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 Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Qualified Extraordinary Costs	)))))	**File No. EO-2022-0040**
In the Matter the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Energy Transition Costs Related to the Asbury Plant	))))))	**File No. EO-2020-0193**

REPLY BRIEF OF STAFF

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SUMMARY

Missouri policy, as reflected in its legislation, supports sharing of costs between Liberty and its ratepayers for Winter Storm Uri and Asbury costs.[1] Courts have affirmed previous Commission decisions that "economic risks are part of the utility business," and "even the risk of economic catastrophe may be properly assigned to owners of the utility rather than to its customers." *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 765 S.W.2d 618, 626 (Mo. App. W.D. 1988).

The record in this case supports involvement by a Commission Finance Team, consisting of designated Commission Staff representative(s) and financial advisors advised by bond counsel.

ARGUMENT

The arguments below relate to new arguments raised in the briefs identified below. To the extent an argument in another party's brief is not replied to here, Staff's brief has already addressed the argument and the response is not repeated. Accordingly, unless expressly stated below, the Commission should not infer that Staff agrees with an argument raised in another party's brief.

1. The Commission should authorize securitization of approximately $266 million (Issue 1, Responds to Liberty Brief at pages 5-11 and 26-33, OPC Brief at 5-6).

For the reasons stated below, the Commission should authorize Liberty's request to securitize $266 million as proposed in Staff's initial brief, and not the full cost recovery

[1] Staff Brief at 19-23, 33-35;

proposed by Liberty or the lower cost recovery proposed by the Office of the Public Counsel.

2. The Commission should authorize securitization of $193,868,094, carrying costs included, in qualified extraordinary costs associated with Winter Storm Uri (Issue 2).

The Commission should authorize securitization of $193,868,094, carrying costs included, in qualified extraordinary costs associated with Winter Storm Uri. The substantive differences between Staff and the other parties are addressed in specific sub-issues below.

a. Liberty's fuel adjustment clause (FAC) is the required starting point for determining the appropriate method of customary ratemaking absent securitization. (Issue 2B/2C, Responds to Liberty brief 23-25)

Liberty can securitize only costs that meet the definition of "qualified extraordinary costs."[2] Qualified extraordinary costs are costs that, among other things, would "cause extreme customer rate impacts if reflected in retail customer rates through customary ratemaking."[3]

Liberty's fuel adjustment clause (FAC) is the correct starting point to determine customary ratemaking. That is because if all Winter Storm Uri costs had been passed to ratepayers through the FAC, there is no question that there would have been an 'extreme customer rate impact' and that Winter Storm Uri fuel and purchased power costs would therefore qualify for securitization.[4]

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[2] § 393.1700.1(17), RSMo (Cum. Supp. 2021) (defining securitized utility tariff costs); § 393.1700.2()(c)
[3] § 393.1700.1(13), RSMo (Cum. Supp. 2021).
[4] § 393.1700.1(13), RSMo (Cum. Supp. 2021).

If, however, the starting point for Winter Storm Uri cost recovery is an accounting authority order (AAO) with a thirteen-year recovery period, there is no evidence in the record to support a finding of "extreme customer rate impacts" as required by the securitization statute,[5] and Liberty cites none in its brief.[6] Liberty acknowledges this very point at page 6 of its brief, noting that the purpose of pulling Winter Storm Uri costs out of the FAC and into an AAO was "because of the extreme rate shock that would have occurred…" if the costs had been recovered through the FAC….."[7]

b. The Commission must reject Liberty's erroneous legal assertion that there is a distinction between "customary method of financing" under Section 393.1700.2(2)(e) and "customary ratemaking" under Section 393.1700.2(2)(a), RSMo (Cum. Supp. 2021). (Issue 2B/2C and 3V, Responds to Liberty Brief at 22-25 and 55, OPC Brief at 15-17).

The Commission must give meaning to every word used, and it cannot ignore the words in a statute.[8] Moreover, statutes cannot be fragmented so as to isolate for consideration language favorable to one construction, while at the same time excluding language which compels a different construction when the statute is construed in its full context.[9]

In a case involving qualified extraordinary costs, an electrical corporation's petition must include, first, "the retail customer rate impact that would result from customary ratemaking treatment of such costs."[10] The petition must also include a comparison of the cost of recovering those costs under securitization with "the costs that would result from

