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MECG – Exhibit 351P
Greg Meyer
Surrebuttal Testimony
File No. ER-2021-0312

Exhibit No.:	
Issues:	Revenue Requirement
Witness:	Greg Meyer
Type of Exhibit:	Surrebuttal Testimony
Sponsoring Party:	Midwest Energy Consumers Group
Case No.:	ER-2021-0312
Date Testimony Prepared:	January 20, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Request of the Empire District Electric Company d/b/a Liberty for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area.	**)))))))**	**Case No. ER-2021-0312**

Surrebuttal Testimony and Schedules of

Greg R. Meyer

On behalf of

Midwest Energy Consumers Group

REDACTED VERSION

January 20, 2022

BRUBAKER & ASSOCIATES, INC.

Project 11186

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Request of the Empire District Electric Company d/b/a Liberty for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area.	)	**Case No. ER-2021-0312**

STATE OF MISSOURI)
) **SS**
COUNTY OF ST. LOUIS)

Affidavit of Greg R. Meyer

Greg R. Meyer, being first duly sworn, on his oath states:

1. My name is Greg R. Meyer. I am a consultant with Brubaker & Associates, Inc., having its principal place of business at 16690 Swingley Ridge Road, Suite 140, Chesterfield, Missouri 63017. We have been retained by the Midwest Energy Consumers Group in this proceeding on their behalf.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony and schedules which were prepared in written form for introduction into evidence in Missouri Public Service Commission Case No. ER-2021-0312.

3. I hereby swear and affirm that the testimony and schedules are true and correct and that they show the matters and things that they purport to show.

Greg R Meyer
Greg R. Meyer

Subscribed and sworn to before me this 20th day of January, 2022.

TAMMY S. KLOSSNER
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commission Expires: Mar. 18, 2023
Commission # 15024862

Tammy S Klossner
Notary Public

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Surrebuttal Testimony of Greg R. Meyer

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Surrebuttal Testimony of Greg R. Meyer

Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A Greg R. Meyer. My business address is 16690 Swingley Ridge Road, Suite 140, Chesterfield, MO 63017.

Q ARE YOU THE SAME GREG R. MEYER WHO HAS PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A Yes. I have previously filed direct testimony on the retirement of the Asbury plant.

Q ARE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE OUTLINED IN YOUR PRIOR TESTIMONY?

A Yes. This information is included in Appendix A to my direct testimony filed on October 29, 2021.

Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?

A This testimony is presented on behalf of the Midwest Energy Consumers Group (“MECG”). MECG is an incorporated association representing the interests of large commercial and industrial users of electricity in the Empire District Electric Company's ("Empire" or "Company") service territory.

Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A I will address the rebuttal testimony of Empire witnesses concerning the Asbury generating plant ("Asbury") retirement; Empire's request to earn a return on the undepreciated Asbury investment (i.e., carrying costs); and the securitization of the Asbury unrecovered investment. In my direct testimony, I also addressed the appropriate ratemaking treatment for Winter Storm URI costs. There, I recommended that those costs should be removed from this case and securitized under newly enacted legislation. In testimony in Case No. EU-2021-0274, Empire informed the Commission and parties that it was removing these costs from this case and was seeking securitization. That securitization application was filed by Empire on January 19 in Case No. EO-2022-0040. Therefore, it is MECG's opinion that Winter Storm URI recovery is no longer relevant to this rate case.

Q PLEASE SUMMARIZE YOUR SURREBUTTAL TESTIMONY.

A I will address the major arguments presented by Empire witnesses as it relates to the retirement date of Asbury, the quantification of the AAO (regulatory liability) ordered by the Commission, as well as the appropriateness of Empire being permitted to apply carrying charges on the Asbury investment (net regulatory asset). I will also briefly discuss the use of securitization for the recovery of the net regulatory asset associated with unrecovered investment in Asbury. My surrebuttal testimony is structured in the following manner:

- Why the retirement date of January 1, 2020 is reasonable and the retirement date of March 1, 2020, as proposed by Empire, should be rejected.

- Discussion of the quantification of the regulatory liability, ordered by the Commission in the last Empire rate case, as of the effective date of new rates from this rate case. I am proposing that this regulatory liability should be used to offset the regulatory asset that existed at the time of plant retirement.

- Discussion of any carrying charges that should be applied to the net regulatory asset as requested by Empire. I am continuing to propose that the net regulatory asset from the unrecovered investment in Asbury (offset by the regulatory liability as of April 25, 2022) should receive no carrying charge.

- Securitization should still be considered for the recovery of the net regulatory asset associated with the retirement of Asbury.

Asbury's Retirement Date

Q WHEN DO YOU BELIEVE THAT ASBURY WAS RETIRED?

A Asbury quit generating electricity on December 12, 2019.[1] Therefore, I believe that this is the appropriate retirement date for Asbury. Given this, I believe that the Commission was correct in its decision in the last Empire rate case to start deferring any savings associated with the retirement of Asbury starting on January 1, 2020 (the first day of the month following the retirement of Asbury).

Q DID EMPIRE IMPLY THAT ASBURY COULD HAVE GENERATED ELECTRICITY AFTER DECEMBER 12, 2019?

A Yes, according to the rebuttal testimony of Empire witness Aaron Doll, page 11:

> "Empire continued to monitor market conditions, forward market prices and evaluate economical fuel procurement options. If market conditions and forward market prices created an opportunity for Empire to procure fuel at a price allowing Asbury to operate economically, fuel would have been purchased and the unit would have been offered as available to the markets once fuel was received."

