it lost an EPA Clean Air Act enforcement action. That loss requires Ameren Missouri to reduce $SO_2$ emissions at Rush Island.[8] Initially, Judge Sippel, presiding judge for the United

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[5] *Black's Law Dictionary* 1482 (11th ed. 2019).
[6] See *State ex rel. Util. Consumers Council, Inc. v. Pub. Serv. Com.*, 585 S.W.2d 41, 47 (Mo. 1979).
[7] See Office of the Pub. Counsel v. Mo. PSC, 409 S.W.3d 371 (Mo. 2013) (no presumption of prudence); Ag Processing Inc. v. KCP&L Greater Mo. Operations Co., 385 S.W.3d 511 (Mo. Ct. App. 2012) (burden of proof on complainant); Johnson v. Simpson Oil Co., 394 S.W.2d 91 (Mo. Ct. App. 1965)(burden of proof to show statutory elements is on party seeking the statutory relief).
[8] EPA brought the action in 2011 after issuing notices of violation in 2010 (Ex. 609; *United States of America v. Ameren Missouri*, United States District Court for the Eastern District of Missouri, Eastern Division, Case No. 4:11 CV 77 RWS, January 27, 2012, *Memorandum and Order*, p. 12.; and *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 914, and 918 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, pp. 1 & 9.); the courts finally determined Ameren Missouri's liability in 2021 (*United States v. Ameren Mo.*, 9 F.4th 989 (8th Cir. 2021); Ex. 110, Staff witness Keith Majors rebuttal testimony, Sch. KM-r3); and the court required Ameren Missouri to reduce emissions at Rush Island (Ex. 606; *United States of America v. Ameren Missouri*, United States District Court for the Eastern District of Missouri, Eastern Division, Case No. 4:11 CV 77 RWS, September 30, 2019, *Memorandum Opinion and Order* (reduce $SO_2$ emissions) and Ex. 610, Order Granting Motion to Modify, Dated 2023-09-30 (abandon Rush Island).

States Court, Eastern District of Missouri, ordered Ameren Missouri to reduce $SO_X$ emissions from Rush Island to "no less []than 0.05 lb $SO_2$/mmBTU on a thirty-day rolling average,"[9] but, at Ameren Missouri's request, he modified his judgment to order Ameren Missouri to "terminate operation of Rush Island's coal-fires boilers (Units 1 and 2) no later than 11:59 p.m. on October 15, 2024."[10] While how it will be accomplished is yet unresolved, Ameren Missouri will also be required to take remedial action for the "more than 162,000 tons of excess $SO_2$ emissions" that "increased the risk of health problems and premature mortality in the exposed population" due to the unlawful emissions released at Rush Island.[11]

Because losing that EPA Clean Air Act enforcement action is the impetus for Ameren Missouri's decision to abandon Rush Island, what happened in that action bears on the reasonableness and prudency of Ameren Missouri's abandonment of Rush Island.

One element the EPA had to prove in its enforcement action was that when Ameren Missouri undertook its 2007 and 2010 projects at Rush Island it "expected, or should have expected, that its projects would result in a 'significant net emissions increase' of sulfur dioxide or nitrogen oxide at [Rush Island]."[12] As shown in the quote from his liability opinion that follows, Judge Sippel found that Ameren Missouri undertook its 2007 and 2010 projects to increase the availability and operational capacity of Rush Island.[13] He found that because Ameren Missouri's intent with the projects was to increase the availability and operational capacity of Rush Island, Ameren Missouri knew, or should have known, that the projects obligated Ameren Missouri to

[9] *United States v. Ameren Mo.*, 421 F. Supp. 3d 729, 824 (E.D. Mo. 2019); Ex. 606 - Remedy Opinion 2019, p. 157.
[10] Ex. 610 - Order Granting Motion to Modify, Dated 2023-09-30.
[11] *United States v. Ameren Mo.*, 421 F. Supp. 3d 729, 741(E.D. Mo. 2019); Ex. 606 - Remedy Opinion 2019, p. 10.
[12] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 986-87 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, Sch. KM-r2, pp. 134-35, *citing* United States v. Ala. Power Co., 730 F.3d 1278, 1282 (11th Cir. 2013).
[13] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 915, 937-42 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, pp. 3, 4, 45-52.

conduct Clean Air Act PSD reviews before undertaking the projects, and if it went forward with them, to secure required EPA air permits and install required pollutant emissions controls.[14] He found that Ameren Missouri went "ahead with the projects, spending $34 to $38 million on each unit to replace the problem components without "report[ing] its planned modifications to the EPA, obtain[ing] the requisite [CCA] permits, or install[ing] state-of-the-art pollution controls."[15] He also found that Ameren Missouri's decisions to not comply with the Clean Air Act at Rush Island resulted in "more than 162,000 tons of excess $SO_2$ emissions and increased the risk of health problems and premature mortality in the exposed population."[16] He summarized his findings and conclusions in the following passages from his liability opinion:[17]

> By 2005, some of the major boiler components in Units 1 and 2 were causing problems that forced Ameren to frequently take the units out of service and made the units underperform, reducing the amount of electricity Ameren could generate and sell from the units. Ameren decided to fix these problems by replacing the problem components with new, redesigned components. Courts in PSD enforcement actions have long recognized that "[i]f the repair or replacement of a problematic component renders a plant more reliable and less susceptible to future shut-downs, the plant will be able to run consistently for a longer period of time," burning more coal and emitting more pollution. *United States v. Ala. Power Co., 730 F.3d 1278, 1281 (11th Cir. 2013)*; *see also United States v. Ohio Edison, 276 F. Supp. 2d 829, 834-35 (S.D. Ohio 2003)*. When these conditions occur, as they did here, they trigger a utility's obligation to conduct PSD review, secure the appropriate permits, and install required pollution controls.
>
> 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.

[14] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 915, 945-998 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, pp. 3-4, 58-155.
[15] 229 F. Supp. 3d at 915; Ex. 110, Sch. KM-r2 at p. 4.
[16] *United States v. Ameren Mo.*, 421 F. Supp. 3d 729, 741(E.D. Mo. 2019); Ex. 606 - Remedy Opinion 2019, p. 10.
[17] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 915 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, Sch. KM-r2.

Instead, Ameren went ahead with the projects, spending $34 to $38 million on each unit to replace the problem components. It executed these projects as part of "the most significant outage in Rush Island history," taking each unit completely offline for three to four months. Ameren's engineers justified the upgrade work to company leadership on the basis that the new components would eliminate outages and the investment would be returned in recovered operations.

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 $SO_2$ pollution.

Now that the projects have been completed, the evidence shows that Ameren's expected operational improvements actually occurred. Replacement of the failing components increased availability at both units by eliminating hundreds of outage hours per year. Unit 2 capacity also increased. Ameren's employees have admitted that those availability increases would not have happened but for the projects. As a result of the operational increases, the units ran more, burned more coal, and emitted hundreds of tons more of $SO_2$ per year.

In response to these projects, the United States filed this suit against Ameren, alleging that Ameren violated the *Clean Air Act*, the Missouri State Implementation Plan, and Ameren's Rush Island Plant Title V Permit by performing major modifications on Units 1 and 2 without obtaining the required permits, installing state-of-the-art pollution control technology, or otherwise complying with applicable requirements.

Previously, in ruling on the parties' summary judgment motions, I set out several of the legal standards at issue in this case. *See* *Ameren SJ Decision, 2016 U.S. Dist. LEXIS 22323, 2016 WL 728234, at *13* (ruling on the parties' various motions for partial summary judgment and evidentiary motions); *United States v. Ameren Missouri, 158 F. Supp. 3d 802, 804 (E.D. Mo. 2016)* (denying Ameren's motion for full summary judgment). I held a twelve day non-jury trial beginning on August 22, 2016. The parties filed post-trial briefs and proposed findings of fact and conclusions of law on September 30, 2016 and argued outstanding evidentiary issues that were raised at trial. On October 12, 2016, the parties filed responses to each other's post-trial briefs.

After consideration of the testimony given at trial, the exhibits introduced into evidence, the parties' briefs, and the applicable law, I make the following findings of fact and conclusions of law, which largely adopt those proposed by the United States. As discussed below, I conclude the United States has established that Ameren should have expected, and did expect, the projects at Rush Island to

> increase unit availability (and, for Unit 2, to increase capacity), which enabled Ameren to run its units more, generate more electricity, and emit significantly more pollution. The United States has also established that Ameren actually emitted significantly more pollution as a result of the projects. Ameren has failed to establish that either the routine maintenance or demand growth defenses apply to shield it from liability. As a result, I conclude that the United States has established by a preponderance of the evidence that Ameren violated the PSD and Title V provisions of the *Clean Air Act*.[18]

Following his summary, Judge Sippel made detailed findings of fact and conclusions of law, which include findings and conclusions that support his summarization. Ameren Missouri never obtained the required EPA air permits or installed $SO_X$ emissions controls at Rush Island;[19] instead, it steadfastly opposed EPA's PSD enforcement action for over a decade, ultimately losing.[20] Ameren Missouri is collaterally estopped from relitigating Judge Sippel's findings and conclusions. *E. Mo. Landowners All. v. P.S.C. (In re Invenergy Transmission LLC)*, 604 S.W.3d 634 (Mo. Ct. App. 2020).

