

**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

**PUBLIC COUNSEL’S APPLICATION FOR REHEARING
OF THE COMMISSION’S AMENDED REPORT AND ORDER**

COMES NOW the Office of Public Counsel (Public Counsel) and applies to the Commission to rehear aspects of its August 7, 2024, Amended Report and Order¹ (“*Amended Financing Order*”) as follows:

Customer securitization benefit

1. To reach its conclusions that “the plain language of the Securitization Statute requires that the benefit comparison include a traditional method of both financing and of recovery of the undepreciated Rush Island plant verses recovery through securitization”² and that “[t]he Securitization Statute necessarily requires that the benefit comparison consider these financing costs³ that would be applicable to the net book value or net rate base of Rush Island plant at its

¹ Although not material to its application for rehearing, Public Counsel notes that in its amended order the Commission incorrectly shows the title of Public Counsel’s attorney as “Counsel” rather than “Chief Deputy Public Counsel” in the listing of counsel on page seven, incorrectly states that in his surrebuttal testimony Public Counsel witness Murray was responding Public Counsel witness Seaver rather than to Staff witness Majors on page 13, and in ordering paragraph 41 on page 170 incorrectly states that the financing order will become effective on July 20, 2024.

² *Amended Financing Order*, p. 92.

³ The Commission’s reference to “these financing costs” is to the following sentences of its *Amended Financing Order* which immediately precede that reference: “The traditional method of financing undepreciated rate base is through a determination of the utility’s cost of capital. Basically, the cost of capital includes both an equity and a debt component. The weighted average cost of equity and debt, or rate of return, provides the utility with dollars to pay interest costs on debt and a return on equity or earnings on its investment. The rate of return is applied to net rate base.” *Amended Financing Order*, pp. 92-93.

retirement date”⁴ the Commission erroneously inserted a financing requirement into an expressly mandated statutory financing order requirement.

2. The relevant statutory financing order requirement follows:

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

* * * *

b. 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 utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. Notwithstanding any provisions of this section to the contrary, in considering whether to find 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, the commission may consider previous instances where it has issued financing orders to the petitioning electrical corporation and such electrical corporation has previously issued securitized utility tariff bonds.

§ 393.1700.2(3)(c)b, RSMo.

3. From the Commission’s *Amended Financing Order* it is apparent that the “traditional method of both financing and of recovery” financing requirement that the Commission inserted into its *Amended Financing Order* is based on the Securitization Statute petition requirement that follows:

(2) The petition shall include all of the following:

* * * *

(e) A comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become securitized utility tariff costs from customers. The comparison should demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility

⁴ *Amended Financing Order*, p. 93.

tariff charges are expected to provide quantifiable net present value benefits to customers.

§ 393.1700.2(1)(f), RSMo.

4. By their plain language these financing order and petition requirements are independent. One includes a securitization petition sufficiency threshold: Here, Ameren Missouri's analysis that on a net present value basis the estimated costs to its customers of securitizing Rush Island are less than what their estimated costs would be by "[applying] the traditional method of financing and recovering [Ameren Missouri's] undepreciated investment [in Rush Island] that may become securitized utility tariff costs."

5. The other establishes a financing order threshold: Here, the Commission's finding that securitizing Rush Island provides "quantifiable net present value benefits to [Ameren Missouri's] customers as compared to [how Ameren Missouri otherwise would recover] the components of securitized utility tariff costs [from its customers]."

6. Without dispute the Commission found that, without securitization, Ameren Missouri's "recovery of the undepreciated balance of Rush Island would be through a general rate case and would entail amortization of the balance to be recovered over a period of years."⁵ With regard to that amortization, the Commission found:

Due to the size of the unamortized balance and Rush Island's original retirement date of 2039, the Commission finds the likely amortization period that would have been ordered under traditional recovery would have been a 15-year amortization period. What if any carrying cost is authorized with any amortization is determined based upon the specific facts surrounding that amortization request.⁶

⁵ *Amended Financing Order*, p. 92.

⁶ *Id.*, p. 92.

7. To lawfully determine whether the financing order threshold is met for securitizing Rush Island the Commission must determine not only the traditional recovery amortization period, but also the carrying cost, if any, for that amortization.

8. Further, because it erroneously inserted the “traditional method of both financing and of recovery” requirement into the expressly mandated statutory financing order threshold, the Commission applied the wrong legal standard and erroneously concluded that “for traditional financing, the cost of capital or WACC becomes a reasonable benefit comparison to the estimated Securitized Utility Bond interest rate”⁷ for purposes of determining whether Ameren Missouri securitizing Rush Island is more beneficial to its customers than Ameren Missouri not securitizing Rush Island.

9. Consistent with a 15-year amortization period, the carrying cost, if any, for that amortization period is the appropriate rate to apply to the undepreciated balance of Rush Island for purposes of evaluating whether the expressly mandated statutory financing order threshold is met.

10. This Commission must rehear this case to apply the correct legal standard for “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 utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds,” *i.e.*, whether it would be less costly for Ameren Missouri’s customers to pay for Rush Island energy transition costs through securitization or through general rates.

