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	)))))	Case No. EO-2022-0040
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 Energy Transition Costs Related to the Asbury Plant	))))))	Case No. EO-2022-0193

The Office of the Public Counsel's Initial Brief

Respectfully submitted,

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COMES NOW the Office of the Public Counsel ("OPC") and for its Initial Brief states:

Introduction

In these cases The Empire District Electric Company d/b/a Liberty is seeking Commission authority to issue about $362 million in bonds secured by its Missouri retail customers to recover immediately from the bond proceeds fuel and purchased power-related costs that it incurred for the extraordinary February 12-20, 2021, Storm Uri weather event, and for its investment in and costs incurred for its Asbury generating resource that it last used to generate electricity on December 12, 2019. In addition to seeking carrying costs based on its weighted average cost of capital, Liberty also is seeking Asbury site decommissioning and other costs it has not yet incurred, costs for projects never used and useful, and costs associated with issuing and administering the bonds. The totals that Liberty is seeking for Storm Uri and Asbury are about $222 million[1] and $141 million,[2] respectively. These cases are the first under HB 734 which became law on August 28, 2021.

Securing the bonds, Liberty's about 160,000 Missouri customers are to be the source of the funds used to pay the bondholders the about $362 million plus interest over 13 years. Assuming an annual bond interest rate of 2.47%, the total those customers are to fund over 13 years is about $425 million, or $32.7 million per year. For perspective, in Liberty's most recent general rate case (Case No. ER-2021-0312), this Commission increased Liberty's rates by 7.38% to collect an additional $35.5 million per year starting June 1, 2022. In these rates Liberty began recovering its investment in 600 MW of new wind projects that it projected would benefit its customers by $93 million over 20 years if it prematurely retired its 200 MW Asbury generating resource and built

[1] Ex. 8, Liberty witness Emery Surrebuttal, pp. 9-10.
[2] Ex. 8, Liberty witness Emery Surrebuttal, pp. 6-7, Fig. CTE-1, Sch. CTE-3 Asbury.

them.[3] Notably, Liberty essentially doubled its undepreciated investment (ratebase) in Asbury in 2014 to comply with air quality emissions standards and extend the life of the unit 20 years to 2035[4]; however, Liberty only ran Asbury, a reliably dispatchable unit, for five of the 20 years.

Here Liberty is seeking to increase its customers' bills for fuel and purchased power expenses it incurred over nine days and for a generating resource that no longer has any value for them by nearly as much as those bills increased for adding 600 MW of wind generating capacity that Liberty projected to benefit them by $93 million over 20 years. As explained in OPC's witnesses' testimony and in this brief, OPC's positions are that Liberty has omitted offsets to the amount that it is entitled to recover, has overstated carrying costs, has included for recovery amounts that it is not entitled to recover, and its shareholders should share in the adverse economic impacts of its decisions over which its customers have no control. Further, the net present value calculations used to evaluate the benefit of the bonds to Liberty's customers should be based on a comparison of the upfront and ongoing costs of the bonds discounted by the bond rate to the amounts they would bear if the bonds did not issue discounted by a cost of debt rate for debt matching the period over which those costs are borne or, if Liberty is receiving a profit, based on Liberty's actual cost of capital, not its Commission-authorized cost of capital.

If the Commission adopts all of OPC's positions, aside from bond-related costs, it will allow Liberty to recover no more than $69,535,902 for Winter Storm Uri, and determine that Liberty has recovered more than enough from its Missouri retail customers for Asbury and its 60 days' burn coal fuel supply. OPC is not opposed to the Commission authorizing Liberty to issue bonds secured by customer charges where it lessens the cost to those customers to do so, and

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[3] Ex. 16, Liberty witness Graves direct, p. 21.
[4] Ex. 204C, OPC witness Marke rebuttal, p. 7-8.

OPC is not weighing in on bond issuance and administration costs, or financial market interest rates, other than to concur that the recent general trend is for interest rates to increase.[5]

Argument

(Issue 1) What amounts should the Commission authorize Liberty to finance using securitized utility tariff bonds?

A) What amounts of qualified extraordinary costs should the Commission authorize Liberty to finance for Winter Storm Uri?

B) What amounts of energy transition costs should the Commission authorize Liberty to finance for Asbury?

For purposes of qualifying for secured bonds, costs must fall within the statutory definitions of "qualified extraordinary costs" or "energy transition costs." Those definitions follow:

> **"Qualified extraordinary costs,"** costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events[6];

and

> **"Energy transition costs"** include all of the following:
>
> (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs,

[5] OPC witness Murray, Tr. 7:5-7-08.
[6] § 393.1700.1(13), RSMo.

and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;

(b) Pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021.[7]

Qualified extraordinary costs

Liberty is seeking $194 million ($193.4 million fuel & purchased power plus $251 thousand legal) for costs it incurred for Storm Uri, plus carrying costs totaling $24 million projected through December 31, 2022, based on an average weighted cost of capital of 6.77% per year.[8]

When addressing rate case expense in *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 233 (Mo. 2021), the Missouri Supreme Court said, "Here, even assuming there was no basis in the evidence to reject the presumption of prudence with respect to one or more of Spire's rate case expenses, the PSC did not err in its decision to exclude a portion of those expenses in setting 'just and reasonable' rates because they served only to benefit shareholders and minimize shareholder risk with no accompanying benefit (or potential benefit) to ratepayers." While, except for a reference to customary ratemaking in the definition of "qualified extraordinary costs," the statutory definitions of "qualified extraordinary costs" and "energy transition costs" do not expressly refer to the Commission's discretion as to what Liberty might recover for Storm Uri and Asbury absent the new avenue of issuing bonds. This novel avenue in Missouri for cost recovery should be viewed in light of preexisting broad discretion the Commission has as to what recovery to allow an electric utility for extraordinary storm costs or no longer used and useful generating resources. The categories of costs and offsets that may be included as components of "qualified

[7] § 393.1700.1(7), RSMo.
[8] Ex. 21, Emery Sch. CTE-4 Storm Uri; Ex. 8, Liberty witness Emery Surrebuttal, p. 10, Fig. CTE-2.

extraordinary costs" or "energy transition costs" are inclusive: "costs incurred prudently . . ., such as but not limited to . . ." and "[p]retax costs . . . include, but are not limited to, . . ., with the foregoing reduced by . . . ." Further, the definition of "qualified extraordinary costs" expressly refers to "costs incurred prudently" and the definition of "energy transition costs" expressly refers to costs where the Commission deems the early retirement or abandonment reasonable and prudent. Moreover, securitized bonds premised on customers benefitting from a lower overall cost than if the utility recovers its costs through rates should not be used to vitiate the Commission's discretion as to what amounts an electric utility may recover for storm costs or retired generating resources, the 1976 Proposition 1 voter initiative prohibiting recovery of capital investment before plant is "fully operational and used for service,"[9] or the rate adjustment mechanism incentive "to improve the efficiency and cost-effectiveness of [a utility's] fuel and purchased-power procurement activities."[10]

While they indicate costs and revenues the Commission views relevant for ratemaking, accounting authority orders do not bind the Commission when ratemaking.[11] When determining Asbury energy transition costs, this Commission is not limited to considering only items captured by its Asbury AAO.

