

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

In the Matter of the Petition of The Empire District )  
Electric Company d/b/a Liberty to Obtain a )  
Financing Order that Authorizes the Issuance of ) Case No. EO-2022-0040  
Securitized Utility Tariff Bonds for )  
Qualified Extraordinary Costs )

In the Matter of the Petition of The Empire District )  
Electric Company d/b/a Liberty to Obtain a )  
Financing Order that Authorizes the Issuance of ) Case No. EO-2022-0193  
Securitized Utility Tariff Bonds for Energy )  
Transition Costs Related to the Asbury Plant )

**RENEW MISSOURI’S POST-HEARING BRIEF**

COMES NOW Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”), and presents its post-hearing brief to the Missouri Public Service Commission (“PSC” or the “Commission”):

**I. Introduction**

The Missouri Public Service Commission is being asked to consider issuing a financing order authorizing the securitization of costs associated with the closure of a coal plant for the first time since lawmakers authorized this regulatory tool in 2021. Based on the defined terms and the plain language of that statute, The Empire District Electric Company d/b/a Liberty’s (“Liberty” or the “Company”) request to securitize costs associated with the closure of the Asbury Plant meets the requirements set forth by the Missouri Legislature. The facts on record demonstrate Liberty acted prudently in making the determination to retire Asbury early. Renew Missouri, as well as other parties, have noted the substantial public interest served, both in economic and non-economic terms, that securitizing coal plant closure costs delivers to the public. In addition, almost all parties to this case agree there are quantifiable net present value benefits that this proposal will provide to Liberty’s customers.

The primary opponent to the Company's request is the Office of Public Counsel ("OPC"). The entirety of OPC's objection, as laid out in the record, involves its desire to have the Commission reconsider previous decisions already made and affirmed involving the adequacy of the Company's resource planning and the Company's investment in renewable energy. Further, OPC conflates the decision to retire Asbury and Liberty's investment in wind as legally connected events. However, whether Liberty's plan to retire Asbury contemplated the addition of wind resources or not, the Commission granted Liberty's wind CCN in a separate docket that was not contingent upon any outcome of the managerial decisions surrounding the Asbury Plant. To treat these events as contingent upon one another and base a finding of imprudence on the Company following through with a CCN it was granted would be unsound policy with the effect of unsettling precedent. As such, the Commission should reject this logic, ignore OPC's previously unsuccessful arguments about the imprudence of Liberty's wind acquisition, and look to the facts demonstrating that retiring Asbury was a prudent decision.

As noted at hearing, Renew Missouri's interest in this case is limited to the use of securitization as it relates to costs associated with the early retirement of Asbury. As such, this brief will first address the prudence of Liberty's decision to retire Asbury prior to the end of its useful life — a point only contested by the OPC. In addition, it will discuss the Commission's ability to consider the broad public interest beyond just that of the economic factors, as authorized by the Securitization Statute. Finally, this brief will discuss the near consensus that the use of securitization for energy transition costs related to Asbury will provide quantifiable net present value benefits to customers, contrary to OPC's lone suggestion otherwise.

## **II. Discussion**

To begin, the Missouri Legislature passed HB 734 in 2021 with overwhelming bi-partisan support, authorizing this Commission to utilize securitization as a way of dealing with the new realities of a changing energy marketplace. This legislation was signed into law and became Section 393.1700 RSMo. (the “Securitization Statute”), which authorizes the use of securitization for energy transition costs in Missouri. In light of this authorization, Liberty became the first utility in the state to apply for securitization of energy transition costs related to the early retirement of a coal plant. While this may be a case of first impression before the Commission, it is critical to note that multiple other states and utilities have already used securitization for this purpose. In comparison to the financing orders issued in other states, Liberty’s proposal is certainly not a revolutionary request being made of the Commission.

Under the Securitization Statute, the Commission has broad discretion to make a finding that the use of securitization to recover energy transition costs related to the early retirement of the Asbury Plant is just, reasonable, and in the public interest. In addition, evidence presented at hearing demonstrates the issuance of securitized utility tariff bonds for this purpose is expected to provide quantifiable net present value benefits to customers. Under the Securitization Statute, energy transition costs include “pretax costs with respect to a retired...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...” MO. REV. STAT. § 393.1700.1(7)(a) (2021). Because there is no final Commission order deeming the early retirement of Asbury reasonable and prudent, the reasonableness and prudence of this decision is contested in this case. In addition, the Securitization Statute dictates that a financing order issued by the Commission shall include a finding that the recovery of securitized utility tariff costs to be

financed using securitized utility tariff bonds is just and reasonable and in the public interest. *Id.* at § 393.1700.2(3)(c)(a). The statute further directs the Commission that a financing order shall include 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 same costs absent the use of securitization. *Id.* at § 393.1700.2(3)(c)(b).

