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**

REPLY BRIEF OF STAFF

Respectfully Submitted,

Jeffrey A. Keevil
Deputy Counsel
Missouri Bar No. 33825
Deputy Counsel

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

Attorneys for Staff of the
Missouri Public Service Commission

May 17, 2024

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY BRIEF OF STAFF

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

ARGUMENT

Rather than replying to every individual statement or argument made by the other parties in their initial briefs, having presented and argued its positions in its initial brief, Staff is limiting its replies to those matters which Staff believes will most aid the Commission. Accordingly, unless expressly stated below, the Commission should not infer from Staff's silence herein on a point raised by another party in their initial brief that Staff agrees with such other party's statement or argument. In addition, Staff would caution the Commission to not simply accept at face value the statements or arguments made by the other parties in their initial briefs, but make sure that such statements are supported by accurate citations to the evidence.

1. Net Present Value Benefits

c. Should the language related to the finance team role be modified from prior financing orders from "the right to review, provide input, and collaborate" to "the right to provide input . . . and collaborate. . ."?

In its initial brief, Ameren Missouri no longer objects to use of the word "review" when describing the role of the finance team. However, it now objects to use of the

word “oversight” “in order “to avoid any confusion.” The Commission should be aware that the word “oversight” was used in the financing orders in both the Empire and Evergy cases in describing the finance team role. Staff would submit that deviating from what the Commission has done in both of the previous securitization cases in Missouri – as Ameren Missouri now requests – is more likely to lead to confusion than remaining consistent with what has been done previously.

Financing Order

Despite it not being listed on the List of Issues, Ameren Missouri chose to brief the Staff’s proposed financing order. This reply brief will not reply to each statement Ameren Missouri made concerning the financing order, as Staff is confident the Commission and RLJ are fully capable of drafting a financing order – particularly after having done so in two prior securitization cases. However, Staff would note the following financing order “issues” from Ameren Missouri’s initial brief for the Commission’s consideration.

On page 51 Ameren Missouri’s brief refers to Page 9, paragraph 19; p. 34-35, paragraph 11; pp 45-46, paragraph 8 of the proposed financing order and claims that its proposed edit is based on Section 393.1700.2(1)(f) of the securitization statute. The Commission should be aware that the cited statutory section applies to the petition for the financing order rather than the financing order itself. On page 52 of its brief, Ameren Missouri refers once again to its objection to use of the word “oversight” discussed above. And perhaps most disturbing, on page 53 of its brief Ameren Missouri refers to page 29, paragraph 61; page 45-46, paragraph 8 in referencing its desired edits to the proposed financing order provisions regarding the underwriter certifications

required by the Commission. Ameren Missouri attempts to eliminate the majority of the underwriter certifications – certifications the Commission has required in both of the prior securitization cases in Missouri. Staff submits that the same certifications should be required in this case to "avoid any confusion."

2. Post Financing Order Process/Procedure

On pages 35 - 37 of its initial brief, OPC refers to "transparency" as justification for several of Mr. Murray's recommendations. Although in the abstract "transparency" may generally be a good thing, in this instance OPC seems willing to exchange increased costs and narrowing the pool of available underwriters in order to obtain its desired level of "transparency." Both Ms. Niehaus and Mr. Davis testified at the hearing that Mr. Murray's recommendations could do exactly that – increase the cost of the process and deter participation of potential underwriters.[1]

In addition, OPC's reference on page 37 of its brief to "what occurred in Case Nos. EO-2022-0040 and 0193" where OPC found an error in the Issuance Advice Letter is somewhat misleading, since the Commission never issued an order in that case agreeing with Mr. Murray's alleged error. Mr. Murray's recommendations herein should be rejected.

3.b. Did Ameren Missouri make reasonable and prudent decisions respecting whether to obtain New Source Review (NSR) permits prior to either or both of the 2007 and 2010 Rush Island planned outages projects and afterward, including its conduct of the NSR litigation? If any of its decisions in this regard

[1] Tr. Vol. 3 pages 142-143, 145-150, 153, 208.

were unreasonable and imprudent, did any such imprudent decisions harm customers and if so, in what amount?

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

5.a. Did Ameren Missouri make reasonable and prudent decisions respecting its planning for the Rush Island NSR litigation's outcome? If not, did any such imprudent decisions harm customers and if so, in what amount?

No, it is not prudent or reasonable to make decisions that lead to violations of federal law.[2] Despite the District Court's ruling that "Ameren should have expected and did expect the project at Rush Island to increase unit availability, emit significantly more pollution, and…by a preponderance of the evidence that Ameren knew it would and did in fact violate the Clean Air Act,"[3] Ameren continues to tell this Commission that "it's unfair to judge them based on what happened when they didn't expect it"[4] and Ameren "couldn't have reasonably anticipated it"[5] and that Ameren's actions were reasonable and prudent.