Further, regarding the EPA, Ameren Missouri witness Karl Moor explained in the hearing that "There are really two parts of EPA,"[21] the Office of Enforcement Compliance and Assurance ("OECA") and the Office of Air Policy. Mr. Moor explained that the "number two at EPA" intervened between a difference of enforcement opinion and "had to step in and referee between OECA and the policy shop" in 2005.[22] OECA and the Office of Air Policy took different positions on the enforcement of NSR applicability when Ameren Missouri was planning the projects at Rush Island. Regardless of the signal sent by the Bush administration that the enforcement initiative begun in 1999 would cease, "the two sides of that house [the EPA] did not agree on NSR…And

[18] 229 F. Supp. 3d at 915-16; Ex. 110, Sch. KM-r2 at pp. 3-5.
[19] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 985 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, p. 132.
[20] *United States v. Ameren Mo.*, 9 F.4th 989 (8th Cir. 2021); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r3.
[21] Tr. 4:35, Ameren Missouri witness Karl Moor.
[22] Tr. 4:35-36, Ameren Missouri witness Karl Moor.

so the house was truly divided and it never really came back together."[23] Mr. Moor explained that under the Obama administration certain EPA policy changes were in the Federal Register, and thus knowable to Ameren Missouri both in content and in intention.[24] "But," Mr. Moor went on, "with the NSR cases, look, we didn't know what they wanted and what they were going to do to us…And from 1999 until 2015, we fought it."[25] Ameren Missouri witness Karl Moor was intimately involved with the EPA on these issues and he plainly says that it was unclear what the EPA wanted and unclear what the EPA was going to do regarding NSR applicability enforcement. Ex. 200, EPA letter to Detroit Edison Company regarding applicability of NSR and PSD to the proposed Dense Pack project, shows a route that Ameren Missouri knew, or should have known, and could have followed instead of the one it did. In this letter the EPA gives an applicability determination directly to Detroit Edison Company, removing any ambiguity or uncertainty regarding NSR applicability or enforcement for its project. Since a prudent company would have taken different actions, the record does not support a finding that it was prudent for Ameren Missouri to undertake and complete its projects.

Ameren Missouri chose not to obtain the required EPA air permits or install $SO_X$ emissions controls at Rush Island;[26] instead, it steadfastly opposed EPA's PSD enforcement action for over a decade, ultimately losing.[27] While that was neither reasonable nor prudent, the record does not show, other than conducting a PSD review, what would have been reasonable and prudent for Ameren Missouri to have done instead. At least four possibilities are apparent. First, Ameren Missouri could have completed the projects as planned, added scrubbers, and continued to operate

[23] Tr. 4:37, Ameren Missouri witness Karl Moor.
[24] Tr. 4:37, lines 12-21, Ameren Missouri witness Karl Moor.
[25] Tr. 4:37-38, Ameren Missouri witness Karl Moor.
[26] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 985 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, p. 132.
[27] *United States v. Ameren Mo.*, 9 F.4th 989 (8th Cir. 2021); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r3.

Rush Island. Second, Ameren Missouri could have continued to operate Rush Island without making any changes to it. Third, Ameren Missouri could have performed different projects that qualified for the routine maintenance, repair and replacement exception and continued to operate Rush Island. Fourth, Ameren Missouri could have retired Rush Island. What Ameren Missouri should have done is unascertainable from the evidence in this case; however, even among this short list of possibilities when to retire or abandon Rush Island varies substantially from October 2024 which is why this Commission cannot deem it reasonable and prudent for Ameren Missouri to prematurely abandon Rush Island in October 2024.

Further, even if Judge Sippel's opinion did not collaterally estop the Commission, Ameren Missouri was aware of, or should have been aware of, the EPA's 1999 Clean Air Act PSD enforcement initiative[28] initiated during President Clinton's administration (1993-2001). It also was aware, or should have been aware, that during George W. Bush's administration (2001-2009) the EPA stopped initiating Clean Air Act PSD enforcement actions except unless there was an emissions increase based on the potential-to-potential test[29]—a test for whether the original design capacity of generating units is changed.[30] It also was aware, or should have been aware, that during those same eight years of George W. Bush's administration there were "a series of NSR rulemakings . . . that were all aimed at the -- at -- at this [1999] enforcement initiative and trying to get it under control."[31] In particular, in 2005 during George W. Bush's administration (2001-2009), the EPA proposed a rule that would have revised its routine maintenance, repair, and

[28] Tr. 2:65, Ameren Missouri witness Jeffrey Holmstead (who was on the White House Staff of President George H.W. Bush from 1989 to 1993, and employed by the EPA from 2001-2005; Ex. 10, Ameren Missouri witness Jeffrey Holmstead direct testimony, pp. 1-2); Tr. 4:30, Ameren Missouri witness Karl Moor.
[29] Tr. 2:85-86, Ameren Missouri witness Jeffrey Holmstead.
[30] Tr. 2:72, Ameren Missouri witness Jeffrey Holmstead.
[31] Tr. 4:30, Ameren Missouri witness Karl Moor.

replacement exception to include within the exception projects such as Ameren Missouri's 2007 and 2010 projects.[32]

Ameren Missouri could have sought EPA determinations of the applicability of New Source Review ("NSR") permitting under the Prevention of Significant Deterioration ("PSD") program to its Rush Island projects. Those applicability determinations would have made unambiguous EPA's positions on the applicability of the NSR rules for its Rush Island projects.[33] It was unreasonable and imprudent for Ameren Missouri not to seek EPA determinations of the applicability of New Source Review ("NSR") permitting under the Prevention of Significant Deterioration ("PSD") program to its 2007 and 2010 Rush Island projects before it undertook them.

In the 2005 to 2010 timeframe when it imprudently planned and undertook the 2007 and 2010 projects, Ameren Missouri had many other options for Rush Island, including, but not limited to, the following: (1) complete the projects as planned, add scrubbers, and continue to operate Rush Island; (2) continue to operate Rush Island without making any changes to it; (3) perform different projects that qualified for the routine maintenance, repair and replacement exception and continue to operate Rush Island; and (4) retire Rush Island. There is no evidence in the record regarding which alternative(s), among these or others, would have been prudent; however, even among these four possibilities, when to retire or abandon Rush Island varies substantially from October 2024.

If Ameren Missouri was as well-informed about the Clean Air Act and PSD requirements as it claims, the Commission might conclude on the record before it that Ameren Missouri took a

[32] 70 Federal Register 61081 (viewable at https://www.govinfo.gov/content/pkg/FR-2005-10-20/pdf/05-20983.pdf when accessed at 5:29 PM, May 2, 2024); Tr. 2:73-75, Ameren Missouri witness Jeffrey Holmstead.
[33] Tr. 4:37, Ameren Missouri witness Karl Moor, "But with the NSR cases, look, we didn't know what they wanted and what they were going to do to us"; and Ex. 200, EPA Letter of Applicability Determination for Detroit Edison Power regarding the proposed Dense Pack project at its Monroe coal plant.

calculated risk (1) that the EPA would expand its routine maintenance, repair, and replacement exception to include the 2007 and 2010 projects near when it undertook them, (2) that the EPA would not revive its 1999 Clean Air Act PSD enforcement initiative initiated during President Clinton's administration (1993-2001) for at least five years after Ameren Missouri completed those projects,[34] or (3) that this Commission would allow Ameren Missouri to pass onto its retail customers any adverse economic consequences it incurred due to its choice not to comply with the PSD requirements. Ameren Missouri's ultimate decisionmakers on the projects did not testify in this case,[35] so whether they were so informed and astute is unknown.

Alternatively, a more cynical Commission might conclude that company decisionmakers' self-interest drove Ameren Missouri's choice— "The company tracks [generating unit] availability 'quite closely' and awards salary bonuses under its "Key Performance Indicator" program to some employees based in part on meeting availability targets" and Ameren Missouri's customers pay for those bonuses.[36]

On the record in this case, given Judge Sippel's findings and the lack of evidence on what Ameren Missouri could have done that would have been reasonable and imprudent instead of its 2007 and 2010 projects, the Commission cannot find that it is "reasonable" or "prudent" for Ameren Missouri to abandon Rush Island in October 2024.

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[34] The EPA did not initiate its PSD enforcement action against Ameren Missouri until 2010-2011 during President Barack Obama's administration (2009-2017). *United States v. Ameren Mo*., 229 F. Supp. 3d 906, 918-19 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, p.9. Judge Sippel dismissed two counts of that enforcement action as time barred after Ameren Missouri raised the applicable five-year statute of limitation. *United States v. Missouri*, No. 4:11 CV 77 RWS, 2012 U.S. Dist. LEXIS 39344; 42 ELR 20023; 75 ERC (BNA) 1406; 2012 WL 262655 (E.D. Mo. Jan. 27, 2012); Ex. 609, Order on MTD, pp. 11-17 (Dismissing EPA counts based on allegations Unit 1 underwent a major modification from September 2001 to February 2002 and that Unit 2 underwent a major modification from November 2003 to January 2004.).