### **The Prudence of Retiring Asbury**

Issue 3(E) in the parties' Joint List of Issues<sup>1</sup> asks whether it was reasonable and prudent for Liberty to retire Asbury. This point is contested by OPC, whose witnesses assert Liberty's resource planning was imprudent, the decision to retire Asbury after investing in environmental upgrades was imprudent, and that Asbury was still needed as a source of reliable generation.<sup>2</sup> While prudence is not a defined term within the Securitization Statute, the prudence analysis contemplated in this case can be informed by prior Commission precedent. The Commission established its prudence standard in a 1985 case that centered on costs incurred by Union Electric Company (now Ameren Missouri) in constructing the Callaway nuclear plant.<sup>3</sup> In establishing its own prudence standard, the Commission cited to a New York Public Service Commission statement, which explains, "...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

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<sup>1</sup> EFIS File No. EO-2022-0040, Doc. No. 59; EFIS File No. EO-2022-0193, Doc. No. 51.

<sup>2</sup> EFIS File No. EO-2022-0040, Doc. No. 30 and Doc. No. 32; EFIS File No. EO-2022-0193, Doc. No. 20 and Doc. No. 22.

<sup>3</sup> EFIS File No. GR-2003-0030, Report and Order; EFIS File No. GR-2002-348, Report and Order.

responsibility is to determine how reasonable people would have performed the tasks that confronted the company.”<sup>4</sup>

Through extensive modeling in its 2019 IRP, Liberty determined that its Asbury coal-burning plant was no longer economically sound to maintain and operate.<sup>5</sup> The Company had recently been granted CCNs necessary to acquire a significant amount of wind resources in a separately decided docket and concluded that it was able to reliably and affordably provide electricity to customers without the generation capacity provided by Asbury.<sup>6</sup> Alleged deficiencies to Liberty’s 2019 IRP were remedied through a Joint Agreement, and the Company’s 2019 IRP was approved by the Commission on April 28<sup>th</sup>, 2020.<sup>7</sup>

Despite this, OPC argues that Liberty’s wind investments are inextricably linked to the retirement of Asbury — what OPC characterizes as a risky bet designed to take advantage of Asbury’s SPP interconnection lines and place Liberty in the position of a merchant generator at the expense of ratepayers.<sup>8</sup> In making these arguments, OPC consistently rests on its previously-argued yet factually unsubstantiated assertions that wind resources are not a reliable resource.<sup>9</sup> In fact, OPC even cites to a known proponent of wind misinformation as evidence to bolster its claim.<sup>10</sup> Yet no credible evidence has been presented to cast doubt on Liberty’s ability to reliably provide service to customers because of its investment in wind resources or its decision to retire

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<sup>4</sup> *In the Matter of the Determination of In-Service Criteria for the Union Electric Company’s Nuclear Plant and Callaway Rate Base and Related Issues and In the Matter of Union Electric Company of St. Louis, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customer in the Missouri Service Area of the Company*, EFIS File Nos. EO-85-17 and ER-85-160, March 29, 1985 Report and Order, 27 Mo. P.S.C.(N.S.) 183, 194 (1985), quoting Consolidated Edison Company of New York, Inc., 45 P.U.R. 4th 331 (1982).

<sup>5</sup> EFIS File No. EO-2019-0049; EFIS File No. EO-2022-0193, Doc. No. 4.

<sup>6</sup> *Id.*

<sup>7</sup> EFIS File No. EO-2019-0049, Doc. No. 45.

<sup>8</sup> EFIS File No. EO-2022-0193, Doc. No. 41.

<sup>9</sup> EFIS File No. EO-2022-0040, Doc. No. 88, P. 76 and Doc. No. 30; EFIS File No. EO-2022-0193 Doc. No. 80, P. 76 and Doc No. 20.

<sup>10</sup> EFIS File No. EO-2022-0040, Doc. No. 32; EFIS File No. EO-2022-0193, Doc. No. 22.