Throughout this case, Ameren attempted to portray the District Court's finding in a light that benefits it, when, as a matter of fact, the District Court found that Ameren should

[2] Ex. 110, Majors Rebuttal, pg. 13, ln. 22-23.
[3] Ex. 117, District Court Transcript 3.28.24, pg. 28, ln. 22-25 and pg. 29, ln. 1.
[4] *Id*, pg. 29, ln. 2-3.
[5] *Id*, pg. 29, ln. 4-5.

have and did know that Ameren's own actions triggered the permitting requirements.[6] As clearly stated in the District Court's remedy order:

> A reasonable power plant operator would have known that the modifications undertaken at Rush Island's Units 1 and 2 would trigger PSD requirements. Ameren's failure to obtain PSD permits was not reasonable.[7]

In addition, the District Court found that:

> …at the time of the Rush Island modifications, "the standard for assessing PSD applicability was well-established." It was also "well-known" that the types of unpermitted projects Ameren undertook risked triggering PSD requirements.[8]

Ameren also had its so-called "avoidance" options, put forward during the District Court trial by expert witness Campbell. These options included "canceling the projects, reducing the projects emissions without a permit, or reducing the projects with a 'minor permit.'"[9] Ameren ignored all three, and chose to proceed with the projects without first obtaining the required permits.[10] As far back as 2009, the District Court found that Ameren was aware of the possibility that NSR would be triggered at Rush Island.[11] The District Court found that Ameren's own internal documents made clear that Ameren has, for many years, understood that flue gas desulfurization systems or scrubbers may be required at Rush Island.[12] Ameren chose to instead delay for more than 10 years, enabling it to benefit from the sale of more power from Rush Island than would have been possible if Ameren had complied with the law.[13]

---

[6] *Id*, pg. 29, ln. 11-18.
[7] Ex. 106, District Remedy Order, pg. 104, para. 393.
[8] *Id*, pg. 104, para. 394.
[9] *Id*, pg. 105, para. 395.
[10] *Id*, para. 396.
[11] *Id*, para. 398.
[12] *Id*, pg. 109, para. 410.
[13] *Id*, para. 412.

And under cross-examination, Ameren witness Jeffrey Holmstead did not disagree that, since Ameren had already delayed both of its outages, the projects themselves were thus not critical for functioning, and that Ameren could have waited for the NSR process to be completed.[14] Again, Ameren chose to proceed with the project anyway.

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

Ameren's decisions were clearly unreasonable at the time the decisions were made; there is no hindsight in relying on the findings of the District Court detailing what Ameren knew or should have known at the time decisions were made. Ameren's argument that the District Court's remedy order is strictly dicta, and relying on it would violate Ameren's rights to due process, are not serious and should be disregarded by the Commission.[15] Ameren reiterates the reasonable and prudent standard found under § 393.1700.1(7)(a) of the securitization statute, and Ameren agrees that "the statutory standard…demonstrates the terms 'reasonable' and 'prudent' are interrelated and do not serve as two independent standards[.]."[16]

[14] Transcript – Volume 2 (Evidentiary Hearing – Jefferson City, MO via WebEx – April 12, 2024), pg. 120, ln. 7-24.
[15] Post-Hearing Brief of Union Electric Company d/b/a Ameren Missouri, pg. 39-41.
[16] *Id*, pg. 5

Ameren failing to recognize that the District Court's finding that its decisions were unreasonable at the time they were made, and how that would affect the prudency of such decisions before the Commission, is not a deprivation of its due process rights: it is Ameren's failure to take into account the consequences of its own decisions.

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

Yes, the Commission should hold ratepayers harmless for costs above ** $115 million** associated with the Rush Island Reliability projects, and preserve the issues with potential future remedies and potential capacity shortfalls for a future rate proceeding.[17]

> As explained by Staff witness Claire Eubanks in her rebuttal testimony:
> Had Ameren Missouri begun planning for an unfavorable outcome from the Courts earlier it may have considered the impact of a nearer term retirement on its transmission system, developed a tighter expectation on the cost of such upgrades, and avoided an increase in market and construction costs. Ameren Missouri's break-even analysis presented in this case assumed ** [redacted] ** for the transmission upgrades. The current expected cost is ** [redacted] . ** Because Ameren Missouri based its decision to proceed with Rush Island retirement on ** [redacted] ** in transmission costs, ratepayers should be held harmless from transmission costs in excess of ** [redacted] .** Ameren Missouri has presented no evidence in this case that ratepayers are better off with the retirement of Rush Island with transmission costs in excess of ** [redacted] .** Staff will propose an adjustment in a future rate proceeding to reflect any portion of the Rush Island Reliability Project it deems imprudent.[18]

[17] Ex. 102, Eubanks Rebuttal, pg. 40, ln. 4-8.
[18] *Id*, pg. 25, ln. 5-15.

And as further explained by Ms. Eubanks during the evidentiary hearing, ** [redacted] . **[19]

The Commission should acknowledge Ameren's failure to plan for a negative outcome in the NSR litigation by holding ratepayers harmless from the costs above ** [redacted] ** associated with the Rush Island Reliability projects, and preserve the issues with potential future remedies and potential capacity shortfalls for a future rate proceeding.[20]

4. Amount to Finance

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

In its brief starting on page 67, Ameren Missouri attempts to justify its inclusion of certain abandoned studies. However, its alleged justification conflicts with its own studies. As stated in Staff's initial brief, Ameren Missouri's own evaluation of the preliminary scrubber studies showed that the preliminary work was of limited benefit to a future project, would not substantially shorten the project schedule, and could not be relied upon by the actual project engineers in the case that Ameren Missouri were to actually commence the project.[21] Staff's proposed exclusion should be adopted.