[35] Gary Rainwater, Ameren CEO; Thomas R. Voss, Ameren Missouri Chief Operating Officer; Capital Project Oversight Committee; Warner Baxter, Ameren CEO, and Ameren's full Board of Directors. *United States v. Ameren Mo*., 229 F. Supp. 3d 906, 937 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, p.44, findings 136 & 137.

[36] *United States v. Ameren Mo*., 229 F. Supp. 3d 906, 932 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, p.34.

**Issue No. 1. Net Present Value Benefits (Customer Benefit from Securitization)**

**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?** No.

**a. What constitutes traditional financing and recovery?**

OPC position summary: Rush Island is the type of significant capital asset which a utility traditionally would finance by a mix of long-term capital, which includes common equity and long-term debt. Ex. 201, OPC witness David Murray rebuttal testimony, pp. 11-12. Utilities for whom the Commission regulates their retail rates recover costs for such assets through general rates to the extent the Commission allows depending on the circumstances. For prudent assets, while they are used and useful, they are included in rate base and recovery is had through depreciation expense with the rate of return allowed on the undepreciated balance. No recovery is allowed for imprudent assets. When a capital asset ceases to be used and useful, traditional recovery of the net book balance and prudent necessary costs associated with the cessation is through a regulatory asset calculated by a straight-line amortization with no return on the unamortized balance. Ex. 201, OPC witness David Murray rebuttal testimony, pp. 2-5 and Ex. 202, OPC witness David Murray surrebuttal testimony, pp. 2-10.

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

OPC position summary: Ameren Missouri already has financed its net book value for Rush Island by debt, equity, and accumulated deferred income taxes. Public Counsel assumes Ameren Missouri has similarly financed the other Rush Island costs it already has incurred. Ameren Missouri has not yet financed those energy transition costs components that it has not yet incurred. Those components include safe closure costs, decommissioning costs, etc. If the Commission were to allow recovery, it would do so through the traditional method of recovery described in response to 1.a. above, *i.e.*, through the rate impacts of one or more regulatory assets calculated by a straight-line amortization with no return on the unamortized balance. Ex. 201, OPC witness David Murray rebuttal testimony.

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

OPC position summary to first question: If the Commission allowed recovery, through the rate impacts of the traditional method of recovery described in response to 1.a. above, *i.e.*, through a regulatory asset calculated by a straight-line amortization with no return on the unamortized balance; and, if the Commission were to allow a return on the regulatory asset,

the return should be applied to the declining balance, which results in higher ratepayer payments at the beginning of the amortization and lower ratepayer payments at the end of the amortization. Ex. 201, OPC witness David Murray rebuttal testimony, pp. 3-4. Ameren Missouri witness Mitchell Lansford's suggested method of recovery absent securitization, which Staff adopted for purposes of its NPV analysis, is not consistent with general ratemaking. Mr. Lansford's Schedule MJL-4 (ln. 9, column C) indicates that retail customers would pay levelized payments over the 15-year amortization period.[37] This is not consistent with determining a revenue requirement by applying the authorized ROR to the asset balance. Although Staff adopted Mr. Lansford's approach in its testimony, Staff's position statement stated the following:

> Absent securitization, the method of recovery would be an amortization of a regulatory asset for the Rush Island energy transition costs. 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.[38]

Therefore, despite Staff's use of Mr. Lansford's method to determine the NPV of quantifiable benefits/costs of securitization, Staff recognized the correct traditional approach for cost recovery absent securitization.

OPC position summary to second question: The Commission would not allow a return any higher than a debt return under traditional recovery. Ex. 201, OPC witness David Murray rebuttal testimony, pp. 5-6, and Ex. 202, OPC witness David Murray surrebuttal testimony, pp. 12-15.

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

OPC position summary: Discount rates ranging from 4% (about the 10-year US Treasury bond discount rate) to 6.82% (what Ameren Missouri asserts is its weighted average cost-of-capital), with the most weight given to the projected securitized bond rate, which should lie within this range. Ex. 201, OPC witness David Murray rebuttal testimony, p. 16.

A securitization financing order must include "[a] finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest ***and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized***

[37] Ex. 1, Ameren Missouri witness Mitchell J. Lansford direct testimony, Schedule MJL-D4.
[38] Staff's Statement of Position, p. 3.

***utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds***." (Emphasis added). § 393.1700.2(3)(c)b, RSMo.

While Ameren Missouri claims that issuing the bonds will save its retail customers about $76 million on a net present value basis, Ameren Missouri's retail customers only benefit if the aggregate bond charges are less than the aggregate amount the Commission would allow to be recovered through general rates.

Ameren Missouri's purported $76 million of savings is phantom. Instead of comparing projected ratemaking treatment to securitization, Ameren Missouri derives its "savings" based on an unrealistic calculation where it applies a ratemaking weighted average cost-of-capital to the "energy transition costs." But "energy transition costs" are not assets that are used and useful for providing electricity to Ameren Missouri's customers and, when ratemaking the Commission only applies a weighted average cost-of-capital to a utility's rate base, which is the utility's capital investment for assets that are used and useful for providing electric service.

Even if the Commission were to allow Ameren Missouri to recover the amount of its remaining net book value and costs associated with abandoning Rush Island over time through general rates and carrying costs at the cost of long-term debt (4.05%), because the projected bond rate (5.59%) exceeds that long-term debt rate, securitization would not provide actual net customer benefits. Ameren Missouri's phantom net customer benefits result from it treating its net book value in Rush Island and costs associated with it abandoning Rush Island as if they were rate based and applying carrying costs at what it views to be its pre-tax weighted average cost of capital (composite pre-tax rate-of-return) (8.36%). Because 8.36% exceeds 5.59% Ameren Missouri

asserts securitization would benefit its customers. That assertion is false because Ameren Missouri grossly overstates the carrying costs the Commission authorizes absent securitization.[39]

Without securitization, the avenue potentially available in Missouri for a Commission rate-regulated electric utility potentially to recover its investment in assets that it retires before it has fully depreciated for regulatory purposes is in a general rate case where that unrecovered investment is one of the "all relevant factors" the Commission considers when deciding general rates.[40] Assets that are not used and useful are excluded from the rate base upon which a utility is allowed a return.[41] Once abandoned, Rush Island will be neither used nor useful for providing electricity to Ameren Missouri's customers.

Public Counsel witness David Murray testified that the Commission emphasized that it does not allow a return on a utility's investment in plant that is not both used and useful in its 2022-2023 finally amended (issued September 22, 2022) and corrected (March 29, 2023, and November 29, 2023) consolidated financing order in Liberty's securitization cases, Case Nos. EO-2022-0040 and 0193.[42] The Commission took official notice of those orders during the evidentiary hearing in this case. Tr. 6:245-46. On pages 67 (abandoned environmental capital projects) and 71-72 (generating plant carrying costs) of that report and order the Commission specifically stated,

> **Conclusions of Law**
>
> SS. The Missouri Court of Appeals has held that "the utility property upon which a rate of return can be earned must be utilized to provide service to

[39] Ex. 201, OPC witness David Murray rebuttal testimony, pp. 2-10; Ex. 202, OPC witness David Murray surrebuttal testimony, p. 3.
[40] See *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo., 293 S.W.3d 63*, 74-76 (Mo. App. 2009) (excluded from rate base and amortized); *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, effective September 14, 2000, Case No. WR-2000-281, 9 Mo. P.S.C. 3d 254, 286-87 (Original cost removed from rate base and accumulated depreciation removed from depreciation reserve).
[41] *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo*., 293 S.W.3d 63 (Mo. App. 2009); *State ex rel. Union Elec. v. Pub. Serv. Comm'n*, 765 S.W.2d 618 (Mo. App. 1988).
[42] Ex. 201, OPC witness David Murry rebuttal testimony, pp. 3,4, and 12; Ex. 202, OPC witness David Murray surrebuttal testimony, p. 4.

customers. That is, it must be used and useful." [citing by footnote186 to *State ex rel. Union Elec. Co. v. Pub. Serv. Com's of State of Mo*., 765 S.W.2d 618, 622 (Mo. App. W.D. 1988)]

TT. The fact that a cost item is no longer used and useful does not prevent a utility from recovering the cost of that item so long as it is not seeking to earn a return on that investment. [citing by footnote 187 to *State ex rel. Missouri Office of Pub. Counsel v. Pub. Serv. Com'n*, 293 S.W.3d 63 (Mo. App. S.D. 2009).]

* * * *

**Decision**

The cost of the abandoned environmental projects at Asbury meet the definition of energy transition costs as defined by the securitization statute. As such those costs may be recovered through securitization. However, those costs would not be includible in Liberty's ratebase and thus it may not recover a return on those investments[.]