⁷ *Id.*, pp. 93-94.

11. Moreover, hypothetically, if the petition sufficiency requirement were also an implicit financing order requirement (a proposition with which Public Counsel does not agree), that requirement would be separate from and independent of the expressly mandated statutory financing order requirement, and it would be incumbent on the Commission to evaluate each separately and independently. In other words, even if the petition requirement were a financing order requirement, it still would be error for the Commission to conflate it with the expressly mandated statutory financing order requirement.

Upfront costs of Holmstead and Moor

12. The Commission's decision to "authorize Ameren Missouri to include 50 percent of the Upfront Financing Costs associated with witnesses Moor and Holmstead in securitization"⁸ is unjust and unreasonable, and not supported by competent and substantial evidence.

13. The 50 percent of the Upfront Financing Costs associated with witnesses Moor and Holmstead the Commission is allowing in securitization is \$161,918 (\$67,726 + \$94,192).⁹

14. As part of its decision on the issue of the Upfront Financing Costs associated with witnesses Moor and Holmstead, the Commission said the following:

These witnesses address the prudence of Ameren Missouri's decision-making process when Ameren Missouri chose not to seek an NSR permit prior to making major modifications to its Rush Island units. Determining the prudence of Ameren Missouri's NSR permitting decisions is not required under the Securitization Statute. Even though they had testified in the prior rate case, Ameren Missouri acknowledges that its reason for also including the witnesses in this case was due to Staff's position in the last rate case that it would be appropriate to address the prudence of the Rush Island NSR decision in the securitization case. Neither of these witnesses were necessary to address the prudence of Rush Island's retirement, which was primarily addressed by Ameren Missouri witness Michels. While neither witness was necessary to the prudence decision that must be addressed in the Financing Order, it was not wholly unreasonable to include some evidence related to the NSR permitting decision based upon Staff's position in the rate case.¹⁰

⁸ *Amended Financing Order*, p. 81.

⁹ *Amended Financing Order*, Appendix C, p. 1.

¹⁰ *Amended Financing Order*, pp. 80-81.

15. From the foregoing it appears the Commission recognizes that with its conclusion that “[d]etermining the prudence of Ameren Missouri’s NSR permitting decisions is not required under the Securitization Statute,” including Ameren Missouri’s costs of its experts witnesses Moor and Holmstead it would be unreasonable to include them as upfront costs, but because the Commission’s Staff took the position in Ameren Missouri’s last rate case that this securitization case is where the prudence of Ameren Missouri’s NSR decisions should be addressed, the Commission concluded that it is reasonable for the Commission to allow Ameren Missouri recovery of 50% of those costs.

16. Ameren Missouri filed its petition initiating this case on November 21, 2023.¹¹

17. As Public Counsel explained in its initial brief, in his January 23, 2017, NSR liability order, Judge Sippel 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 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.¹² The Eighth Circuit affirmed Judge Sippel’s liability opinion with its August 20, 2021, opinion on appeal,¹³ which became final when the Eighth Circuit denied rehearing on November 30, 2021.¹⁴

18. As Public Counsel pointed out in its initial brief, 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 \(Mo. Ct. App. 2020\)](#).

19. Because Ameren Missouri did not file its securitization petition for over two years after Judge Sippel’s liability findings and conclusions in Ameren Missouri’s Rush Island NSR litigation

¹¹ *Amended Financing Order*, p. 9.

¹² [*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.

¹³ [*United States v. Ameren Mo.*, 9 F.4th 989 \(8th Cir. 2021\)](#); Ex. 110, Staff witness Keith Majors rebuttal testimony, sch. KM-r3.

¹⁴ [*United States v. Ameren Mo.*, No. 19-3220, 2021 U.S. App. LEXIS 35444 \(8th Cir. Nov. 30, 2021\)](#).

became final and unappealable on November 30, 2021, regardless of what the Commission’s Staff may have said during Ameren Missouri’s last rate case (Case No. ER-2022-0337), the testimony of Ameren Missouri’s expert witnesses Moor and Holmstead about that NSR litigation were irrelevant to the issues before the Commission in this case, and would have been irrelevant even if the Commission had considered the prudence of Ameren Missouri’s NSR decisions when deciding whether Ameren Missouri satisfied the requirement that the energy transition costs must be for an electric generating facility for which the Commission has deemed the early retirement or abandonment to be reasonable and prudent in a final order. § 393,1700.1((7)(a), RSMo.

20. This Commission must rehear this case to reduce from \$161,918 to zero dollars the amount included in upfront costs for the services of Ameren Missouri witnesses Holmstead and Moor because their services were irrelevant to deciding any issue in this case.

Wherefore, the Office of the Public Counsel applies to the Commission to set aside its June 20, 2024, *Financing Order* and rehear the foregoing issues.

Respectfully,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-4975 (Voice)
(573) 751-5562 (FAX)
Nathan.Williams@opc.mo.gov

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 14th day of August 2024.

/s/ Nathan Williams