BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

The Office of the Public Counsel's Reply Brief

Respectfully submitted,

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

Introduction

Due to the short time between when parties filed their initial briefs and the due date of reply briefs, Public Counsel has limited the scope of its replies. That Public Counsel does not reply to argument made by another party in its initial brief is not concession by Public Counsel to that argument. Public Counsel is not abandoning any argument it made in its initial brief in this case. The Commission should keep in mind that denying Ameren Missouri authority to securitize Rush Island energy transition costs does not prevent Ameren Missouri from pursuing recovery of them in a general rate case, as early as Case No. ER-2024-0319.

Reply Argument

Issue No. 3. Prudence of Retirement

Ameren Missouri argues that this Commission has used the words "reasonable" and "prudent" somewhat interchangeably when reviewing costs it includes in a utility's revenue requirement. As Public Counsel argued in its initial brief, Missouri's securitization statute explicitly includes the words separately for determining eligibility to use securitization: "where such early retirement or abandonment is deemed reasonable and prudent."[1]

In the context of Commission ratemaking, the Court's opinion in *State ex rel. Capital City Water Co. v. Missouri Pub. Servs. Comm'n,* 850 S.W.2d 903 (Mo. App. 1993), provides guidance. There the Court reviewed the standard the Commission applied when deciding how to treat cost impacts. The Court approved the Commission's adoption of the "reasonable care standard" from *Re: Union Electric Company*, 27 Mo. P.S.C. (N.S.) 183, 194 (1985). In *Re: Union Electric Company*,

[1] § 393.1700.1(7)(a), RSMo.

the Commission first addressed how much of Ameren Missouri's (then d/b/a UE) Callaway nuclear plant costs to include in rate base when establishing Ameren Missouri's rates. Those costs exceeded Ameren Missouri's definitive estimate by $2 billion.[2] Regarding the "reasonable care standard," the Commission said:

> It is sometimes contended that management prudence is presumed. With respect to the question of the presumption of management prudence, the Commission agrees with the following conclusions of the Washington D.C. Circuit Court of Appeals:
>
> > [11-13] The Federal Power Act imposes on the Company the "burden of proof to show that the increased rate or charge is just and reasonable." 16 U.S.C. '824d(e). Edison relies on Supreme Court precedent for the proposition that a utility's cost are presumed to be prudently incurred. See *Missouri ex rel. Southwestern Bell Telephone Co. v. Missouri Pub. Serv. Comm.*, 262 U.S. 276, 289 n.1 (1923). However, the presumption does not survive "a showing of inefficiency or improvidence." *West Ohio Gas Co. v. Public Utilities Comm.*, 294 U.S. 63, 55 S.Ct. 316, 79 L.Ed. 761 (1935); see 1 A.L.G. Priest, Principles of Public Utility Regulation 50-51 (1969). As the Commission has explained, "utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent. . . However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent." Opinion No. 86, Minnesota Power & Light Co. Opinion and Order on Rate Increase Filing, Docket No. ER76-827, at 14, 20 Fed. Power Service, 5-874, 5-887 (June 24, 1980) (footnotes omitted). *Anaheim, Riverside, etc. v. F.E.R.C.*, 669 F2d 779 (D.C. Cir. 1981).
>
> In the Commission's opinion, the existence of $2 billion in cost overruns raises doubts as to prudence in this case. Therefore, UE has the burden of proof regarding prudence.
>
> Staff and UE both agree that prudence is the appropriate standard to be used. Staff and UE both agree that prudence should not be based on hindsight. Rather, the standard should be a reasonableness standard.
>
> UE states that prudence should be based on what could be expected of reasonable persons in the particular field of expertise under the same or similar circumstances. In applying this standard, UE proposes industry standards. UE's industry standards consist of charts and graphs showing costs and schedule duration of other nuclear plant projects. The average of these costs and schedules is claimed to be the industry standard.
>
> The Commission determines that no industry standard of prudence has been established by UE. Over 100 nuclear plants have been cancelled since 1972. Some have been fraught with problems while others have been relatively successful. Mr.

[2] *Re: Union Electric Company,* 27 Mo. P.S.C. (N.S.) at 189.

