

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

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

**POST-HEARING REPLY BRIEF OF  
THE MISSOURI INDUSTRIAL ENERGY CONSUMERS**

COMES NOW the Missouri Industrial Energy Consumers (“MIEC”) and for its Post-Hearing Reply Brief states as follows:

**I. The Commission Staff’s Analysis of MIEC’s Proposal for Allocating  
Securitization Costs Among Customer Classes is Incomplete and Wrong**

**A. The Commission Staff’s position reflects fundamental and material  
misunderstandings regarding cost allocation.**

Staff witness Sarah Lange recommends an allocation of the Rush Island securitization costs in this case based on energy consumption.<sup>1</sup> In her testimony, Ms. Lange makes four statements that she believes “allocation based on class-kilowatt hours.” The testimony of MIEC witness Maurice Brubaker shows that none of Ms. Lange’s four statements support Staff’s position.

Ms. Lange’s first statement is correct but obvious proposition that “[t]he cost recovery issue here are the costs of the decisions that Ameren Missouri’s management that resulted in a plant that cannot lawfully be operated. As energy is the most basic unit sold by an electric utility, allocation on energy is reasonable.”<sup>2</sup> This sentence is reasonably accurate

---

<sup>1</sup> Exh.106, *Lange Rebuttal* p. 2, l. 19 – p. 3, l. 11.

<sup>2</sup> *Id.* at p. 2, ll. 20 – 23.

and could be equally accurate if expanded to state that the costs to be securitized are fixed costs associated with the undepreciated portion of the Rush Island units and related costs.<sup>3</sup>

This statement simply does not address or support the validity of Ms. Lange’s position.

Ms. Lange’s second statement is inaccurate and irrelevant. Ms. Lange states that the retirement of Rush Island creates an “energy need”.<sup>4</sup> This is not relevant to the allocation of how costs associated with the Rush Island retirement should be allocated. Rush Island, like any other generating unit, satisfies a demand requirement and generates energy<sup>5</sup>. In the same sense that one might say that retirement of Rush Island creates “an energy need”, it can also be said create a “demand need”<sup>6</sup>, as made obvious in the Rebuttal Testimony of Commission Staff Witness Claire Eubanks: “Ameren Missouri’s recent 2023 IRP suggests that \*\*\*\*\*Ameren Missouri will be short on capacity for MISO Resource Adequacy purposes”.<sup>7</sup> Staff Witness Eubanks also states:

Staff is still reviewing Ameren Missouri’s 2023 IRP and is not commenting on the reasonableness of Ameren Missouri’s long-term capacity expectations. However, the near-term expectation from Ameren Missouri is that there is a potential capital shortfall in evaluating its capacity position in terms of \*\*\*\*\*. If Ameren Missouri’s expectations materialize, Ameren Missouri will need to clear capacity in the planning resource auction (PRA), resulting in harm to ratepayers attributable to the early retirement of Rush Island.<sup>8</sup>

Notably, Staff Engineering Witness Eubanks focuses on the capacity issue association with the Rush Island retirement, and not the energy issue.<sup>9</sup>

---

<sup>3</sup> Ex. 551, *Surrebuttal Testimony of Maurice Brubaker* at p. 5, ll. 11- 14.

<sup>4</sup> Ex. 106, *Lange Rebuttal* at p. 3, ll. 1-2 and p. 3, l. 12 – p. 4, l. 13.

<sup>5</sup> Ex. 551, *Brubaker Surrebuttal* at p. 5, ll. 8 – 14.

<sup>6</sup> *Id.* at p. 6, ll. 15 – 12.

<sup>7</sup> Ex. 102, *Rebuttal Testimony of Claire M. Eubanks*, p. 5, ll. 9 – 11.

<sup>8</sup> *Id.* at p. 21, ll. 14 – 20.

<sup>9</sup> Ex. 551, *Brubaker Surrebuttal* at p. 7, ll. 11 – 12.