[1]Response to MECG Data Request 19.1, attached as Schedule GRM-1.

Q DESPITE THE IMPLICATION THAT ASBURY COULD HAVE GENERATED ELECTRICITY AFTER DECEMBER 12, 2019, DO YOU BELIEVE THAT THIS WAS ECONOMICALLY FEASIBLE?

A It would have been very difficult. Specifically, a number of facts related to Empire's ability to procure and transport fuel to Asbury made further Asbury generation impractical. For instance:

- Asbury's coal-fired generator consumed all fuel in inventory on December 11, 2019.[2]
- As of December 12, 2019, "there were no additional coal contract purchase requirements for Asbury."[3]
- Asbury's rail transportation contracts expired in December 2019.[4]
- Asbury's railcar lease expired August 31, 2019.[4]

Clearly, with all of these factors, it would have been very difficult for Asbury to have generated electricity at any point after December 12, 2019. Asbury did not have any burnable coal, did not have any contractual way to buy more coal, had no way to transport the coal and, even if it did, had no railcars to move the coal. For all practical purposes, therefore, Asbury was retired in mid-December 2019.

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[2]Response to MECG Data Request 19.2 - Asbury Fuel Procurement Cessation Memo, attached as Schedule GRM-2.

[3]Response to MECG Data Request 19.3, attached as Schedule GRM-3.

[4]Response to MECG Data Request 19.2 - Spot Coal Options, attached as Schedule GRM-2.

Q DID EMPIRE STUDY ALTERNATIVES TO PROCURE FUEL FOR ASBURY AFTER DECEMBER 12, 2019?

A Empire studied three coal alternatives. I have listed those alternatives below:

- Phoenix Coal
- Powder River Basin ("PRB") Coal from Peabody
- Illinois Coal Blend

Q PLEASE DESCRIBE THE PHOENIX COAL OPTION.

A The Phoenix Coal option, out of Oklahoma, was not a solution for Empire. On January 7, Empire held an internal discussion that determined Phoenix Coal would not be available on a short-term basis.[5] Furthermore, on January 14, Empire spoke with a representative of Phoenix Coal and was informed that mining operations ran out sooner than they expected and they were waiting on permits before they could resume mining operations.[6] Finally, in a memo regarding Asbury's fuel procurement, Empire acknowledges that the availability of Phoenix Coal could not happen until March 1, 2020.

Q PLEASE DISCUSS THE PRB COAL OPTION.

A There are a couple of reasons why PRB Coal, out of Wyoming, was not a viable option to allow for further Asbury generation. First, Empire acknowledged that PRB Coal could not be burned 100% at Asbury. PRB Coal required blending for use at Asbury. Second, there was no rail contract or rail cars to transport coal.

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[5] *Id.*
[6] *Id.*

Q PLEASE DISCUSS THE ILLINOIS COAL BLEND OPTION.

A Illinois Coal needed to be blended to operate Asbury. Empire acknowledged operational problems associated with Asbury burning solely Illinois Coal. Specifically, Empire recognized that it had to blend Phoenix Coal (discussed previously) with the Illinois coal in order for Asbury to operate reliably. In addition, there was no rail contract to transport the coal from Illinois to Asbury. Illinois Coal would have to be trucked to Asbury and this would require a large trucking fleet traveling significant distances. Empire recognized that trucking coal from an Illinois mine to Asbury would be cost-prohibitive. Simply stated, Illinois Coal also was not an option.

Q WERE THERE ANY OTHER CHALLENGES THAT EMPIRE WOULD HAVE FACED IF IT DECIDED TO GENERATE POWER AFTER DECEMBER 12, 2019?

A Yes. Empire would need to obtain fuel oil for start-up.[7] Empire also would have needed to obtain a supply of lime to operate Asbury.[8] Asbury would have had to recall personnel to operate Asbury and a lead time of seven days would have been necessary.[9] Finally, if Empire was to receive additional coal supplies at Asbury, it would have had to move stored rail cars at the site and the lead time would have been 7-14 days.[10]

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[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

Q IN EMPIRE WITNESS AARON DOLL'S REBUTTAL TESTIMONY, HE STATES THAT THE RETIREMENT DATE FOR ASBURY SHOULD BE MARCH 1, 2020 BECAUSE THAT DATE REFLECTS THE COMPLETION OF THE 6-MONTH NOTIFICATION WINDOW REQUIRED BY SOUTHWEST POWER POOL ("SPP") TO PERFORM STUDIES RELATING TO RELIABILITY. DO YOU AGREE WITH MR. DOLL'S POSITION?

A I agree that Empire was required to ask SPP to study the reliability implications associated with the retirement of Asbury. Specifically, SPP has published Market Protocols associated with utility participation in the SPP Integrated Marketplace. Appendix E to that document provides timeframes for a number of participation actions including the addition of a new market participant, the addition of a new market resource, and the retirement of a market resource. During the time period when Asbury was being retired, Appendix E (Network and Commercial Model Update Timing) clearly set forth a six-month timeline for retiring a generator. I have included the applicable language from Appendix E discussing this event.

System Update Type	Update Duration	Comments	TCR Update Duration	Comments
Terminating a Resource due to Deactivation, Retirement, or Mothball	6 months	Deactivated, retired or mothballed Resources could have reliability and/or economic impacts on the SPP footprint. Market Participants must provide a 6-month notification prior to planned Resource deactivation, retirement, or mothball in order for SPP to have sufficient time to study possible impacts.	30-45 days / 1 month / 105 days	Monthly Auction - 30 to 45 days (limited scope) / 1 month (moderated to large scope); Annual Auction 75 to 105 days prior to June 1st. The indicated durations include the time for implementing changes in the Market and/or Reliability Models as well as implementing and publishing these changes in the TCR Models during the applicable scheduled Model updates.