* * * *

**Conclusions of Law**

YY. In a 1988 case, the Missouri Court of Appeals upheld a Commission decision to deny rate recovery of $106.3 million for cancellation costs related to the abandoned Callaway II nuclear plant. The Commission had found that such cancellation costs were not a just and reasonable expense to be placed in rates and charged to ratepayers. In upholding the Commission's decision, the Court of Appeals held that "the utility property upon which a rate of return can be earned must be utilized to provide service to customers. That is, it must be used and useful." [citing by footnote 202 to *State ex rel. Union Elec. Co. v. Pub. Serv. Com's of State of Mo.* 765 S.W.2d 618, 622 (Mo. App. W.D. 1988).]

**Decision**

* * * *

As the Commission has concluded above, Missouri law generally holds that for a utility to be able to recover a return on a property, that property must be used and useful. . . . .

* * * *

Here, Liberty is seeking to recover its full carrying costs on a generation facility that has not been used and useful since its effective retirement in December 2019. The Commission finds that such full recovery is not just and reasonable. Under these circumstances a more limited recovery of carrying costs for the period after the Asbury plant was removed from Liberty's rates, beginning in June 2022 is just and reasonable.

The ratemaking principles the Commission cited for securitization carrying costs apply equally to evaluating the benefits of securitization itself. When Ameren Missouri abandons—permanently ceases to operate—Rush Island, Rush Island will neither be used nor useful for electric service.

If the Commission were to allow Ameren Missouri to recover Rush Island energy transition costs through general rates, it would do so by including them in one or more regulatory assets where they are amortized over a period of years, and then include the annual amount in Ameren Missouri's cost-of-service used for designing general rates.[43] When reciting facts of the Commission's proceedings in the rate case it was reviewing where Evergy West was seeking recovery for its abandoned Sibley generating station, the Court said,

> With regard to the regulatory asset, the Commission noted that the length of an amortization is typically driven by how large an amount is being amortized, because of its impact on rates, and/or it may be tied to another factor, such as the regulatory liability amortization in this case being set at four years to mirror the period over which those amounts were included in rates. The Commission disagreed with Evergy that Evergy should receive a return *on* the unamortized balance over the time frame of the amortization period, finding that it was not appropriate to allow Evergy to continue to earn a return on a plant no longer in service and no longer used and useful.

*Mo. Pub. Serv. Comm'n v. Office of Pub. Counsel (In re Evergy Metro., Inc.)*, 677 S.W.3d 526,535 (Mo. Ct. App. 2023).

During the evidentiary hearing in the present case, Staff witness Keith Majors testified about journal entries for plant retirements, including premature retirements and his response to OPC data request 0036 attached to OPC witness David Murray's surrebuttal testimony as Sch.

[43] See *State ex rel. Missouri Office of Pub. Counsel v. Pub. Serv. Com'n*, 293 S.W.3d 63 (Mo. App. S.D. 2009); Mo. Pub. Serv. Comm'n v. Office of Pub. Counsel (In re Evergy Metro., Inc.), 677 S.W.3d 526 (Mo. Ct. App. 2023); Ex. 201, OPC witness David Murray rebuttal testimony, p. 3; Ex. 202, OPC witness David Murray surrebuttal testimony, pp. 3-8 (citing to Case No. ER-2022-0130, Report and Order, November 21, 2022, pgs. 38-39 which is Mo. Pub. Serv. Comm'n v. Office of Pub. Counsel (In re Evergy Metro., Inc.), 677 S.W.3d 526 (Mo. Ct. App. 2023) on appeal); Tr. 3:279-98, Staff witness Keith Majors.

DM-S-1. Tr. 3:283-90. He testified that the journal entries for abandoning Rush Island would be to credit plant and debit reserve by the same net book value. This Commission rejected that accounting when setting general rates for Missouri American Water Company after it prematurely retired its St. Joseph water treatment plant. In its *Report and Order* in that case, recognizing the impropriety of the effect on depreciation reserve, effectively allowing a return on the net book abandoned plant balance, the Commission said,

> **Premature Retirement:**
>
> Another issue arising from the St. Joseph project is that of the premature retirement of the old St. Joseph plant. Depreciation is an accounting convention that approximates an asset's loss of value through use. At the end of its useful life, the asset is considered to have lost all value except residual salvage value. If the accounting convention were perfect, an asset would be fully depreciated at time it is actually retired, that is, removed from service. *See* *In the Matter of St. Louis County Water Company, 4 Mo.P.S.C.3d 94, 102-3 (1995)*; *In the Matter of Depreciation, 25 Mo.P.S.C. (N.S.) 331*. In the case of the old St. Joseph treatment plant, the accounting convention yielded an imperfect result and the plant was not yet fully depreciated at the moment of its retirement.
>
> MAWC and Staff agreed that the original cost of the plant should be deducted from both plant-in-service and accumulated depreciation in order to "preserve" the old plant's remaining, undepreciated value of $ 2,832,906 until a proper depreciation study can be performed. Additionally, the retirement cost for the plant--estimated at $ 500,000--should also be deducted from accumulated depreciation, thereby "preserving" $ 3,332,906, at the time when the retirement actually occurs. MAWC and Staff would then cooperate in performing the necessary depreciation study.
>
> Public Counsel opposes the treatment proposed by MAWC and Staff. Testimony presented by the Public Counsel asserted that the normal accounting process representing the retirement of a utility plant is to remove the original cost of the plant from both the utility plant-in-service and the depreciation reserve accounts. Public Counsel contends that this would be inappropriate in this case because it would result in a net increase to rate base of $ 2,832,906, thus causing ratepayers to pay for a plant no longer in service. This would occur because the original cost of the plant exceeds the accumulated depreciation on the plant by its net original cost of $ 2,832,906. Thus, deducting the original cost of the plant from the depreciation reserve would diminish that reserve by more than the depreciation accumulated therein with respect to the old St. Joseph plant, causing a net increase in rate base. As an alternative, Public Counsel proposes that the original cost of the plant should be deducted from utility plant-in-service, while only the recorded

amount of depreciation should be deducted from the accumulated depreciation reserve. The difference should be written off.

MAWC is permitted a reasonable return only on the value of its assets actually devoted to public service. From the moment of its retirement, a moment controlled by MAWC, the old plant was no longer used and useful in public service. In an early case involving the retirement of utility assets, the Missouri Supreme Court stated:

> The abandonment of property which is never replaced, but is superseded by another instrumentality, as gas lamps by electric lights, or by another agency or company, is an extraordinary supersession. Its loss is "one of the hazards of the game," just as the extraordinary increase in values following the war was an unexpected gain . . . . It follows that the abandoned property, lights, service mains, and the like should not be considered for the purpose of determining the annual depreciation reserve.

*State ex rel. City of St. Louis v. Public Service Com'n of Missouri, 329 Mo. 918, 941, 47 S.W.2d 102, 111 (1931)*.

It follows that the treatment proposed by Public Counsel is correct. Utility plant-in-service will be reduced by the original cost of the old St. Joseph plant, while the depreciation reserve will be reduced only by the amount of depreciation accumulated with respect to the plant. The difference, the plant's net original cost of $ 2,832,906, will be written off. Likewise, any amount expended by MAWC to retire the old plant is also not recoverable in rates.

*In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, Case No. WR-2000-281, Report and Order, decided August 31, 2000, 9 MoPSC3d 254, 286-87. Because Rush Island is not used and useful after it is abandoned, it must be excluded from Ameren Missouri's rate base upon which Ameren Missouri's weighted average cost of capital is allowed as a return.

If the Commission were to allow Ameren Missouri to recover for Rush Island "energy transition costs" through an amortized regulatory asset, even with recovery of a debt return of 4.05% on that regulatory asset, based on the projected bond rate of 5.59%, securitization would be

more costly to Ameren Missouri's retail customers.[44] Ameren Missouri creates the phantom appearance of net customer benefits from securitization by applying its view of its pre-tax weighted average cost of capital (composite pre-tax rate-of-return) (8.36%) to its Rush Island "energy transition costs" as if they were included in its rate base. Because 8.36% exceeds 5.59% Ameren Missouri asserts securitization would benefit its customers. That assertion is false because in a general rate case the Commission would not allow Ameren Missouri its pre-tax weighted average cost of capital rate base return on its "energy transition costs."[45]

**8. NPV of Tax Benefits/ADIT**

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

**i. If retired September 1, 2024?**

OPC position summary: $89,128,306.[46]

**ii. If retired October 15, 2024?**

OPC position summary: $87,311,890.[47]

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

OPC position summary: The same way that the Commission treated them in Case Nos. EO-2022-0040 & 0193 and the Missouri Court of Appeals affirmed in *Empire Dist. Elec. Co. v. PSC*, 672 S.W.3d 868 (Mo. Ct. App. 2023), where ADIT is the tax benefit for which a net present value is calculated by amortizing ADIT of the anticipated bond term and then a net present value calculated using the projected bond rate, which net present value is applied as an offset when determining the Rush Island "energy transition costs."