Staff Witness Lange’s third statement is incongruous. Ms. Lange states that “Ameren Missouri testifies that its decisions to retire coal-fired generation and certain oil and natural gas units are driven by environmental policy goals and legislation, not by a traditional capacity objective of meeting system demand.”<sup>10</sup> This statement does not make sense, because utilities do not retire capacity for the objective of meeting peak demands, and as correctly noted by Ms. Lange elsewhere in her testimony, Rush Island’s retirement was compelled by EPA and court decisions and a recognition that the continuation of Rush Island operations would not be economical. Commission Staff Witness Lange’s fourth statement is irrelevant. Ms. Lange states:

Customers can and do switch among rate classes and rate schedules, and rate classes and rate schedules come and go over time. Unreasonable outcomes are likely without sufficient tariff provisions that – as yet – have not been developed. The loss-adjusted energy approach has been adopted for Evergy West Schedule SUR and Liberty SUTC.<sup>11</sup>

This statement does not support an energy-based collection of securitization costs in the present case. The Evergy and Liberty cases presented a very different sets of facts than the present case and cannot be supported by Ms. Lange’s reference.<sup>12</sup> MIEC witness Brubaker addressed the potential rate switching argument in his Rebuttal Testimony and explained why under his methodology, rate switching is not a concern.<sup>13</sup> Additional evidence showing that there is no “rate switching problem” is provided in MIEC’s Response to Commission Staff Data Request No. 28.<sup>14</sup>

---

<sup>10</sup> Ex. 106, *Lange Surrebuttal* at p. 3, ll. 3 – 6.

<sup>11</sup> *Id.* at p. 3, ll. 7 – 11.

<sup>12</sup> Ex. 551, *Brubaker Surrebuttal* at p. 8, l. 21 – p. 9, l. 2.

<sup>13</sup> Ex. 550, *Brubaker Rebuttal* at p. 11, ll. 1 – 10.

<sup>14</sup> *Id.* at Schedule MEB-SUR-1.

Ms. Lange’s references to Ameren’s Integrated Resource Plan (“IRP”) case<sup>15</sup> are also irrelevant to show how costs associated with Rush Island’s retirement should be collected from ratepayers.<sup>16</sup> The IRP is a forward-looking planning analysis. In contrast, the Rush Island retirement is assumed to be an accomplished historical decision. What may or may not occur during a pending or future IRP has no bearing or relevance to how the stranded costs associated with Rush Island should be collected from customers.<sup>17</sup>

**B. Staff’ recommendation is based on a flawed and evaluation of MIEC’s recommended approach.**

Taking a high level view, it is very important to note that: (1) Ms. Lange’s claim that Mr. Brubaker’s proposal “can’t be done”<sup>18</sup> is contrary to the evidence - Ameren has testified that it does not foresee any difficulty or problems if it were to implement MIEC’s proposed collection method (if there were problems, Ameren certainly would have made note of them);<sup>19</sup> and (2) Contrary to Ms. Lange’s claim in her testimony that no other utility has implemented MIEC’s proposal<sup>20</sup>, the evidence clearly shows that this is untrue; indeed, extensive information provided to Ms. Lange well in advance of her testimony clearly

---

<sup>15</sup> Ex. 106, *Lange Surrebuttal* at p. 5, l. 34 – p. 6, l. 32.

<sup>16</sup> Ex. 551, *Brubaker Surrebuttal* at p. 8, l. 21 – p. 9, l. 2.

<sup>17</sup> *Id.* at p. 8, l. 26 – p. 9, l. 2.

<sup>18</sup> Tr. Vol. 8, p. 136, ll. 8 – 10.

<sup>19</sup> See Ex. 20, *Surrebuttal Testimony of Steven Wills*, p. 19, ll. 1 – 2 (“The cost allocation approach advocated by MIEC would unquestionably be another reasonable alternative for the Commission to consider”); T. Vol 8, p. 82 l. 1 -- 84, l. 10.

