

Exhibit No.: _____
Issue(s): Asbury AAO
Witness/Type of Exhibit: Robinett/Reply to
Answers to Commission Questions
Sponsoring Party: Public Counsel
Case No.: ER-2019-0374

**REPLY TO TESTIMONY RESPONDING
TO COMMISSION QUESTIONS**

OF

JOHN A. ROBINETT

Submitted on Behalf of the Office of the Public Counsel

EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2019-0374

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**

Denotes Confidential Information that has been Redacted

May 12, 2020

PUBLIC

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

In the Matter of The Empire District)
Electric Company's Request for Authority)
to File Tariffs Increasing Rates for Electric) Case No. ER-2019-0374
Service Provided to Customers in its)
Missouri Service Area)

VERIFICATION OF JOHN A. ROBINETT

John A. Robinett, under penalty of perjury, states:

1. Attached hereto and made a part hereof for all purposes is my responsive testimony to answers to Commission questions in the above-captioned case.

3. My answer to each question in the attached responsive testimony to answers to Commission questions is true and correct to the best of my knowledge, information, and belief.



John A. Robinett
Utility Engineering Specialist
Office of the Public Counsel

**REPLY TO TESTIMONY RESPONDING TO COMMISSIONER QUESTIONS
OF
JOHN A. ROBINETT
THE EMPIRE DISTRICT ELECTRIC COMPANY**

CASE No. ER-2019-0374

1 **Q. Are you the same John A. Robinett who filed direct, rebuttal, and surrebuttal/true-up**
2 **direct testimony and a response to Commission questions on behalf of the Missouri**
3 **Office of the Public Counsel (“OPC”) in this proceeding?**

4 A. Yes.

5 **Q. Why are you testifying again now?**

6 A. I am responding to the supplemental testimonies of Empire Witnesses Ms. Sheri Richard,
7 Mr. Timothy N. Wilson and Mr. Aaron J. Doll discussing Asbury in response to questions
8 the Commission asked. In addition, I address the supplemental testimony of Staff witnesses
9 Mr. Charles T. Poston, P.E., and Mr. Mark L. Oligschlaeger supporting an accounting
10 authority order (AAO) for Asbury, also in response to Commission questions. I will also
11 be addressing Staff witness Kimberly K. Bolin testimony related to the true-up of all cost
12 of service items.

13 **Q. In his supplemental testimony Mr. Doll testifies that he is answering the**
14 **Commission’s questions as to whether Asbury was operating on March 31, 2019 and**
15 **September 30, 2019. Did he?**

16 A. No, he did not answer the questions asked. Instead, Mr. Doll testifies that Empire did not
17 de-designated the Asbury unit from the SPP market until March 1, 2020, and then he
18 discusses the process for notifying the SPP of Empire’s plan to retire the unit. This doesn’t
19 answer the Commission’s question. I do not know that the unit was incapable of operating
20 on March 31, 2019 or September 30, 2019, and I also do not know if the unit ran and
21 supplied power to the market on either date. That is not clear from Empire’s response to

1 the Commission's question, and I have no other information that informs me that Asbury
2 actually ran on either of those dates.

3 **Q. Do you have a response to Mr. Wilson's statement regarding the reutilization of**
4 **existing Asbury assets in response to Commission question 13(1)?**

5 A. Yes. The Commission asked Empire for the status of any decommissioning, reuse, and
6 repurposing plan for Asbury. Mr. Wilson's response is not at all consistent with how
7 Empire has previously answered this question when both Staff and OPC asked it. Mr.
8 Wilson tells the Commission that Empire has already identified certain assets to be reused
9 or repurposed. However, when Staff asked Empire the same question in Staff data request
10 number 0223 on December 16, 2019,¹ Empire's answer on January 5, 2019 was:

11 Yes, the Company is exploring options for the continued operation of several of the
12 buildings at the site to support other company operating activities and is still
13 evaluating details regarding other asset dispositions. As such, the Company has
14 insufficient details of accounts and amounts. This request will be supplemented
15 with the requested information when it becomes available.

