Exhibit No.: _____
Issue(s): Prudence – Asbury and Storm Uri, Carrying Costs
Witness: John J. Reed
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Sponsoring Party: The Empire District Electric Company
Case Nos.: EO-2022-0040; EO-2022-0193
Date Testimony Prepared: May 2022

Before the Public Service Commission
of the State of Missouri

Surrebuttal Testimony

of

John J. Reed

on behalf of

The Empire District Electric Company d/b/a Liberty

May 2022

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FOR THE SURREBUTTAL TESTIMONY OF JOHN J. REED
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
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I. INTRODUCTION

Q. Please state your name and business address.

A. My name is John J. Reed. My business address is 293 Boston Post Road West, Suite 500, Marlborough, Massachusetts 01752.

Q. By whom are you employed and in what capacity?

A. I am Chairman and Chief Executive Officer ("CEO") of Concentric Energy Advisors, Inc. ("Concentric") and CE Capital Advisors, Inc.

Q. On whose behalf are you testifying in this proceeding?

A. I am testifying on behalf of The Empire District Electric Company d/b/a Liberty ("Liberty" or the "Company").

Q. Please briefly describe your educational and professional background.

A. I have more than 45 years of experience in the North American energy industry. Prior to my current position with Concentric, I have served in executive positions with various consulting firms and as Chief Economist with Southern California Gas Company, North America's largest gas distribution utility. I have provided expert testimony on financial and economic matters on more than 200 occasions before the National Energy Board ("NEB"), the Federal Energy Regulatory Commission ("FERC"), numerous provincial and state utility regulatory agencies, various state and federal courts, and before arbitration panels in the United States and Canada. A copy

of my résumé and a listing of the testimony I have sponsored in the past is included as **Surrebuttal Schedule JJR-1**.

Q. Please briefly describe Concentric.

A. Concentric Energy Advisors was founded in 2002 by a small group of executive-level consultants who were committed to establishing a mid-sized energy consulting firm with capabilities and a reputation unsurpassed by any firm in North America. We provide our clients with access to one of the nation's largest pools of expert witnesses in the field of utility regulation, with more than 20 individuals who have appeared as experts in regulatory proceedings across North America, backed up by a team of consultants that are experienced in all aspects of developing the financial, economic, and technical data filed as part of regulatory proceedings. Currently, Concentric has approximately 60 employees who support the corporate headquarters in Marlborough, Massachusetts, and our offices in Washington, DC and Calgary, Alberta, Canada. Our energy industry experts have held positions with utility companies, regulatory agencies, integrated energy companies, regional transmission organizations, retail marketing companies, and utility management consulting firms. Many members of our team have been working together for more than 30 years.

Through our subsidiaries, CE Capital Advisors and Concentric Advisors ULC, we also provide capital market advisory support and consulting services in Canada.

