

**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) File No. EO-2022-0040
Obtain a Financing Order that Authorizes)
the Issuance of 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) File No. EO-2022-0193
Obtain a Financing Order that Authorizes)
the Issuance of Securitized Utility Tariff)
Bonds for Energy Transition Costs Related)
to the Asbury Plant)

**EVERGY MISSOURI METRO’S AND EVERGY MISSOURI WEST’S
APPLICATION FOR REHEARING**

COMES NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”) (collectively, “Evergy”), pursuant to sections 386.500¹ and 386.510 RSMo., and submits this *Application for Rehearing* to the Missouri Public Service Commission (“Commission”). In support thereof, Evergy respectfully states as follows:

I. Legal Principles That Govern Applications for Rehearing.

1. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 734-

¹ Section 1 of this statute provides that any public utility interested in a Commission decision has the right to apply for rehearing. Evergy Missouri Metro and Evergy Missouri West are electrical corporations and public utilities regulated by the Commission under the provisions of chapters 386 and 393 of the revised statutes of Missouri. Evergy played a central role in the development and passage of Missouri’s Securitization Law during the 2021 session of the General Assembly. Fossil fuel generating facilities owned and operated by Evergy may be amenable to retirement and financing under Missouri’s Securitization Law. Evergy is therefore interested in the Commission’s Amended Report and Order and files this application for rehearing to request that the Commission correct its decision on the valuation of the accumulated deferred income tax offset associated with Liberty’s Asbury plant.

35 (Mo. en banc 2003) (Ag Processing). An order's reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. State ex rel. Alma Tel. Co. v. PSC, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). An order must be neither arbitrary, capricious, nor unreasonable, and the Commission must not abuse its discretion. Id.

2. In a contested case, the Commission is required to make findings of fact and conclusions of law pursuant to Section 536.090. Deaconess Manor v. PSC, 994 S.W.2d 602, 612 (Mo. App. W.D. 1999). For judicial review to have any meaning, it is a minimum requirement that the evidence, along with the explanation thereof by the Commission, make sense to the reviewing court. State ex rel. Capital Cities Water Co. v. PSC, 850 S.W.2d 903, 914 (Mo. App. W.D. 1993). In order for a Commission decision to be lawful, the Commission must include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000); State ex rel. Monsanto Co. v. PSC, 716 S.W.2d 791, 795 (Mo. en banc 1986); State ex rel. A.P. Green Refractories v. PSC, 752 S.W.2d 835, 838 (Mo. App. W.D. 1988); State ex rel. Fischer v. PSC, 645 S.W.2d 39, 42-43 (Mo. App. W.D. 1982), cert. denied, 464 U.S. 819 (1983).

3. In State ex rel. GS Technologies Operating Co. v. PSC, 116 S.W.3d 680, 691-92 (Mo. App. W.D. 2003), the Court of Appeals described the requirements for adequate findings of fact when it stated:

While the Commission does not need to address all of the evidence presented, the reviewing court must not be "left 'to speculate as to what part of the evidence the court found true or was rejected.'" ... In particular, the findings of fact must be sufficiently specific to perform the following functions:

[F]indings of fact must constitute a factual resolution of the matters in contest before the commission; must advise the

parties and the circuit court of the factual basis upon which the commission reached its conclusion and order; must provide a basis for the circuit court to perform its limited function in reviewing administrative agency decisions; [and] must show how the controlling issues have been decided[.]

[St. Louis County v. State Tax Comm'n, 515 S.W.2d 446, 448 (Mo. 1974), citing Iron County v. State Tax Comm'n, 480 S.W.2d 65 (Mo. 1972)].

4. The Commission cannot simply recite facts on which it bases a “conclusory finding,” and must rather “fulfill its duty of crafting findings of fact which set out the basic facts from which it reached its ultimate conclusion” in a contested case. Noranda, 24 S.W.3d at 246. “Findings of fact that are completely conclusory, providing no insights into how controlling issues were resolved are inadequate.” Monsanto, 716 S.W.2d at 795.

5. A review of the evidentiary record in this case demonstrates that the Financing Order fails to comply with these principles in certain respects and that rehearing should be granted as discussed below.

II. Issues on Which Rehearing Should be Granted.

6. The Commission’s decision in its Amended Report and Order² on the issue entitled “What are the values of the Accumulated Deferred Income Tax (ADIT) and Excess ADIT?” is found on pages 52-55 of the Amended Report and Order. The Commission’s decision regarding the value of the ADIT offset – in particular its adoption of Staff witness Bolin’s methodology to value ADIT (Financing Order, p. 54) - is unlawful and in excess of the Commission’s authority because it fails to observe the requirements of section 393.1700.2(3)(c)m. Evergy does not dispute the Commission’s determination of the value of Excess ADIT.