16 Empire has not provided any correction or update to how it previously answered
17 Staff data request number 0223. The Commission should also look at the attached Empire
18 data request responses to Public Counsel and Staff in Schedule JAR-D-2 of Exhibit 217C.
19 Empire's whole case related to Asbury has been "we don't know what we are going to do
20 with the facilities, but keep it all in rates." Those data request responses to Staff and Public
21 Counsel indicate that Empire was looking at potentially reusing buildings, but nothing was
22 definitive. Now, when the Commission asks, then more clarity exists. Empire's retirement
23 study should have been completed long before it retired Asbury because Empire has been

¹ Attached as Schedule JAR-D-2 page 5 of 10 to OPC exhibit 217C.

1 planning to retire Asbury for quite some time. With a completed retirement study, Empire
2 would know full well whether its assets at Asbury could be reutilized, and have an initial
3 estimate of the dismantlement and ash pound closure costs. Instead, Empire is seeking to
4 retain Asbury in rates for approximately 15-18 months, when the unit no longer produced
5 power after 2019, and is not and will not supply a benefit to Empire's customers afterward.

6 **Q. What is your response to Mr. Wilson's testimony about the reutilization of existing**
7 **Asbury assets in response to Commission question 13(2) regarding a Black and**
8 **Veatch study?**

9 A. Mr. Wilson says that Black and Veatch has completed the first phase of finding a potential
10 buyer. This response again is very telling. It is that Empire still has no finalized plan or
11 decision, as Mr. Wilson states that multiple options are still on the table.

12 Additionally, Black and Veatch has not even completed Phase 1 of its study. At
13 page 3 line 10 of his testimony Mr. Wilson states, "Black and Veatch will perform one
14 additional study under Phase 1 which will be to analyze the risks and costs associated with
15 abandoning-in-place instead of full dismantlement. Once complete, the Company will
16 make a decision and move onto Phase 2." Mr. Wilson's statements about the results are not
17 supported by any evidence in the record of Empire's costs to sell the Asbury unit or its
18 costs to dismantle the unit. Mr. Wilson does not provide with his testimony any competitive
19 bid contracts for dismantlement of the unit nor does he provide any documentation for why
20 sale of the unit would be approximately four times as expensive as dismantling it.

1 **Q. Do you have a response to Ms. Richard's supplemental testimony regarding an**
2 **Asbury accounting order?**

3 A. Ms. Richard's testimony addresses items to be tracked as part of the order. Based on the
4 following excerpt from page 20 lines 5-13 of her testimony the proposed order appears
5 designed to track the stranded asset values:

6 More specifically, in addition to the return on and of the rate base associated with
7 Asbury, the Company will book cost changes for the various categories listed in
8 Paragraph 25 subparts a through i of the Stipulation. The base plant amounts
9 reflected in Appendix D reflect the net plant that remains after the removal of
10 currently identified re-purposed plant which will continue to be used by Empire. If
11 further plant is identified to be repurposed, the Company will adjust the base
12 amounts accordingly after discussion with the signatories to the Stipulation. In
13 addition, any plant proceeds received for salvage will be applied to the regulatory
14 asset/liability accounts described above.

15 **Q. Is that a concern?**

16 A. Yes. I already addressed part of my concern in my surrebuttal testimony. Mainly, that I
17 question the extent to which Empire will track costs for the benefits of its customers, given
18 its resistance to discovery. Empire objected to my data request 8512 where I sought plant-
19 in-service and accumulated depreciation reserves balances for the Asbury facility as of
20 February 29, 2020, March 1, 2020, and March 2, 2020, the day before Empire says it retired
21 Asbury, the day of retirement, the day after retirement for how Empire valued the stranded
22 assets and for how Empire booked the retirement and affected reserves. Following is that
23 request, with Empire's response.

24 8512. Please provide Empire's unrecovered net plant investment balance for the
25 Asbury plant by account as of February 29, 2020, March 1, 2020, and March 2,
26 2020.

27
28 **OBJECTION:** Liberty-Empire objects to this DR on the bases that it is overly broad
29 and unduly burdensome and seeks information that is not relevant or reasonably
30 calculated to lead to the discovery of admissible evidence in this proceeding. The

1 Commission held it “will not modify the test year, nor allow isolated adjustments
2 for Asbury’s retirement to be addressed in this general rate proceeding.” The
3 Commission further directed the parties to “file a list of suggested items or
4 categories to address impacts resulting from Asbury’s retirement for inclusion in
5 an Accounting Authority Order, no later than April 3, 2020.” The requested
6 information is not relevant to the test year as updated and trued up nor to the
7 provision of suggested items or categories for an AAO.