Q. Have you previously testified before the Missouri Public Service Commission ("Commission")?

A. Yes. I have testified before the Commission on 32 occasions, detailed below.

SPONSOR	DATE	CASE/APPLICANT	DOCKET NO.	SUBJECT
Missouri Gas Energy	1/03 4/03	Missouri Gas Energy	GR-2001-382	Gas Purchasing Practices, Prudence
Aquila Networks	2/04	Aquila-MPS, Aquila L&P	ER-2004-0034 HR-2004-0024	Cost of Capital, Capital Structure
Aquila Networks	2/04	Aquila-MPS, Aquila L&P	GR-2004-0072	Cost of Capital, Capital Structure
Missouri Gas Energy	11/05 2/06 7/06	Missouri Gas Energy	GR-2002-348 GR-2003-0330	Capacity Planning
Missouri Gas Energy	11/10 1/11	KCP&L	ER-2010-0355	Natural Gas DSM
Missouri Gas Energy	11/10 1/11	KCP&L GMO	ER-2010-0356	Natural Gas DSM
Laclede Gas Company	5/11	Laclede Gas Company	CG-2011-0098	Affiliate Pricing Standards
Union Electric Company d/b/a Ameren Missouri	2/12 8/12	Union Electric Company	ER-2012-0166	Return on Equity, Earnings Attrition, Regulatory Lag
Union Electric Company d/b/a Ameren Missouri	6/14	Noranda Aluminum Inc.	EC-2014-0223	Ratemaking, Regulatory and Economic Policy
Union Electric Company d/b/a Ameren Missouri	1/15 2/15	Union Electric Company	ER-2014-0258	Revenue Requirements, Ratemaking Policies
Great Plains Energy Kansas City Power and Light Company	8/17 2/18 3/18	Great Plains Energy, Kansas City Power & Light Company, and Westar Energy	EM-2018-0012	Merger Standards, Transaction Value, Merger Benefits, Ring-Fencing,
Union Electric Company d/b/a Ameren Missouri	6/19	Union Electric Company d/b/a Ameren Missouri	EO-2017-0176	Affiliate Transactions, Cost Allocation Manual
Union Electric Company d/b/a Ameren Missouri	7/19 1/20 2/20	Union Electric Company d/b/a Ameren Missouri	ER-2019-0335	Reasonableness of Affiliate Services and Costs
Union Electric Company d/b/a Ameren Missouri	3/21	Union Electric Company d/b/a Ameren Missouri	GR-2021-0241	Affiliate Transactions
Union Electric Company d/b/a Ameren Missouri	3/21 10/21	Union Electric Company d/b/a Ameren Missouri	ER-2021-0240	Affiliate Transactions, Prudence Standard, Used and Useful Principle
Empire District Electric Company	5/21 12/21 1/22	Empire District Electric Company	ER-2021-0312	Return on Equity
Empire District Gas Company	8/21 3/22	Empire District Gas Company	GR-2021-0320	Return on Equity

II. PURPOSE OF SURREBUTTAL TESTIMONY

Q. What is the purpose of your Surrebuttal Testimony in this proceeding?

A. The purpose of my Surrebuttal Testimony is to respond to the rebuttal testimony filed by:

- The Office of the Public Counsel ("OPC") witnesses Lena Mantle and Geoff Marke regarding their assertions of imprudence and recommendations to exclude costs from the Company's proposed securitization of certain Asbury and Storm Uri costs;
- Commission Staff ("Staff") witness Jordan Hull regarding his assertion of imprudence with regard to Riverton 11 and recommended disallowance; and
- Staff witnesses Kimberly Bolin and Amanda McMellen and OPC witness David Murray regarding carrying costs and the recommendation that the Commission reject the use of the Company's most recently authorized rate of return ("ROR") as the appropriate measure for carrying charges for deferred cost recovery and instead use a debt rate.

My testimony addresses these issues from a regulatory policy perspective.

Please see the testimonies of Liberty witnesses Charlotte Emery, Aaron Doll, Drew Landoll, Shaen Rooney, Michael Mosindy, Brian Mushimba, Frank Graves, and Katrina Niehaus for additional responsive testimony regarding the specific facts and circumstances underlying the Company's proposed securitization.

Q. What key conclusions do you reach responding to these witnesses?

A. My key conclusions are highlighted below.

- The regulatory principle relating to cost recovery has been clear for many decades—utilities are entitled to recover their prudently incurred costs, and

a reasonable opportunity to earn a fair return on the assets that are the product of prudent investment.

- Missouri precedent on these points is fully aligned with the national mainstream and with the National Regulatory Research Institute ("NRRI") standards.
- Properly applied, in order for a prudence disallowance to be warranted, a party would have to show that Liberty's conduct was outside the range of what a reasonable utility would have done based on what was known or reasonably knowable at the time the decision was made.
- Not only has that not been shown by the OPC or Staff witnesses, the witnesses addressing these issues did not construct or apply a proper prudence evaluation framework, did not focus on the reasonableness of the utility's decisions based on information that was known or reasonably knowable at the time, and did not develop a recommended disallowance based on quantifying the difference between actual costs and what the witness concluded would have been the costs incurred under a "minimally-prudent" decision. In short, there is no adherence by these witnesses to the established prudence standard, and their recommended disallowances should be given no weight.
- Furthermore, based on the material I reviewed, the evidence is compelling that the Company's decisions that have been challenged by these parties were reasonable, prudent and well within industry norms.
- The underpinnings of OPC's position is that Liberty could have achieved a lower cost of producing power if it had not closed the Asbury plant. This is entirely a results-oriented approach to cost recovery, not one based on prudence under the circumstances, and OPC flatly fails to adhere to established principles for performing a prudence review. I also feel compelled to note that Ms. Mantle's position as to what constitutes prudent planning by a Load Serving Entity ("LSE") is not within the mainstream of utility conduct.