Q IN YOUR OPINION, DID EMPIRE FILE A TIMELY REQUEST TO RETIRE ASBURY?

A No. I have reviewed the Highly Confidential ("HC") exhibits to the response provided to MECG Data Request 19.4. In those exhibits, it is shown that ***[redacted][11]***

Q DO YOU BELIEVE THAT EMPIRE INTENDED TO RETIRE ASBURY PRIOR TO THE MARCH 1, 2020 DATE FINALLY APPROVED BY SPP?

A Yes. It seems apparent that Empire intended to retire Asbury well before March 1, 2020. ***[redacted][12]*** Ultimately, the fuel lasted long enough for Asbury to generate until December 2019.[13] That all said, the coal contract, freight contract and railcar leases all expired on or before December 31, 2019.[14] In addition, Empire had made plans for the redeployment of the employees at Asbury.[15] Given all these factors, I believe that Empire intended to retire Asbury consistent with the last

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[11]HC Response to MECG Data Request 19.4. See attached HC Schedule GRM-4, Exhibit 1, of this data response.

[12]HC Response to MECG Data Request 19.4. See attached HC Schedule GRM-4, Exhibit 2, of this data response.

[13]Response to MECG Data Request 19.1, attached as Schedule GRM-1.

[14]Response to MECG Data Request 19.2 – Spot Coal Options, attached as Schedule GRM-2.

[15]*Id.*

day of generation (December 12, 2019). ***[redacted]***

Q SUBSEQUENT TO THE RETIREMENT OF ASBURY, DID SPP CHANGE THE GUIDELINES FOR THE RETIREMENT OF GENERATORS?

A Yes. In January 2021, the SPP received approval from the Federal Energy Regulatory Commission ("FERC") for the adoption of Attachment AB to its Open Access Transmission Tariff. Attachment AB describes the retirement procedures for a Generator Owner that desires to retire a Resource. Importantly, the process for retirement of a generating unit has been extended from six months to one year.

> "**AB Section 2.0 Submission of Study Requests for Resource Retirements:** The Generator Owner shall make a request to study the retirement of a Resource by submitting notification to the Transmission Provider no less than one year from the expected retirement date. This request shall include the Resource name, the expected retirement date, and other relevant information specified in Addendum 1 to Attachment AB. Upon notification, the Transmission Provider will also inform the SPP Market Monitor of the anticipated Resource retirement."

Given the current language, it is clear that the SPP recognition of Asbury's retirement would have taken even longer given Empire's untimely filing of the MCST.

Q PLEASE SUMMARIZE YOUR CONCLUSIONS.

A I will list the conditions that lead me to believe Asbury was operationally retired on December 12, 2019.

- Asbury quit generating on December 12, 2019;
- Lack of burnable coal at Asbury in December 2019;
- Expiration of the Asbury contractual coal requirements as of December 31, 2019;
- Expiration of the rail transportation provisions to the Asbury plant;
- The expiration of the rail car leases to deliver coal to Asbury;
- The hurdles facing Empire to contract for additional coal supplies from January 2020 forward;
- Need to recall employees to operate Asbury; and
- The Asbury site work to prepare to generate electricity from wind resources at Asbury in 2020.

It should be obvious that Empire had no intentions of generating any electricity after December 2019. It is only because of an untimely retirement notification with the SPP that Empire is trying to justify a retirement date of March 1, 2020.

Asbury's Regulatory Liability

Q DO YOU HAVE ANY FURTHER COMMENTS ON THE MEASUREMENT OF THE REGULATORY LIABILITY?

A Yes. In the last rate case, the Commission ordered an AAO to defer the financial impacts (both newly incurred costs in the form of a regulatory asset as well as cost savings in the form of a regulatory liability). As I stated in my direct testimony, I believe the regulatory liability should be updated through the operation of law date in this rate case (April 25, 2022).

Q WHY ARE YOU PROPOSING TO UPDATE THE REGULATORY LIABILITY TO APRIL 25, 2022?

A Empire's retail rates currently include all of the operating and capital costs of Asbury and ratepayers will continue to pay for the costs associated with this retired asset up until the time new rates are established in this rate case. In its suspension order in this case, the Commission suspended Empire's proposed tariffs until April 25, 2022. Therefore, it is likely that the rates arising out of the last rate case, which include all of the operating and capital costs for Empire will continue to be paid by ratepayers until that date. It is only fair that the regulatory liability should continue until new rates are set and are effective in this rate case.

Q WHAT COSTS DO YOU PROPOSE TO UPDATE UNTIL APRIL 25, 2022?

A In Case No. ER-2019-0374, the Commission ordered that the following items be deferred in either a regulatory asset or liability:

- Rate of return on Asbury plant;
- Accumulated Depreciation;
- Accumulated and Excess Deferred Income Taxes;
- Fuel Inventories assigned to the Asbury plant;
- All non-fuel/non-labor O&M expenses;
- Depreciation expense;
- All labor charges for maintaining and operating the Asbury plant;
- Property taxes assigned to the Asbury plant;
- Any costs associated with the retirement of the Asbury plant, including dismantlement and decommissioning-Non-Empire labor excluded;
- Cash working capital and income tax gross up associated with Asbury;

- Any fuel or SPP revenues or expenses associated with Asbury that do not flow through the Fuel Adjustment Clause ("FAC"); and

- Revenue from scrap value or value of items sold.