[5] § 393.1700.2(13), RSMo (Cum. Supp. 2021).
[6] Liberty Brief at 23-24.
[7] Liberty Brief at 6.
[8] *Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm'n*, 555 S.W.3d 469, 473 (Mo. banc 2018).
[9] *State ex rel. Fee Fee Trunk Sewer, Inc. v. Pub. Serv. Comm'n*, 522 S.W.22d 67, 73 (Mo. App. K.C. 1975).
[10] § 393.1700.2(2)(a), RSMo (Cum. Supp. 2021).

the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates."[11] Finally, the Commission's financing order must include a finding that "the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge … are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs *that would have been incurred absent the issuance of securitized utility tariff bonds*."[12] In the context of qualified extraordinary costs, costs do not even qualify for securitization unless they could be "recovered through customary ratemaking."[13]

Reading each of the above provisions together, and giving effect to each, it is clear that the term "customary method of financing" refers to "customary ratemaking method," and that securitization must provide a quantifiable net present value benefit compared to the customary ratemaking method that would be used "absent the issuance of securitized utility tariff bonds."[14]

Here, Liberty reads "customary method of financing" in isolation, fragmented from the rest of the statute to support its argument that the Commission should not rely on traditional ratemaking principles, like those involved in the 95/5 sharing mechanism under the fuel adjustment clause or the higher than normal revenues that would normally be considered in a general rate case. Liberty's approach violates the guidance that Missouri's courts provide on statutory construction.

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[11] § 393.1700.2(2)(e), RSMo (Cum. Supp. 2021).
[12] § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021) (emphasis added).
[13] § 393.1700.1(13), RSMo (Cum. Supp. 2021).
[14] *Id.*

Liberty's approach here also contradicts its own arguments, when Liberty asks the Commission to rely on traditional ratemaking principles, like setting a just and reasonable rate of return.[15] Liberty cannot have it both ways. The securitization statute incorporates traditional ratemaking principles of just and reasonable rates that are in the public interest. Just and reasonable rates are a basic requirement of both traditional ratemaking and securitization. The Commission must reject Liberty's selective arguments.

c. The Commission should order securitization of only 95% of Liberty's Winter Storm Uri costs, consistent with Liberty's fuel adjustment clause. (Issue 3D, Responds to Liberty Brief at 5-11; OPC Brief at 14-15).

As stated above, the correct starting point to decide whether fuel and purchased power costs from Winter Storm Uri should be securitized is to consider what amount of fuel and purchased power costs would be recovered through Liberty's fuel adjustment clause (FAC). Liberty's request is not just and reasonable because it fails to account for the 95/5 sharing mechanism in its FAC.[16]

Liberty improperly uses its starting point as a proposed accounting authority order (AAO) with rate recovery over a thirteen-year period.[17] The problem with that approach is that recovery of Winter Storm Uri costs over thirteen years would not result in "extreme customer impacts,"[18] meaning Winter Storm Uri fuel and purchased power costs would not meet the definition of "qualified extraordinary costs" and therefore do not qualify for recovery under the securitization statute.[19] Liberty's own brief makes clear that by moving

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[15] *See*, Liberty Brief at 19-22.
[16] *See*, Liberty brief at 6-7.
[17] Liberty Brief at 6.
[18] § 393.1700.1(13), RSMo (Cum. Supp. 2021) (defining "qualified extraordinary costs").
[19] Liberty brief at 6.

fuel and purchased power costs out of the FAC and into an AAO, "because of the extreme rate shock that would have occurred" if Liberty had sought recovery through the FAC.[20]

Contrary to Liberty's assertions,[21] the Commission has already found that a 95/5 sharing mechanism is necessary to incentivize efficiency and cost-effectiveness (not just prudence). The Commission has further found that a 95/5 sharing mechanism provides Liberty an opportunity to earn a fair return on its investment.[22] Courts have affirmed the Commission's decisions that a 95/5 sharing mechanism is just and reasonable and provides a proper incentive to utilities to pursue efficiency and cost-effectiveness.[23]

The Commission has already found that the 95/5 sharing mechanism under Liberty's FAC is just and reasonable, that it provides the appropriate incentive for Liberty to pursue efficiency and cost-effectiveness, and that it provides Liberty an opportunity to earn a fair return on its investments.[24]

The Joplin tornado case is irrelevant. In the Joplin tornado case, the Commission was deciding on "its tornado *capital* additions during the deferral period to offset the lack of a current return on its tornado-related *capital* additions."[25] Here, the Commission is asked to approve recovery not of capital additions but of fuel and purchased power *expenses*.