OPC witness John Riley, CPA, explained in his testimony[48] that Ameren Missouri's calculation of the net present value of accumulated deferred income taxes ("ADIT") as an offset to the "transition costs" balance, is unlawful and unreasonable. Correctly calculated, the net

[44] Ex. 202, OPC witness David Murray surrebuttal testimony, p. 10.
[45] Ex. 201, OPC witness David Murry rebuttal testimony, pp. 2-10; Ex. 202, OPC witness David Murray surrebuttal testimony, pp. 2-10.
[46] Ex. 600, Lansford - Schedules MJL - D1-D4 WORKPAPERS, tab NPV ADIT, cell B35.
[47] Ex. 208, OPC witness John S. Riley surrebuttal testimony, p. 2.
[48] Ex. 207, OPC witness John Riley rebuttal testimony, pp. 2-12, Sch. JSR-R-03; Ex. 208, OPC witness John Riley surrebuttal testimony, pp. 1-6, Schs. JSR-S-01 to JSR-S-05.

present value of the Rush Island deferred income taxes is $87,311,890—the net present value of $136,696,234[49] amortized over 15 years then discounted using the projected bond interest rate of 5.59%.[50] It should be noted that the $136,696,234 includes the tax impact of the $108 million abandonment deduction OPC witness John S. Riley discusses on pages eight to twelve of his rebuttal testimony (Ex. 207) because Ameren Missouri derived the $136,696,234 ADIT balance by multiplying the projected net book value of Rush Island as of the projected abandonment date by the composite state/federal income tax rate.

The Missouri Western District Court of Appeals observed the following when reviewing the Commission's treatment of ADIT for securitization of Empire's Asbury generating facility in Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868, 877 (Mo. Ct. App. 2023):

> *Section 393.1700.1(7)(a)* provides that the amount of energy transition costs that a utility is allowed to securitize is to be reduced by the "applicable tax benefits of [ADIT]." A securitization financing order that includes retired or abandoned facility costs must include "a procedure for the treatment of [ADIT] . . . connected with the retired or abandoned facility." *§ 393.1700.2(3)(c)m.* The statute states that ADIT "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." *Id.* The statute then states how this customer credit is to be calculated:
>
> > 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[.]
>
> *Id.*

[49] Ameren Missouri's projected Rush Island ADIT balance as of October 15, 2024.
[50] Ex. 208, OPC witness John Riley surrebuttal testimony, pp. 1-6, Schs. JSR-S-01 to JSR-S-05.

In that case Empire had made the same arguments to the Commission regarding ADIT that Ameren Missouri is making here; and pursued them to the Western District on appeal.[51]

In its opinion on that appeal the Western District said, "Resolution of these issues requires interpreting *Section 393.1700.2(3)(c)m*. The interpretation of a statute is a matter of law, which we review *de novo. In re Laclede Gas Co., 417 S.W.3d 815, 819 (Mo. App. 2014)*."[52] That Court rejected Empire's arguments in support of its "contention that the statute requires the Commission to reduce the amount to be securitized by the net present value of the *tax benefits* of the ADIT balance and not by the net present value of the *full amount* of the ADIT balance," and held, "The record supports the Commission's finding that Asbury's entire ADIT balance is, in fact, a 'tax benefit.'"[53] Significantly, the Commission vigorously argued in that appeal that its interpretation and application of the statute were lawful and supported by the evidence.[54] That interpretation and application are what Public Counsel is advocating here, *i.e.*, that the full amount of the ADIT balance of $87,311,890 as of October 15, 2024, is the tax benefit of which the net present value is calculated using the 5.59% discount rate which equals the expected interest rate of the securitized utility tariff bonds. The record in this case does not support the Commission deviating from what it did, and the Western District affirmed, in Empire's securitization case to now adopt a statutory interpretation and methodology which it rejected in that case. Stated differently, if the Commission were to adopt in this case the statutory interpretation and methodology it rejected in Empire's securitization case, it would be acting unlawfully, and arbitrarily and capriciously.

[51] Ex. 208, OPC witness John Riley surrebuttal testimony, pp. 4-5; Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868 (Mo. Ct. App. 2023).
[52] Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868, 878 (Mo. Ct. App. 2023).
[53] Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868, 878 (Mo. Ct. App. 2023).
[54] Ex. 208, OPC witness John Riley surrebuttal testimony, Sch. JSR-S-05, pp. 18-35.

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

> OPC position summary: None. Ameren Missouri's only evidence of decommissioning costs is a Black and Veatch study report the Commission erred in admitting into evidence over Public Counsel's hearsay and lack of foundation objections. Further, the study is not sufficiently accurate to rely upon for including decommissioning costs over $29,750,000.

Ameren Missouri's total Rush Island decommissioning costs estimate of $46,907,500 is a combination of its internally generated safe closure cost estimate and a demolition cost estimate Ameren Missouri had Black and Veatch perform.[55] Black and Veatch's confidential demolition cost estimate is the only source of Ameren Missouri's demolition cost estimate included in the total decommissioning costs estimate of $46,907,500.[56] Because Black and Veatch's demolition cost estimate of $42,500,000[57] is hearsay and because Ameren Missouri laid no foundation for its admission,[58] the Commission erred when it admitted Sch. JW-D2 to exhibit 17C into the evidentiary record in this case.[59] When a testifying expert acts as a conduit for the opinion of another who is not testifying, the opinion of the non-testifying expert is hearsay and, if objected to, inadmissible. See *Otwell v. Treasurer of Mo.*, 634 S.W.3d 850, 859 (Mo. Ct. App. 2021). Introducing into evidence the testimony of a non-testifying expert (an employee of Black and Veatch) through the testimony of a testifying witness (Jim Williams) is exactly what the Commission has allowed Ameren Missouri to do here by overruling Public Counsel's objections. The Commission should exclude Black and Veatch's $42,500,000 demolition cost estimate from Rush Island energy transition costs.

In addition to there being no evidence properly in the record for demolishing Rush Island, were it properly admitted, the accuracy of Black and Veatch's estimate is expected to be from negative thirty

[55] Ex. 17C, Ameren Missouri witness Jim Williams direct testimony, pp. 6-10, Schs. JW-D1 and JW-D2.
[56] Ex. 210, Ameren Missouri's response to OPC data request 8515 where it admits its Rush Island demolition (decommissioning) costs are based on Black and Veatch's decommissioning study attached as Sch. JW-D2 to Ameren witness Jim Williams direct testimony (Ex. 17C).
[57] Ex. 17C, Ameren Missouri witness Jim Williams direct testimony, p. 8.
[58] See §536.070(11), RSMo.
[59] Tr. 6:271-74.

percent to positive thirty percent (+/- 30%), or $29,750,000 to $55,250,000 with a midpoint of $42,500,000.[60] Black and Veatch's "estimate is a high-level analysis and does not incorporate a complete Decommissioning and Demolition ("D&D") plan that includes a constructability analysis." If Black and Veatch's estimate were properly in evidence, due to its estimated inaccuracy, it would reasonably support no more than estimated decommissioning costs of $29,750,000 (the low end of Black and Veatch's estimated accuracy range) for inclusion in Rush Island energy transition costs.[61] If Ameren Missouri were to incur costs above the $29,750,000 the Commission could review them for potential recovery in Ameren Missouri's next general rate case. Similarly, not recovering decommissioning costs through securitization, does not prevent the Commission from considering them for recovery through general rates in a general rate case.

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

> OPC position summary: Monitoring and treating groundwater contamination at Rush Island is not an asset retirement obligation or triggered by Ameren Missouri abandoning Rush Island, it currently is an ongoing obligation that will continue after Ameren Missouri abandons Rush Island.

Because Ameren Missouri currently is obligated by federal law to monitor and treat groundwater at Rush Island regardless of whether it abandons the plant, Ameren Missouri's abandonment of Rush Island does not initiate those obligations and they are not "energy transition costs" as defined by § 393.1700.1(7), RSMo.[62] Further, Ameren Missouri's $4,615,042 estimate for future groundwater monitoring and treatment is based on periods of eight years and five years, respectively, but, with securitization, Ameren Missouri's retail customers will incur unavoidable charges for at least fifteen years creating a large mismatch between when Ameren Missouri actually

[60] Ex. 209C, OPC witness Angela Schaben rebuttal testimony, p. 7.
[61] Ex. 209C, OPC witness Angela Schaben rebuttal testimony, p. 8.
[62] Ex. 209C, OPC witness Angela Schaben rebuttal testimony, pp. 2-5.

will incur the costs and when its retail customers will pay for them.[63] Not including these costs in the Rush Island energy transition costs would not prevent the Commission from considering these costs as relevant factors for potential recovery in future rate cases.

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

> OPC position summary: The securitization statute does not authorize securitization to fund cessation of a tax benefit. Further, there is no substantial and competent evidence in the record for an amount for tax benefit cessation.