² The Commission issued its Amended Report and Order herein on September 22, 2022, with an effective date of October 2, 2022.

7. On page 54 of its Amended Report and Order, the Commission determined that the “ADIT offset to the Asbury Energy Transition Cost balance is properly calculated using the methodology used by Staff witness Kim Bolin.” In the Amended Report and Order the Commission does not describe the methodology Staff witness Kim Bolin used to value the Asbury ADIT offset. To ascertain the methodology adopted by the Commission to value the Asbury ADIT offset it is therefore necessary to review the underlying record evidence, namely Staff witness Bolin’s testimony. This aspect of the Amended Report and Order is unlawful because the findings of fact and conclusions of law are completely conclusory, do not provide insight into how the controlling issues were resolved and are not sufficient to understand the basis of the Commission’s decision without resorting to review of the underlying evidentiary record. Noranda, 24 S.W. 3d at 246; Monsanto, 716 S.W. 2d at 795.

8. Unfortunately, Staff witness Bolin’s testimony does not provide a meaningful description of the methodology she used to value the Asbury ADIT offset and wholly fails to even discuss the manner in which she proposes to measure the “tax benefits , , , for the estimated accumulated , , , deferred income taxes . . . created by the issuance of securitized utility tariff bonds . . . [.]” under section 393.1700.2(3)(c)m.³ Only by reviewing Staff witness Bolin’s workpaper, attached hereto as Exhibit A, can one ascertain the methodology she used to value the Asbury ADIT offset.

9. As can be seen by reviewing Exhibit A, Staff witness Bolin’s valuation methodology does not consider the tax benefits of estimated ADIT created by the issuance of securitized bonds. As the first step in Staff witness Bolin’s methodology, she starts with the

³ See Exhibit 102, Bolin Rebuttal, pp. 10-12.

Asbury ADIT balance of \$22,306,868 that was projected to exist as of April 30, 2022. In the second step, Staff witness Bolin reduces this starting balance ratably over a 13-year period by \$1,715,899 each year. And finally in the third step of Staff witness Bolin's methodology, the 13 annual amounts are discounted back to period one using a discount rate of 4.0⁴ percent to produce the net present value of \$17,134,363 in the order.

10. Staff witness Bolin's methodology violates the requirements of section 393.1700.2(3)(c)m:

a. In step two of her methodology, she credits retail customers with the full ADIT balance instead of crediting them with the impact on retail customer rates resulting from those ADIT balances. This contravenes the requirements of the third sentence of section 393.1700.2(3)(c)m which specifies, in relevant part, that "[T]he customer credit shall include the net present value of the tax benefits . . . for the estimated accumulated . . . deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds."

i. Notably, the Commission accurately recognizes the impact of tax benefits of ADIT on retail customer rates in another section of its

⁴ Evergy presumes that Staff witness Bolin used a discount rate of 4.0 percent as a proxy for the expected interest rate of the securitized utility tariff bonds. Based on Evergy's understanding of the record evidence, this would be a reasonable proxy. Evergy understands that the actual interest rate on the securitized bonds will be used to calculate the final amount of the ADIT offset, among other things, when it becomes available through the Issuance Advice Letter process.

Financing Order. Specifically, on p. 64, the Commission finds that “[T]his tax benefit is a normal timing item that is treated the same as any ADIT item in rates. A regulatory asset was created for Asbury. This regulatory asset has deferred taxes associated with it. As this regulatory asset gets amortized, the amortization expense is added back for taxable income tax purposes with no corresponding tax deduction because Asbury qualified as an abandonment for tax purposes already.” Staff witness Bolin’s methodology for valuation of the ADIT offset, which the Commission adopted in its decision on p. 54 of the Amended Report and Order is inconsistent with the Commission’s description of the tax benefits of ADIT on p. 64 of its Amended Report and Order.

- b. Correcting Staff witness Bolin’s methodology for the valuation of the tax benefits of ADIT so that it meets the requirements of section 393.1700.2(3)(c)m results in an ADIT offset for Asbury of \$4,486,986. This corrected ADIT offset valuation is attached hereto as Exhibit B and reflects the requirements of section 393.1700.2(3)(c)m instead of Staff witness Bolin’s methodology.