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[20] Liberty brief at 6.
[21] Liberty Brief at 9.
[22] Exhibit 104, Mastrogiannis Rebuttal at 7:9-12 (quoting Amended Report and Order in rate case ER-2019-0374).
[23] *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 471 & n.2, 490-91 (Mo. App. W.D. 2013) (approving prudence adjustment based on winter ice storm fuel and purchased power costs).
[24] Exhibit 104, Mastrogiannis Rebuttal at 7:9-12 (quoting Amended Report and Order in rate case ER-2019-0374).
[25] Exhibit 109 at 154 paragraph 424 (Report and Order).

Staff's proposal for a 95/5 sharing mechanism is grounded squarely in the language of the statute. The definition of "qualified extraordinary costs" includes references to "customary ratemaking," and customary ratemaking for fuel and purchased power costs would be through the 95/5 sharing mechanism in the FAC. The statute includes a requirement that costs recovered through securitization must be "just and reasonable and in the public interest," and the Commission's decision on the 95/5 sharing mechanism is likewise based on the requirement that rates be just and reasonable. The Commission must reject Liberty's argument that there is "no equivalent provision[]"[26] authorizing a 95/5 sharing mechanism, as that would render the definition of qualified extraordinary cost, references to customary ratemaking and the requirement that cost recovery be "just and reasonable" as meaningless.[27]

Section 386.266, which authorizes the fuel adjustment clause, establishes that mere prudence is not enough to pass through automatic fuel and purchased power costs to ratepayers, and therefore authorizes the Commission to include "features designed to provide the electrical corporation with incentives to improve the efficiency and *cost*-effectiveness of its fuel and purchased-power procurement activities."[28] Liberty's view of what passes for prudence underscores the importance of a 95/5 sharing mechanism under Section 386.266. According to Liberty's witness John Reed, to pass a prudence review, a utility need only do what a "minimally prudent" utility would have done.[29] If the Commission awards 100% of Liberty's fuel and purchased power costs merely because

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[26] Liberty brief at 8.
[27] § 393.1700.2(3)(c)a-b, RSMo (Cum. Supp. 2021); CITE.
[28] § 386.266.1, RSMo (Cum. Supp. 2021).
[29] Exhibit 1, Reed Direct at 5:16-17, 9:1-13, 20:6-13 (discussing "minimally prudent conduct.").

Liberty met its own "minimally prudent conduct" standard, Liberty will be incentivized to provide "minimally prudent conduct" in future extreme weather events. If, however, the Commission awards 95% of Liberty's fuel and purchased power costs, Liberty will continue to be incentivized to pursue efficiency and cost effectiveness, and not just meet minimum expectations, when severe weather hits again.

d. The Commission should adjust Liberty's securitization to reflect Liberty's higher than normal revenues (Issue 2E, Responds to Liberty Brief at 11-13).

The securitization statute allows the Commission to approve whatever cost recovery and associated charges it finds are "just and reasonable and in the public interest."[30] The securitization statute requires the Commission to consider what cost recovery an electrical corporation would receive if not through securitization.[31] Outside of securitization, the Commission is required to consider "all relevant factors."[32]

When the Missouri legislature creates a single-issue ratemaking mechanism, and wishes the Commission to not consider all relevant factors, it does so explicitly. For example, the Water and Sewer Infrastructure Act (WSIRA), Sections 393.1500 through 393.1509, provides that in evaluating a WSIRA application, "[n]o other revenue requirement or ratemaking issues shall be examined in consideration of the petition or associated proposed WSIRA rate schedules…."[33] A similar provision exists for the Infrastructure System Replacement Surcharge Act for gas corporations.[34] There is no

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[30] § 393.1700.2(3)(c)a-b, RSMo (Cum. Supp. 2021).
[31] § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).
[32] § 393.150.2, RSMo (Cum. Supp. 2021).
[33] § 393.1509.2(2), RSMo (Cum. Supp. 2021).
[34] § 393.1015.2(2), RSMo (Cum. Supp. 2021).

such provision in the securitization statute.[35] In the absence of specific language to the contrary, the general requirement that the Commission consider all relevant factors applies to securitization proceedings.

The Commission must therefore reject Liberty's unsupportable argument that the securitization statute provides no basis for consideration of Liberty's higher than normal revenues during Winter Storm Uri.[36]

In addition, Staff's proposed adjustment is perfectly just and reasonable and supportable. Staff's adjustment considered all February revenues because Liberty's billing periods make a direct comparison impossible.[37] Moreover, Liberty ignores that Staff's adjustment includes revenue adjustments in Liberty's favor for early February, which was before Winter Storm Uri occurred[38] Liberty's assertion that Staff's analysis is "skewed" is contrary to the record evidence.

e. The Commission should order an adjustment to reflect Liberty's imprudent preparation of Riverton 11 for winter operation. (Issue 2F, Responds to Liberty brief at 13-15; OPC Brief at 11-13)