In her direct testimony on page 17, Empire witness Tisha Sanderson provided the net regulatory liability that Empire calculated at June 30, 2021. I have recreated the liability portion of that schedule in Table 1.

TABLE 1

Empire's AAO Schedule for Asbury Retirement

Description	Amount ($000)
Regulatory Liability	
Return on Asbury	($14,486)
Revenue from Scrap Value of Items Sold	($10)
Depreciation Expense	($13,914)
All Non-Revenue/Non-Labor Operating & Mtce. Expenses	($5,931)
Property Taxes	($2,860)
Non-Labor Asbury Retirement/Decommissioning Costs	$3,290
Asbury Regulatory Liability	($33,911)
Gross Revenue Conversion Table	1.3130
Total Regulatory Liability	($44,256)

Note: Missouri Jurisdictional totals.

It is my contention that these costs should be updated to April 25, 2022. In that way, the regulatory liability could be used to offset the regulatory asset of $112,317 that I included in my direct testimony (Page 9). In the interests of fairness/equity, I believe that Empire should also be permitted to update any components of the regulatory asset (i.e., costs associated with retirement, dismantling, and decommissioning) as well.

Q DO YOU HAVE AN ESTIMATE BASED ON THE COSTS LISTED ABOVE OF WHAT THE REGULATORY LIABILITY WOULD BE AT APRIL 25, 2022?

A Yes. I have estimated that for the period of January 1, 2020 (the date ordered by the Commission) through April 25, 2022, the regulatory liability would be approximately $72.2 million. Subtracting that total from the regulatory asset of $112.3 million would result in an unrecovered investment total (net regulatory asset) of $40.1 million.

Q DO YOU CONTINUE TO SUPPORT A 13-YEAR AMORTIZATION OF THIS UNRECOVERED BALANCE?

A Yes. A 13-year amortization period is still appropriate for the recovery of this asset as it represents the remaining life of Asbury before its premature retirement. That said, however, I would note that the amortization period is also dependent on the carrying charges. As discussed below, MECG has argued against the application of carrying charges to the unrecovered asset balance. If the Commission orders no carrying charges, then it is possible that the unrecovered investment balance could be collected over a shorter amortization period, such as 10 years. The carrying charge issue and the amortization period must be considered together to properly address ratepayer impacts.

Q DO YOU HAVE ANY FURTHER DISCUSSIONS ON THIS TOPIC?

A Yes. I would propose that the Parties to this issue attempt to reach a consensus on the proper quantification for the Asbury regulatory asset and regulatory liability at whatever timeframes each party believes is appropriate. By doing this, we will not be arguing about different issue values depending on the decision of the Commission.

Carrying Costs

Q DOES EMPIRE CONTINUE TO ARGUE THAT THE APPROPRIATE CARRYING CHARGE FOR THE UNRECOVERED ASSET IS THE WEIGHTED COST OF CAPITAL ("WACC")?

A Yes. Empire continues to argue that shareholders should be entitled to a profit on the retired Asbury generating unit. Empire seeks to ensure this profit in two ways. First, Empire asks that the Commission modify its list of items to be included in the AAO arising out of the last case. Specifically, Empire asks that the Commission remove the "rate of return" item that the Commission included in the Asbury AAO. Interestingly, the Commission included this same exact item in the AAO arising out of the Sibley retirement case (Case No. EC-2019-0200). Therefore, the Commission's inclusion of the rate of return component is not unique to Empire.

Second, Empire asks that the Commission include the net regulatory asset in rate base. In this way, Empire is allowed to continue to earn a return on the undepreciated Asbury investment. The Empire witnesses argue that shareholders are entitled to the continued profit stream from the retirement of Asbury. Among their arguments are the following:

- The used and useful standard should not apply;
- Ratepayers are already getting a benefit and therefore it is a penalty to shareholders to deny them a WACC return on the unrecovered Asbury investment; and
- If the Commission denies a WACC carrying charge, then the ROE granted by the Commission needs to be increased.

Q ON PAGE 5 OF HIS REBUTTAL TESTIMONY, EMPIRE WITNESS FRANK GRAVES STATES THAT THE USED AND USEFUL STANDARD IS A "…BLUNT TOOL THAT SHOULD ONLY BE USED IN A VERY SPECIFIC CONTEXT, AND CERTAINLY NOT IN THE CONTEXT OF THE RETIREMENT." PLEASE RESPOND.

A Mr. Graves must find ways to discredit a standard that has been used for decades to measure the performance of utility assets. Mr. Graves cannot deny that a retired generator would not pass the used and useful standard. It simply cannot happen. In fact, Mr. Graves agrees that Asbury would not pass the used and useful test. However, in his mind that does not matter since he asserts that once a plant investment is deemed prudent and included in rates, the used and useful standard is no longer relevant. It makes no difference to Mr. Graves if this asset does not live its expected life or not, shareholders must continue to reap the profits from this retired unit regardless if Asbury was used and useful. Therefore, Mr. Graves is stuck with the task of discrediting one of the standards this Commission has used for decades to determine if an asset is providing service to ratepayers.

The Commission should not abandon its application of used and useful for purposes of addressing the retirement of the Asbury plant. As detailed in my direct testimony, the abandonment of the used and useful standard would create perverse incentives for the utility at the detriment of ratepayers. Specifically, given that it would be permitted to earn a return on a retired asset as well as any replacement assets, the utility would be given an incentive to prematurely retire assets. This would be uneconomical and would serve to inflate utility rates.