This Commission has stated the following regarding prudency:

> 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,

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[9] § 393.135, RSMo.
[10] § 386.266.1, RSMo.
[11] See *Office of Pub. Counsel & Midwest Energy Consumers Grp. v. Evergy Mo. W., Inc.*, 609 S.W.3d 857 (Mo. App. 2020), see also *Mo. Gas Energy v. PSC*, 978 S.W.2d 434 (Mo. App. 1998) (carrying cost rate in AAO is not binding for ratemaking).

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our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[12]

Resource Portfolio Management Imprudence

Issue 2) Storm Uri

A) What amount of costs, if any, that Liberty is seeking to securitize would Liberty recover through customary ratemaking?

G) Should Liberty's recovery reflect a disallowance based on Liberty's resource planning?

It is OPC's position that Liberty did not prudently incur all of its $193.4 million of fuel and purchased power costs because it did not prudently manage its resource portfolio for reliable dispatchability. From the perspective of Liberty's customers their primary cost for generating resources is determined by Liberty's cost for electricity it sells into the SPP markets or the SPP market prices. This is because the sales of electricity Liberty sells into the market and then buys back to serve its retail customers are essentially "wash" sales, *i.e.*, there is little or no net profit or loss. Had Liberty managed its energy resource portfolio for cost-effective reliably dispatchable electricity to ameliorate extraordinarily high SPP market prices, then, as OPC witness Lena Mantle explains, it would have incurred as much as $67 million less in fuel and purchased power costs during Storm Uri. That is, Liberty would have had more "wash" sales so that its customers were not exposed to the sustained extraordinarily high SPP market prices during Storm Uri that exceeded $7,000 per MWh during many hours. Liberty retired its reliably dispatchable Asbury coal-fired plant that normally had a 60-days' burn supply of coal on site so that it was not available during this time of high prices. Now instead of a reliably dispatchable resource, it has its recently

[12] *Union Electric*, 27 **Mo. PSC (N.S.)** 183, 193, 194 (1985) (quoting *Consolidated Edison Company of New York, Inc.* 45 **P.U.R.4th** 331 (1982))(quoted in *State ex rel. Associated Nat. Gas Co. v. PSC*, 954 S.W.2d 520, 528-29 (Mo. App. 1997)).

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added 600 MW of wind projects that generate electricity when the wind blows, not always when customers need it.

From Liberty's perspective, aside from prudency disallowances or extraordinary events, because of its fuel adjustment clause, Liberty's exposure is limited to no more than five percent of the difference between its net base fuel costs and its actual fuel and purchased power costs. Liberty is free to seek recovery of its extraordinary fuel and purchased power costs through general rates (typically preceded by an accounting authority order) or, as it is here, from the proceeds of bonds secured by its customers.

When designing its energy resource mix after Algonquin acquired it, Liberty unreasonably relied too much on other market participants supplying reasonably priced energy in the SPP market and the SPP's reserve margin requirement which is limited to having sufficient reserves available to match one peak hour of demand during the year plus 12%. Substantial amounts of energy sold in the SPP market are from intermittent wind resources and from natural gas-fired resources that are susceptible to gas supply delivery issues. Further, as OPC witness Dr. Geoff Marke explains in great detail, Liberty's imprudence is particularly highlighted by it embarking on its plan to retire Asbury immediately after it doubled its $113 million investment in Asbury by adding $167 million in environmental controls and retrofits intended to extended the useful life of Asbury by twenty years.[13] As OPC witness Dr. Marke explains, before Algonquin acquired Liberty, it saw the potential to ** ____

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______________________________ **[14] That potential ** ______________

[13] Ex. 204C, Marke rebuttal, p. 27, Fig. 3.
[14] Ex. 204C, Marke rebuttal, p. 14.

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__________________ **[15] The EPA's Clean Power Plan would have restricted carbon emissions from existing power plants. The State of Missouri opposed it, and the Commission commented on it raising concerns about the unintended stranding of resources.[16] The EPA repealed the Clean Power Plan early in 2019. Regardless, and facing no external pressure to invest more in its energy resource mix, Liberty accelerated the timeline of its investment in new wind projects and retirement of Asbury, and dropped its plans to add additional efficient natural gas resources.[17] As OPC witness Dr. Marke testifies:

> ** ____ **[18]

A reasonable utility, unlike Liberty, rather than managing its resources in an attempt to profit in the SPP markets, would have considered all of its resources in concert with all of those available from others through the SPP market at all times during the year, would have taken into consideration the probabilities of high cost events such as Storm Uri, and managed its resource portfolio to be able to provide its customers the electricity they demand at a reasonable cost. Had

[15] Ex. 204C, Marke rebuttal, p. 15.
[16] Ex. 204C, Marke rebuttal, pp. 12-13.
[17] Ex. 204C, Marke rebuttal, pp. 15.
[18] Ex. 204C, Marke rebuttal, pp. 19.

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Liberty done so, it would have reduced its fuel and purchased power costs due to Storm Uri by as much as $67 million.

Riverton 11 Imprudence

Issue 2) Storm Uri

F) Should Liberty's recovery reflect an offset based on revenues that Liberty's Riverton 11 unit would have generated during Winter Storm Uri, and if so how much?