8 Empire’s objection was pointed in saying “The requested information is not relevant to the
9 test year as updated and trued up nor to the provision of suggested items or categories for
10 an AAO.” However, my understanding of Ms. Richard’s testimony is that net plant is
11 being tracked as part of the proposed AAO. Indeed, the Stipulation language to which
12 Empire agreed states that the following is to be tracked in an AAO:

13 “The base plant amounts reflected in Appendix D reflect the net plant that remains
14 after the removal of currently identified re-purposed plant which will continue to
15 be used by Empire.”

16 There is no need to set up base plant values, unless it is an item that is to be tracked as part
17 of the AAO. Clearly the information I sought was relevant, and yet Empire objected, and
18 has not provided any other response.

19 **Q. Do you agree that the closure of Asbury occurred outside of the true-up period as Ms.
20 Richard states at page 21 lines 6-7 of her supplemental testimony?**

21 A. No. This is the main point of contention related to Asbury; the unit has not generated
22 electricity since mid-December of 2019. As is evidenced by Empire’s response to OPC DR
23 8523 that Mr. Poston of Staff attached to his supplemental testimony that **

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16 **Q. When did Public Counsel receive Empire’s response to OPC data request 8523?**

17 A. Public Counsel received Empire’s response on April 11, 2020, after direct, rebuttal, and
18 surrebuttal/true-up direct testimony were filed, and just 3 days prior to the original hearing
19 was to start.

20 **Q. Does Empire’s response to OPC data request 8523 change Public Counsel’s position?**

21 A. No. For reasons discussed above and below, the Commission must address the Asbury
22 retirement impacts in this case to order just and reasonable rates reflecting the costs of
23 Empire’s operations going forward.

1 **Q. Does Staff acknowledge that Empire retired Asbury during the pendency of this case?**

2 A. Yes. Staff witness Mr. Oligschlaeger at page 6 line 4 of his supplemental testimony states,
3 “As of the date of the Stipulation filing, Asbury has been retired by Empire and is no longer
4 generating power. Staff Witness Mr. Poston at page 3 lines 4 and 5 of his supplemental
5 testimony repeats Empire’s statement that the Asbury Plant was retired March 1, 2020.
6 Then he couches that if the Commission does not approve the Global Agreement as a full
7 resolution of all issues, Staff reserves the right to take a position in the appropriate case on
8 the March 1, 2020 retirement date for the Asbury Plant. I do not know what Mr. Poston
9 means by “appropriate case” or why this rate case would not be appropriate. Mr. Poston
10 goes one step further and has a discussion about January 1, 2020, as a date when Asbury
11 costs will no longer flow through the fuel adjustment clause,² but then he goes out of his
12 way to re-clarify that “Use of January 1, 2020 in this settlement provision does not
13 represent an agreement regarding the retirement date of the plant.”

14 **Q. What do these Staff statements in testimony confirm to you?**

15 A. That Staff has knowingly determined rates that cannot be just and reasonable, as they do
16 not properly reflect expenses and operations on a going forward basis related to Asbury
17 operation.

18 **Q. Do you agree that the retirement of coal generation units is uncommon for Empire?**

19 A. No based on recent history. Empire has retired three coal generating units over the past five
20 years: Asbury unit 2 in December of 2013, Riverton unit 7 in June of 2014, and Riverton
21 unit 8 in June 2015. Riverton units 7 and 8 were roughly one fourth the size of Asbury unit

² Yet Staff has recommended in Empire’s current FAC rate change case, ER-2020-0311, that Empire be allowed to recover Asbury costs for January and February 2020 with a potential adjustment in the next FAC rate change filing.

1 1, and were essentially at the end of their useful lives. Asbury unit 2 was a 16MW unit that
2 was retired and dismantled due to being situated in the designed footprint of the Air Quality
3 Control System for the only generating unit still at Asbury.

4 **Q. Do you agree with Mr. Oligschlaeger that the timing of the retirement should be**
5 **considered extraordinary?**

6 A. No. Although Asbury was a reliable baseload coal unit that cost nearly as much to run as
7 the revenues it generated in the SPP market on an annual basis, it had considerable capacity
8 value, and the upgrades that Empire completed on the Asbury plant in 2014-2015 resulted
9 in it being a more efficient plant. Yet Empire elected to prematurely retire it in a shift to
10 building its rate base through wind projects and in anticipation of recovering through rates
11 its stranded investment in Asbury. This is not an act of nature or other unforeseen event
12 that made Asbury uneconomic or unusable; Empire voluntarily elected to retire Asbury
13 now. What I consider extraordinary is how Staff has seemingly refused to address the
14 Asbury issue as part of this case, but continues to couch that Staff reserves the right to take
15 a position on the retirement date in a future rate case.