Q IN HIS REBUTTAL TESTIMONY, MR. GRAVES ARGUES THAT APPLYING THE USED AND USEFUL STANDARD AFTER MANY YEARS OF OPERATION COULD CAUSE UNDESIRABLE INCENTIVES FOR THE UTILITIES TO OPERATE IN THE MOST EFFICIENT MANNER. PLEASE RESPOND.

A In essence, Mr. Graves is implying that, if shareholders do not receive a profit stream from any unrecovered investment, the utility will make uneconomic decisions in the future to enhance the profits of its shareholders at the expense of its ratepayers. Specifically, the utility would decide not to retire an asset in a timely fashion simply so that it can continue to receive a return from ratepayers. I find it very disturbing that a hired consultant for a utility would openly acknowledge that the utility's primary concern is its earnings and completely disregard its duty to its monopoly customers.

First, let me state that I believe a utility is required to make economic decisions to keep rates just and reasonable. Utility executives are paid handsomely to make sure this standard is met. Second, if a utility was found to be foregoing economic decisions simply to preserve shareholder profits, I believe the Commission should significantly lower the return on equity allowed in the next rate case. This would send a signal to the utility and its shareholders that this type of behavior will not be tolerated. The shareholders could then decide what actions need to be taken at the utility. Suggesting threats like this should not dissuade the Commission from doing the right thing and encourage the Commission to advise all utilities that actions like that will not be tolerated.

Q AS PART OF HIS ARGUMENT FOR THE APPLICATION OF CARRYING COSTS, MR. GRAVES ARGUES THAT A BALANCING OF INTERESTS CLEARLY FAILS IF CUSTOMERS WERE TO RECEIVE ALL OF THE COST SAVINGS RELATING TO THE RETIREMENT OF ASBURY. PLEASE RESPOND.

A First, I think it is necessary to clear up a fundamental point. There are intimations in the Empire testimony that all of the costs of the Asbury generating unit is being proposed for disallowance. The MECG is proposing that only the carrying costs not be granted recovery during the period of time since Asbury was retired (January 1, 2020 for purposes of MECG's testimony). MECG still supports the recovery of the unrecovered investment amount, net of the regulatory liability as quantified on April 25, 2022. Therefore, shareholders will be made whole on the dollars they invested in Asbury. Shareholders will simply have to forego a return on a plant that has been retired and is no longer used and useful.

Second, I believe the MECG proposal is a fair compromise from a total recovery disallowance of the unrecovered investment. As mentioned, in my direct testimony, there are certainly valid reasons to disallow both the return on the undepreciated investment as well as the return of the undepreciated investment. As Staff mentioned, the competitive environment would preclude the recovery of both components. Mr. Graves discusses the competitive market and the ability of a competitor to choose who and where to offer its product. I would simply remind Mr. Graves that a utility has a certificated service area which means it not only must, but is allowed, to serve all customers in that franchised area without the threat of competition. The competitive market supplier must price its service to be competitive within the market. The utility, on the other hand, can seek to raise its rates whenever it feels it is not earning a sufficient rate of return (albeit with some degree of regulatory lag).[16]

Finally, if a competitive service is not earning a sufficient profit and the service provider decides not to offer that service anymore, the service provider must forgo any recovery of its unrecovered investment. In this instance, the MECG is proposing to allow recovery of the unrecovered investment but asks that Empire forgo the return component. This is quite a bargain for shareholders considering total disallowance is an option as outlined in my direct testimony.

Q IN YOUR OPINION, ARE THE SHAREHOLDERS GOING TO LOSE A PROFIT STREAM IN THIS INSTANCE?

A No. It is largely ignored in the Empire rebuttal testimony, but the Asbury generation has been replaced with new wind generation. Therefore, the profit stream to shareholders has not only continued, but given the increased investment in the replacing wind generation, has been enhanced. The only difference is that the profits will be derived from a new generating resource. If the Commission grants a return on Asbury, it is essentially allowing a return from two assets to provide the same level of generation for customers. One return will be from the new wind generation that is replacing Asbury and the other return is from the retired Asbury plant that has not produced any power since December 12, 2019.

[16]Importantly, this regulatory lag is significantly reduced by mechanisms just as the fuel adjustment clause as well as the use of true-ups. For instance, the utility can time the filing of a rate case such that the in-service date of a large asset is synchronized with the true-up date in a rate case. Given this, the regulatory lag is reduced to as little as four to six months.

Q DO YOU HAVE ANYTHING FURTHER TO DISCUSS ON ASBURY?

A Yes. In many places in the Empire rebuttal testimony, various witnesses argue that not allowing a return on Asbury is unfair because the decision to retire Asbury was saving ratepayers money. First, I am not sure that once it has been demonstrated that savings occurred for retiring Asbury that a profit should be afforded to shareholders for the retirement. I have previously discussed why it is inappropriate to allow a return on Asbury, and will not repeat those arguments again. Simply stated, passing a savings test should not permit shareholders to earn a return on a retired plant that is not used and useful. Second, the retirement of Asbury was part and parcel of Empire's justification to spend $500 million on replacement wind units. Therefore, shareholders have benefitted mightily from the retirement of Asbury in the form of enhanced profits on the replacement investment. Third, if indeed ratepayer savings occurred, why is it such a bad policy to increase those ratepayer savings by not allowing a profit return on Asbury?