Schnell's schedule showing nuclear plant costs, excluding AFUDC, range from $1,121 per kilowatt to $3,491 per kilowatt. The average cost plant does not exist. No evidence was produced to show prudent management at any of the plants used in the schedules showing industry averages. The Commission concludes that industry averages do not create an industry standard of prudence.

UE has asserted that the project was very complex and that many problems are inherent in such projects. UE states in its initial Phase III brief -part A ". . . that the fast-tracking approach is known to produce certain inherent drawbacks". The Commission agrees that this is a factual statement but does not understand why UE would argue this as a reason for cost overruns as prudent management procedures would have factored these inherent drawbacks into its original cost estimate.

The Commission determines that the complexity of the project does not address the question of management prudence. The proper questions to ask are, "Did UE properly manage this complex project? Did UE properly manage matters within its control?"

The Commission determines that the appropriate standard to be used in this case was enunciated by the New York Public Service Commission in Re: Consolidated Edison Company of New York, Inc., 45 P.U.R., 4th, 1982. In that case at page 331, the New York Commission rejected an earlier "rational basis" standard in favor of a reasonable care standard:

> More recently, and in cases more directly on point, we have articulated the standard against which a utility's conduct in circumstances such as these should be measured as follows:
>
> > ". . . the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company. Case 27123, Re: *Consolidated Edison Company of New York, Inc.,* Opinion 79-1, January 16, 1979."

In reviewing UE's management of the Callaway project, the Commission will not rely on hindsight. The Commission will assess management decisions at the time they are made and ask the question, "Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?"

In accepting a reasonable care standard, the Commission does not adopt a standard of perfection. Perfection relies on hindsight. Under a reasonableness standard relevant factors to consider are the manner and timeliness in which problems were recognized and addressed. Perfection would require a trouble-free project.

Re: Union Electric Company, 27 Mo. P.S.C. (N.S.) at 192-94.

In *State ex rel. Capital City Water Co.* and *Re: Union Electric Company* both the Court and the Commission were addressing the prudency of management in the context of a rate case where,

absent there being raised a serious doubt they were prudently incurred, a utility's costs are presumed to have been incurred prudently. Here, in contrast, the Legislature has imposed a requirement that to authorize Ameren Missouri to issue Rush Island securitized bonds the Commission must opine that it is both "reasonable" and "prudent" for Ameren Missouri to abandon Rush Island, *i.e.*, there is no presumption of reasonableness or prudency.[2] However, the Commission's characterizations of its "reasonable care" standard—"Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?"—accurately capture what the Commission should be reviewing for deciding the prudency of Ameren Missouri abandoning Rush Island.

As Public Counsel argued in its initial brief, the primary purpose of the Commission is to protect consumers from the natural monopoly of utilities; thereofore,[6] 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. Ameren Missouri and its Staff would have the Commission focus only on the circumstances of Ameren Missouri when it decided in December 2021 to abandon Rush Island. The problem with that myopic slice-of-time view is that Ameren Missouri put itself into those circumstances by its unreasonable and imprudent decisions to steadfastly continue to oppose complying with the Clean Air Act at Rush Island.

Aside from Judge Sippel's findings that Ameren Missouri knew or should have known that its 2007 and 2010 projects at Rush Island violated the Clean Air Act, the evidence also demonstrates that starting before it began the projects in 2007 and 2010 the answer to the question, "Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?," is "No."

The answer is "No," because Ameren Missouri knew that in 1999 the EPA began an enforcement initiative to address Clean Air Act New Source Review compliance issues at coal-fired

power plants such as Rush Island,[3] and Ameren Missouri knew, or should have known, that it could have sought and obtained EPA determinations of the applicability of the Clean Air Act prevention of the significant deterioration ("PSD") requirements to its 2007 and 2010 Rush Island projects ***before*** it undertook them. If not earlier, Ameren Missouri knew of the EPA's views by the time the EPA issued notices of violation to Ameren Missouri in 2010.[4] Even after the EPA brought its enforcement action against Ameren Missouri, Ameren Missouri chose not to obtain the required EPA air permits or install SO_X emissions controls at Rush Island;[5] instead, it steadfastly opposed EPA's PSD enforcement action for over a decade, ultimately losing.[6]

The EPA approves state implementation plans, and once it does it can enforce them. *42 U.S.C. § 7413(a)*. Wisconsin had a state implementation plan when Wisconsin Electric Power Company sought state approval for a project, the state referred it to the EPA, the EPA made an applicability determination that the project would require pollution controls.[7] On judicial review the court took issue with a test the EPA applied, affirmed in part, vacated in part, and remanded the case to the EPA for further proceedings.[8]