16 **Q. Do you agree with Mr. Oligschlaeger that the retirement of Sibley is similar to**
17 **Empire's retirement of Asbury?**

18 A. I agree that they are similar in many respects. In both cases Public Counsel stood alone in
19 seeking to have the units removed from rates going forward. Like Sibley, for Asbury Staff
20 agreed to keep the unit in rates even though the unit will no longer be providing service to
21 prospective ratepayers. Both units retired during the pendency of perspective general
22 electric rate case and before new rates became affective in that case.

1 **Q. Mr. Oligschlaeger states that the deferral is to begin retrospectively to January 1,**
2 **2020, does this cause you concern?**

3 A. Yes, inherently this agreement creates the possibility for double counting to occur as the
4 true-up values in this case were calculated through January 31, 2020, and the Asbury fuel
5 inventory adjustment was made in December 2019.

6 **Q. Mr. Oligschlaeger states on page 9, lines 18-20 of his supplemental testimony that**
7 **parties may continue to debate when Asbury was actually retired. Regardless of a**
8 **dispute over the precise retirement date of plant, does Staff normally treat plant that**
9 **has ceased operating before new rates will go into effect as if it were operating when**
10 **Staff is determining its revenue requirement recommendation to the Commission?**

11 A. I do not know, but in its direct testimony Staff said that it planned to make isolated
12 adjustments for Asbury. While I was a member of Staff, I do not recall questioning the
13 timing of a retirement. However the vast majority of retirements were for smaller assets
14 and not whole generating units with the exception of the three Empire units discussed
15 above. The timing was not questioned to the best of my recollection, just whether or not to
16 continue depreciation expense on a retired asset.

17 **Q. Do you have any comment regarding Staff Exhibit 162 - Mr. Oligschlaeger**
18 **supplemental testimony on page 9, lines 13-22 about starting the deferral accounting**
19 **for Asbury costs on January 1, 2020 - before March 2, 2020, but after December 12,**
20 **2019?**

21 A. Yes. Given that the dispute is whether Asbury stopped serving customers on December 12,
22 2019 or March 1, 2020, starting a deferral as of January 1, 2020 is arbitrary. If one accepts
23 the premise there should be a deferral for addressing the date of retirement in some later

1 Empire case, the appropriate date to start the deferral is sometime before the earliest
2 proposed retirement date of December 12, 2019.

3 **Q. Will deferring Asbury costs to deal with them later instead of in this case**
4 **disadvantage Empire’s retail customers?**

5 A. Unquestionably. If the Commission does not address Asbury now, Empire’s customers
6 will be charged rates that are not based on all relevant factors, rates which will be unjust
7 and unreasonable because they will not reflect the reality of Empire not incurring
8 operational costs or revenues from Asbury.

9 **Q. But doesn’t granting the AAO guarantee rate payers will see the net savings?**

10 A. No. Granting the AAO is not a guarantee that rate payers will see the savings in the next
11 case. The AAO may end up being a regulatory asset to the benefit of Empire, and will be
12 a heavily litigated issue in the next case since there is no agreement as what will be the
13 baseline to judge values from the Staff True-Up accounting schedules. The key word in
14 Mr. Oligschlaeger’s discussion of customer benefits is the word “may.” Just because net
15 savings may be captured and available to flow to customers in the next rate case does not
16 mean that they will. Moreover, since the signatories agreed to allow deferral of the
17 unrecovered rate base, I do not envision a scenario of a regulatory liability in which the
18 utility needs to return money to its customers. As I discussed in my previous testimonies,
19 the undepreciated balance of Asbury was approximately two hundred million dollars before
20 the consideration of costs related to dismantlement, environmental remediation and other
21 retirement related costs. Removing Asbury from rates going forward is the only way
22 customers are guaranteed to see the savings of Asbury not being operational, now or later.