For all those years that Asbury was producing power, ratepayers paid a profit to Empire shareholders for the plant. Now that the plant has been retired the profit stream should cease, and if that means increased savings to Empire ratepayers, all the better. Finally, if the decision to retire Asbury created overall cost savings, then why was Empire studying coal purchases from December 2019 until March 1, 2022. I have previously discussed the March 1, 2020 retirement date and how it was probably the result of a late filing with the SPP.

Q IF THE COMMISSION DOES NOT ALLOW A WACC CARRYING CHARGE, DOES EMPIRE PROPOSE ANY ALTERNATIVE ADJUSTMENTS TO ITS COST OF SERVICE?

A Yes. Empire witness John Reed addresses the possibility that the Commission would not allow a WACC carrying charge. Mr. Reed states the following in his rebuttal testimony on page 56.

> "If the Commission were to disallow any of these retirement costs, as proposed by Staff and intervenors, Empire would need a higher authorized ROE than what I have recommended in order to compensate investors for the risk associated with not recovering some or all of these legitimate costs."

Q DO YOU AGREE THAT AN ADJUSTMENT IS NEEDED TO THE ROE IF THE COMMISSION DENIES EMPIRE A WACC CARRYING CHARGE?

A No. I have reviewed the Algonquin Power & Utilities Corp. (Parent company of Empire) 2020 Annual Report. In that filing, I found the following statements in the Regulatory Risk discussion.

> "A fundamental risk faced by any regulated utility is the disallowance of operating expenses or capital costs requested to be placed into the utility's revenue requirement by the utility's regulator. In addition, capital investments that have become stranded may pose additional risk for cost recovery and could be subject to legislative proposals that would impact the extent to which such costs could be recovered."

As the Annual Report reveals, the cost of recovery of any part of a stranded investment is a risk that has already been identified by Algonquin Power Utilities Corp. and is therefore a risk that is necessarily included in the identification of a proxy company group and the ROE recommendations of the ROE experts. To claim an additional ROE adjustment is without merit.

Securitization

Q DO YOU CONTINUE TO SUPPORT SECURITIZATION OF THE UNRECOVERED INVESTMENT IN ASBURY?

A Yes, under certain circumstances. First, if the unrecovered investment in Asbury (net regulatory asset) can be combined with the URI storm costs and collected through one securitization charge, the MECG would support that approach. This would allow the securitization of both items without the need to incur the significant costs of a separate securitization bond issuance. If that possibility does not exist, then securitization of strictly the regulatory asset associated with Asbury (not net of the regulatory liability) would be an appropriate recovery for the retirement of the Asbury plant. This would make the decision to incur the significant costs of issuance of bonds more economical. The regulatory liability that I previously discussed would then need to be addressed separately in this case as an offset to cost of service through an amortization. Bottom line, MECG is still interested in exploring ways for Empire to collect the unrecovered investment in Asbury either on a total basis through securitization (with the regulatory liability then recognized in this case) or via a netting with the Asbury regulatory liability to be amortized in this case.

Q PLEASE SUMMARIZE YOUR SURREBUTTAL TESTIMONY.

A My surrebuttal testimony has proposed the following findings for the Commission to consider:

- The retirement date of Asbury should be January 1, 2020, the first day of the month following the last day of generation (December 12, 2019).
- The WACC return should not be applied to the unrecovered investment in Asbury.

- The regulatory liability ordered by the Commission should measure customer savings through April 25, 2022 with the inclusion of the rate of return savings component ordered by the Commission in the last rate case.
- So long as done in an economical manner, securitization should continue to be considered as a mechanism to collect the costs associated with the retirement of the Asbury plant.

Q DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A Yes, it does.

428950

Data Request Received: 2022-01-05 | Response Date: 2022-01-13
Request No. 0019.1 | Witness/Respondent: Tim Wilson
Submitted by: David Woodsmall, david.woodsmall@woodsmalllaw.com

REQUEST:

What date did Asbury last generate electricity?

RESPONSE:

The last SPP IM dispatch received by Asbury Unit 1 for energy was December 12, 2019, 07:55 AM. The unit started shutdown at 08:00 AM and continued to have output until the breaker was opened approximately at 09:00 AM.

December 12, 2019 was the last operating day that Asbury was offered into the SPP IM as Market. Starting December 13, 2019, the plant was offered daily to the SPP IM as Outage. Empire continued to monitor market conditions, forward market prices and evaluate economical fuel procurement options. If market conditions and forward market prices created an opportunity for Empire to procure fuel at a price allowing Asbury to operate economically, fuel would have been purchased and the unit would have been offered Available to the markets once fuel was received. In order to properly manage costs, Empire did not want to procure additional fuel if the unit was not going to be able to economically make use of it.

Data Request Received: 2022-01-05
Request No. 0019.2
Submitted by: David Woodsmall, david.woodsmall@woodsmalllaw.com
Response Date: 2022-01-13
Witness/Respondent: Tim Wilson

REQUEST:

Please identify all factors that prevented Asbury from generating after the date identified in response to 19.1.

RESPONSE:

In order to ensure reliable unit operation while limiting the financial exposure of unused coal, several primary factors were considered for any coal sources to be viable including: contractual obligations, quantities available, operational functionality and environmental compliance. First, it was essential to avoid contractually committing to any quantity of fuel which might not be required. Such a decision could have imprudently locked the company into a financial commitment to write off any unused coal or potentially forced the use of a self-commitment offer for the unit regardless of market economics.