11. Because Staff witness Bolin’s methodology for valuing the ADIT offset does not meet the requirements of section 393.1700.2(3)(c)m, the Commission has no authority to adopt that methodology as a matter of law. Because the Commission’s decision on the valuation of the ADIT offset in the Amended Report and Order exceeds the Commission’s statutory authority, rehearing must be granted as to this aspect of the Commission’s Amended Report and Order. If

the Commission declines to grant rehearing this aspect of its Amended Report and Order, the Court of Appeals will have no choice, in accordance with Ag Processing (120 S.W. 3d at 734-35), but to reverse the Commission's decision on valuation of the ADIT offset for Asbury as that decision is beyond the authority granted to the Commission under section 393.1700.2(3)(c)m.

12. Setting aside the fact that Staff witness Bolin's methodology for valuing the Asbury ADIT offset does not meet the requirements of section 393.1700.2(3)(c)m, Commission refusal to grant rehearing on this issue and remedy the methodology used to value the ADIT offset in the Amended Report and Order so that it meets the requirements of section 393.1700.2(3)(c)m will serve as a significant financial disincentive for electrical corporations to seek Commission authorization to issue securitized utility tariff bonds to finance energy transition costs that involve the retirement of fossil fuel generating facilities with meaningful ADIT balances. This is because Staff witness Bolin's methodology will require, in the case of Asbury, a write-off of an additional \$12,647,377 in excess of the ADIT offset calculated in compliance with the requirements of section 393.1700.2(3)(c)m if Liberty moves forward and issues bonds under the terms of the Commission's Amended Report and Order as currently written. This write-off would be required because Liberty would still be obligated to pay this amount of income taxes to the Internal Revenue Service but have no revenue stream to fund those payments because that amount had been removed from the principal amount of the securitized utility tariff bonds as an erroneous ADIT offset. Such a result is clearly contrary to the purpose of the enactment of Missouri's Securitization Law because it would slow the pace of retiring fossil fuel generating facilities and the transition to renewable generating resources and, in Evergy's considered opinion, would also be contrary to the best interests of retail electric customers served in Missouri by electrical corporations subject to this Commission's jurisdiction.

WHEREFORE, Evergy Missouri Metro and Evergy Missouri West request that the Commission grant rehearing of its Amended Report and Order, as more fully described herein.

Respectfully submitted,

/s/ Roger W. Steiner

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**Attorneys for Evergy Missouri Metro and
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, this 30th day of September 2022, to all parties of record.

/s/ Roger W. Steiner

Roger W. Steiner

**The Empire District Electric Company
EO-2022-0193
Missouri Asbury Securitization
Asbury (Retired Portion) ADIT NPV
13 year**

Asbury ADIT Projected 4/30/2022
22,306,686

Year	Estimated Total Deferred Taxes	Balance ADIT	Plant Retirement Customer Net Tax Benefit
	22,306,686	22,306,686	
1	1,715,899	20,590,787	1,715,899
2	1,715,899	18,874,888	1,715,899
3	1,715,899	17,158,989	1,715,899
4	1,715,899	15,443,090	1,715,899
5	1,715,899	13,727,191	1,715,899
6	1,715,899	12,011,293	1,715,899
7	1,715,899	10,295,394	1,715,899
8	1,715,899	8,579,495	1,715,899
9	1,715,899	6,863,596	1,715,899
10	1,715,899	5,147,697	1,715,899
11	1,715,899	3,431,798	1,715,899
12	1,715,899	1,715,899	1,715,899
13	1,715,899	(0)	1,715,899
	22,306,686		

Total NPV ADIT 17,134,363 4.0% Estimated Securitization Yield
13 year

The Empire District Electric Company
EO-2022-0193
Missouri Asbury Securitization
Asbury (Retired Portion) ADIT NPV
13 year

Asbury ADIT Projected 4/30/2022
22,306,868

Year	Estimated Total Deferred Taxes	Balance ADIT	Estimated Securitization Yield	Plant Retirement Customer Net Tax Benefit
	22,306,868	22,306,868		
1	1,715,913	20,590,955	4.00%	823,638
2	1,715,913	18,875,042	4.00%	755,002
3	1,715,913	17,159,129	4.00%	686,365
4	1,715,913	15,443,216	4.00%	617,729
5	1,715,913	13,727,303	4.00%	549,092
6	1,715,913	12,011,390	4.00%	480,456
7	1,715,913	10,295,478	4.00%	411,819
8	1,715,913	8,579,565	4.00%	343,183
9	1,715,913	6,863,652	4.00%	274,546
10	1,715,913	5,147,739	4.00%	205,910
11	1,715,913	3,431,826	4.00%	137,273
12	1,715,913	1,715,913	4.00%	68,637
13	1,715,913	(0)		-
	22,306,868			

Total NPV ADIT **4,486,986** 4% Estimated Securitization Yield
13 year

Staff's Calculation	<u>17,134,363</u>
Projected Write-off	<u><u>(12,647,377)</u></u>