Ameren Missouri seeks to include community transition costs to ease the financial impact on the Jefferson County R-VII school district from the loss of tax revenues due to Ameren Missouri abandoning Rush Island and to fund a "grant aimed to help engage local community stakeholders to identify and implement initiatives that support schools and students as well as community, economic, and workforce development."[64] However, these are not costs; they are cessation of a tax revenues benefit, and Ameren Missouri's community transition costs proposal is to apply "involuntary retail customer contributions to broad social goals."[65] As such, they are not "energy transition costs" which by statute are defined to include all of the following:

> (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 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,

[63] Ex. 209C, OPC witness Angela Schaben rebuttal testimony, pp. 2, 4 and 5.
[64] Ex. 1C, Ameren Missouri witness Mitchell Lansford direct testimony, pp. 7-8.
[65] Ex. 207, OPC witness John Riley rebuttal testimony, pp. 18-19.

> 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[.]

Amounts paid to entities to "soften" the lost property tax revenues are not in the nature of the costs listed in the statutory definition of "energy transition costs." Moreover, if Ameren Missouri truly was concerned about the impact of reduced tax revenues on tax supported entities as its witness Steve Wills testified to during the evidentiary hearing, it should have notified them as soon as possible of that potential and certainly by not later than when it decided in December of 2021 to abandon Rush Island. Doing so would have given them about three years to adjust budgets and seek alternative sources of funds to replace, in whole or in part, those it was losing due to Ameren Missouri's abandonment of Rush Island. Ameren Missouri presented no evidence that it did so.[66]

Further, Ameren Missouri has failed its burden of proof as to the community transition costs amount of $3,677,365[67] it is requesting be included in Rush Island energy transition costs. In *State ex rel. Marco Sales, Inc. v. Pub. Serv. Com.*, 685 S.W.2d 216 (Mo. Ct. App. 1984), the Missouri Western District Court of Appeals affirmed a circuit court judgment which reversed the Commission's authorization for Laclede Gas Company to impose, on an interim basis, a surcharge on its gas service customers who use electric add-on heat pumps to supplement their space heating for lack of evidence to support that at 34 degrees Fahrenheit the heat pumps cease to be operational. In its opinion that Court said,

> Attention next focuses on the mean or average temperature "balance" or "changeover" point of 34 degrees Fahrenheit seized upon by Laclede as the structural core of its proposed surcharge tariff. Relying upon syllogism and mathematical calculations, Laclede advances the proposition that a surcharge tariff

[66] Tr. 8:19-28, Ameren Missouri witness Steve Wills.
[67] Ex. 1C, Ameren Missouri witness Mitchell Lansford direct testimony, p. 7; Ex. 20C, Ameren Missouri witness Steve Wills surrebuttal testimony, p. 5.

of $15.00 per month for each month starting in November and ending in April (totaling $90.00) would offset its theoretically narrowing margin of return between the cost of gas and the constant rate charge occasioned by customers with electric add-on heat pumps whose gas needs must be met by gas obtained by Laclede at premium prices. At this juncture the significance of the following observations is self-evident -- Laclede's use of 34 degrees Fahrenheit as a mean or average temperature "balance" or "changeover" point at which electric add-on heat pumps cease to be operational is the linch-pin of the controversial surcharge tariff. Hypothetically, if the mean or average temperature "balance" or "changeover" point at which electric add-on heat pumps cease to be operational is higher than 34 degrees Fahrenheit, then the surcharge tariff approved by the Commission is proportionally unfair and discriminatory with respect to the majority of gas customers with electric add-on heat pumps. Conversely, if the mean or average temperature "balance" or "changeover" point at which electric add-on heat pumps cease to be operational is lower than 34 degrees Fahrenheit, then the surcharge tariff approved by the Commission is proportionately unfair and discriminatory with respect to gas customers who do not supplement their heating needs with electric add-on heat pumps.

The record in this case is fragmented with random bits of evidence regarding the temperature "balance" or "changeover" point at which various electric add-on heat pumps, subject to innumerable variables such as size, age, design, and premise insulation factors, cease to be operational. The temperature "balance" or "changeover" points mentioned run the gamut from approximately 44 degrees Fahrenheit to approximately 0 degrees Fahrenheit. There was no evidence, estimates or otherwise, of the market share of any of the various heat pumps just mentioned. In sum, none of the random bits of evidence, singularly or collectively, provided a foundation for establishing 34 degrees Fahrenheit as a mean or average temperature "balance" or "changeover" point at which electric add-on heat pumps cease to be operational.

Laclede attempts to weld the linch-pin of its surcharge tariff by emphasizing the testimony of one of its employees, who, although absent indicating or claiming any expertise in the field of electric add-on heat pumps, and absent making any "independent studies", concluded that 34 degrees Fahrenheit represented a mean or average temperature "balance" or "changeover" point at which electric add-on heat pumps cease to be operational on the basis of some "ads" he had read and what others had told him. The record has been searched in vain for other evidence, whatever its character, which could arguably be said to support 34 degrees Fahrenheit as a mean or average temperature "balance" or "changeover" point at which electric add-on heat pumps cease to be operational. It is patent that the only evidence Laclede and the Commission have to rely on to preserve the integrity of their surcharge tariff is the unmitigated hearsay heretofore mentioned.

Cases are legion that hearsay evidence does not rise to the level of "competent and substantial evidence" within the ambit of Mo. Const. Art. V, § 18. *State ex rel.*

> *DeWeese v. Morris*, 359 Mo. 194, 221 S.W.2d 206, 209 (1949); *Dickinson v. Lueckenhoff*, 598 S.W.2d 560, 561-62 (Mo. App. 1980); *Wilson v. Labor and Indus. Relations Comm'n*, 573 S.W.2d 118, 120-21 (Mo. App. 1978); *Bartholomew v. Bd. of Zoning Adjustment*, 307 S.W.2d 730, 733 (Mo. App. 1957); *State ex rel. Horn v. Randall*, 275 S.W.2d 758, 763 (Mo. App. 1955); and *Dittmeier v. Missouri Real Estate Comm'n*, 237 S.W.2d 201, 206 (Mo. App. 1951).
>
> Laclede and the Commission seek to avoid the fatal consequence of the evidentiary deficiency by the classic hue and cry of virtually limitless discretion possessed by the Commission, the admonition that courts should not substitute their judgment for that of the Commission, and the indulgence of deference for decisions of the Commission because of its expertise in the complicated and highly sophisticated matters it is legislatively ordained to resolve. Judicial recognition thereof when and where appropriate, however, does not dictate blind acceptance of every order cut and every decision handed down by the Commission. Indiscriminate approval of orders and decisions of the Commission, without subjecting them to the rigors of Mo. Const. Art. V, § 18, is an abdication of judicial responsibility. Unbridled bureaucracy is the subtle destroyer of people's rights and Mo. Const. Art. V, § 18, is their response.
>
> Having concluded that there was no "competent and substantial evidence" upon the whole record to support a finding by the Commission that 34 degrees Fahrenheit was a mean or average temperature "balance" or "changeover" point at which electric add-on heat pumps cease to be operational, the surcharge tariff sought by Laclede and approved by the Commission falls apart for want of a linch-pin. Perforce, the Circuit Court of Cole County was eminently justified when it invalidated the surcharge tariff on the ground heretofore discussed.

*Id*. at 219-221. Even if the community transition costs Ameren Missouri seeks to recover were "energy transition costs" within the meaning of § 393.1700.1(7), RSMo., like the absence of evidence to support the 34 degrees Fahrenheit "changeover" point in *State ex rel. Marco Sales, Inc*., the record in this case is barren of any evidence to support Ameren Missouri's $3,677,365 community transition costs amount.[68]

[68] See Ex. 1C, Ameren Missouri witness Mitchell Lansford direct testimony; Ex. 20C, Ameren Missouri witness Steve Wills surrebuttal testimony; Tr. 8:14-17, Ameren Missouri witness Mitchell Lansford testimony; and Tr. 8:18-28, Ameren Missouri witness Steve Wills testimony.

**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?**

OPC position summary: Basemat coal is not fuel and Ameren Missouri's general rates have been based on Ameren Missouri getting a return on its basemat coal at Rush Island since 1976: therefore, Ameren Missouri should not now also get an amount for the cost of that coal. Further, the value of basesmat coal in "energy transition costs should not exceed $562,436 (53,000 tons at a cost of $10.612 per ton) because that is at what the Commission valued Ameren Missouri coal in 1977 near when coal was first delivered to Rush Island for it to begin operating in 1976.

Basemat coal is not useable as fuel, but Ameren Missouri's general rates have been based on Ameren Missouri getting a return on its basemat coal at Rush Island since it began operations there in 1976; therefore, Ameren Missouri should not now also get an amount for the cost of that coal. Should the Commission disagree that Ameren Missouri already has recouped its investment in basemat coal, then the Commission should not include any more than $562,436 (53,000 tons at a cost of $10.612 per ton) for basemat coal in Rush Island energy transition costs.[69] The 53,000 tons is Ameren Missouri's estimate of its tons of basemat coal. The $10.612 per ton is the result of a Commission calculation taken from page 5 (Sch. JSR-R-04, p. 7) of a Missouri Public Service Commission January 19, 1978, *Report and Order* in Case No. ER-77-154, a copy of which is attached to Ex. 207, OPC witness John Riley's rebuttal testimony, as Schedule JSR-R-04, pp. 4-43.