1 **Q. Do you agree with Ms. Bolin’s statement that Staff’s true-up audit attempts to**
2 **“capture material changes” on page 6 of her supplemental testimony?**

3 A. I agree that Staff attempts to include most material changes. However, Staff has failed
4 significantly in this case by not including in its true-up the impact of the material change
5 at Asbury that was known and measurable prior to March 27, 2020, when the parties filed
6 their surrebuttal and direct true-up testimony. As Staff witness Oligschlaeger states,” As of
7 the date of the Stipulation filing, Asbury has been retired by Empire and is no longer
8 generating power.” That stipulation and agreement Staff executed was filed on April 15,
9 2020. Even based on Empire’s booked retirement date of March 1, 2020, Empire had
10 retired Asbury prior to Staff’s true-up filing on March 27, 2020. However, as Public
11 Counsel has testified in this case Empire ceased operating Asbury in mid-December, and
12 the Commission should consider Asbury to have been retired at that time, which is over 1-
13 1/2 months before the end of the true-up period—January 31, 2020.

14 **Q. Does Staff consider the financial impact of Asbury retirement to be material?**

15 A. Yes. Staff witness Mr. Oligschlaeger provides the following Q&A on page 7 lines 1 and 2
16 of his supplemental testimony marked Exhibit 162.

17 Q. Does Staff consider the financial impact of the Asbury retirement to be material?

18 A. Yes.

19 **Q. Does Staff consider the retirement of Asbury to be known and measurable?**

20 A. Apparently. In Staff’s Cost of Service Report Ms. Bolin states:

21 The amount of these adjustments will be known and measurable at the time of the
22 Asbury retirement, well before the operation-of-law date in this proceeding.
23 Accordingly, Staff intends to adjust plant-in-service and the accumulated
24 depreciation reserve to reflect the retirement of the Asbury plant. Staff also intends
25 to remove Asbury depreciation expense from this case. In addition, Staff will also

1 remove any fuel inventory associated with Asbury from rate base. These adjustment
2 amounts will be quantified and supported in Staff's surrebuttal/true-up testimony
3 filing scheduled for March 27, 2019.

4 Empire's O&M expenses will also be affected by the retirement of Asbury,
5 but many of these cost changes may not be fully known and measurable within the
6 pendency of this rate case. For that reason, Staff recommends that a tracker
7 mechanism be ordered by the Commission in this case to quantify the changes in
8 the amounts of O&M expenses incurred by Empire associated due to the retirement
9 of Asbury, with the tracked amount potentially includable in rates in Empire's next
10 general rate proceeding. The items to be tracked include the portion of the change
11 in Asbury net fuel/purchased power expense not flowing through the FAC, Asbury
12 maintenance expense, and Asbury payroll expense and payroll related benefits.

13 Staff at the time of direct filing thought that certain items related to Asbury were, or would
14 be, known at the time of its retirement.

15 **Q. Did Staff remove Asbury from its determination of Empire's cost-of-service in this**
16 **case?**

17 A. No. Staff did not remove items related to Asbury that it stated were known, measurable,
18 and material. Instead Staff filed true-up accounting schedules reflecting continued
19 operation of Asbury, but with an eighteen burn-day coal supply.

20 **Q. Will you summarize your testimony?**

21 A. Asbury is no longer operational, and the stipulation and agreement produces unjust and
22 unreasonable rates. Both Staff and Empire have stated that the unit is retired and no longer
23 providing benefits to Empire's customers, but Asbury is treated in the agreement as if it is
24 still operating. The reasonableness of Empire and Staff's position on Asbury can be
25 measured by the fact that both have included Asbury coal pile inventories in their case, and
26 yet those have not existed since mid-December 2019. They continue to insist that Empire
27 customers pay rates from this case based on the cost to operate Asbury. Both Empire and
28 Staff are assuring the Commission that costs that Empire does not incur will be tracked in

1 an AAO while asking for these costs to be included in rates now. This position, if adopted
2 by the Commission, will result in unjust and unreasonable rates where the customer
3 overcharges may or may not be paid back in the future. Staff and Empire want to use
4 Empire's customers to provide the equivalent of an interest-free loan that will overcharge
5 these customers, with only a potential that these overcharges will be returned to those
6 customers. The only way to assure that customers do not pay costs that are not incurred is
7 to not include these costs in rates now.

8 **Q. Does this conclude your responsive testimony?**

9 A. Yes, it does.