<sup>20</sup> Tr. Vol 8 p. 117, l. 15 – l. 20.

pointed out that this approach (equal percent increase on base rate revenues) has been widely used to recover the cost of securitization.<sup>21</sup>

Staff Witness Lange produces numerous hypotheticals claiming that it would be impossible to implement the equal percentage collection approach in conjunction with two annual bond payments. However, evident from Ms. Lange’s surrebuttal testimony, she has incorrectly considered only cash flows between the collection of revenue and the twice-annual payment on the bonds to the exclusion of myriad other aspects of the securitization.<sup>22</sup> The incomplete picture presented Ms. Lange’s surrebuttal creates the appearance of a problem because she ignores numerous other features of securitization that are specifically designed counteract and/or eliminate the problems that Ms. Lange has alleged. ***Specifically, the Commission Staff’s analysis omits consideration of crucial funding provisions which clearly outlined both in Ameren’s Verified Petition, the Direct Testimony of Ameren Witness Niehaus and the Commission Staff’s own Proposed Financing Order filed in this case.***

Ameren witness Katrina Niehaus clearly explains in her Direct Testimony how money gets to the bondholders for the two annual payments.<sup>23</sup> Ms. Niehaus describes a “Collection Account” and a “Capital Account.”<sup>24</sup> The Collection Account receives all collections of Securitized Utility Tariff Charges (“SUTC”).<sup>25</sup> The Capital Account protects against under-collections and ensures prompt payment:

---

<sup>21</sup> See Ex. 551, *Brubaker Surrebuttal*, Schedule MEB SUR-1 (Incorporating March 11, 2024 Data Response to Commission Staff Data Request 28).

<sup>22</sup> Ex. 106, *Lange Surrebuttal* at p. 2, l. 9 – p. 7, l. 10.

<sup>23</sup> Exh. 4, *Direct Testimony of Katrina Niehaus*, p. 22, l. 1 - p. 24, l. 9.

<sup>24</sup> *Id.* at p. 22, ll. 13 – 14.

<sup>25</sup> *Id.* at p. 22, ll. 1 – 9.

The Capital Account serves as a buffer against under-collection which might otherwise cause a delay in the payment of scheduled principal, interest, or operating expenses. The Capital Subaccount will be funded by Ameren on or prior to the closing of the transaction through a capital contribution in an amount to equal to at least 0.5% of the initial principal balance of the rate reduction bonds issued.”<sup>26</sup>

\* \* \*

The Capital Account can be used to make interest and principal payments (or to pay other operating costs) if Securitized Utility Tariff Charges on deposit to the credit of the Collection Account are inadequate to do so. Any withdrawals from the Capital Account to pay interest or principal due to bondholders will be replenished to the required level with future remittances of Securitized Utility Tariff Charges and incorporated into the true-up mechanism.<sup>27</sup>

Ameren Witness Niehaus goes on to explain the “true-up” process as follows:

One of the fundamental utility securitization features that enables “AAA” ratings is the statutorily mandated periodic true-up adjustment process. The true-up process involves the adjustment of the customer charges on a periodic basis, to ensure that the scheduled securitization debt service and ongoing financing costs are paid on a timely basis. True-up adjustments are also designed to minimize any over-collections and target the low 100% (or 1.0x) debt service coverage.<sup>28</sup>

The same general provisions explained in the Direct Testimony of Ms. Niehaus are set forth clearly in Ameren’s Petition<sup>29</sup> and in the Commission Staff’s Proposed Financing Order.<sup>30</sup>

### **C. Contrary to Staff Witness Lange, the Method Proposed by MIEC**

#### **Witness Brubaker is Widely Used**

Astonishingly, Commission Staff Witness Lange incorrectly testified during the evidentiary hearing to the effect that the method proposed by Mr. Brubaker has not been

---

<sup>26</sup> *Id.* at p. 23, ll. 1 – 5.

<sup>27</sup> *Id.* at p. 24, ll. 1 – 6.

<sup>28</sup> *Id.* at p. 32, ll. 14 – 19.