On page 31 of its brief, Ameren Missouri states, "OPC cannot point to *any* example where a utility has asked EPA to confirm a state interpretation of a SIP." Public Counsel believes that it did so with Exhibit 200. Michigan has had an EPA-approved state implementation plan since the

[3] Ex. 8C, Ameren Missouri witness Steven Whitworth direct testimony, pp. 7-9, Schs. SCW-D2, SCW-D3, and SCW-D4.
[4] EPA brought the action in 2011 after issuing notices of violation in 2010 *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 918 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, pp. 1 & 9.
[5] *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.
[6] *United States v. Ameren Mo.*, 9 F.4th 989 (8th Cir. 2021); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r3.
[7] Ex. 204HC, Public Counsel witness Jordan Seaver rebuttal testimony, pp. 2-3.
[8] *Wis. Elec. Power Co. v. Reilly*, 893 F.2d 901 (7th Cir. 1990).

1970's.[9] Detroit Edison Company's Monroe Power Plant is located in Monroe, Michigan.[10] On June 8, 1999, on behalf of Detroit Edison Company a Hunton & Williams attorney requested an applicability determination as to whether PSD requirements would require Detroit Edison Company to add pollution controls if it went forward with its proposed replacement and reconfiguration of the high pressure section of two steam turbines at its Monroe Power Plant. He supplemented that request on December 10, 1999, and March 16, 2000. By letter dated May 23, 2000, the EPA responded with its applicability determination. Ex. 200. Among other things, EPA said,

> For the reasons delineated above, we conclude that the changes proposed by Detroit Edison are not routine. Detroit Edison's submissions do not demonstrate that projects such as the Dense Pack project are frequent, inexpensive, or done for the purpose of maintaining the facility in its present condition. Instead, the source relies on two principal arguments: (1) it claims that this project is less significant in scope than was the activity in question in the 1988 applicability determination for the Wisconsin Electric Power Company (WEPCO); and (2) it alleges that EPA has interpreted the exclusion for routine activity expansively to exempt all projects that do not increase a unit's emission rate. EPA rejects both of these arguments, the former because both EPA and the U.S. Court of Appeals for the Seventh Circuit viewed WEPCO's activity as "far from" routine and thus this attempted comparison to WEPCO is unsuitable, and the latter because it is demonstrably incorrect. The attached analysis addresses these points in significant detail.
>
> When nonroutine physical or operational changes significantly increase emissions to the atmosphere, they are properly characterized as major modifications and are subject to the PSD program. In general, a physical change in the nature of the Dense Pack project, which provides for the more economical production of electricity, would be expected to result in the increased utilization of the affected units, and thus, increased emissions. Notwithstanding the fact the Monroe units may be high on the dispatch order, the Dense Pack project would allow Detroit Edison to produce electricity more cheaply per unit of output, thereby creating an incentive to run Units 1 and 4 above current levels. Even a small increase over current normal levels in the utilization of the affected units would result in a significant increase in actual emissions of criteria pollutants. For example, in 1997, at the Monroe facility Unit 1 emitted approximately 14,000 tons of nitrogen oxides (NOx) and 41,000 tons of sulfur dioxide (SO_2), and Unit 2 emitted 12,000 tons of NOx and 35,000 tons of SO_2. Based on this information, if a one to five percent increase in operation were to result from the Dense Pack

[9] 40 CFR § 52.1190; *United States v. DTE Energy Co.*, Civil Action No. 10-13101, 2011 U.S. Dist. LEXIS 95175 (E.D. Mich. Aug. 23, 2011); *United States v. DTE Energy Co.*, 711 F.3d 643, 647-48 (6th Cir. 2013): see also EPA Approved Regulations and Statutes in the Michigan SIP | US EPA accessed 8:44 AM, May 15, 2024 (with links to federal register).

[10] *United States v. DTE Energy Co.*, 711 F.3d 643, 647-48 (6th Cir. 2013).