Dr. Brian Mushimba may have experience in electrical operations, but there is no evidence that he has any experience drafting, interpreting, or implementing air permits.[39] Staff witness Jordan Hull, in contrast, has experience drafting and working on air permits for Missouri's Air Pollution Control Program.[40] Mr. Hull testified that Liberty's air permit for

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[35] § 393.1700, RSMo (Cum. Supp. 2021).
[36] Liberty brief at 11.
[37] Tr. 256:19-257:10.
[38] Tr. at 256:3-9.
[39] Exhibit 10, Mushimba Surrebuttal, at Schedule BM-1.
[40] Exhibit 105, Hull Rebuttal, at Schedule JTH-r1 ("In June of 2016 I began employment with the Missouri Department of Natural Resources in the Air Pollution Control Program as an Environmental Engineer I. In June of 2017, I was promoted to an Environmental Engineer II within the Air Pollution Control Program.")

Riverton 10 and 11 allows for testing on Riverton 11.[41] Moreover, Dr. Mushimba is not a trained or licensed attorney.[42] Liberty's air permit in Kansas, by its plain terms, allows for testing of Riverton 11.[43]

Liberty's argument that Riverton 11 would not have started regardless ignores the evidence that other dual fuel units did start in extreme conditions during Winter Storm Uri. Liberty witness John Olsen established, ** [redacted] .**[44]

Finally, Liberty relies on innuendo and exhibits not in evidence to suggest that Riverton 11 revenues are not as high as Staff proposes.[45] Exhibit 22 was not offered into evidence, and it is not in evidence.[46] Questions about Exhibit 22 were hearsay.[47] Liberty failed to file a proper foundation for Exhibit 22: Staff Witness Fortson was not a party to Exhibit 22, his signature is not on Exhibit 22, he is not aware of whether Exhibit 22 is still in effect or has any subsequent amendments.[48] All Mr. Fortson could testify to Exhibit 22 was, that it "appears to be" a power purchase agreement.[49] Liberty cites a series of hypothetical questions and answers to support its argument that Exhibit 22 reflected a valid, effective sales contract related to Riverton 11.[50]

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[41] Exhibit 105HC, Hull Rebuttal at 3:11-4:12 (quoting relevant air permit provisions).
[42] Exhibit 10 at Schedule BM-1.
[43] Exhibit 10 at Schedule BM-2 at page 4 line "EU-011" ("Allowed to use distillate fuel oil No. 1 and No. 2….").
[44] Exhibit 9C, Olsen Direct, Sch. JO-3 26 ("** [redacted] **"), 37 ("** [redacted] **").
[45] Liberty Brief at 14-15.
[46] Tr. Vol. 4 at 17:4-5 ("It's not offered at all at this point.").
[47] Tr. Vol. 4 at 17:16-18:6.
[48] Tr. 292-293.
[49] Tr. 285:16-18.
[50] Tr. 303 ("you did not take anything into account … that *might be due* to other entities…."); Tr. 367-368.

Staff raised its Riverton 11 proposed disallowance in pre-filed rebuttal testimony. Liberty did not lay a valid foundation for Exhibit 22 in its surrebuttal testimony. Liberty did not lay a valid foundation for Exhibit 22 with any Liberty witnesses in the hearing. Liberty attempted, but failed, to lay a foundation for Exhibit 22 in cross-examination of a Staff witness. There are no Liberty witnesses who testified that Exhibit 22 was a contract in effect at the time of Winter Storm Uri. This is not an idle concern raised by Staff: in the hearing, Liberty attempted to introduce an exhibit that had been updated on April 30th of 2021, after Winter Storm Uri occurred, and not the version of the exhibit in effect at the time of Winter Storm Uri.[51] Without a Liberty witness who can both lay a proper foundation for Exhibit 22 and be subject to cross-examination about Exhibit 22, Exhibit 22 is not evidence and it cannot support Liberty's arguments.

f. The Commission should order carrying costs at Liberty's long-term cost of debt of 4.65% for Winter Storm Uri costs. (Issue 2J, Responds to Liberty Brief at 18-22, 24-25; OPC Brief at 15-17).

As stated in Staff's initial brief, Liberty should recover carrying costs for Winter Storm Uri at a long-term cost of debt of 4.65%.

Liberty cites *Hope* and *Bluefield* caselaw for the proposition that general ratemaking principles govern its request for securitization. The Commission should reject that argument, as Liberty in other places argues that general ratemaking principles have no place in a securitization case.[52]

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[51] Tr. Vol. 6 at 4:19-5:18.