- Liberty has committed capital to funding the deferred fuel cost collections and the regulatory asset associated with Asbury that are the subject of this securitization application, and that commitment of capital warrants a reasonable return on capital until such time as Liberty's capital is paid off by the proceeds from securitization. The interval over which Liberty's capital will be deployed is not yet known, but it significantly exceeds one year, which is the typical definition of short-term capital.
- The appropriate return (or carrying cost) for the deployment of Liberty's capital in this instance is no different than that which should apply to any other commitment of intermediate or long-term capital and should reflect a balanced mix of debt and equity. In addition, the equity return portion of the cost of capital requires an adjustment for income taxes.

III. THE PRUDENCE STANDARD

Q. Before beginning your discussion of the prudence standard, do you have a significant amount of experience on the topic of prudence reviews as part of utility rate proceedings?

A. Yes. I have conducted more than 20 prudence reviews as part of ratemaking processes over more than a 35-year period. These reviews have included construction programs for utility assets, gas costs and power costs from energy procurement programs, system planning issues and other topics. I have performed these analyses for utilities, customers of utilities, and regulators. My experience with prudence reviews involves the review of more than $20 billion of utility expenditures and has often been part of the largest prudence reviews ever conducted in the jurisdiction where my work was being done. Recently, I have completed prudence reviews for a $1.5 billion electric transmission project, three separate nuclear refurbishment projects totaling more than $5 billion, wind project development, coal plant environmental controls, and for Winter

Storm Uri energy costs exceeding $400 million. The conduct of prudence reviews has been a major part of my career in energy consulting since 1985.

Q. Please generally describe the regulatory standard for prudence.

A. Under traditional cost-based ratemaking, a utility is permitted to include prudently-incurred costs in the revenue requirement used to set its rates. The standard for the evaluation of whether costs are, or are not, prudently incurred is built on four principles. First, prudence relates to actions and decisions. Costs themselves are neither prudent nor imprudent. It is the decision or action that led to cost incurrence that must be reviewed and assessed, not the results of those decisions. In other words, prudence is a measure of the quality of decision-making, and does not reflect how the decisions turned out. The second feature is a presumption of prudence, which is often referred to as a rebuttable presumption. The burden of showing that a decision is outside of the reasonable bounds falls, at least initially, on the party challenging the utility's actions. The third feature is the total exclusion of hindsight from a properly constructed prudence review. A utility's decisions must be judged based upon what was known or reasonably knowable at the time the decision was made by the utility. Information that was not known or reasonably knowable at the time of the decision being made cannot be considered in evaluating the reasonableness of a decision, and subsequent information on "how things turned out" cannot influence the evaluation of the prudence of a decision. The final feature is that decisions being reviewed need to be compared to a range of reasonable behavior; prudence does not require perfection, nor does prudence require achieving the lowest possible cost. This standard recognizes that reasonable people can differ and that there is a range of reasonable actions and decisions that is consistent with prudence. Simply put, a decision can only be labelled

as imprudent if it can be shown that such a decision was outside the bounds of what a reasonable person would have done under those circumstances.

Q. Why is it appropriate and fair in utility ratemaking to exclude the real-world knowledge of "how things turned out" from the consideration of whether costs should be recoverable in rates?

A. This approach is essential in providing a regulatory framework for balancing the interests of customers and utility investors. While it is not the only workable framework, it is the one which is in use in nearly every utility regulatory jurisdiction in North America. Utilities are typically not allowed to recover more than their actual costs when very favorable results are achieved and are not asked to bear the results of what turned out to be unfavorable outcomes as long as the decisions leading to a result were reasonable. This is largely the same standard of care and responsibility that applies to parties that are acting in a fiduciary role where others will bear the consequences of an action, such as in acting as a financial advisor or a trust officer. I understand the "normal" inclination of seeking to have the higher costs of unfortunate and extraordinary weather occurrences shared between customers and investors, but that type of risk sharing is not appropriate when the utility operates under a cost-based regulatory regime with the acknowledged standard for cost recovery being the traditional prudence standard. Under the prudence standard, decisions are to be judged, and the resulting costs, as they become known at a later date are not to enter into the equation for determining cost recovery. This approach is not only fair, it is part of preserving the essential balance between customer and investor interests in public utility regulation.