Liberty also was imprudent for not supplying its dual fuel capable Riverton 11 generating unit with diesel fuel it could burn during Storm Uri. Riverton units 10 and 11 both are duel fuel generating units that can run on natural gas or diesel fuel.[19] Riverton 10 was in a forced outage due to a mechanical issue before and during Storm Uri.[20] According to Liberty witness Olsen, Liberty ** ________________________________ **[21]; however, that statement is refuted by Liberty's data response regarding fuel oil stored at Riverton.[22] Liberty witness Olsen's Utilicast ***Review of Empire District Electric Company's Operations During the Winter Storm Event*** makes clear on page 42 of 114 that Liberty focused on its Stateline and Energy Center dual fuel units, and not those at Riverton,[23] as do Liberty's responses to data requests to which OPC witness Robinett testifies.[24]

In a summary of his findings Liberty witness Olsen states[25]:

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[19] Ex. 9C, Liberty witness Olsen Direct, Sch. JO-3, p. 17 of 114; Ex. 105HC, Staff witness Hull Rebuttal, p. 2.
[20] Ex. 105HC, Staff witness Hull Rebuttal, p. 3.
[21] Ex. 9C, Liberty witness Olsen Direct, Sch. JO-3, p. 7 of 114.
[22] Ex. 211HC, OPC witness Robinett Surrebuttal, p. 3, Sch. e JAR-S-2HC.
[23] Ex. 9C, Liberty witness Olsen Direct, Sch. JO-3, p. 42 of 114.
[24] Ex. 211HC, OPC witness Robinett Surrebuttal, p. 3.
[25] Ex. 9C, Liberty witness Olsen Direct, Sch. JO-3, pp. 8-9 of 114.

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Liberty witness Dr. Mushimba testified Liberty could not start Riverton 11 on No. 2 diesel fuel[26] because it was too cold and Liberty did not have power to warm the fuel.[27] Liberty was able to start and run its other dual fuel units on No. 2 diesel fuel.[28] It was imprudent of Liberty not to have prepared Riverton 11 to be capable of starting and running on No. 2 diesel fuel during Storm Uri and not to have procured as much No. 2 diesel fuel as it could store on the Riverton site in

[26] Tr. 2:165, 3:191,201; No. 2 fuel oil is No. 2 diesel.
[27] Tr. 3:190-192.
[28] Ex. 9C, Liberty witness Olsen Direct, Sch. JO-3, p. 17 of 114 (Stateline 1, and Energy Center 1, 2, 3, & 4 dual fuel), p. 26 (Energy Center 1, 2, 3, & 4 ran on fuel oil), p. 37 (Stateline 1 ran on fuel oil).

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advance of Storm Uri. Had it done so Riverton 11 would have generated revenues sufficient to reduce what Liberty is seeking in fuel and purchased power costs from its Missouri retail customers by $4,015,143.[29]

Load Management Imprudence

In addition to the foregoing imprudent actions, it is the opinion of OPC's witness Lena Mantle that if Liberty's customers had known that they would be paying over $260 million over thirteen years ($20 million plus per year) for electricity they consumed during the nine days of Storm Uri, they would have preferred the inconvenience of controlled interruptions in their electric service an hour a day every other day for a few days during Storm Uri to reduce that $260 million amount. Faced with unreasonable SPP market prices when it did not have sufficient energy to sell to cover its customers' demand for energy, a prudent utility would have not waited until the SPP called for load shedding to begin controlled service curtailments to mitigate the unreasonableness of what it would bill its customers for electricity. During February 12 to 19, 2021, there were over 24 hours where SPP's hourly market prices exceeded $2,000 per MWh and over 58 hours when they exceeded $1,000 per MWh; for perspective, the average day-ahead market price for 2020 was $17.69 per MWh. OPC does not recommend a specific amount that the Commission disallow for Liberty not starting controlled service curtailments when SPP market prices were unreasonable, but Liberty failing to initiate curtailments sooner is support for not including the five percent ($4 million to $10 million) that Liberty would not have recovered through its fuel adjustment clause if these fuel and purchased power costs were ordinary.[30]

[29] Ex. 211HC, OPC witness Robinett surrebuttal, p. 6.
[30] Ex. 200, OPC witness Mantle rebuttal, p.p. 31-33.

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OPC recognizes that Liberty incurred its Storm Uri litigation costs when seeking relief at the FERC for the failure of natural gas sellers to deliver gas as contracted with Liberty; however, if the Commission allows Liberty to pass on all of its fuel and purchased power costs to its customers, it will lessen Liberty's incentive to seek to reduce their impact on those customers through changes in its firm natural gas transportation contracts, how the FERC addresses breaches of those contracts, or by other means, all of which are avenues unavailable to those customers.

Fuel and Purchased Power Procurement Incentive

Issue 2)

D) Should Liberty's recovery include more than 95% of fuel and purchased power costs?

OPC, like the Commission's Staff, opposes Liberty recovering as an extraordinary cost the five percent that would not have flowed through Liberty's fuel adjustment clause as an incentive for Liberty "to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities."[31] Allowing Liberty to recover that five percent is directly contrary to that incentive which is just as meaningful, if not more meaningful, during times of extraordinary weather. Further, Liberty had control over the amount of energy it purchased in the SPP market during Storm Uri because it had control of its load, *i.e.*, Liberty could have used controlled service curtailments to reduce how much energy it required from the SPP market.[32] Because the five percent is based on the "actual" fuel and purchased power expenditures, the dollar amount reduction varies based on the amount of disallowances. If there are no disallowances other than the five percent, the Commission should reduce the recovery amount by $10,056,492.[33] If the Commission agrees with

[31] § 386.266.1, RSMo.
[32] Ex. 200, OPC witness Mantle rebuttal, p.p. 29-31.
[33] Ex. 202P, OPC witness Mantle, Sch. LMM-R-7C.

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all the OPC disallowances for resource portfolio imprudence, Riverton 11 imprudence, and the income tax adjustment, the five percent disallowance should be $4,066,502.[34]

Storm Uri Income Tax Deduction

Issue 2)

H) Should Liberty's recovery reflect a disallowance for income tax deductions for Winter Storm Uri costs?

Liberty is part of a consolidated group for income tax purposes and it expects to claim an income tax deduction for Storm Uri losses on the group's 2021 consolidated income tax return. Liberty's Storm Uri losses for its Missouri retail operations are $204,500,939; therefore, when the Missouri state-federal composite tax rate of 23.84% is applied, the income tax deduction benefit is $48,753,024.[35] Since Liberty's customers ultimately reimburse it for its income taxes, it is OPC's position that, rather than deferring their recognition of Liberty's $48,753,024 income tax deduction from its Storm Uri losses or never recognizing it, the Commission should apply that tax deduction benefit against the Storm Uri costs that Liberty is seeking to recover here through bond proceeds. To not do so defers or deprives Liberty's customers from realizing any benefit from Liberty's $48,753,024 income tax deduction for Storm Uri losses.[36]

Storm Uri Carrying Costs

Issue 2) Storm Uri

C) Under RSMo. 393.1700.2(2)(e), what is the "customary method of financing"? What are the costs that would result "from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates"?