Asbury. In fact, OPC witness Mantle stated that she was not aware of any study conducted on the impact of retiring Asbury as it relates to Empire’s ability to reliably provide energy to customers, and provides no further facts to support the notion that Liberty’s reliability has been placed in peril.<sup>11</sup> These arguments amount to a reiteration of prior arguments that the Commission has previously ignored or rejected, a point which OPC witness Marke notes in his testimony.<sup>12</sup>

What the facts do demonstrate is that, had Asbury remained in operation, Liberty would be required invest another \$20 million into environmental upgrades to comply with EPA regulations — a cost surely left to ratepayers.<sup>13</sup> When factoring in the already-extensive yet still insufficient investments made into environmental compliance, the significant drop in Asbury’s net capacity factor from 2010 to 2019, as well as the Company’s ability to save customers money as modeled in its 2019 IRP, the reasonableness and prudence of Liberty’s decision is clear. Despite OPC’s assertions that the \$1.2 billion investment in wind was insubstantial compared to the \$20 million needed to render Asbury compliant with EPA regulations, the decision to invest in wind resources was decided by the Commission entirely independently from the decision to retire Asbury. It is necessary to offer a reminder that the Commission determined Liberty’s investment in wind resources met the requirements of a certificate of convenience and necessity<sup>14</sup> in a docket that was not predicated on the retirement or continued operation of Asbury.<sup>15</sup> As such, OPC’s assertion that \$20 million was insignificant in the face of a \$1.2 billion investment<sup>16</sup>

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<sup>11</sup> EFIS File No. EO-2022-0040, Doc. No. 30; EFIS File No. EO-2022-0193, Doc. No. 20.

<sup>12</sup> See EFIS File No. EO-2018-0092; EFIS File No. EA-2019-0010.

<sup>13</sup> EFIS File No. EO-2022-0040, Doc. No. 37; EFIS File No. EO-2022-0193, Doc. No. 28.

<sup>14</sup> The “Tartan Criteria” is a set of five objective standards that the Commission uses to determine if a proposal is “necessary or convenient for the public service,” as defined by Section 393.170, RSMo. The five criteria are, 1) is the service needed; 2) is the applicant qualified to provide the service; 3) does the applicant have the financial ability to provide the service; 4) is the applicant’s proposal economically feasible; 5) does the service promote the public interest. *In the Matter of the Application of Tartan Energy Company, LLC, d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d 173, 177 (1994).

<sup>15</sup> EFIS File No. EA-2019-0010.

<sup>16</sup> EFIS File No. EO-2022-0193, Doc. No. 41.

implicates the fallacy that the environmental upgrades in Asbury were somehow an alternative scenario to Liberty's wind investment. In reality, had Liberty chosen not to retire the plant, its customers potentially would be responsible with paying for both Asbury upgrades and for its wind investments. As the investment in wind resources was approved as a distinct and entirely separate action of the Company, it would be improper to consider this as a basis for determining that the retirement of Asbury was imprudent. Rather, the facts on record demonstrate that the Company reasonably chose to retire an inefficient, expensive, and dirty coal plant that was not providing a substantial benefit to customers.

### **Consideration of the Public Interest**

The Securitization Statute, as cited above, requires a finding that the recovery of securitized utility tariff costs through the issuance of securitized utility tariff bonds, as well as the imposition and collection of securitized utility tariff charges, is just and reasonable and in the public interest. § 393.1700.2(3)(c)(a)-(b). It is important to note that the public interest is not a statutorily defined term, and nothing in the Securitization Statute constrains the Commission to evaluate the public interest only in terms of economic benefits. In fact, precedent is clear that “(t)he Commission’s powers to regulate in the public interest ‘are broad and comprehensive’ and include the authority ‘to order improvements[.]’” (*In the Matter of Application of KCP&L Greater Missouri Operations Company*, 515 S.W.3d 754, 760 (Mo. App. W.D. 2016) (citing *Stopaquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 34-35 (Mo. App. W.D. 2005)), and that the public interest is a matter of policy to be determined by the Commission. *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). Moreover, “It is within the discretion of the (Commission) to determine when the evidence indicates the public interest would be served.” (Case No. EA-2016-0208, *Report and Order* pp.

18-19)(citing *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993)). Finally, the Commission has held that determining the public interest is a balancing process, and that the total interests of the public served must be assessed. *In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, EFIS File No. EO-93-0259, 1993 WL 719871 (Mo. P.S.C.).

Case law and prior Commission findings indicate that the Commission may exercise its well-established and broad discretion to regulate in the public interest by considering non-economic factors in determining whether the use of securitization in this case serves the public interest. In previous dockets, the Commission has concluded that, "... customers and the general public have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere."<sup>17</sup> It is well within the discretion of the Commission to determine that the use of securitization to shutter a dirty and uneconomic coal plant, an action that not only saves customers money but also serves to carry out the purpose of improving the air and water quality by reducing the amount of carbon dioxide released into the atmosphere, is well in line with the established public interest of the state.