<sup>29</sup> *Verified Petition for Financing Order Allowing Issuance of Securitized Utility Tariff Bonds* dated November 1, 2023

<sup>30</sup> *Commission Staff Proposed Financing Order* dated April 11, 2024.

applied in any other state.<sup>31</sup> This is directly contrary to the MIEC’s Data Response the Commission Staff dated March 11, 2024, which included in Mr. Brubaker’s Surrebuttal Testimony as Schedule MEB-SUR-1, **and which identifies seven securitization tariffs that work exactly as Mr. Brubaker has proposed in this case.**<sup>32</sup> Specifically, Mr. Brubaker’s Surrebuttal Testimony provides the exact tariff sheets that prescribe the application of the equal percentage charge as follows:

“II. NET MONTHLY RATE

There shall be added to each monthly bill an adjustment, in the form of a new and separate charge, for the financing of system restoration costs, storm damage reserve costs and system restoration bond financing costs as approved by the Commission. Customer charges, energy charges, load or Demand charges, lamp charges or access charges on any monthly bill shall be adjusted by the appropriate rate shown in Attachment A.

III. TRUE-UP

The FSCIV-ELL Rate Adjustments shall be subject to true-up in accordance with the schedule prescribed in the Commission’s financing order and shall be performed at least semi-annually.<sup>33</sup>

This same language appears in the Rider presented in Mr. Brubaker’s Surrebuttal Testimony, Schedule MEB-SUR-1.<sup>34</sup>

We assume that Staff Witness Lange’s misstatement was the result of memory lapse, but it nevertheless is a colossal misstatement of the facts. Clearly, the method proposed by Mr. Brubaker has been successfully applied in other instances – at least seven that were

---

<sup>31</sup> Tr. Vol. 3, p. 117, ll. 19 - 25.

<sup>32</sup>The entire response is attached to Mr. Brubaker’s Surrebuttal Testimony, Exh. 551, Schedule MEB-SUR-1 at pp.19 – 20.

<sup>33</sup> Exh. 551, *Brubaker Surrebuttal*, Schedule MEB-SUR-1, Attachment 2, pp. 19-22

<sup>34</sup> Id.

provided in MIEC's response to Staff's Data Request and included in Mr. Brubaker's Surrebuttal Testimony.

**D. The Language of the Proposed Financing Order Language Should Simply Be Changed Only to Refer to "Equal Percentage Collection" Instead of "Equal per Kilowatthour"**

Staff attempts to diminish the value of Mr. Brubaker's testimony on the basis that he did not provide specific language for the proposed financing order.<sup>35</sup> Contrary to Staff's position this is a non-issue -- as Mr. Brubaker explained in his testimony, all securitization bond issues have similar provisions and requirements that would be applicable regardless of whether Mr. Brubaker's method or Staff's method were employed.<sup>36</sup> The same provisions would be included in the Financing Order, and the tariff would simply prescribe the equal percent application of the securitization surcharge as clearly defined by Mr. Brubaker in his Rebuttal Testimony:

**"Q IN PRACTICE, HOW WOULD THIS BE APPLIED?"**

**A** This uniform percentage of 1.816% would be applied to the base rate component of monthly bills of each customer. Base rates consist of the customer, demand and energy charges that are used to calculate the bill sent to customers. Base rate revenues for lighting classes would also include charges for lighting fixtures and other components. The base rate revenues would be before any surcharges or sur-credits and do not include FAC, Riders B or C credits, or other components.<sup>37</sup>

---

<sup>35</sup> Ex. 107, *Lange Surrebuttal*, p. 2 ll. 9 - 14

<sup>36</sup> Tr., Vol. 8, p. 144, ll. 3 - 20.

<sup>37</sup> Exh. 550, *Brubaker Rebuttal* p. 10, ll. 11 - 17. Of course, the specific percent will not be known until the Commission decides the amount to securitize and the bond cost is determined.



## **II. Missouri’s Securitization Statute, Cost of Service Principles and Economic Development Policy Support Allocation of Securitized Costs to Customers Similarly to How Costs Are Allocated in Rates**

The Commission’s prior securitization decisions in both the Liberty<sup>38</sup> and Empire<sup>39</sup> applied Missouri Statutory Section 393.1700 securitization to very different facts than those in the present case. Nonetheless, Commission’s reasoning in these cases strongly supports allocation of the securitized Rush Island retirement costs as an equal percentage to base rates. In both the Liberty and Evergy securitization cases, the Commission applied the principle that “recovery through securitization requires a comparison to recovery absent securitization”.<sup>40</sup> Applying that same principle to the present case will provide a fair allocation of securitization costs among the customer classes as well as guidance for stable and consistent future interpretation of Missouri’s Securitization Statute.