Empire continuously monitored fuel inventory levels at Asbury, monitoring multiple factors in determining a fuel inventory management action plan. In October 2019, it was determined that the current fuel inventory levels could allow the plant to operate until May 2020 based on recent historical capacity factors of the unit. Receiving additional PRB fuel deliveries by rail, approximately ten operating days of fuel per delivery, could increase fuel expense associated with unconsumed fuel inventory when the plant was retired. Asbury's rail transportation contracts were set to expire in December 2019, extending these annual contracts for an additional year would add customer expense that would be incurred in months after the retirement date. Utilizing these factors, Empire determined the best course of action was to not seek renewal of the rail transportation contracts and to cease PRB deliveries by rail.

Empire continued to evaluate fuel procurement options that would allow the unit to be offered to the SPP IM at an economical cost. Due to operating parameters of the unit as registered with SPP, a minimum of 5,000 tons, or a quantity of approximately 2 days of minimum run time, was utilized.

Also critical was ensuring the fuel was operationally functional and would meet environmental regulatory compliance. Operational functionality limited sources to those which had been previously used, as attempting to test a new fuel at this point could easily have resulted in unused inventory. To meet environmental regulatory compliance meant that the coal must have sufficiently low sulfur content.

Empire ceased the evaluation of options on February 20, 2020 because that was the last date fuel could reasonably be delivered and consumed prior to the retirement date of March 1, 2020. The attached memo, "Spot Coal Options.pdf," details a timeline of communications between Empire and fuel vendors including challenges to the process. Attached memo, "Asbury Fuel Procurement Cessation Memo.pdf," details the end of the evaluation process for procuring fuel.

Memo February 20, 2020

Asbury Fuel Procurement

Asbury coal-fired generator consumed all fuel in inventory December 11, 2019. Since that date, Empire has been in contact with fuel providers attempting to procure fuel at economical costs based on forward SPP price forecasts. During these solicitations, Empire identified three possible procurement paths to acquire fuel:

- Phoenix Coal was able to deliver low sulfur blend coal by truck to the plant. The Phoenix coal mine is currently out of service due to the company relocating to a new mine. The estimated return to availability of fuel from Phoenix is March 1st, 2020. This exceeds the retirement date window for the plant and is not longer a viable procurement option.
- Peabody, supplying Powder River Basin (PRB) coal, was a second option. Through numerous negotiations with Peabody and the delivering railroads, minimum lead time for delivery of fuel by rail would require 7 to 10 days. At the time of this memo, earliest estimated delivery would be February 27th. With at least 12 hours to unload and prepare coal for use and a startup time of 16 hours, the unit would not be released for dispatch by the market until February 28th. This would not allow the unit a long enough run prior to its retirement date of March 1st to meet the minimum run time. In addition, the plant is not capable of operating on PRB coal solely and would require additional low sulfur coal. As a result, procuring from Peabody is no longer a viable option.
- The final procurement option we have identified is Illinois blend coal from Foresight Coal. Rail delivery of Illinois blend coal is not a viable option per the vender, leaving trucking the fuel to the plant. Trucking of Illinois coal would require a large trucking fleet traveling significant distances, increasing scheduling risk of timely deliveries. Although indicative pricing was requested, we have not received any figures to date. However, it is likely that the cost of trucking coal from an Illinois mine would involve transportation expense that would be cost prohibitive. Additionally, Illinois coal is too high in sulfur content to be utilized solely to operate the plant. Blend coal needs to be mixed with PRB coal to maintain environmental operational standards. Due to these constraints, Illinois coal is not a viable option.

With the three procurement options deemed not viable due to economic cost constraints, delivery timing constraints, and/or fuel characteristic constraints, Empire is ceasing its efforts for procuring economical fuel for the Asbury generation plant as of February 20, 2020. The plant will be retired March 1st, 2020.

Liberty Utilities
EMPIRE DISTRICT

Subject: Spot Coal Options for use at Asbury

Coal options for use at Asbury need to ensure any financial obligations any options are avoided to minimize the cost to our customers.

Assess PRT Forward pricing for potential coal purchasing triggers.

Challenges:

- Blend Coal required. Operational experience has shown we cannot operate on 100% PRB coal.
    - Illinois coal is not a viable option for several reasons including: No rail or existing contracts, significant lead times, the need to transport full train loads or more and high sulfur content.
- No Contractual Minimums or Obligations
- Limit purchased quantity to 5,000 tons.
    - This will ensure we do not end up with additional unusable coal inventory needing to be written off if the market doesn't need the plant or self-committing the unit even though market prices might be unfavorable.
- Sulfur content must be low to meet environmental regulations
- Minimum Quantity required by vendor
    - Limit total quantity to minimize risk of inventory write off
- Delivery lead time
- Delivery method
    - Truck
    - Rail
        - No Rail Contract. Contract expired 12/31/19. Must be delivered coal.
        - No Railcars. Lease expired 8/31/19.
        - Railcars stored at Asbury would need to be moved
            - Min Est. lead time 7 – 14 days.
        - Train Unloading Facility operational?
            - Time required to verify
- Other Challenges
    - Fuel Oil for Start up
    - Lime supply
    - Personnel recall. Plan for 7 days to recall necessary personnel.

11/20/19: Phone call with Pam of Phoenix Coal Sales. Discussed coal purchase option. Need to speak with Clay Hartley.

11/27/19: Phone call with Clay Hartley of Phoenix. Discussed coal purchase option. Our Requirements: No contractual minimums / obligations, 5,000 tons, Low sulfur coal, Delivery within 7 days of notification. Clay quoted a price of $300/ton contingent on availability.