I) What are the appropriate carrying costs for Winter Storm Uri?

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[34] *Id*.
[35] Ex. 208C, OPC witness Riley rebuttal, pp. 21-23, Sch. JSR-R-08; Ex. 209, OPC witness Riley surrebuttal, pp. 8-12.
[36] Ex. 209, OPC witness Riley surrebuttal, pp. 8-9.

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Liberty seeks approval of carrying costs totaling $24 million projected through December 31, 2022, based on an average weighted cost of capital of 6.77% per year for its Storm Uri fuel and purchased power, and litigation costs.[37] In response OPC witness Murray testifies, "It is inconsistent with financing principles to expect a profit on expenditures related to funding costs of goods sold, such as the purchase of energy."[38]

Because Liberty's Storm Uri costs—$193.4 million fuel & purchased power and $251 thousand legal—are expenditures related to the purchase of energy, not capital improvements or for replacing existing plant and equipment, Liberty should receive no profit on them.

Liberty's affiliate Liberty Utilities Company ("LUCo") provided Liberty with significant amounts of capital to finance its Storm Uri costs by issuing commercial paper (a form of short-term debt) to raise that capital which it then transferred to Liberty through Liberty's affiliate money pool borrowings which are charged interest based on LUCo's commercial paper rate.[39] Liberty is carrying these storm costs for a short term—Liberty apparently anticipates it will issue the bonds about December 31, 2022,[40] which is less than two years after it incurred these costs.[41] The carrying costs Liberty is seeking from its customers could have been less if Liberty had filed for securitization of these costs sooner since the term potentially could have been shorter. Liberty filed its statutorily required 60 days' notice it was seeking to secure its Storm Uri costs on August 28, 2021, but did not file its application until January 19, 2022, 144 days later. The source of the capital it used to pay its Storm Uri cost and the duration of time over which Liberty will carry them

[37] Ex. 21, Emery Sch. CTE-4 Storm Uri; Ex. 8, Liberty witness Emery Surrebuttal, p. 10, Fig. CTE-2.
[38] Ex. 206C, OPC witness Murray rebuttal, p. 3.
[39] Ex. 206C, OPC witness Murray rebuttal, p. 3.
[40] Ex. 8, Emery surrebuttal, Sch. CTE-2 Storm Uri (showing carrying costs calculated through December 31, 2022).
[41] Ex. 206C, OPC witness Murray rebuttal, p. 3.

are why Mr. Murray recommends that the Commission use LUCo's average short-term debt rate for each month from February 2021 through the date Liberty recovers its Storm Uri costs from the secured bond proceeds.[42]

Further, for capital items it is customary practice to allow a utility to book into a deferral account the short-term financing costs it incurs for that capital item before it becomes used and useful, and is included in the utility's rate base.[43] The integrity of that short-term financing rate (the "allowance for funds used during construction" rate) depends on whether the company is capitalized based on arms-length transactions. If a company's authorized rate of return is used for carrying costs, then its rate of return should reflect its short-term debt.[44] Liberty's proposed rate of return of 6.77% for carrying costs does not reflect its short-term debt.[45] This is another reason why the Commission should reject Liberty's proposed carrying cost based on an average weighted cost of capital of 6.77% per year[46] and, instead, use LUCo's average short-term debt rate.

Storm Uri Net Present Value Discount Rate

Issue No. 2)

J) What is the appropriate discount rate to use to calculate the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?

Issue 5)A) What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri and Asbury through securitization?

[42] Ex. 206C, OPC witness Murray rebuttal, pp. 7-8.
[43] See *Mo. Gas Energy v. PSC*, 978 S.W.2d 434, 436 (Mo. App. 1998); Ex. 206C, OPC witness Murray rebuttal, p. 6.
[44] Ex. 206C, OPC witness Murray rebuttal, p. 6.
[45] In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area, Case No. ER-2019-0374, Amended Report and Order, pp. 24-39.
[46] Ex. 21, Emery Sch. CTE-4 Storm Uri; Ex. 8, Liberty witness Emery surrebuttal, p. 10, Fig. CTE-2.

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As OPC witness Murray explains in his rebuttal testimony, for purposes of Missouri's securitization statutes, given that the proposed recovery periods for both "customary ratemaking" and the bonds here are the same, the net present value question essentially boils down to whether the extra upfront and ongoing costs for the bonds are more than offset by the effective cost of the difference in the bond rates and the rates the Commission would use in customary ratemaking.[47] Stated differently, the question primarily is whether the upfront costs plus the net present value of the ongoing costs of the bonds is less than the net present value of the rate used for ratemaking less the bond rate. Using Liberty's upfront financing costs of $3,638,534, present value of ongoing financing costs of $3,315,952, and 13 years for the bond tenor and ratemaking recovery, Mr. Murray determined that the breakeven point is a bond rate that is 90 basis points lower than the general ratemaking rate. In other words, the annual ratemaking rate must exceed the annual bond rate plus 90 basis points for Liberty's customers to benefit from securitization; therefore, assuming a bond rate of 2.47%, this means the ratemaking rate would have to be more than 3.37% for customers to benefit from securitization.[48] During the hearing Mr. Murray testified that he believes that 2.47% is too low of an estimate for the date by which Liberty would issue bonds.[49]

As Mr. Murray explains, the appropriate annual rate to use for determining the net present value of the ongoing bond costs is the secured bond rate because the risk of the cash flows associated with the costs secured by the bonds is reflected in the bond rate.[50] In contrast, the risk of the cash flows associated with the costs the Commission allows in rates is determined by the rate the Commission uses for determining the underlying costs. Because, as explained in the

[47] Ex. 206C, OPC witness Murray rebuttal, p. 10.
[48] Ex. 206C, OPC witness Murray rebuttal, pp. 10-11.
[49] Tr. 7:505-06 & 514-15.
[50] Ex. 206C, OPC witness Murray rebuttal, p. 11; Tr. 7:511-13.

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Storm Uri Carrying Costs section of this brief, "It is inconsistent with financing principles to expect a profit on expenditures related to funding costs of goods sold, such as the purchase of energy"[51] and Liberty's Storm Uri costs—$193.4 million fuel & purchased power and $251 thousand legal—are expenditures related to the purchase of energy, not capital improvements or for replacing existing plant and equipment, Liberty should receive no profit on them.