Q. What happens when a utility's action or inaction is deemed imprudent?

A. Generally, when an action, or inaction is deemed imprudent, the investments or costs associated with the imprudent action are disallowed from cost recovery. If an action is ruled imprudent then a regulator should: 1) define the range of reasonable behavior; 2) consider what the costs would have been if a "minimally prudent" course of action had been followed; and 3) disallow only the amount of costs that are above those which would have been produced by a "minimally prudent" level of decision making. As an example, if a utility adopted a $50 million self-insurance level for storm-related costs and the regulator determined that this was too high and prudent managers would have decided to utilize a self-insurance level of $10 million to $30 million, it is only the cost consequences of electing $20 million of a higher self-insurance level ($50 million actual as compared to $30 million that is minimally prudent) that can be considered for disallowance.

Q. Does this Commission adhere to the prudence standard as you have laid it out?

A. Yes, the Commission reviewed and articulated its prudence standard in a 1985 case involving the costs incurred by Union Electric Company in its construction of the Callaway Nuclear Plant.[1] The Commission adopted a standard established by the Court of Appeals for the District of Columbia in 1981 to determine the costs to be included in that case. Under this standard, the Commission recognizes that a utility's costs are presumed to be prudently incurred, and that a utility need not demonstrate in its case-

[1] In the Matter of the Determination of In-Service Criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway Rate Base and Related Issues. In the Matter of Union Electric Company of St. Louis, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company, 27 Mo. P.S.C. (N.S.) 183, 192-193 (1985).

in-chief that all expenditures are prudent. "However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling those doubts and proving the questioned expenditures to have been prudent."[2] The Commission, in the case involving the Callaway Nuclear plant, further recognized that the Prudence Standard is not based on hindsight, but upon a reasonableness standard. The Commission cited with approval a statement of the New York Public Service Commission that: "…the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company."[3] The Missouri courts have adopted this standard.[4]

Q. Has the Commission recently ruled on the prudence standard specifically related to a Liberty filing?

A. Yes. In Liberty's most recent Fuel Adjustment Clause ("FAC") case, the Commission accepted this standard.[5]

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2 Union Electric, 27 Mo. P.S.C. (N.S.) 183, 193 (1985).

3 Union Electric 27 MO P.S.C at 194 quoting Consolidated Edison Company of New York, Inc., 45 P.U.R. 4th 331 (1982).

4 *State ex rel. Associated Natural Gas v. Pub. Serv. Comm'n*, 954 S.W.2d 520, 528-29 (Mo. App. W.D. 1997) (quoting with approval the Commission's adoption of the standard quoted in the Union Electric case involving Callaway).

5 In the Matter of the Ninth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of The Empire District Electric Company, EO-2021-0281, Conclusions of Law, Section H.

Q. Is there national precedent for the definition of the prudence standard in the United States?

A. Yes. The original standard of prudence in ratemaking was expressed by Supreme Court Justice Louis Brandeis in 1923 as a means of guiding regulators conducting reviews of utility capital investments. As originally proffered, the test provides a basis for establishing a utility's investment or rate base based on the cost of such investment:

> There should not be excluded from the finding of the base, investments which, under ordinary circumstances, would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent expenditures. Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown… adoption of the amount prudently invested as the rate base and the amount of the capital charge as the measure of the rate of return … [would provide] a basis for decision which is certain and stable. The rate base would be ascertained as a fact, not determined as a matter of opinion. (Separate, concurring opinion of Justice Louis Brandeis, Missouri ex. Rel. Southwestern Bell Telephone Co. v. Public Service Commission, 262 U.S. 276 (1923)); (clarification added).

The position of Justice Brandeis was endorsed in 1935 when Supreme Court Justice Benjamin N. Cardozo stated:

> Good faith is to be presumed on the part of managers of a business. In the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay. (West Ohio Gas Co. v. Public Utilities Commission of Ohio (No.1), 294 U.S. 63, (1935), Opinion).

The prudent investment test offered by Justice Brandeis was applied sparingly for the first four decades following its pronouncement. It was not until the nuclear power construction projects of the 1970s and 1980s that the prudent investment test, at least in name, was applied frequently in various electric utility rate cases. The Federal

Energy Regulatory Commission ("FERC") offered its view of the prudent investment test in 1984 by stating the following:

> We note that while in hindsight it may be clear that a management decision was wrong, our task is to review the prudence of the utility's actions and the cost resulting therefrom based on the particular circumstances existing either at the time the challenged costs were actually incurred, or the time the utility became committed to incur those expenses. (New England Power Company, 31 FERC ¶ 61,047 (1985).

