

**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	)	Case No. EF-2024-0021
Order Authorizing the Issue of	)	
Securitized Utility Tariff Bonds for	)	
Energy Transition Costs Related to	)	
Rush Island Energy Center	)	

**RESPONSE TO COMMISSION COMMENTS**

**COMES NOW** the Office of the Public Counsel (“OPC”) on behalf of the Missouri public and provides the following response regarding Commissioner statements made at the Public Service Commission’s August 21, 2024, agenda meeting. The OPC submits this response to raise concerns regarding: (1) the Commission cautioning against appealing the *Amended Order*; and (2) the Commission’s incorrect recitation of the first point in the OPC’s Application for Rehearing.

**1) Cautioning Against Appealing the Amended Order**

Appellate review is a fundamental right that the Missouri Legislature provided the Missouri public through the OPC. It helps ensure Commission decisions are lawful, reasonable, and in the public interest. The Court of Appeals explained, “the statutes...clearly reflect a legislative intent that the OPC...be provided the opportunity to pursue rehearing and appellate review of PSC orders, see §§ 386.500.1, 386.710.3, and, in order for that right of review to be meaningful,

applicants must be given due process...” *State ex rel. Office of the Pub. Counsel*, 409 S.W.3d 522, 528 (Mo. App. W.D. 2013).

The public’s right to appeal was severely restricted in this case due to the Commission’s determination that Ameren could charge its customers an additional \$2 million<sup>1</sup> in carrying costs for every month of a pending appeal.<sup>2</sup> This decision created significant pressure on the OPC not to challenge the Commission’s *Amended Order*. During its agenda meeting, the Commission recognized this impact when it cautioned against appealing due to these additional costs that it approximated to be \$20 million, assuming a 10-month appeal.<sup>3</sup>

Allowing Ameren to charge its customers an additional \$20 million due to an appeal effectively eliminates the public’s constitutional and statutory rights to appellate court review. The *Amended Order* essentially requires unprecedented certainty that an appeal would successfully result in ratepayer savings greater than the additional carrying costs.

The due process right to appellate review should not be encumbered by these unnecessary and significant pressures placed on the public representative not to challenge orders that could very well be unlawful or unreasonable.

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<sup>1</sup> This is the estimate stated during the Commission’s agenda discussion.

<sup>2</sup> The Commission stated in its *Amended Order*, p. 69, “This carrying cost will be calculated from the period between the retirement of Rush Island to when the bonds are issued.”

<sup>3</sup> The \$20 million figure contemplates a review by the Court of Appeals. Applications for transfer filed with the Missouri Supreme Court by the Commission, Ameren, or OPC, would have likely doubled this amount.

During the Commission's August 21 agenda meeting the Commission mischaracterized the prior Empire District Electric Company securitization order appeal as an OPC appeal. The Commission attributed \$10 million of additional carrying costs to the OPC despite that being an appeal filed by Empire Electric. See Empire District Electric Co. v. P.S.C., 672 SW3d 868 (Mo. App. W.D. 2023).<sup>4</sup> In that case, the Commission allowed Empire Electric to add another \$10 million to the bond amount to be recovered from customers due to Empire Electric's unsuccessful appeal. This highlights an additional concern in the present case. If Ameren were to have appealed the Commission's *Amended Order*, the Commission would have allowed an additional \$20 million in carrying costs to be recovered from Ameren's customers. In other words, the pressure not to appeal securitization orders is one-sided in that the utility does not have the same pressure to not appeal.

If the Commission is concerned with raising the bond amount due to carrying costs incurred during a pending appeal, and/or concerned with preserving the public's right to appeal, the Commission could simply order those costs to not be included in bonds. Doing so would help preserve the rights of the Missouri public to have their day in court should they believe the Commission's order is unlawful or unreasonable. Otherwise, this will continue to put pressure on the public to not seek an appeal even when the Commission commits a costly error.

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<sup>4</sup> The OPC did file a notice of appeal after Empire appealed, but the OPC withdrew its appeal.

## **2) Misstating the OPC's Point of Error**

The OPC also brings to the Commission's attention another significant concern with the August 21 agenda meeting. At that agenda meeting the Commission denied the OPC's Application for Rehearing seemingly based upon an issue the OPC did not raise. The entire agenda meeting discussion regarding the OPC's first point of error asserted that the OPC sought rehearing of the carrying cost rate ordered by the Commission. However, the OPC's first point in its Application did not request that the Commission rehear the carrying cost decision.

The OPC's first point of error states that it is based upon the Commission not providing the analysis and findings required by § 393.1700(2)(3)(c)b RSMo, which states in part:

“...that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge...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.”

Nowhere in its Application does the OPC state or imply that its Application is based upon opposition to the ordered carrying cost rate. The Application does state, however, that to comply with the above statute, the Commission must also determine the carrying costs it would impose, if any, absent securitization. Without this calculation, it is impossible for the Commission to conclude that securitization is expected to provide quantifiable net present value benefits. Simply put,

the Commission cannot conclude that there are quantifiable benefits if it does not make the quantifications. That was the entire basis for the OPC's first point.

The OPC sought rehearing because it wanted the Commission to properly determine how it would allow recovery of a retired generation plant absent securitization. The OPC's calculations show that absent securitization, and consistent with past orders on retired plant, the Commission would have denied Ameren Missouri's securitization petition and instead allowed Ameren Missouri to recover the remaining plant balances through base rates. This would have saved ratepayers between \$54 million and \$167 million, while still allowing Ameren Missouri to recover its investment.<sup>5</sup> The OPC makes this point not to relitigate the case, but to demonstrate the importance of the Commission fully understanding the arguments and potential impacts of matters before it.

### **Conclusion**

There are no assurances the Court of Appeals would have reversed the *Amended Order* based on the OPC's points of error. Even if the OPC had been successful and the Court directed the Commission to make the proper quantifiable net present value calculations, there are no assurances that the Commission would conduct that analysis consistent with how it has treated retired plant in the past. Given the Commission's decision to allow carrying costs to incur during an appeal, and the

approximate costs that would be added to the bond, the OPC did not file an appeal. Absent the Commission's decision to allow carrying cost to incur during an appeal, the OPC would have challenged the order and requested that the Court remand the case back to the Commission so that it can make the necessary quantifications.

WHEREFORE, the Office of the OPC respectfully offers this response to bring these serious concerns to the Commission's attention.

Respectfully submitted,

**/s/ Marc Poston**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 24th day of September 2024.

**/s/ Marc Poston**

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<sup>5</sup> Surrebuttal Testimony of David Murray, Corrected Schedule DM-S-5 and Rebuttal Testimony of David Murray, p. 3.