

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

**PETITION OF UNION ELECTRIC COMPANY D/B/A AMEREN
MISSOURI FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE***

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Company” or “Ameren Missouri”) and for its petition to file an *amicus curiae* brief in the above captioned proceedings pursuant to 20 CSR 4240-2.075(11) of the Missouri Public Service Commission’s (“Commission”) Rules of Practice and Procedure, states the following:

1. Ameren Missouri is an electrical corporation and public utility that is eligible to petition the Commission to issue securitized utility bonds under §393.1700, RSMo.¹ to finance and recover costs associated with retired or to be retired coal-fired generating plants. Ameren Missouri operates substantial coal-fired generation in the state and expects to retire a substantial portion of it in just the next several years. Given the General Assembly’s adoption of a statute authorizing use of securitization in 2021, and the expected benefits for customers if securitization is used and properly implemented, prior to the Commission’s issuance of the *Report and Order* (“Empire Order”) in this case, Ameren Missouri would expect to use securitization in the next few years as its remaining coal-fired generating plants retire.

2. However, as discussed in detail in the attached *Amicus Brief*, the Empire Order reflects a serious mistake in the interpretation and application of the securitization statute, specifically subsection 2(3)(c)m of §393.1700.² That statutory provision mandates two key

¹ All statutory references are to the Revised Statutes of Missouri (Cum. Supp. 2022).

² As expressly provided for in Subsection 2(3)(c)m of §393.1700, RSMo.

things: 1. That accumulated deferred income taxes (“ADIT”) be removed from rate base in future general rate cases, and 2. That the net present value of “net tax benefits” arising from the ADIT be credited to customers as a reduction from the securitized amount so that customers will get credit for the fact that the utility receives benefits from the ADIT arising from not having to pay the deferred taxes today, but instead being allowed to pay them later. The mistake was that Staff recommended – and the Commission ordered – that the net present value of ADIT itself – the taxes that everyone agrees will be paid to the federal government over the ensuing 13 years – be used to reduce the sum to be securitized. The result is that Empire will pay the taxes but will have no funds (other than from its shareholders) with which to do so; effectively, the mistake forces Empire to eat approximately 20% of the sum that should have been securitized, rendering securitization as compared to use of traditional financing and recovery unfair and practically if not legally confiscatory as to Empire.

3. That mistake, if applied to Ameren Missouri in a future securitization related to the retirement of one of its coal-fired generating plants, would likely prevent Ameren Missouri from issuing securitization bonds, which in turn would prevent cost savings associated with securitization from being realized by customers. Ameren Missouri would likely be unable to utilize securitization under those circumstances because doing so would result in the same unfair result the Empire Order, if not corrected, would impose on Empire, that is, a disallowance of approximately 20% (assuming current income tax rates remain in effect) of the sum that needs to be securitized in order for all true energy transition costs to be financed and recovered. Indeed, the existence of that mistake may effectively prevent Ameren Missouri from filing a securitization petition at all since under the mistaken interpretation the only way for Ameren Missouri to finance and fully recover its prudent investment made to serve customers from its

coal-fired generating plants would be to use the traditional means of finance and recovery, that is, by including an amortization of the remaining investment in the revenue requirement used to establish future base rates, recovered over a reasonable amortization period including an appropriate cost of capital, which the Commission determined in this case would be the long-term cost of debt.

4. That a mistake was made is perhaps not surprising given that this is the first securitization case to be processed by the Commission, and no party – including Empire and the Staff – have experience with applying a securitization statute. Similarly, the Commission lacks any such experience and of course relies upon the parties to adduce evidence and to properly explain and apply the statute. That the Commission followed the Staff’s mistaken recommendation may also be understandable given that it appears that Empire did not fully appreciate precisely how Staff was making its mistake, and therefore was unable to clearly explain the problem to the Commission before the Commission issued the Empire Order. In the end, however, that a mistake was made will not matter so long as the mistake is corrected; the goal should not be to lay blame but to simply get it right.

5. Ameren Missouri seeks leave of the Commission to file the accompanying brief of *amicus curiae* to address the serious policy issue presented by the Empire Order’s mistaken interpretation of the securitization statute, as explained above, because the proper interpretation of that statute is of critical importance to all regulated electrical corporations in the state. Indeed, it is of critical importance to the Commission, who is charged with implementing the policy reflected in the securitization statute just recently adopted by the General Assembly, which would naturally want the mechanisms reflected in that statute to be utilized by regulated electrical corporations if doing so can benefit customers.

6. Ameren Missouri's brief will assist the Commission in reaching a well-informed decision on Empire's rehearing application.

7. Ameren Missouri submits simultaneously herewith an *amicus curiae* brief for the Commission's consideration.

WHEREFORE, for the foregoing reasons, Ameren Missouri respectfully requests that the Commission accept and consider this *Amicus Curiae* brief.

Respectfully submitted,

/s/ James B. Lowery

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the service list of record of this case on this 30th day of August, 2022.

James B. Lowery
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