The National Regulatory Research Institute ("NRRI") advocated for similar principles in a 1985 research paper entitled, "The Prudent Investment Test in the 1980s." In this paper, the NRRI stated that the prudent investment standard should include the following four guidelines:

- "…a presumption that the investment decisions of the utilities are prudent…"
- "…the standard of reasonableness under the circumstances…"
- "…a proscription against the use of hindsight in determining prudence…"
- "…determine prudence in a retrospective, factual inquiry. Testimony must present facts, not merely opinion, about the elements that did or could have entered into the decision at the time." (National Regulatory Research Institute, The Prudent Investment Test in the 1980s; (April 1985)).

Q. How does the prudence standard apply in this case?

A. Good ratemaking policy, as reflected in the foregoing authorities including the practice of this Commission, is that the prudence standard that should be the standard used to determine whether the costs at issue in this proceeding are eligible for securitization.

IV. RESPONSE TO OPC AND STAFF

Q. Did OPC witnesses Mantle and Marke and Staff witness Hull apply the longstanding prudence standard in their review of the company's proposed securitization of certain Asbury and Storm Uri costs?

A. No, they did not. In fact, much of their "evidence" directly contradicts the established standard of prudence. As discussed above, if a participant in a Missouri Commission proceeding creates a serious doubt as to the prudence of a decision that led to an expenditure, the applicant has the burden of dispelling those doubts and proving the questioned expenditures were prudently incurred. In this case, neither OPC nor Staff has created any doubt as to the prudence of the Asbury costs and fuel and purchased power costs incurred because of Storm Uri that Liberty seeks to securitize. They do not discuss the standard by which they considered the prudence of the Company's actions. They do not discuss the Company's decision-making process. Instead, these witnesses attempt to use pure hindsight, i.e., that Storm Uri costs would have been less if Asbury was not retired and if any of the Company's attempts to start Riverton Unit 11 had been successful, and revisit testimony offered in other proceedings over the years as "evidence". This is not a proper review of Liberty's decision to retire the Asbury plant or of Liberty's response to Storm Uri.

These witnesses also ignore other fundamental premises of the long-established prudence standard including that prudence does not require perfection, nor does it require achieving the lowest possible cost. As I discuss later in my Surrebuttal Testimony, Ms. Mantle's definition of a prudent utility would establish an impossible standard which would require exceptional performance in every hour of every year.

Importantly these witnesses also did not consider the Company's decisions and actions in comparison to the range of what any reasonable utility would have done based on what was known or reasonably knowable at the time the decision was made.

These witnesses failed to address, utilize or satisfy the prudence standard of review. Based on an unbiased review of the facts of this case, there is no reasonable indication that the Company was imprudent. The evidence presented by Company witnesses Doll, Rooney, Graves, Landoll and Olsen is compelling that the Company's decisions that have been challenged by these parties – the retirement of Asbury, the extraordinary costs incurred as a result of Storm Uri, and the maintenance and attempt to start Riverton 11 - were reasonable, well within industry norms, and prudent.

Q. You stated that Ms. Mantle puts forth an impossible standard of prudence. Please explain.

A. Ms. Mantle testifies that a prudent utility will, among other things, "provide generation required by its customers every hour at a cost below market prices".[6] By this "standard", in order for its resource planning decisions to be prudent, an LSE must beat the market in every hour of every year. Not only is this naïve, but it is also impossible to achieve absent a crystal ball and impossible to evaluate without total reliance on hindsight. This standard for cost recovery is in many ways the antithesis of the Prudence Standard, i.e., it is all about results being achieved and not at all about the quality of decision making.

[6] LMM-R-2, at 6.

This "standard" violates other long-standing elements of what constitutes prudent utility actions, including that prudence does not require perfection or achieving the lowest possible cost. It is also worth noting that Ms. Mantle's own testimony is inconsistent on this point. She and Dr. Marke criticize the Company's "imprudent resource planning" to beat the Southwest Power Pool ("SPP") market[7] but goes on to testify that beating the market in every hour of every year is the definition of prudence.