12/9/19: Email to Clay Hartley summarizing the indicative offer from Phoenix

12/12/19: Asbury finished burning recoverable inventory onsite.

12/13/19: PRT price forecast shows a max of $29.25 for the next 7 days, well below any trigger.

12/20/19: PRT price forecast through 12/26/19 shows a max of $26.41.

12/30/19: PRT price forecast for next 7 days remain low with a max of $21.17.

1/6/20: Phoenix Coal Sales – Spoke with Amy. They are currently moving mines. Coal availability is about 2 weeks out.

1/7/20: $24.19 max PRT price forecast through 1/13/20.

1/7/20: Internal discussion – Discussed Phoenix coal being unavailable short term and therefore, looking at possible PRB deliveries.

1/8/20: Peabody Coal Sales – Spoke with Barb Busby. We discussed the possibly of the option to purchase PRB. Our Requirements: No contractual minimums / obligations. Limit train size to 5,000 tons. Discussed challenges which need to be addressed including no existing rail agreement (requested delivered product), no railcar lease, railcars which are stored at the Plant which would need to be moved. Barb is going to review and let me know if they could supply our needs upon request and what it would cost.

1/10/20: Internal discussions – John Woods, Josh Tupper & Jared Wicklund. We discussed obstacles which must be addressed if we need to receive any addition coal by rail. Considerations: Dumper operation, personnel recall, Lime, Start up fuel oil & need for blend fuel.

1/13/20: $24.35 max PRT price forecast through 1/19/20.

1/14/20: Phoenix Coal Sales – Spoke with Pam. She said the existing mine reserves ran out sooner than they expected and they are still waiting on permits before they can resume mining operations.

1/14/20: Murray Energy Corporation – Spoke w/ Todd Adkins. Hillsboro switching right now so going to be a while before it available. Macoupin might be available. Logistics would be a challenge that would need to be worked out. UP still has track issues at Hillsboro. Will have more available in February.

1/15/20: Peabody Coal Sales: Barb Busby email update. Peabody contacted both UP & BNSF RR. UP has a customer who we might be able to split a train with. But it isn't the right coal (lower BTU value) and they said limiting it to a 5,000 ton train is not an option. They are still waiting for a response from the BNSF.

1/17/20: Internal discussion: David Eaton. Discussed issues associated with availability of Phoenix coal over the next couple of months and alternative options of PRB deliveries and Illinois coal deliveries. David reminded me of operational problems associated with the Illinois coal and the fact that we had to blend the Phoenix coal with it in order to get the Illinois coal to function.

1/22/20: PRT price forecast show a max of $21.35 with a downward trend for the next 7 days.

1/22/20: Sent emails to Barb at Peabody and David Eaton looking for updates.

1/22/20: Email from Barb at Peabody stating that discussions with both RR's are progressing and requesting additional information.

1/23/20: Internal discussion: David Eaton & Ray Mouser. Additional discussions on action items which need to be addressed with any deliveries of coal by rail.

1/27/20: Phoenix Coal Sales – Spoke with Pam. Estimate mining will begin again in March.

1/27/20: Email to Barb at Peabody providing clarification on notification and delivery and question if our expectations are feasible.

1/27/20: PRT price forecast shows a max of $24.61 dropping to $15.06 by the end of the week.

1/27/20: Email received from Barb at Peabody. RR said they can move the coal but I need to contact them and let them know we want Peabody to get the rate and handle the contract for us.

2/3/20: $26.15 max PRT price forecast through 2/9/20.

2/3/20: Email to BNSF, UP & KCS railroads regarding potential deliveries.

2/3/20: Sent emails to Peabody and Foresight coal sales discussing possible deliveries and requesting updates.

2/7/20: PRT price forecasts remain low ($21.78 max) through 2/13/20.

2/12/20: Received an update from Todd Adkins of Foresight regarding possible coal deliveries.

2/14/20: PRT price forecast was $37.96 for current day and then drops ~ $16 the next day, ending at $23.59 on 2/20/20.

2/17/20: Email to Todd Adkins at Foresight requesting an indicative price for delivered

Liberty Utilities (The Empire District Electric Company)
Case No. ER-2021-0312
Midwest Energy Consumers Group Data Request - 0019.3

Data Request Received: 2022-01-05 | Response Date: 2022-01-13
Request No. 0019.3 | Witness/Respondent: Tim Wilson

Submitted by: David Woodsmall, david.woodsmall@woodsmalllaw.com

REQUEST:

On the date identified in response to 19.1, what was the level of coal inventory at the Asbury generating site? Please provide the level in tons and an average burn day total. On the date identified in response to 19.1, what amount of coal was still subject to purchase per the current coal contract used to supply Asbury?

RESPONSE:

As described in the response to DR 19.1, the last day the Asbury generating site burned coal was December 12, 2019. At that point there was no recoverable coal remaining at the Asbury Plant. Therefore, at moth end, December 31, 2019, an inventory adjustment was made in the amount of 29,172.194 tons, the amount of inventory still on the books.

The average daily coal burn for Asbury during the calendar year of 2019 was 2,583. See the response to DR0075 for average daily coal burn for the years of 2014 through 2019. The total coal burned on December 12, 2019 was 715 tons.

On December 12, 2019 there were no additional coal contract purchase requirements for Asbury. See response to DR 0019.11.

Placeholder Page for HC Schedule GRM-4

which is Highly Confidential in its entirety