[52] Liberty Brief at 22 ("**Staff has suggested** that the Commission should conduct a **traditional cost of service ratemaking analysis** of all the costs that are proposed to be securitized and then compare this hypothetical outcome with the cost of securitization. **That is not what the Securitization Statute states or implies.**") (emphasis added).

Liberty's proposed carrying costs of 6.77% is a stale number from a 2019 rate case.[53] Staff's proposed long-term cost of debt of 4.65% is from February 2022.[54] Liberty's weighted average cost of capital is used to calculate a rate of return on Liberty's rate base. Winter Storm Uri costs are fuel and purchased power costs; they are not included in Liberty's rate base.

3. The Commission should authorize securitization of $66,107,823, carrying costs included, in energy transition costs associated with the retirement of Asbury (Issue 3).

The Commission should authorize securitization of $66,107,823, carrying costs included, in energy transition costs associated with the retirement of Asbury. The substantive differences between Staff and the other parties are addressed in specific sub-issues below.

a. The net book value of Asbury, before adjustments to reflect depreciation expense from January and February 2020, is $159,414,474. (Issue 3D, Responds to Liberty brief at 33, OPC Brief at 20-23).

Staff generally agrees with Liberty's calculation of net book value of Asbury of $159,414,474.[55] To the extent the book value calculated by the Office of the Public Counsel reflects adjustments for accumulated depreciation for January and February of 2020, Staff agrees with the adjustment.[56]

b. The proper ratepayer credit for accumulated deferred income tax (ADIT) is $22,306,688[57] and the proper ratepayer credit for Excess ADIT is $12,313,459. (Issue 3H, Responds to Liberty brief at 35-41).

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[53] Liberty Brief at 22.
[54] Exhibit 100, McMellen Rebuttal at 8:1-3.
[55] Staff Brief at 37.
[56] Staff Brief 53-54.
[57] Staff Brief at 43; Exhibit 103, Bolin Surrebuttal at 11:16. This amount would be $30,831,327 if the Commission approves Liberty's proposed asset retirement obligations (AROs), higher decommissioning costs, and a lower regulatory liability. Exhibit 102, Bolin Rebuttal at 11:3-14.

Liberty's arguments at pages 35 to 36 cite no legal authority, and cite nothing in the record. The Commission should not rely on those arguments.

Liberty's ADIT argument is unlawful because it misconstrues the securitization statute and because it ignores half of the benefits ratepayers receive when ADIT is removed from rate base. Liberty suggests, through bullet points that strip the ADIT provision out of context, suggesting that the "multiplied by the expected interest rate…" clause modifies the "net present value of the tax benefits" clause.[58] Liberty's construction of the statute is plainly unlawful. Under the last antecedent rule, "relative and qualitative words are to be applied only to the words or phrases preceding them…[and] are not to be construed as extending to or including others more remote."[59] The last antecedent rule applies unless "a more remote antecedent is *clearly required* by consideration of the entire act."[60] Here, the clause "multiplied by the expected interest rate" is immediately adjacent to the clause "including the timing differences created by the issuance of securitized utility tariff bonds…," and is more remote from the clause "net present value of the tax benefits."[61] It makes no sense to multiply the ADIT balance by the expected interest rate under the bonds because doing so would not deliver to ratepayers the net present value of the tax benefits of the ADIT balance; it makes sense only to multiply the *timing differences* by the expected interest rate. Liberty must multiply the timing differences by the expected interest rate; it cannot multiply the entire net present value of the ADIT balance by the expected interest rate.

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[58] Liberty Brief at 38.
[59] *Spradling v. SSM Health Care St. Louis*, 313 S.W.3d 683, 688 (Mo. banc 2010).
[60] *Id.*
[61] § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021).

Liberty's calculation is also unlawful because it ignores a significant benefit to ratepayers of removing ADIT from rate base. ADIT is removed from rate base because ADIT is "free' cash to the company, so "ratepayers should not be required to pay for it **and** the company should not be allowed to earn a return on it."[62] Liberty talks about the second benefit of removing ADIT from rate base ("the company should not be allowed to earn a return on it").[63] But there Liberty stops.[64] By failing to acknowledge that removing ADIT from rate base also means that Liberty's ratepayers "should not be required to pay for it" (i.e., that ratepayers also benefit from the "return of" associated with the ADIT balance), Liberty's approach would fail to deliver those same "return of" benefits to ratepayers. Said another way, Liberty acknowledges it should not earn a "return on" the ADIT balance; but it fails to acknowledge it should not earn a "return of" the ADIT balance, either.