Ms. Mantle's position as to what constitutes prudent resource planning by an LSE is simply not within the mainstream of utility conduct. Further, Ms. Mantle's testimony regarding the prudence of the Company's actions ignores the fundamental premises of prudence and is simply not credible.

Q. Ms. Mantle also testifies that a prudent utility is one which "can meet its customers' needs on a stand-alone basis".[8] Is this "standard" within the mainstream of utility conduct for utilities that are part of an RTO?

A. No. Ms. Mantle's position that it is inappropriate for a company to rely on energy purchases from their RTO as part of their preferred resource plan is also outside the mainstream of utility conduct. Utilities that are part of an RTO commonly rely on market purchases as one source of generation in their portfolio. There is nothing inherently imprudent in this action as suggested by Ms. Mantle's testimony.

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7 Rebuttal Testimony of Lena Mantle, at 1.

8 *Ibid.*

Q. How did Ms. Mantle and Dr. Marke reach their erroneous conclusion that much of the extraordinary costs Liberty incurred because of Storm Uri were the consequence of imprudent resource planning decisions?

A. Ms. Mantle and Dr. Marke reach this conclusion based on hindsight. Ms. Mantle testifies "[t]he extreme costs Liberty incurred [during Storm Uri] exposed the weaknesses of its portfolio"[9] and argues that the Company should have continued to operate Asbury in spite of the fact, which Ms. Mantle acknowledges[10], that the plant was uneconomic. The Company's resource plan, including the retirement of the Asbury plant, cannot be judged to be imprudent based on the occurrence of the Storm Uri extraordinary event as Ms. Mantle and Dr. Marke have done. Ms. Mantle herself recognizes that "[t]here is no way to accurately plan for all extreme circumstances."[11] Reasonable parties can disagree on specific inputs and assumptions (although, Ms. Mantle acknowledges that "she has not looked closely at the inputs into the resource planning models").[12] This is in part why multiple scenarios are considered in a resource plan. Ms. Mantle ignores the fact that as discussed in the Direct Testimony of Mr. Doll, the Company considered 54 different scenarios in its 2019 IRP and retiring Asbury resulted in meaningful savings 94% of the time. Ultimately, management has to select its preferred plan from the range of reasonable options based on the information available to it at that time. That is what the Company did. That is within the mainstream of utility conduct and consistent with industry norms.

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9 Rebuttal Testimony of Lena M. Mantle, at 4.

10 *Id*., at 10.

11 *Id*., at 6.

12 *Id*., at 10.

Q. You noted that Ms. Mantle recognizes that Asbury was uneconomic. Please expand.

A. While Ms. Mantle acknowledges that Asbury was uneconomic, she argues that the Company should have kept it online anyway because it still "carried great value" as a hedge against market prices and extreme weather events.[13] This again is the use of hindsight. Winter Storm Uri was an extraordinary event. No one could have predicted Storm Uri and the unprecedented impact it had on fuel and power prices throughout the nation. Ms. Mantle notes that Storm Uri's market prices were more than 100 times higher than the average SPP price in 2020. This could not have been reasonably anticipated, yet Ms. Mantle would hold Liberty to a Prudence Standard where the unimaginable would need to be planned for and, in this case, Liberty's customers would continue to pay for an uneconomic resource as a hedge against weather conditions that may never occur and had never occurred prior to February 2021.

Q. Do you wish to respond to anything else in Ms. Mantle's Rebuttal Testimony regarding Liberty's response to Storm Uri?

A. Yes. It bears noting that Ms. Mantle also testifies that Liberty should have opted to turn off its customers' electricity during a period of extremely cold temperatures to reduce costs and that she is "confident" that customers would have been okay with this.[14] Many people died as a result of Storm Uri. Extreme circumstances such as those experienced in February 2021 are not the time to invent new operational or financial measures in an attempt to save money. It is difficult to comprehend how jeopardizing

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[13] *Id*., at 10, 26-28.

[14] *Id*., at 31.

the welfare of its customers would have been considered responsible utility behavior for the Company.