The Commission’s cost allocation decision in present case will have a much larger impact than the Commission’s two prior securitization decisions, and will have large and lasting economic consequences for Ameren ratepayers and for Missouri’s economy as a whole due to the potential early retirements of two additional Ameren coal plants. Ameren’s coal-fired Sioux Energy Center is scheduled for retirement in 2030, and Ameren disclosed in its most recent earnings call on May 3, 2024 that it may retire its Labadie units earlier than expected due to EPA’s new rule stipulating that coal plants either close by 2039 or use carbon capture or other technologies to capture 90 percent of their emissions by 2032.<sup>41</sup>

---

<sup>40</sup> *Evergy West*, Amended Report and Order at p. 24, Case No. EF-2022-0155.

<sup>41</sup> Ameren Corporation, Transcript of Q1 Earnings Call, May 3, 2024.

In the same earnings call, Ameren noted that it is expecting mounting load growth from the automotive, aerospace engineering data center and agricultural industries. All of these are energy intensive, high-load factor industries which make major contributions to fixed costs, which it turn reduces rates for all other ratepayers.<sup>42</sup> In a recent Commission proceeding, Ameren’s Senior Director of Economic, Community and Business Development Robert Dixon (previously Missouri’s Director of Economic Development) explained how attracting and retaining large power users reduces rates for all classes of customers by spreading the utility’s fixed costs:

Economic development is an important customer affordability strategy, and it included in Ameren Missouri’s annual business plan. By attracting new customers and helping our existing customers grow our operations here, we can expand our customer base and better utilize our infrastructure, including by spreading our fixed costs over the additional electricity sales economic development creates. This ultimately keeps rates lower than they would otherwise be for all customers.<sup>43</sup>

The upcoming retirement of Sioux in 2030 and the potential early retirement of Labadie’s four units are large costs that will necessarily be projected and considered by any large power user in deciding whether to locate or expand operations in Missouri. Economic development requires that the utility rate increase process be stable, predictable and based on consistent principles that enable business and industry to predict their costs over the long term.<sup>44</sup> The Commission’s allocation of the Rush Island securitization costs in this case will

---

<sup>42</sup> Id.

<sup>43</sup> *Surrebuttal Testimony of Robert B. Dixon*, p. 6 ll. 15-22, Case No. EA-2022-0245.

<sup>44</sup>Utility rate increases are associated with job losses across Missouri’s economy. **METCALFE, GILBERT E., THE RELATIONSHIP BETWEEN ELECTRICITY PRICES AND JOBS IN MISSOURI**,” February 27, 2013 (finding that a ten percent increase in electric prices would conservatively be expected to result in the loss of 61,000 jobs or 1.8 percent of Missouri’s workforce primarily in the manufacturing sector), filed in Case No. EW-2016-0313, *Comments of The Missouri Industrial Energy Consumers* Appendix A.

send an important signal to large employers regarding their potential exposure cost exposure as they consider investment in Missouri operations. The Commission should allocate the securitized costs in this case as an equal percentage to base rates, which is consistent with the principles applied in the Commission's two prior decisions under the Missouri Securitization statute and ensure that the allocation of plant retirement costs is fair, stable and predictable.

Respectfully submitted,

Curtis, Heinz, Garrett & O'Keefe, P.C.

By: /s/ Diana M. Plescia  
Diana M. Plescia #42419  
130 S. Bemiston, Suite 200  
St. Louis, Missouri 63105  
Telephone: (314) 725-8788  
Facsimile: (314) 725-8789  
E-mail: [dplescia@chgolaw.com](mailto:dplescia@chgolaw.com)

Attorney for the Missouri Industrial  
Energy Consumers

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed to all parties on the Commission's service list in these cases.

/s/ Diana M. Plescia