Liberty's proposal is also unreasonable, as it is based on self-contradictory testimony and evidence. Liberty claims that it followed the steps outlined in Charlotte Emery's testimony.[65] Liberty witness Emery testified that the "impact on the annual revenue requirement associated with ADIT is calculated by multiplying the ADIT balance by the Rate of Return ("ROR")."[66] Elsewhere, when Liberty uses "Rate of Return" it refers to its WACC of 6.77%.[67] Here, though, Liberty multiplies the

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[62] *In the Matter of Union Elec. Co.*, 320 P.U.R.4th 330 (Mo. P.S.C., Apr. 29, 2015) (emphasis added).
[63] Liberty Brief at 37.
[64] *Id.*
[65] Liberty Brief at 38.
[66] Liberty Brief at 38; Exhibit 8, Emery Surrebuttal at 14.
[67] Liberty Brief at 54, citing Exhibit 8, Emery Surrebuttal at 15-21; Exhibit 1, Reed Surrebuttal at 20-24; Tr. at 143:24-144:3.

annual ADIT balance by a miserly 2.47%.[68] If the Commission were to adopt Liberty's formula for calculating ADIT, it must at least use a proper 6.77% rate of return, resulting in a ratepayer impact net present value calculation of almost $13 million in ratepayer credit.[69]

In addition, it is not clear at all from the record what rate Ms. Emery used for the discount rate on Liberty's net present value (NPV) analysis. Exhibit 21, Schedule CTE-13 is completely opaque on this matter. There is consequently no competent and substantial evidence to support Liberty's ADIT calculation.

Liberty asserts that Staff failed to include the benefit of the timing differences created by the statute.[70] Even if that were the case, it just means that Liberty's ratepayers are entitled to an ADIT credit even larger than Staff calculated, as the credit must "include" the benefit of the timing differences; they cannot be "limited" to the timing differences.[71]

Liberty's only other criticism of Staff's calculation rests on a calculation step that Liberty itself uses: dividing the ADIT balance by 13 years.[72] If this first step of the ADIT calculation is indeed a "fatal flaw"[73] in Staff's ADIT calculation, then it is also a fatal flaw in Liberty's ADIT calculation, because Liberty bases its ADIT calculation on that exact same step.

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[68] Exhibit 21, Schedule CTE-13.
[69] Tr. 143:24-144:7.
[70] Liberty Brief at 39-40.
[71] § 393.1700.2(3)(c)m, RSMo (Cum. Supp. 2021).
[72] Liberty Brief at 40. *Compare* Exhibit 111 at pdf page 2, column 2 ("Estimated Total Deferred Taxes"); *and* Exhibit 21 at pdf page 65 column 2 ("Estimated Total Deferred Taxes").
[73] Liberty Brief at 40.

c. The value of the AAO regulatory liability depends largely on the Commission's determination of the value of the regulatory liability at Issue 3U below. (Issue 3I, Responds to Liberty Brief at 42).

Staff agrees with Liberty that the difference between Staff and Liberty on this issue largely depends on the interaction of the different rates of return proposed by Staff and Liberty on issue 3U.[74] For the reasons explained in its initial brief and this brief, the Commission should adopt Staff's approach to rate of return on Issue 3U below.

d. The Commission should include the salvage value of Asbury as an offset to proposed decommissioning costs (Issue 3J, Responds to Liberty Brief at 43; OPC Brief at 23-26).

Staff agrees with the Office of the Public Counsel that the Black & Veatch study commissioned by Liberty establishes a likely salvage value for Asbury, and that amount should be reflected as an offset to Liberty's decommissioning costs.[75] Liberty should not gain the benefit of both securitization and salvage values immediately, while its ratepayers have to wait for the benefits of the salvage value for Liberty's next rate case.

e. There is no evidence of double recovery of labor expenses. (Issue Liberty brief at 48-49, OPC Brief at 27-28)

The Office of the Public Counsel cites no evidence from Liberty's previous rate case that labor costs associated with Asbury were included twice in the revenue requirement.[76] Those labor costs are associated with employees that were reassigned to other areas since the retirement of Asbury, and those positions were necessary to provide

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[74] *See*, Liberty Brief at 42.
[75] OPC Brief at 25-26.
[76] OPC Brief at 27-28.

safe and adequate service.[77] There is consequently no evidence that Liberty has double-recovered such costs.

f. The Commission should allow some recovery of costs related to abandoned capital projects at Asbury, but cannot allow a rate of return on those costs. (Issue 3P, Responds to Liberty Brief at 49, OPC Brief at 28-29).