> project, increases on the order of 160-800 tons of NOx and 400-2000 tons of SO_2 would occur.
>
> Detroit Edison, however, maintains that emissions will not increase as a result of the Dense Pack project. Specifically, the company contends that representative actual annual emissions following the change will not be greater than its pre-change actual emissions, because the Dense Pack upgrade will not result in increased utilization of the units. As you are aware, the PSD regulations (under the provisions commonly known as the "WEPCO rule") allow a source undertaking a nonroutine change that could affect emissions at an electric utility steam generating unit to
> lawfully avoid the major source permitting process by using the unit's representative actual annual emissions to calculate emissions following the change if the source submits information for 5 years following the change to confirm its pre-change projection. In projecting post-change emissions, Detroit Edison does not have to include that portion of the unit's emissions which could have been accommodated before the change and is unrelated to the change, such as demand growth.

The law firm that made Detroit Edison Company's request for an EPA applicability determination is the same law firm who made presentations to the Utility Air Regulatory Group,[11] and the attorney who made the applicability request is named as a moderator in at least one October 9, 2007, UARG workshop.[12]

This Commission should not allow itself to be misled by Ameren Missouri's emphasis on state permitting authority under state implementation plans and its assertion that "if there was no change that would cause an increase in potential emissions (i.e., no 'modification'), then the permitting inquiry was at an end and no permit was required for the work" as the "test for permitting set forth in the text of the SIP, in guidance provided by MDNR, and confirmed under oath by MDNR."[13] As stated above, after the EPA approves state implementation plans, the EPA can and does enforce them. *42 U.S.C. § 7413(a)*. Ameren Missouri knew, or should have known, of EPA's enforcement authority. Ameren Missouri also knew, or should have known, that it could have sought and obtained EPA determinations of the applicability of the prevention of significant deterioration

[11] Ex. 8C, Ameren Missouri witness Steven Whitworth direct testimony, including confidential Schs. SCW-D2 to SCW-D18.
[12] Ex. 8C, Ameren Missouri witness Steven Whitworth direct testimony, confidential Sch. SCW-D8.
[13] Ameren Missouri initial brief, pp. 21-22.

requirements to its 2007 and 2010 Rush Island projects ***before*** it undertook them. Doing so would have reduced uncertainty, *i.e.*, risk. That answer to the question of "Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?," the answer is "No." What the Sixth Circuit said on appeal of an EPA enforcement action against Detroit Edison Company for 2010 projects at its Monroe Power Plant accurately characterize what Ameren Missouri did at Rush Island in 2007 and 2010—it assumed the risk:[14]

> In *DTE I*, we referenced the second sentence of *40 C.F.R. § 52.21(r)(6)(ii)*:
>
> > If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in *paragraph (r)(6)(i)*. *Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the Administrator before beginning actual construction*.
>
> *711 F.3d at 650* (emphasis added). Judge Rogers's current dissent seems to take a broader view of this regulation than the text permits in repeatedly cautioning that permitting the EPA's enforcement action to go forward would create "a de facto prior approval system." (Rogers Opinion at 15, 17, 19) But this reading is patently too expansive, because the regulation does not say that the EPA has to accept projections at face value or that it is prohibited from questioning their legitimacy. Instead, and in context, the rule means that once the required information has been submitted to the EPA for review, the operator does not have to delay construction until it receives a decision on the necessity of a permit, but may commence construction prior to a "determination from the Administrator." Of course, if the operator actually begins construction without waiting for a "determination" from the EPA and it later turns out that a permit was required, a violation of NSR has occurred, and the operator risks penalties and injunctive relief requiring mitigation of illegal emissions, a possible shut down of the unit, or a retrofit with pollution controls to meet emissions standards. *See, e.g., United States v. Cinergy Corp., 618 F. Supp. 2d 942, 971 (S.D. Ind. 2009)*, *rev'd on other grounds*, *623 F.3d 455 (7th Cir. 2010)*.
>
> In short, DTE was not required by the regulations to secure the EPA's approval of the projections, or the project, before beginning construction, but in going forward without a permit, DTE proceeded at its own risk.

A prudent Ameren Missouri would not have assumed that risk for its 2007 and 2010 Rush Island projects.

[14] *United States v. DTE Energy Co.*, 845 F.3d 735, 740 (6th Cir. 2017).