Further, Ms. Mantle fails to appreciate that rotating interruptions throughout the Company's system may not have reduced the Company's total load or costs. The energy market effects of Storm Uri lasted for more than four days. Residential service during this time included a substantial amount of home and water heating load, which is a form of thermal storage load. Rotating interruptions of such service for an hour would not eliminate that load and reduce power costs as suggested by Ms. Mantle, rather it would shift it to the next hour service was returned. Choosing to implement rotating interruptions for industrial customers based on an attempt to save money also runs the risk of creating substantial economic harm to those customers and liability for the Company. Industrial customers require a reliable source of electricity for production purposes. Random interruptions run the risk of disrupting not just an hour's, but an entire day's, production or sales. Ms. Mantle's apparent view that rotating hour-long service interruptions would simply reduce consumption and costs is simply not accurate. Please also see the Surrebuttal Testimony of Mr. Doll for additional discussion related to this matter.

Q. Does Dr. Marke offer any other support for his recommendation that all costs related to Asbury be rejected from Liberty's securitization application?

A. Dr. Marke testifies that if a plant is retired early for any reason other than "government-sanctioned intervention or a categorical loss of load" its costs cannot be considered stranded and implicitly suggests the costs of early retired plants should not be recovered

from customers.[15] This is an unreasonable position. There are many circumstances, including economics and environmental considerations, that make retiring a plant early a prudent decision. Recovery of plant retirement costs is standard practice in most jurisdictions.[16]

Q. What is your response to Ms. Mantle's and Dr. Marke's assertions that Liberty's resource plan was designed to "beat" the market and that customers suffered as a consequence?

A. As discussed by Mr. Doll, this is demonstrably false. OPC witnesses' testimony regarding the Empire/Liberty transaction, Liberty's investment in wind resources, and Liberty's resource planning process are nothing more than unsubstantiated allegations that distort the plain facts. Liberty's resource planning process is consistent with industry standards. The decision to retire the uneconomic coal-fired Asbury plant was prudent by any reasonable application of the prudence standard. On this basis, these costs should be eligible for securitization, and the use of securitization for this purpose is beneficial to customers.

Q. What is your response to Staff witness Hull's position that Liberty was imprudent "by not tuning Riverton 11 for winter temperatures"[17]?

A. As discussed in the Surrebuttal Testimony of Dr. Mushimba, the Company could not have performed the tuning Mr. Hull demands without violating its air permit. In fact, Mr. Hull does not discuss the Company's decision-making process including the environmental requirements that limit the Company's operation of Riverton 11. While

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15 Rebuttal Testimony of Geoff Marke, at 5.

16 *See* the Direct Testimony of John Reed in Case No. ER-2021-0312, at 61-64.

17 Rebuttal Testimony of Jordan Hull, at 1.

Mr. Hull acknowledges that the Company attempted to start the Riverton 11 unit 26 times, he apparently does not believe that was good enough. Mr. Hull's assessment appears to be based entirely on a hindsight, what if analysis that is not rooted in the quality of the Company's decision-making process nor the facts that were known or reasonably knowable at the time, including the operational realities of the unit.

Q. Ms. Mantle, Dr. Marke and Mr. Hull all recommend disallowances, in some cases complete disallowance of all costs. Are these recommendations reasonable?

A. No. If imprudence were demonstrated, which it was not, any disallowance would need to be based on a comparison of actual costs to what would have resulted from minimally prudent conduct. Without this critically important step, the concept of a range of reasonable behavior has no meaning. Neither Staff nor OPC even defined the minimally prudent conduct, let alone quantified a disallowance based on this threshold. Once again, these witnesses ignore the prudence standard and industry practice.

V. CARRYING COSTS

Q. Does the Missouri Securitization Statute allow the Company to recover carrying costs?

A. Yes. The recovery of carrying charges is specifically provided for in the Missouri Securitization Statue. In particular, the definition of energy transition costs with respect to retired or abandoned electric generating facilities would include "accrued carrying charges".[18] Likewise, qualified extraordinary costs include the "purchase of fuel or power, inclusive of carrying charges, during anomalous weather events".[19]

[18] Missouri Laws 393.1700, 1.(7)(a)

[19] Missouri Laws 393.1700, 1.(13)

Q. What is the appropriate regulatory standard for establishing the carrying charge for regulatory assets arising from the retirement of the Asbury plant and from winter storm Uri?

A. The fair return standard established by the U.S. Supreme Court in the *Hope* and *Bluefield* cases and routinely relied upon by Commissions when establishing a utility's allowed cost of capital is the appropriate regulatory standard. In *Bluefield Waterworks & Bluefield Waterworks & Improvement Company v. Public Service Commission of the State of West Virginia et al (Bluefield)* the U.S. Supreme Court found that:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.[20]

In Federal Power Commission et al v. Hope Natural Gas Co., (Hope) the U.S. Supreme Court found that:

> … [T]he investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view, it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. … By that standard, the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, to maintain its credit and to attract capital…[21]

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[20] *Bluefield Waterworks & Improvement Co., v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).