The Office of the Public Counsel correctly argues that Section 393.135 prohibits rate base treatment of projects before they are used and useful.[78] Section 393.135 therefore further supports Staff's proposal to prohibit a full return at the weighted average cost of capital on the Asbury regulatory asset.[79] However, the Commission does have authority under Section 393.135 to exercise its discretion to allow or disallow recovery of costs related to cancelled projects.[80]

Here, the Commission should allow some recovery of costs related to abandoned capital projects at Asbury, but cannot under Section 393.135 allow a rate of return on those costs.

g. Depreciation expense (Liberty brief at 51; OPC Brief at 34)

Staff agrees with the Office of the Public Counsel that depreciation expense should reflect a retirement date of Asbury in December 2019.[81] Depreciation expense from January 2020 through May 2022 should be reflected in Liberty's AAO regulatory liability.

h. Carrying costs (Issue 3T/3U[82], Responds to Liberty Brief at 51-54, OPC Brief at 30-32)

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[77] Exhibit 101, McMellen Rebuttal at 1-5.
[78] OPC Brief at 28-29.
[79] Staff Brief at 34.
[80] *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 765 S.W.2d 618, 623, 625-26 (Mo. App. W.D. 1988).
[81] OPC Brief at 34.
[82] *See also*, Issue 3I above.

As stated in Staff's initial brief, Liberty should recover only $1,987,723 in accrued carrying costs for Asbury, based on a long-term cost of debt of 4.65%.[83]

Liberty cites *Hope* and *Bluefield* caselaw for the proposition that general ratemaking principles govern its request for securitization. The Commission should reject that argument, as Liberty in other places argues that general ratemaking principles have no place in a securitization case.[84]

Liberty's proposed carrying costs of 6.77% is a stale number from a 2019 rate case.[85] Staff's proposed long-term cost of debt of 4.65% is from February 2022.[86]

4. The Commission should base its decision on Staff's estimated financing costs. (Issue 4, Liberty brief at 56)

Liberty's financing costs appear to be based on estimates of costs from two separate orders.[87] Staff's calculation illustrates potential benefits of a consolidated order, noting that actual costs should be reviewed by the Commission's Designated Representative and its advisors.[88] Staff's number should be used. Staff agrees that a true-up requirement should correct for any over- or under-recovery of securitization costs.[89]

5. Securitization is expected to provide quantifiable net present value benefits if the Commission awards securitized utility tariff costs based on Staff's recommendation. (Issue 5; Responds to Liberty Brief at 56-57, OPC Brief at 17-19 and 35).

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[83] Exhibit 100, McMellen Rebuttal at 6:25-7:3 and Table 2; 7:14-8:3; Exhibit 113 at pdf page 3, line 13.
[84] Liberty Brief at 22 ("**Staff has suggested** that the Commission should conduct a **traditional cost of service ratemaking analysis** of all the costs that are proposed to be securitized and then compare this hypothetical outcome with the cost of securitization. **That is not what the Securitization Statute states or implies.**") (emphasis added).
[85] Liberty Brief at 22.
[86] Exhibit 100, McMellen Rebuttal at 8:1-3.
[87] Liberty Brief at 56.
[88] Exhibit 118.
[89] Liberty Brief at 56.

The parties appear to agree that securitization is expected to provide quantifiable net present value benefits, but disagree on the size of those benefits and the conditions under which they occur. Staff cannot agree that securitization would be expected to provide quantifiable net present value benefits if securitization is used to recover more than it recommends for Uri and Asbury costs. Staff also cannot agree that securitization would be expected to provide quantifiable net present value benefits if Liberty is authorized to securitize only $70 million as the Office of the Public Counsel proposes.[90]

Because Staff's net present value benefit calculations rely on a number of different assumptions and scenarios, Staff's net present value benefit calculations provide more robust support for a Commission finding that securitization is expected to provide quantifiable net present value benefits to ratepayers.[91]

However, given uncertain on actual interest rates and volatility, an analysis of NPV benefits should be required to be completed as part of the post-issuance review process and outlined in the Issuance Advice Letter.

6. The Commission should designate one or more members of Staff, who may be advised by one or more financial advisors, advised by outside bond counsel. (Issue 6, Responds to Liberty brief at 58-61).

The Commission should approve the Financing Team provisions of Staff's proposed financing order, which is attached to and incorporated into this Reply Brief.