**4. Amount to Finance**

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

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

OPC position summary: Because they were never used and useful, and are not costs the Legislature intended be included as "energy transition costs," including them in "energy transition costs" rather than in a general rate case would be more costly to Ameren Missouri customers, and avoid a meaningful opportunity for them to be reviewed for prudency.

[69] Ex. 207, OPC witness John Riley rebuttal testimony, pp. 14-18.

Ameren Missouri is abandoning projects at Rush Island totaling about $13 million currently booked as construction work-in-progress, including the scrubber study costs that Staff opposes.[70] Construction work-in-progress costs are for projects that were never used and useful. They are not they type of costs that the legislature intended to be included within the statutory definition of energy transition costs that are eligible to be included in the amount recoverable through securitization charges. Public Counsel does not oppose Ameren Missouri seeking potential recovery of its about $13 million of Rush Island construction work-in-progress costs through rates without a return on them or carrying costs; however, Public Counsel does oppose Ameren Missouri recovering them through securitization charges that include 15 years of bond interest. Further, Public Counsel opposes Ameren Missouri recovering those costs without first examining the prudency of Ameren Missouri incurring them.[71]

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

> OPC position summary: Public Counsel does not oppose Ameren Missouri's amount of $4,407,500.

Ameren Missouri has included in its energy transition costs $4,407,500 for disposals, electrical feeds, rentals, neutralizations, closures, and flood protection. While Public Counsel views that Ameren Missouri's customers would pay less for these activities through rates than through securitization, based on the testimony at the hearing,[72] Public Counsel is dropping its opposition to these costs being energy transition costs.

**12. Materials and Supplies**
**What amount of materials and supplies inventory should be financed using securitized utility tariff bonds?**

> OPC position summary: Ameren Missouri's $18,259,888.74 of materials and supplies inventory should be addressed in a general rate case and not through securitization because they will be better known then, can be reviewed for prudency and will advantage Ameren Missouri's

[70] See the table on page two of Ex. 205, OPC witness Manzell Payne rebuttal testimony.
[71] Ex. 205, OPC witness Manzell Payne rebuttal testimony, pp. 1-7.
[72] Ameren Missouri witness Mitchell Lansford, Tr. 6:267; Ameren Missouri witness Jim Williams, Tr. 6:276-78.

customers by Ameren Missouri recovering them through rates without carrying charges as opposed to incurring bond interest for 15 years.

Ameren Missouri and Public Counsel appear to agree that Ameren Missouri has about $18,259,888.74 of materials and supplies that is not usable at its other generating sites, and that will not be used or useful after it abandons generation at Rush Island.[73] The appropriate amount will not be known and measurable until Ameren Missouri abandons Rush Island. Like abandoned project costs Ameren Missouri's retail customers would be better off if Ameren Missouri recovered the costs of these items through rates without a return on them or carrying costs and an opportunity to audit these costs for prudence; however, Public Counsel opposes Ameren Missouri recovering them through securitization charges that include 15 years of bond interest.[74]

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

OPC position summary: These costs should be addressed in a general rate case and not through securitization because they can be reviewed for prudency and will advantage Ameren Missouri's customers by Ameren Missouri recovering them through rates without carrying charges as opposed to incurring bond interest for 15 years.

Ameren Missouri has included in its energy transition costs total amounts for software, office furniture, and office equipment. These are capitalized on Ameren Missouri's books with depreciation lives of five, 20, and 15 years, respectively. Their remaining depreciation lives are less than one year, nine years, and three years, respectively. If included as energy transition costs, they will be amortized over 15 years. A fifteen-year amortization period has the same effect on cost recovery as a remaining depreciation life of 15 years. Public Counsel opposes Ameren Missouri's retail customers paying for these costs over 15 years through securitization charges rather than through rates over their shorter remaining depreciation lives—less than one year, nine

[73] Ex. 205, OPC witness Manzell Payne rebuttal testimony, p. 9.
[74] Ex. 205, OPC witness Manzell Payne rebuttal testimony, pp. 7-10.

years and three years, respectively.[75] Both the higher bond interest rate and longer repayment period will result in Ameren Missouri's retail customers paying a much higher total amount for these costs than if Ameren Missouri were to recover for them through its general rates.

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

OPC position summary: There should be none because Ameren Missouri's customers should not be responsible for regulatory delay and there are no specific capital issuances identifiable to "carry" Rush Island investment and costs.

Because no capital issuances are identifiable to Ameren Missouri to "carry" Rush Island, no amount should be added to Ameren Missouri's requested securitization amount for carrying charges. If the Commission were to insist on allowing "carrying" costs, then carrying costs rate should not be any higher than the interest rate of the securitized debt—here projected to be 5.59%[76] Ameren Missouri's customers should not suffer due to inefficiencies in the regulatory process which prevent the bonds from issuing contemporaneously with when Ameren Missouri stops recovering for Rush Island through its rates. If the bonds issue contemporaneously with when Ameren Missouri stops recovering for Rush Island through its rates, then the interest rate its retail customers will bear is the Rush Island securitized bonds interest rate.[77]

**2. Post Financing Order Process/Procedure**
**a. What information should be included in the Issuance Advice Letter?**
**i. Should the Issuance Advice Letter include a comparable securities pricing analysis as recommended by OPC witness Murray?**

OPC position summary: Yes, to provide a meaningful context for the pricing.

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

OPC position summary: Yes, they should be as transparent to the public as possible.

[75] Ex. 209C, OPC witness Angela Schaben rebuttal testimony, pp. 9-10.
[76] Ex. 201, OPC witness David Murray rebuttal testimony, pp. 11-13.
[77] Ex. 201, OPC witness David Murray rebuttal testimony, p. 13.

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

OPC position summary: Yes, for transparency and accountability.

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

OPC position summary: Yes, to give them a reasonable opportunity to provide constructive input.

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

OPC position summary: Yes, given the essentially doubling of the maximum Staff financial advisor fees between this case and Empire's recent consolidated securitization cases, Case Nos. EO-2022-0040 and 0193.

Because the yield realized on securitized bonds is not meaningful without context, the Issuance Advice Letter should include a comparable pricing analysis to give that context. Doing so will help for confirming the certifications given that the "structuring, marketing and pricing of the Securitized Utility Tariff Bond resulted in the lowest charge consistent with market conditions." The public Issuance Advice Letters filed in the Liberty and Evergy securitization cases identify "pricing strategy, comparable issuance pricing and expected levels" as part of the process to ensure the "lowest charge consistent with market conditions." However, even the confidential certification/opinion letters filed by the underwriters and Staff's financial advisor do not identify any specific comparable pricing information. Requiring this information to be disclosed publicly in the Issuance Advice Letter is reasonable and good public policy. It will also help make the securitization process more transparent to everyone, including Ameren Missouri's retail customers.

Consistent with transparency, which the Commission indicates is important in its confidential evidence rule—20 CSR 4240-2.135:

> All items filed in case proceedings before the commission shall be open to the public unless protected pursuant to this rule or otherwise protected by law.

and

> Any information designated as confidential shall be submitted with a cover sheet or pleading describing how such information qualifies as confidential under subsection (2)(A) of this rule, including the specific subsection relied upon and an explanation of its applicability. ***Only the specific information that qualifies as confidential shall be designated as such.*** (Emphasis added). In addition, each document that contains confidential information shall bear the designation "Confidential" and the paragraph(s) of 4 CSR 240-2.135(2)(A) through which that information is protected.

Only the sensitive portions of the underwriter's and Staff's financial advisor's certification letters should be redacted and made nonpublic.

For public confidence, transparency, and accountability the Commission should require Staff's financial advisor to identify information that advisor 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.

Based on what occurred in Case Nos. EO-2022-0040 and 0193, where Public Counsel found the inputs used for the NPV calculations in the Issuance Advice Letter were not consistent with the Commission's order despite having essentially no time to review it, other parties, including Public Counsel, should have the opportunity to meaningfully review the details supporting Ameren Missouri's and the Finance Team's calculations and conclusions that the securitized bonds achieve quantifiable NPV benefits to customers. Additionally, the Issuance Advice Letter contains the final updated costs that are included in upfront and ongoing financing

cost. Parties should be afforded the opportunity to have sufficient time to carefully determine that the costs, inputs, and methodology are consistent with the Commission's order.

Given the essentially doubling of the maximum Staff financial advisor fees between this case and Empire's recent consolidated securitization cases, Case Nos. EO-2022-0040 and 0193, performed by the same financial advisor, at a minimum the Staff's financial advisor should be required to explain in detail and account in detail for any request for fees in this case that exceed $1.561 million.

**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?**

OPC position summary: None, see Public Counsel's positions on Issues 3 and 1.

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

OPC position summary: None, since there should be no energy transition costs securitized, there should be no upfront financing costs securitized either.