The Commission should use a debt rate commensurate with the length of time over which Liberty would recover its Storm Uri costs through rates for the ratemaking discount rate. Mr. Murray testifies, "It is consistent with sound financing principles to match the expected tenor of debt financing with the tenor of the asset, which under regulatory ratemaking, may be defined by the regulator's decision."[52] He offers that "the current yield on BBB-rated utility bonds with approximately a 20-year tenor is around 4.75%."[53] This Commission has not yet indicated or spoken on over what period it would allow Liberty to recover its Storm Uri costs through "customary ratemaking," nor has it spoken on what ratemaking rate it would employ when doing so.

Storm Uri Summary

Of the $193.7 million Liberty is seeking to include in bond proceeds for Storm Uri exclusive of carrying costs, the Commission should not include the following:

Up to $67,031,627	Resource Portfolio Management Imprudence
$4,015,143	Riverton 11 Imprudence
Unspecified	Load Management Imprudence
$4,066,502	Fuel and Purchased Power Procurement Incentive

[51] Ex. 206C, OPC witness Murray rebuttal, p. 3.
[52] Ex. 206C, OPC witness Murray rebuttal, p. 13.
[53] Ex. 206C, OPC witness Murray rebuttal, p. 13.

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$48,753,024	Storm Uri Income Tax Deduction

Once it determines the balance, rather than the $24 million in carrying costs based on Liberty's Commission-authorized 6.77% rate of return, the Commission should include carrying costs calculated with LUCo's average short-term debt rate for each month from February 2021 through the date Liberty issues the bonds.

Energy Transition Costs

Including actual and projected costs associated with the bonds, the total Liberty is seeking that it attributes to Asbury is $141 million, including upfront financing fees of $3.2 million.[54]

Resource Portfolio Management Imprudence

Issue 3) Asbury

D) What is the net book value of the retired Asbury plant?
E) Was it reasonable and prudent for Liberty to retire Asbury?
M) Should Liberty's recovery reflect a disallowance of the remaining cost of the Air Quality Control System (AQCS), and if so how much?

The magnitude of Liberty's Storm Uri costs demonstrate that it has not prudently managed its resource portfolio to include sufficient reliably available energy at all times. OPC has already briefed the issue of Liberty's imprudence in managing its resource portfolio above as a reason to exclude Storm Uri costs Liberty incurred due to that imprudence. That same imprudence bears on the costs for its investment in Asbury that Liberty is seeking to recover through secured bond proceeds. As explained earlier, Liberty unreasonably relied too much on other participants supplying reasonably priced energy in the SPP market and the SPP's reserve margin requirement which is limited to having sufficient reserves available to match one peak hour of demand during the year plus 12% when it designed its energy resource mix after Algonquin acquired it. Liberty

[54] Ex. 8, Liberty witness Emery surrebuttal, pp. 6-7, Fig. CTE-1, Sch. CTE-3 Asbury.

should have continued to recognize the resource value of its reliably dispatchable Asbury unit for which it had just completed its plan to more than double its $113 million investment in by adding $167 million in environmental controls and retrofits which extended the useful life of Asbury by twenty years.[55] Instead, even though there were no new federal or state emissions requirements or renewable mandates, and SPP market prices dropped with added new generation, Liberty retired Asbury and replaced it with wind projects, actions consistent with the plan developed for it earlier to ** ____

____

______________________________________ **[56]

Because it was imprudent for Liberty to retire its reliably dispatchable Asbury unit so soon after it completed its $167 million in environmental controls and retrofits which extended the useful life of Asbury by twenty years, when the SPP market upon which it was relying for energy was becoming less reliable due to the increasing penetration of renewable energy into that market, and rather than replacing it with a reliably dispatchable resource, replaced it with wind projects, OPC recommends that the Commission disallow Liberty's rate base balance net of depreciation of $125.25 million as of December 12, 2019, for its $167 million investment in environmental controls and retrofits completed in 2014-2015.[57] ($167 million / 20 yrs. * 15 yrs. = $125.25 million.) The net book value of Asbury as of January 1, 2020, is $155,044,297 ($217,663,073 - $62,618,776).[58] The balance after the disallowance of the stranded environmental controls and retrofits is about $29.8 million.

[55] Ex. 204C, OPC witness Marke rebuttal, p. 27, Fig. 3.
[56] Ex. 204C, OPC witness Marke rebuttal, p. 14.
[57] Ex. 204C, OPC witness Marke rebuttal, pp. 27, 46.
[58] Ex. 208C, OPC witness Riley rebuttal, p. 7.

In an effort to squeeze out more money from its retail customers Liberty asserts the net book value of Asbury to use in these calculations is $157,740,873 as of March 1, 2020.[59] Using the latter date would deprive Liberty's customers of the recognition of the amounts they paid in rates for Asbury during January and February of 2020 when Asbury provided no value to Liberty as a supply-side resource because Liberty had no fuel available with which to run Asbury.

Further, the facts surrounding Missouri American Water Company's ("MAWC") decision to retire and replace its St. Joseph water treatment plant described in the Commission's *Report and Order* in Case No. WR-2000-281[60] in many ways are analogous to those surrounding Liberty's decision to retire Asbury. MAWC planned to continue to upgrade and renovate its existing plant originally built in 1881 until the Missouri River flood of 1993. After MAWC determined in late 1995 that the improvements needed at that plant would cost about the same as the cost of a new plant, MAWC sought and obtained a certificate of convenience and necessity from this Commission for building a new plant.[61] When MAWC sought rate relief for its new plant and the issue of what it should recover for its prematurely retired and abandoned plant, the Commission said the following:

> MAWC is permitted a reasonable return only on the value of its assets actually devoted to public service. From the moment of its retirement, a moment controlled by MAWC, the old plant was no longer used and useful in public service. In an early case involving the retirement of utility assets, the Missouri Supreme Court stated:
>
> > The abandonment of property which is never replaced, but is superseded by another instrumentality, as gas lamps by electric lights, or by another agency or company, is an extraordinary

[59] Ex. 8, Liberty witness Emery surrebuttal, p. 26.
[60] *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company* (Report and Order dated August 31, 2000), 9 MoPSC3d 254.
[61] *Id*. at 272-74.