Ameren Missouri's argument on page nine of its initial brief that its December 2021 retirement decision results in "absolutely no harm" and "indeed there is a *benefit* from that decision of about a billion dollars, and possibly more than two billion dollars, on a NPVRR basis" is premised on ignoring the history preceding December 2021 where in violation of the Clean Air Act it emitted over 162,000 tons of SO_2 in excess of the legal limits and exposed itself to incurring future costs for remediation of having violated the Clean Air Act.

On page 13 of its initial brief Ameren Missouri states, "As for the first theory, in its 2020 IRP, the Company analyzed specific alternative resource plans that assumed that the NSR litigation would be lost, ..." Ameren Missouri lost that NSR litigation on January 23, 2017, when Judge Sippel issued his liability opinion.[15] Although that loss was not final, at least by its 2017 integrated resource plan filing Ameren Missouri should have been explicitly addressing the fate of Rush Island.

On page 20 of its initial brief Ameren Missouri states, "The Rush Island projects were no different from the sort of component replacements that occur routinely across the Ameren Missouri system and the industry as a whole." That assertion is undercut by Ameren Missouri industry expert witness Jeffrey Holmstead's testimony during the evidentiary hearing that he could not identify which of the component replacements listed on Schedule SCW-D6 involve air preheater replacements,[16] and by Judge Sippel's findings in paragraphs 174, 175, and 176 of his liability opinion to the effect that components Ameren Missouri replaced at Rush Island in 2007 and 2010 were typical.[17]

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?

[15] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2.
[16] Tr. 2:75-85.
[17] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 944 (E.D. Mo. 2017); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r2, pp. 56-57.

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?

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?

On page 43 of its initial brief Ameren Missouri asserts, "First, if Mr. Murray were right[—that no securitization would ever be less costly to customers than traditional ratemaking—], then the legislature completely wasted its time in enacting Section 393.1700 because no utility could ever show that securitization produces net present value benefits." During the evidentiary hearing, Public Counsel witness Mr. Murray clarified his prefiled testimony by saying that there could be circumstances where the securitized bond rate was sufficiently below a utility's embedded cost of debt to make securitization beneficial to its customers.[18] There also may be circumstances where the appropriate comparison for securitization is the cost to customers of continuing to operate the generating plant; however, inasmuch as Ameren Missouri is abandoning Rush Island because its lost EPA's Clean Air Act enforcement action against Rush Island, this is not that circumstance.

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

On page 44 of its initial brief Ameren Missouri argues, "If customers were to collectively have a discount rate below the utility's WACC (which they do not) customers would be willing and should demand that they pay for the Company's outstanding approximately $11 billion in rate base up front instead of over time (which they are not and do not)." Ameren Missouri does not know what customers might be willing to pay for its $11 billion in rate base up front. $11 billion divided by 1.2 million customers is just over $9,000 per customer. It is likely that many of Ameren Missouri's customers would be willing to pay or finance $10,000 up front to avoid the profit this Commission will allow Ameren Missouri on that rate base. Ameren Missouri's effort to make its point begs the question as to whether customers could save even more money if all of Ameren Missouri's rate base is securitized. In such a scenario, customers would only be required to

[18] Tr. 3:251-255.

compensate debt investors who essentially provide all the capital to support rate base. In any event, Ameren Missouri's argument is specious, as Ameren Missouri has not offered to sell its rate base to its customers or give up the opportunity for equity investors to receive an authorized return on equity.

Issue No. 2 Post Financing Order Process/Procedure

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?

At page 49 of its initial brief Ameren Missouri mistakenly interpreted the workpapers at issue to be those supporting the certification letters. The workpapers at issue are those supporting the Issuance Advice Letter. If the Issuance Advice Letter workpapers are not available to parties other than Ameren Missouri and Staff before the Issuance Advice Letter is filed, then the other parties only have one and one-half business days to review them and the Issuance Advice Letter to evaluate whether the Issuance Advice Letter complies with the Commission's Financing Order, and to raise any concerns they have that it does not. Public Counsel simply is requesting the opportunity for it and other parties to see the drafts of Issuance Advice Letter and associated workpapers at the same time they are shared with Staff's finance team, which is two weeks prior to the scheduled filing of the Issuance Advice Letter.