For the reasons presented in response to Issues 3 and 1, the Commission should not authorize Ameren Missouri to securitize any amount of energy transition costs. Since the Commission should not authorize Ameren Missouri to securitize any amount of energy transition costs, it also should not authorize Ameren Missouri to securitize any upfront financing costs. In no event should Staff's financial advisor upfront costs exceed $1.561 million without the Commission being satisfied by a detailed explanation and accounting for any request for fees that exceed $1.561 million.

**17. Tariff**
**Should the tariff changes recommended by Staff be adopted?**

OPC position summary: No. The securitization tariff sheets should be developed after the Commission issues its financing order.

**If securitization is authorized, should the compliance tariff sheets:**

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

OPC position summary: Yes.

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

OPC position summary: Yes, to identify the charge to why it is incurred as the Legislature intends.

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

OPC position summary: Yes, to be consistent with other tariff rates.

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

OPC position summary: Only those who are Ameren Missouri customers when they incur a Rush Island securitization charge should be required to pay it, *i.e.*, when an Ameren Missouri customer no longer is an Ameren Missouri customer, that customer should cease to incur new securitization charges.

After the Commission decides the disputed issues in this case, if it decides to authorize Ameren Missouri to issue Rush Island bonds, then the Commission should order the parties to develop accurate and clear compliance tariff sheets that incorporate the Commission's specific decisions,[78] and accurately and clearly describe the securitization charge, and how it is to be calculated.

[78] Ex. 211, OPC witness Lena Mantle surrebuttal testimony, pp. 2-3.

Public Counsel agrees with Staff that the implementation of the Rush Island securitization charge at different voltage levels should be consistent with the implementation of Ameren Missouri's fuel adjustment charge at different voltage levels.[79]

To identify the charge to a particular plant abandonment or retirement will inform Ameren Missouri's customers of why they are incurring that charge. Also there may be multiple securitization charges on Ameren Missouri's customers' bills in the future; therefore, Ameren Missouri's customer bills should identify the Rush Island securitization charge specifically to Rush Island.[80] Identifying the charge as "Rush Island Plant Retirement Cost" would do that.

Consistent with how other rates and charges are calculated in Ameren Missouri's tariff, the Rush Island securitization rate should have digits to the fifth decimal place.[81]

It is Public Counsel's position that only those who are customers of Ameren Missouri when the Rush Island securitization charge is in effect are subject to it; therefore, if an Ameren Missouri customer who is incurring Rush Island securitization charges ceases to be an Ameren Missouri customer due to a territorial agreement, changing supplier or some other reason, then that former customer will cease to incur Rush Island securitization charges. However, if the Commission adopts Staff's position that Rush Island securitization charges follow former Ameren Missouri customers who cease to be Ameren Missouri customers due to the Commission approving a territorial agreement or request to change suppliers, then the tariff language Staff proposes should be modified as shown in the following by strikeout and underlining:

> Charges as described in Rider SUR will continue to be applicable to any customers ~~(new or existing) currently~~ served by the Company~~, but~~ who are subsequently served by a different electric provider as a result of a territorial agreement or modification of a territorial agreement, regardless of whether the

[79] Ex. 106C, Staff witness Sarah Lange rebuttal testimony, pp. 14-15.
[80] Ex. 211, OPC witness Lena Mantle surrebuttal testimony, p. 5.
[81] Ex. 211, OPC witness Lena Mantle surrebuttal testimony, p. 6.

other electric service provider is regulated by this Commission or exempted from regulation by this Commission by any current or future law.[82]

**16. Allocation of Revenue Requirement**
**How should the securitized utility revenue requirement be allocated to customers?**

OPC position summary: No party has shown why the Commission should deviate from using a kWh rate as it did when it authorized Empire and Evergy West to use securitization.

No party has offered persuasive evidence or argument for why the Commission should deviate from the consistent energy usage volumetric (per kWh) approach to calculating securitization charges that it adopted for Empire in Case Nos. EO-2022-0040 and 0193, and for Evergy West in Case No. EF-2022-0155.

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

OPC position summary: Only those who are Ameren Missouri customers when they incur a Rush Island securitization charge should be required to pay it, *i.e.*, when an Ameren Missouri customer no longer is an Ameren Missouri customer, that customer should cease to incur new securitization charges.

The verb meanings of "Bypass" are: (1) to avoid (an obstruction, city, etc.) by following a bypass; (2) to cause (fluid or gas) to follow a secondary pipe or bypass; and (3) to neglect to consult or to ignore the opinion or decision of: He bypassed the foreman and took his grievance straight to the owner. Dictionary.com, LLC (April 23, 2024) *Dictionary.com*. Accessed 2:30 PM April 23, 2024, at https://www.dictionary.com/browse/bypass. In other words, "to bypass" means "to avoid." So, as used in § 393.1700.1(16), RSMo, "nonbypassable charges" means "unavoidable charges." As a practical matter, to impose volumetric-based securitization charges on a consumer, the utility collecting the charges must know the consumer's usage. In the context of net metering

[82] Ex. 211, OPC witness Lena Mantle surrebuttal testimony, pp. 4-5.

the New Hampshire Public Utilities Commission defines "non-bypassable charges" in its Rule 902.24 as follows: "'Non-Bypassable Charges' means charges assessed on the full amount of electricity imports without any netting during the applicable billing period, including such charges as the system benefits charge, stranded cost recovery charge, and storm recovery surcharge."[83]

For Ameren Missouri to continue to bill Rush Island securitization charges to former customers who have left its system because the Commission has approved a territorial agreement,[84] approved a request to change suppliers,[85] or for any other reason would require Ameren Missouri to obtain that former customers current electricity usage information to continue to bill that former Ameren Missouri customer Rush Island securitization charges. Public Counsel is of the view that the Missouri legislature did not contemplate such a broad sweep by "nonbypassable charge," and what it meant was that, like customer charges, while be served by Ameren Missouri, its customers cannot avoid any securitization charges through net metering. Stated differently securitization charges are based on the electricity the utility supplies, not on the net of the electricity the utility supplies and the electricity the customer creates.

In addition, new customers to Ameren Missouri's system will incur the Rush Island securitization charge, without having received the system benefits of Rush Island, and that will act as an offset to the impact of customers who leave Ameren Missouri's system.

**6. Net Plant**
**What is the net plant in service balance of the retired Rush Island plant:**
**a. If retired September 1, 2024?**

OPC position summary: a projected balance of $447,398,779.

**b. If retired October 15, 2024?**

OPC position summary: a projected balance of $442,820,805.

[83] https://gencourt.state.nh.us/rules/State_Agencies/puc900.html accessed 8:36 AM May 7, 2024.
[84] § 394.312, RSMo.
[85] § 393.106, RSMo.

In Evergy West's rate case, Case No. ER-2022-0130, where the Commission first addressed the impact of Evergy West's abandonment of its Sibley generating station on Evergy West's general rates, the Commission relied on OPC witness John Robinett's methodology for arriving at the net plant-in-service balance for Sibley when Evergy West abandoned Sibley.[86] He applied that same methodology here by starting with the depreciation study from Ameren Missouri's most recent rate case, Case Number ER-2022-0337, and bringing the numbers forward without additions or retirements[87] since Ameren Missouri decided in December 2021 that it would abandon Rush Island.[88] The result is a projected balance of $447,398,779 as of September 1, 2024, and a projected balance of $442,820,805 as of October 15, 2024.[89] Ameren Missouri's actual and projected additions through October 15, 2024, exceed $27 million.[90]

## CONCLUSION

For the reasons stated above, this Commission should not authorize Ameren Missouri to issue bonds for Rush Island energy transition costs secured by nonbypassable customer charges. However, if the Commission authorizes Ameren Missouri to issue those bonds, it should find in favor of Public Counsel on its issues that would reduce the amount Ameren Missouri will recover through those bonds. Further, the Commission should clarify that consumers only are obligated to pay Rush Island securitization charges when they incur them when Ameren Missouri is supplying retail electric service to them, *i.e.*, while they are Ameren Missouri retail customers, and

[86] *In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement a General Rate Increase for Electric Service*, Case No. ER-2022-0130 (consolidated with *In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's Request for Authority to Implement a General Rate Increase for Electric Service*, Case No. ER-2022-0129 for decision), *Amended Report and Order*, effective December 18, 2022, pp. 19, 23, 36-38.
[87] Ex. 206C, OPC witness John Robinett rebuttal testimony, pp. 2-3, Sch. JAR-R-3.
[88] Ex. 6, Ameren Missouri witness Mark Birk direct testimony, p. 22.
[89] Ex. 206C, OPC witness John Robinett rebuttal testimony, Sch. JAR-R-3.
[90] Ex. 2, Ameren Missouri witness Mitchell Lansford surrebuttal testimony, p. 20.

the Commission should adopt Public Counsel's suggestions regarding transparency, and securitization tariff language.

Respectfully,

*/s/ Nathan Williams*

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of May 2024.

/s/ Nathan Williams