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> supersession. Its loss is "one of the hazards of the game," just as the extraordinary increase in values following the war was an unexpected gain . . . . It follows that the abandoned property, lights, service mains, and the like should not be considered for the purpose of determining the annual depreciation reserve.

> *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 329 Mo. 918, 941, 47 S.W.2d 102, 111 (1931). It follows that the treatment proposed by Public Counsel is correct. Utility plant-in-service will be reduced by the original cost of the old St. Joseph plant, while the depreciation reserve will be reduced only by the amount of depreciation accumulated with respect to the plant. The difference, the plant's net original cost of $2,832,906, will be written off. Likewise, any amount expended by MAWC to retire the old plant is also not recoverable in rates.[62]

Here Liberty voluntarily chose to prematurely retire and abandon Asbury, not only that, unlike MAWC which did not renovate or upgrade its prematurely retired and abandoned treatment plant after the 1993 flood, Liberty doubled its rate base in Asbury immediately before it prematurely retired and abandoned Asbury. As it did with MAWC's treatment plant, this Commission should not allow Liberty to recover the about $126 million of undepreciated investment it made in Asbury in 2014-15.

Asbury Decommissioning Costs

Issue 3) Asbury

J) What are the likely Asbury decommissioning costs?

K) What are the likely Asbury retirement obligations?

Liberty's Asbury decommissioning costs are listed on lines 7-10 of Liberty witness Emery's Surrebuttal Schedule CTE-2 Asbury as follows:

Line No.	Description	Total	Total Missouri
7	Additional Asbury Decommissioning Costs (Phase 2)	$4,000,000	$3,541,054
8	Additional Asbury Decommissioning Costs (Phase 3)	$6,400,000	$5,666,687
9	Additional Asbury Asset Retirement Obligation Costs-- Asbestos	$3,205,360	$2,837,588

[62] *Id*. at 9 MoPSC3d 287.

10	Additional Asbury Asset Retirement Obligation Costs—CCR Impoundment	$20,835,712	$18,445,096

According to her, line nos. seven and eight are sourced from the Black & Veatch study that is Schedule DWL-2 to the direct testimony of Liberty witness Drew Landoll. Liberty witness Drew Landoll testified on cross-examination that he and his team at Liberty directly participated in Black and Veatch's Asbury decommissioning studies by "help[ing to] direct Black and Veatch on what we wanted to do, how we wanted to ultimately dispose of the facility and have them go and do their estimate."[63] In his direct testimony Liberty witness Landoll explains that the phase three cost estimate in that study (line no. 8) is for a scope of work that is independent of scope of work for the phase one and phase two cost estimates.[64]

While the quality of Liberty's phase three cost estimate is disputable, decreasing by a factor of ten from January 24, 2020, to October 8, 2021,[65] OPC has not disputed that estimate, except with regard to the amount included in it for asbestos removal and Liberty not including Black & Veatch's offsetting estimate of salvage value (minus transportation costs) when arriving at its amount of energy transition costs. Based on Liberty witness Emery's following surrebuttal testimony and reducing its phase three decommissioning costs to $6.4 million in her Surrebuttal Schedule CTE-2 Asbury, the $2 million estimate for asbestos removal (labeled, *Cleanup/Abatement of Hazardous Waste* on Table l3-1 in the study)[66] may no longer be an issue:

> After reviewing the testimony of OPC Witness Riley, Liberty concurs the $8.4M of phase 3 decommissioning costs proposed by the Company did include $2M of costs related to the removal of asbestos at Asbury. The Company also had included

[63] Tr. 3:207-208.
[64] Ex. 13C, Liberty witness Landoll direct, p. 15.
[65] Ex. 13C, Liberty witness Landoll direct, Sch. DWL-2, p. 8 of 9, Table 3-1; Tr. 3:208-209.
[66] Ex. 13C, Liberty witness Landoll direct, Sch. DWL-2, p. 8 of 9, Table 3-1.

> an additional balance for the asset retirement obligation related to the removal of asbestos.[67]

The Commission should note that asbestos cost in the phase three decommissioning costs estimate is $2 million while the asbestos ARO (asset retirement obligation) estimate is nearly 50% greater—$2.84 million.

With his surrebuttal testimony prefiled May 27, 2022, Liberty witness Drew Landoll included as a schedule a copy of a Midwest Environmental Consultants *Asbury CCR Impoundment Final Cover Cost Study* dated February 2022 that essentially supports its Asbury CCR impoundment ARO estimate.[68] When Liberty filed its application for securitizing Asbury energy transition costs on March 21, 2022, it contemporaneously prefiled direct testimony, including direct testimony of Drew Landoll; however, it did not include any Midwest Environmental Consultants Asbury CCR impoundment cover cost study, final or not. Liberty has known for years that it would close its Asbury CCR impoundment, certainly well before it informed the SPP on August 21, 2019, that Asbury would no longer be available as an SPP resource March of 2020.[69] It is more than a little disconcerting that Liberty's Midwest Environmental Consultants Asbury CCR Impoundment Final Cover Cost Study dated February 2022 did not appear until May 27, 2022, with Liberty's surrebuttal prefiling. Regardless, Liberty's $2,837,588 Asbury asbestos ARO is not known and measurable and it must be excluded from the Asbury energy transition costs.

Also disconcerting is Liberty witness Drew Landoll's attempt to debase Black & Veatch's estimate of salvage value (less transportation costs),[70] when he uses that same study as the support

[67] Ex. 8, Liberty witness Emery surrebuttal, p. 5, Surrebuttal Sch. CTE-2 Asbury.
[68] Ex. 14C, Liberty witness Landoll surrebuttal, Surrebuttal Sch. DWL-1.
[69] Ex. 204C, OPC witness Marke rebuttal, p. 20, Fig. 3, (Empire Asbury Retirement(s) Timeline).
[70] Ex. 14C, Liberty witness Landoll surrebuttal, p.5.

for Liberty's phase three decommissioning cost estimate. As stated earlier, Liberty witness Drew Landoll testified on cross-examination that he and his team at Liberty directly participated in Black and Veatch's Asbury decommissioning studies by "help[ing to] direct Black and Veatch on what we wanted to do, how we wanted to ultimately dispose of the facility and have them go and do their estimate."[71] Either Liberty undermined the value of Black & Veatch's salvage value estimates by what it directed Black & Veatch to do, or those salvage estimates should be as good as Black and Veatch's cost estimates upon which Liberty is relying for its phase three Asbury decommissioning costs. This Commission either should offset the $6,400,000 ($5,666,687 Missouri) estimate of phase three decommissioning costs by Black & Veatch's $**________** salvage estimate ($**________** Missouri), or it should exclude the $5,666,687 for phase three decommissioning costs from the Asbury energy transition costs altogether.