Liberty's proposed financing order is inadequate. Liberty's findings of fact at paragraph 70 and ordering language paragraph 25 merely parrot the language of Section 393.1700.2(h) without any helpful specificity. Staff generally agrees with Liberty's

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[90] OPC Brie at 4.
[91] Exhibit 116; Exhibit 117C.

proposed findings of fact paragraphs 71 and 72 requiring certificates and attachments to its issuance advice letter. However, Liberty's citation to conclusions of law paragraphs 5 and 6 appear to be in error; Staff cannot find any conclusions of law in Liberty's proposed order relating to the designation of Staff.

Liberty cites "delays" in the process as a reason for its failure to specify anything in the post-financing order process.[92] Liberty did not file its securitization case until January 2022, four and a half months after the enabling legislation went into effect. Liberty is not in a position to ask for less oversight based on a need to act urgently to protect ratepayers. Unlike ratepayers, who are directly responsible for the charge and have a vested interest in ensuring the lowest charge standard is achieved, Liberty's proposed role is instead servicing and administering the proposed charge, which is directly funded by ratepayers. As such, ratepayers' interests must be directly represented to ensure the lowest charge standard is achieved.

7. The Commission should approve the conditions recommended by Staff in its proposed financing order. (Issue 7, Responds to Liberty Brief at 61)

The Commission should approve the conditions in its proposed financing order, as supported by Staff's initial brief. No other party filed anything of substance to respond to in initial round of briefs.

8. The Commission should allocate securitized utility tariff costs on the basis of loss-adjusted energy sales, as proposed by Staff. (Issue 8, Responds to Liberty brief at 62, MECG Brief at 1-6).

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[92] Liberty Brief at 60.

Liberty's brief provides support for allocation of Asbury costs only; it does not cite record evidence supporting allocation of Uri costs.[93] Liberty's brief fails to address the problem with its proposal for Uri costs, which failed to include an allocation for all rate classes.[94] The Commission should adopt Staff's proposal, for the reasons cited in its initial brief.

MECG cites no record evidence for its assertion that "treating these costs within each class minimizes the risk of further subsidization by customers in one class of customers in other classes."[95] MECG is correct that Staff's proposal is consistent with the fuel adjustment clause. That is because in the absence of securitization, Liberty's fuel and purchased power costs would flow through the fuel adjustment clause.[96] Further, the allocation of Asbury costs is consistent with the fuel adjustment clause because Liberty's decision to pursue wind energy, which ultimately led to its decision to retire Asbury, provides benefits to ratepayers through the fuel adjustment clause in the form of offsets to its fuel and purchased power costs resulting from off-system sales.[97]The benefits and the costs of Asbury's retirement should therefore both be consistent with Liberty's fuel adjustment clause.

[93] Liberty Brief at 62, citing Exhibit 7, Emery Direct at page 22 from Case EO-2022-0193.
[94] Exhibit 108, Lange Rebuttal at5:4 & n.4.
[95] MECG Brief at 4.
[96] Exhibit 108; Lange Rebuttal at 32:11-15.
[97] Exhibit 106, Luebbert Rebuttal at 3-6; Exhibit 108, Lange Rebuttal at 25. Intervenor Renew Missouri argues that "the decision to invest in wind resources was decided by the Commission entirely independently from the decision to retire Asbury." Renew Missouri Brief at 6. Renew Missouri's assertion is not necessarily at odds with Staff's assertion that Liberty retired Asbury based on Liberty's analysis if the benefits of wind already approved. Both can be true: Liberty may have built wind regardless of its plans for Asbury, and Liberty may have retired Asbury because of the wind it did in fact build.

MECG's arguments about cost causation have little applicability in a securitization case where costs are securitized over a long period of time and allocated among all current and future retail customers.[98] For example, it is not clear how many electric vehicles (EVs) were being used by Liberty ratepayers during Winter Storm Uri, but under the Securitization statute, all retail customers, including those on the EV rate class, must pay securitized utility tariff charges associated with Winter Storm Uri costs.[99] Securitization, like other cost allocation cases, can be based on pragmatic adjustments and is not subject to pure mathematical formulas.[100]

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 20th day of July, 2022, to all parties and/or counsels of record.

/s/ Curt Stokes
Curt Stokes

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[98] *See*, § 393.1700.2(3)(c)h, RSMo (Cum. Supp. 2021).
[99] § 393.1700.2(3)(c)h, RSMo (Cum. Supp. 2021).
[100] *State ex rel. Public Counsel .v Pub. Serv. Comm'n*, 274 S.W.3d 569, 586 (Mo. App. W.D. 2009); *State ex rel. U.S. Water/Lexington v. Pub. Serv. Comm'n*, 795 S.W.2d 593, 597 (Mo. App. W.D. 1990).