The Commission should look to the broad array of benefits delivered by the retirement of Asbury, which include the health and well-being of the communities nearest to the plant — communities that are disproportionately low-income, with higher populations of people of color than average for the state — which are likely to feel the negative effects of fossil fuel generation the most. As discussed in the Surrebuttal Testimony and cross-examination of James Owen,

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<sup>17</sup> EFIS File No. EA-2016-0208, Doc. No. 126; EFIS File No. EA-2015-0256, Doc. No. 84.



studies have shown that, if the full value of environmental and social benefits of coal phaseout were considered, coal would be even more uneconomic than what statistics already reflect and the economic benefits of phasing out coal would exceed all other related costs.<sup>18</sup> This notion holds true for residents who lived near Asbury. Data indicates the plant is responsible for six deaths, three heart attacks, sixty-seven asthma attacks, three hundred and eleven lost workdays, and four cases of acute bronchitis per year prior to its retirement.<sup>19</sup> Consideration of these factors, which is evidence of record in this case, is well within the discretion of the Commission to consider in determining whether authorizing the use of securitization is in the public interest. Moreover, the Commission should, as a matter of public policy, take this approach to evaluating whether the facts in this case indicate the public interest would be served.

#### **Quantifiable net present value**

Issue 5 in the parties' Joint List of Issues<sup>20</sup> asks whether issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds. The Securitization Statute mandates that a financing order shall include 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 same costs absent the use of securitization. § 393.1700.2(3)(c)(b).

Staff's analysis determined that securitization of Asbury and Winter Storm Uri costs would result in \$25 million in customer benefits on a net present value basis.<sup>21</sup> This is consistent with

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<sup>18</sup> EFIS File No. EO-2022-0193, Doc. No. 40.

<sup>19</sup> *Id.*

<sup>20</sup> EFIS File No. EO-2022-0040, Doc. No. 59; EFIS File No. EO-2022-0193, Doc. No. 51.

<sup>21</sup> EFIS File No. EO-2022-0040, Doc. No. 35 and 39; EFIS File No. EO-2022-0193, Doc. No. 26 and 30.

the analysis of outside professionals at the Rocky Mountain Institute, an independent nonprofit that has provided research and analysis across the energy field for forty years, and consulted by Renew Missouri's expert. The Rocky Mountain Institute concluded securitization of Asbury would result in quantifiable net present benefits of around \$25 million.<sup>22</sup> By Liberty's analysis, use of securitized utility tariff bonds for energy transition costs related to Asbury will result in quantifiable net present benefits of \$32,051,938 in comparison to the costs that would result from customary ratemaking.<sup>23</sup>

The analyses conducted by parties and outside experts share the same overall conclusion: that securitization of energy transition costs related to the retirement of Asbury will save customers money; consistently at a minimum of \$25 million. This consensus is shared by all parties but OPC, which contemplates a transaction whereby Asbury costs are deducted from the outstanding Storm Uri securitization request, if not simply rejected altogether.<sup>24</sup> It is important to note that OPC is approaching this issue from a position inconsistent with precedent and statutory authority. In taking the parties' analyses together, the overwhelming evidence presented supports a finding that the use of securitization for energy transition costs related to the retirement of Asbury will deliver quantifiable net present value benefits to customers.

### **III. Conclusion**

Renew Missouri urges the Commission to approve Liberty's petition to securitize costs associated with the early retirement of the Asbury Plant. When evaluating the totality of evidence presented by the parties at hearing, the objections to the prudence of retiring Asbury amount only to a reiteration of arguments proven unsuccessful before the Commission in prior

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<sup>22</sup> Fong, Christian, "Securitization in Action: US States Continue to Retire Coal and Reduce Electricity Rates," Rocky Mountain Institute (May 24, 2022).

<sup>23</sup> EFIS File No. EO-2022-0193, Doc. No. 2.

<sup>24</sup> EFIS File No. EO-2022-0040, Doc. No. 32; EFIS File No. EO-2022-0193, Doc. No. 22.

cases. Rather, when held to a reasonableness standard, Liberty’s decision to retire Asbury was clearly sound. Further, the Commission is entitled to consider the broad range of benefits — economic and otherwise — that retiring coal plants via securitization delivers to the public. The non-economic factors identified by Renew Missouri witness James Owen provide further support for the net public interest served by Liberty’s proposal. Finally, while the analyses of the Company, Staff, and other outside experts differ slightly in terms of dollar amount, these parties all agree that securitization for the energy transition costs related to Asbury will deliver quantifiable and significant net present value benefits to customers.

WHEREFORE, Renew Missouri submits its *post-hearing brief*

Respectfully,

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**Certificate of Service**

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 13<sup>th</sup> day of July 2022:

**/s/ Alissa Greenwald**