Asbury Cash Working Capital

Issue 3) Asbury

- **L)** What is the appropriate amount for Cash Working Capital?
- **U)** What is the appropriate rate(s) of return that should be used to calculate the amount of recovery?

Liberty's rates from Case No. ER-2016-0023 were in effect through September 15, 2020, and then its rates from Case No. ER-2019-0374 were in effect through May 31, 2022. Liberty retired Asbury December 12, 2019, but Asbury, and the $3,947,465 value of 60 days' burn of coal at Asbury, was included in Liberty's rate base used for setting Liberty's general rates in both Case Nos. ER-2016-0023 and ER-2019-0374. The rates of return applied to the amounts included in Liberty's rate base in the cost of service used for setting its general rates in those cases were 7.484% and 6.77%, respectively. Taking the foregoing into account, OPC witness Riley calculated

[71] Tr. 3:207-208.

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the cash working capital impacts of those amounts Liberty was collecting from its customers for unused and useless plant and of nonexistent coal inventory to June 2022.[72] He also calculated the cash working capital impacts of Asbury property taxes, Asbury worker payroll and interest that Liberty's customers paid for in rates, but that Liberty did not incur. His total cash working capital offset to the Asbury rate base, and reduction to the Asbury regulatory asset value, is $15,205,731.[73]

Asbury Labor

Issue 3) Asbury

I) What is the value of the Asbury AAO regulatory liability?

O) Should Liberty's recovery reflect a disallowance for labor at Asbury?

Liberty argues that because it transferred employees who were working to other positions it should have no liability for recovering for Asbury labor through customer rates.[74] The problem with Liberty's argument is that presumptively Liberty is compensated through general rates for ***all*** of its labor costs, including the positions to which these employees were transferred. Merely shifting employees from one position to another does not alter that presumption. Because the Commission allowed Liberty to recover through general rates for Asbury as if it were an operating supply-side resource, including Asbury labor costs, it required Liberty to book labor costs specific to Asbury, and Liberty's customers are entitled to the benefit of the labor expense that Liberty ceased to incur at Asbury, but for which they continued to pay until June 2022. Again Liberty is overreaching and Liberty's customers should get the benefit of an Asbury labor regulatory liability amount of $6,988,710.[75]

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[72] Ex. 208C, OPC witness Riley rebuttal, pp. 8-9; Sch. JSR-R-03; Ex. 209, OPC witness Riley surrebuttal, Sch. JSR-S-01, p. 5 (updated to June 2022).

[73] Ex. 209, OPC witness Riley surrebuttal, Sch. JSR-S-01, pp. 1 & 5.

[74] Ex. 8, Liberty witness Emery surrebuttal, p. 36.

[75] Ex. 209, OPC witness Riley surrebuttal, Sch. JSR-S-01, p. 2.

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Liberty retail customers have paid in rates for labor expenses at Asbury. That Liberty may have shifted those employees into other positions for which Liberty's retail customers already were paying in rates does not entitle Liberty to recover those same labor expenses twice, i.e., double dip.

Asbury Property Tax

Liberty collected in rates amounts for Asbury property taxes through the end of May 2022 when new rates from Case No. ER-2021-0312 took effect. According to Liberty its rates in effect January 2020 through May 2022 were designed to collect $2,296,582 per year for those taxes.[76] As Liberty has calculated, Liberty's Asbury regulatory liability for those taxes for what it has collected from its customers over those 29 months is $5,550,074.[77] Liberty's customers should get the benefit of the Asbury property tax liability amount of $5,550,074.

Abandoned Asbury Projects

Issue 3) Asbury

P) Should Liberty's recovery include amounts for abandoned environmental capital projects?

Despite the statutory prohibition of § 393.135, RSMo, that "[a]ny charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited," as OPC

[76] Ex. 21, Liberty witness Emery workpapers Surrebuttal Schedule CTE-5 Asbury (Adobe p. no. 14 of 68).

[77] *Id*. If the $5,550,074 includes property taxes on the $18,634,579 of Asbury plant that Liberty did not retire, then it would be appropriate to reduce the $5,550,074 by $475,210 ($18,634,579/$217,663,073*$5,550,074) to $5,074,864.

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witness Riley observes, Liberty has included $1,673,601 labeled, "RB ADJ 9 Asbury Stranded Assets" for projects started, but never completed and, thus, which were never "fully operational and used for service."[78] Based on Liberty's response to OPC witness Riley's data request no. 1308, Liberty abandoned the projects it started "to keep the plant within compliance with anticipated environmental regulations."[79] This $1,673,601 is an amount that Liberty is not entitled to recover, and should be excluded from the Asbury rate base included in Liberty's Asbury regulatory asset.

Missouri is a plain meaning state, which is codified by statute: "Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import." § 1.090, RSMo. This Commission should not read the statutory definition of "Energy transition costs" to tacitly evade the November 2, 1976, voter initiative, Proposition No. 1, that is codified at § 393.135, RSMo.

Asbury Income Tax Deduction

Issue 3) Asbury

N) Should Liberty's recovery reflect a disallowance for income tax deductions for Asbury abandonment?

In her surrebuttal testimony Liberty witness Emery argues for deferring into the future flowing to its customers the Asbury abandonment income tax deduction benefits totaling **__________** that Liberty reaped in 2019 and 2020.[80] There is no reason for this Commission

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[78] Ex. 208C, OPC witness Riley rebuttal, pp. 5-6, Sch. JSR-R-02; Ex. 8, Emery surrebuttal, p. 26.
[79] Ex. 208C, OPC witness Riley rebuttal, Sch. JSR-R-02.
[80] Ex. 8, Liberty witness Emery surrebuttal, p. 37; Ex. 208C, OPC witness Riley rebuttal, p. 19 .

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not to flow those benefits to Liberty's customers now as OPC witness Riley proposes.[81] Liberty has realized them, they are particular to Asbury, and Liberty is seeking bond proceeds for Asbury that its customers will finance. Ms. Emery's claim, "Under Mr. Riley's approach, he would be double dipping on the tax benefit," is without merit. As a well-managed utility Liberty need only take steps to assure that eventuality does not materialize. Further, if needed, the Commission could order Liberty to make entries in its books to memorialize for the future that its customers have been made whole for these tax benefits.