[19] Transcript – Volume 5 (Evidentiary Hearing – In-Camera Session – Jefferson City, MO – April 16, 2024), pg. 346, ln. 12-22.
[20] Ex. 102, Eubanks Rebuttal, pg. 3, ln. 12-16.
[21] Ex. 111, Majors Surrebuttal, page 8, lines 6-10. See, in general, Ex. 111, Majors Surrebuttal, page 4 line 17 through page 8 line 10.

13. Community Transition costs

Staff agrees with Ameren that it is appropriate to ease the transition to zero property tax for the surrounding community, including the school district.[22] However, the cost of that transition should not be securitized, because it does not meet the definition of "energy transition costs" as contemplated under the statute. Section 393.1700.1(7) defines such costs as:

> (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;
>
> (b) Pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021;

Ameren put forward that, though community transition costs are not clearly outlined and permitted under the statutory definition of "energy transition costs," the Commission has discretion to include such costs because the statute says "include, but are not limited to…"[23] While Staff agrees that the statutory language does provide the Commission

[22] Post-Hearing Brief of Union Electric Company d/b/a Ameren Missouri, pg. 70.
[23] *Id*, pg. 70-71.

discretion in deciding what is an "energy transition cost," these costs are more like charitable contributions than a tax that Ameren has to pay.[24] In short, Ameren should not need these costs to be securitized for it to be a good community partner serving the public interest.

16. Allocation of Revenue Requirement

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

At page 10 of its initial brief MIEC makes the unsupported statements that "At no time have the fixed costs of Rush Island been proposed to be allocated on a kWh basis by Ameren, nor has the Commission ever supported an allocation of fixed costs associated with Ameren on the basis of class kWh. These costs of Ameren that are to be securitized are currently collected in Ameren's base rats [*sic*], and have been allocated on the basis of demands, not energy. It is appropriate that the cost of the securitization be allocated among customer classes in a manner that is similar to how the underlying costs are allocated in rates."

MIEC glosses over, or ignores completely, the fact that the "demand" allocation of production rate base is still heavily reliant on allocating by energy; Mr. Wills of Ameren Missouri testified to this at some length during the hearing.[25] The securitized utility revenue requirement should be allocated as proposed by Staff.

17. Tariff

If securitization is authorized, should the compliance tariff sheets:

d. Clarify the application of the SUTC in the event of a new or modified territorial agreement?[26]

[24] Ex. 110, Majors Rebuttal, pg. 21, ln. 15-19.
[25] Tr. Vol. 8 pages 94-99.
[26] Staff's Reply herein would also apply to Issue 20 on the List of Issues.

On page 39 of its initial brief OPC states its position to be that "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." First, it should be recognized that the nonbypassability Staff has included in its proposed tariff is incredibly similar to that which the Commission has previously approved for both Empire/Liberty and Evergy.[27] Second, OPC's position is at odds with the securitization statute. 393.1700.1(16), RSMo., defines "Securitized utility tariff charge" as:

> the amounts authorized by the commission to repay, finance, or refinance securitized utility tariff costs and financing costs and that are, except as otherwise provided for in this section, nonbypassable charges imposed on and part of all retail customer bills, collected by an electrical corporation or its successors or assignees, or a collection agent, in full, separate and apart from the electrical corporation's base rates, and paid by all existing or future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state.[28] **[emphasis added]**

The answer to the specific question posed by this issue is "Yes," as reflected in Staff's proposed tariff.

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?

[27] Tr. Vol. 8 page 131.
[28] Section 393.1700.1(16), RSMo. See also Sections 393.1700.2(3)(c)d and 393.1700.11(1)(a).

Ameren Missouri misstates / mischaracterizes this issue in its initial brief. As stated in the issue above, the issue involves the *retirement date* of Rush Island. On page 77 of its brief, Ameren Missouri refers to the time *when the assets are taken out of the Company's revenue requirement*, and then proceeds to make its argument on the basis of that date. The assets won't be taken out of revenue requirement until the next rate case after retirement. Obviously, these are different dates, and could lead to different arguments and different results.

As stated in Staff's initial brief, based on the correct statement of the issue, if the Commission decides to allow these carrying costs they should be calculated at the most current rate of long-term debt (currently 4.051%[29]), consistent with the Liberty Utilities Order.[30]

WHEREFORE, Staff respectfully submits this Reply Brief for the Commission's consideration, and for the reasons set forth in its initial brief and this reply brief, Staff requests the Commission issue an order adopting Staff's position on each of the issues in this case.

Respectfully submitted,

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

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

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

Attorneys for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System on this 17th day of May 2024.

/s/ Jeffrey A. Keevil