8. NPV of Tax Benefits/ADIT

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

On page 58 of its initial brief Ameren Missouri erroneously states that its ADIT balance on the date it abandons Rush Island will "reflect[] amount owed to the taxing authority in future periods." This statement diametrically opposes a Commission argument to the Missouri Court of Appeals in Liberty's securitization case appeal: "Because '[t]his section referring to taxes does not mention ADIT,' the Commission argues that '[t]he statute does not contemplate Liberty retaining Asbury's ADIT to pay future taxes that may be owed on the securitized utility tariff

charges.'"[19] It also demonstrates Ameren Missouri's fundamental misconception of ADIT and income taxes. Rush Island ADIT is nothing more or less than the difference between what Ameren Missouri was entitled to claim for depreciation (accelerated depreciation) on its federal and state income tax returns plus the abandonment deduction it will be entitled to take when it abandons Rush Island, and the federal and state income tax depreciation (straight-line depreciation) and abandonment deductions Ameren Missouri was treated as having taken and will take for depreciation and abandonment for Missouri state ratemaking purposes.[20]

Once Ameren Missouri abandons Rush Island it no longer can take any federal or state depreciation deduction,[21] although it can take an abandonment deduction for the tax year in which it abandons Rush Island.[22] This means that after Ameren Missouri abandons Rush Island, Rush Island is irrelevant to Ameren Missouri's post abandonment federal or state income tax liabilities. It also means that Ameren Missouri's Rush Island ADIT balance no longer is tied to the no longer used and useful Rush Island. Rush Island ADIT should be moved on Ameren Missouri's regulatory books to a regulatory liability that is amortized to flow back to Ameren Missouri's customers; however, Missouri's securitization statute requires that, instead, a net present value calculation is performed and the result applied as an offset to reduce what otherwise would be the "energy transition costs."[23] That net present value calculation for the offset amount leaves an actual balance. Ameren Missouri will have the benefit of that amount, and if carrying costs are applied to it, it should have most, if not all, of the funds needed to pay the future federal and state income taxes on the Rush Island securitization charge revenues. Ameren Missouri's motivation here is to keep more of the Rush Island ADIT cash benefit now. But Ameren Missouri's argument

[19] Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868, 879, n. 8 (Mo. Ct. App. 2023).
[20] Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868, 876 (Mo. Ct. App. 2023).
[21] Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868, 878, n.6 (Mo. Ct. App. 2023).
[22] Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868, 872 (Mo. Ct. App. 2023).
[23] Empire Dist. Elec. Co. v. PSC, 672 S.W.3d 868, 879 (Mo. Ct. App. 2023).

is based on an interpretation and application of the statute the Commission rejected, a rejection which the Missouri Court of Appeals affirmed.

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

Public Counsel takes issue with Ameren Missouri's attempt to inject into this case as a new issue a modification of Staff's proposed financing order as to the treatment of partial payments which it describes as follows:

- Page 47-48, paragraph B10. Ameren Missouri modified the language to align with the description of partial payments reflected in paragraph 47 on page 22. Staff and the Company had different language for handling partial payments made by customers in their proposed tariffs. Ultimately the Commission will have to approve one of those sets of tariff language. The Company's tariff language is consistent with the expectations of rating agencies related to the treatment of partial payments and therefore will support issuance of securitized bonds, and is substantially less costly than Staff's language is to implement from the perspective of programming the Company's billing system, saving money for customers.

There is no evidence to support Ameren Missouri's bald assertions that its tariff language is consistent with rating agency expectations or that it will be cheaper to implement. Staff proposed tariff language in rebuttal, including treatment of partial payments.[24] Ameren Missouri responded to Staff tariff language proposals, but was silent as to partial payments.[25] Because prioritizing payment of securitization charges inherently reduces securitization bondholder risk and there is no evidence in the record to show more benefit by allocating partial payments despite Ameren Missouri's opportunity to adduce such evidence, the Commission should disregard Ameren Missouri's argument and adopt Staff's tariff language.

CONCLUSION

For the reasons stated in its initial brief and 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

[24] Ex. 106C, Staff witness Sarah Lange rebuttal testimony, p. 18, Sch. SLKL d-2, p. 1.
[25] Ex. 20C, Ameren Missouri witness Steve Wills surrebuttal testimony, pp. 20-23.

Missouri will recover through those bonds. Further, the Commission should reject Ameren Missouri's untimely partial payments proposal, 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 the Commission should adopt Public Counsel's suggestions regarding transparency, and securitization tariff language.

Respectfully,

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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 17th day of May 2024.

/s/ Nathan Williams