[21] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

The principle of a fair return applies here because Liberty has committed capital to funding the deferred fuel and purchased power cost collections and the regulatory asset associated with Asbury, and that commitment of capital warrants the opportunity to earn a reasonable return.

Q. Is a carrying cost based on a debt rate only, as proposed by Ms. Bolin, Ms. McMellen and Mr. Murray, reasonable and consistent with the fair return standard?

A. No. The Company relies on a balanced mix of debt and equity to fund intermediate-term and longer-term investments, operations, and emergencies, like Storm Uri. Short-term sources of funding provide utilities with access to capital between long-term financings. They are one of a utility's sources of capital, not the entire source of capital.

Q. Staff and OPC witnesses refer to the use of a short-term debt rate in carrying costs in FAC filings as justification for their recommendations. Do you agree?

A. No. The appropriate return (or carrying cost) for the deployment of Liberty's capital in this instance is no different than that which should apply to any other commitment of intermediate or long-term capital and should reflect a balanced mix of debt and equity. The interval over which Liberty's capital will be deployed is not yet known, but it significantly exceeds one year, which is the typical definition of short-term capital.

Further, as discussed by Liberty witnesses Mr. DeCourcey, Ms. Emery and Ms. Niehaus, securitization will reduce customers costs by financing certain Asbury and Storm Uri costs with securitization bonds that have a lower cost than Liberty's weighted average cost of capital ("WACC"). Staff and OPC witnesses' proposals would deny Liberty the opportunity to earn a reasonable return until securitization

bonds are issued. This is neither reasonable nor appropriate. The Company's proposed securitization should be supported, not penalized.

Q. Is there precedent for the Commission endorsing the use of the utility's WACC as the carrying charge for the deferred recovery of regulatory assets such as extraordinary costs arising from a storm?

A. Yes, there is. In File No. ER-2019-0374, the Commission approved the inclusion of the unamortized balance of storm costs from the Joplin tornado in the Company's rate base. These costs were accumulated pursuant to an Accounting Authorization Order from the Commission that allowed for these costs to be eligible for recovery on a deferred basis. By including the unamortized balance in rate base, the Commission provided for a return on this deferral at the same cost of capital that is applied to all other rate base. That treatment is analogous to the Company's proposed use of its overall cost of capital as the carrying charge in this case.

Q. Does Ms. McMellen offer an alternative proposal?

A. Yes. Ms. McMellen testifies that if the Commission uses the Company's WACC to calculate carrying costs in this case it should not include an allowance for taxes.[22]

Q. What is your response to Ms. McMellen's alternative WACC proposal?

A. This proposal is illogical. It is premised on the Commission accepting the Company's proposal that its most recently allowed ROR, or WACC, is the appropriate carrying charge rate in this case. For the Company to earn its ROR, the equity return portion of the cost of capital requires an adjustment for income taxes. Further, Ms. McMellen offers no rationale whatsoever for her alternative proposal. I can only presume it is

[22] Rebuttal Testimony of Amanda McMellen, at 8.

results-oriented and intended to minimize carrying costs. Ratemaking should reflect principles that produce just and reasonable rates, not an opportunistic approach that only considers short-term customer impacts.

Q. What is the appropriate carrying cost for financing Storm Uri and for Asbury's undepreciated assets?

A. The Company's most recently allowed ROR is the appropriate carrying cost. Liberty has committed capital to funding the deferred fuel cost collections and the regulatory asset associated with Asbury that are the subject of this securitization application, and that commitment of capital warrants a reasonable return on capital until such time as Liberty's capital is paid off by the proceeds from securitization. This accumulation of the carrying charge should commence when the costs were incurred, which is the date of payment for the power costs arising from Storm Uri and is the retirement date for the Asbury remaining plant balances. In both cases, this is the point at which the costs were first afforded deferred cost recovery status.

Q. Does this conclude your Surrebuttal Testimony at this time?

A. Yes.

VERIFICATION

I, John J. Reed, under penalty of perjury, on this 27th day of May 2022, declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/