Asbury Basemat Coal

Issue 3) Asbury
Q) Should Liberty's recovery include basemat coal at Asbury?

OPC's position on the $1,532,832 which Liberty has included in its Asbury energy transition costs for unrecoverable coal buried in the clay foundation for its coal pile at Asbury[82] is that Liberty purchased the coal in that basemat in the early 1970's or 1990's either when it first opened Asbury[83] or when it began delivering western coal to Asbury by rail.[84] In either case, OPC does not agree that Liberty has supported its $1,532,832 quantification, or that it has not already recovered from its customers through rates the cost of that 30- or 50-year-old coal.[85]

Asbury Carrying Costs

Issue 3) Asbury
T) What are the appropriate carrying costs for Asbury?

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[81] Ex. 208C, OPC witness Riley rebuttal, p. 19; Ex. 209, OPC witness Riley surrebuttal, pp. 6-7.
[82] Ex. 8, Emery surrebuttal, pp. 30-31.
[83] Ex. 210C, OPC witness Robinett rebuttal, p. 2.
[84] Ex. 210C, OPC witness Robinett rebuttal, pp. 2-3.
[85] Ex. 208C, OPC witness Riley rebuttal, pp. 10-11l Ex. 209, OPC witness Riley surrebuttal, p. 4.

Liberty seeks a return of 6.77% per year on what it identifies to be the Asbury energy transition costs from June through December 2022 of $4.8 million.[86] Because Asbury was neither used nor useful after December 2019, *i.e.*, it provided no benefit to Liberty's customers after December 2019, like the costs of funding the costs of goods sold, Liberty should not continue to profit on its investment in Asbury.[87]

As OPC explained in the **Storm Uri Carrying Costs** section of this brief, Liberty's affiliate Liberty Utilities Company ("LUCo") provided Liberty with significant amounts of capital to finance its Storm Uri costs by issuing commercial paper (a form of short-term debt) to raise that capital which it then transferred to Liberty through Liberty's affiliate money pool borrowings which are charged interest based on LUCo's commercial paper rate.[88] Liberty is carrying its remaining net investment in Asbury for a short term—Liberty apparently anticipates it will issue the bonds about December 31, 2022,[89] which is six months after it ceased collecting amount for Asbury through its Missouri customers' rates. That six months potentially could have been shorter since Liberty could have filed its statutorily required 60 days' notice it was seeking to secure its Asbury investment on August 28, 2021, and it did not file its application until January 20, 2022, 145 days later.

The duration of time over which Liberty will carry its Asbury energy transition costs and that Liberty did not file its application earlier are why the Commission should use LUCo's average

[86] Ex. 8, Emery surrebuttal, Surrebuttal Sch. CTE-2 Asbury.
[87] Ex. 206C, OPC witness Murray rebuttal, pp. 3, 8-9.
[88] Ex. 206C, OPC witness Murray rebuttal, p. 3.
[89] Ex. 8, Emery surrebuttal, Sch. CTE-2 Storm Uri (showing carrying costs calculated through December 31, 2022).

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short-term debt rate for each month from June 2022 through the date Liberty recovers its Asbury energy transition costs from the secured bond proceeds.

Further, as OPC also explained in the **Storm Uri Carrying Costs** section of this brief, for capital items it is customary practice to allow a utility to book into a deferral account the short-term financing costs it incurs for that capital item before it becomes used and useful, and is included in the utility's rate base.[90] The integrity of that short-term financing rate (the "allowance for funds used during construction" rate) depends on whether the company is capitalized based on arms-length transactions. If a company's authorized rate of return is used for carrying costs, then its rate of return should reflect its short-term debt.[91] Liberty's proposed rate of return of 6.77% for carrying costs does not reflect its short-term debt.[92] This is another reason why the Commission should reject Liberty's proposed carrying cost based on an average weighted cost of capital of 6.77% per year.[93]

Customer Incurred Return on Asbury & Coal Pile

Issue 3) Asbury

I) What is the value of the Asbury AAO regulatory liability?

As stated in the cash working capital section of this brief, Liberty's rates from Case No. ER-2016-0023 were in effect through September 15, 2020, and then its rates from Case No. ER-2019-0374 were in effect through May 31, 2022. Liberty retired Asbury December 12, 2019. The

[90] See *Mo. Gas Energy v. PSC*, 978 S.W.2d 434, 436 (Mo. App. 1998); Ex. 206C, OPC witness Murray rebuttal, p. 6.

[91] Ex. 206C, OPC witness Murray rebuttal, p. 6.

[92] *In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area*, Case No. ER-2019-0374, Amended Report and Order, pp. 24-39.

[93] Ex. 21, Liberty witness Emery workpapers, Sch. CTE-4 Storm Uri; Ex. 8, Liberty witness Emery Surrebuttal, p. 10, Fig. CTE-2.

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rates of return applied to the amounts included in Liberty's rate base in the cost of service used for setting its general rates in those cases were 7.484% and 6.77%, respectively. Because the Commission allowed Liberty to recover through general rates for Asbury as if it were an operating supply-side resource, including a return on Liberty's investment in Asbury and a non-existent coal pile, it required Liberty to book those returns. Liberty's customers are entitled to the benefit of the returns that Liberty received for that Asbury plant which was unused and useless and a non-existent coal pile, but for which they continued to pay until June 2022. Taking the foregoing into account, OPC witness Riley calculated to June 2022 the return Liberty collected from its customers for the unused and useless Asbury plant and non-existent coal inventory.[94] His total for both assets is $17,987,046 ($17,320,069 for Asbury plus $666,977 for coal).[95] Liberty's customers should get the benefit of a return on Asbury and coal pile regulatory liability amount of $17,987,046.

Customer Incurred Tax on Return on Asbury & Coal Pile

Issue 3) Asbury
I) What is the value of the Asbury AAO regulatory liability?

In addition to the Commission including a return on Liberty's investment in Asbury and its associated coal pile in Liberty's cost–of-service used for designing Liberty's rates in effect until June 1, 2022, the Commission included amounts for income taxes on those returns. Because Asbury was unused and useless, and the coal pile did not exist, but Liberty's customers continued to pay for the income tax effects of the Commission treating Liberty as profiting on Asbury and its coal pile, Liberty's customers are entitled to the benefit of those tax amounts.[96] Liberty's

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[94] Ex. 208HC, OPC witness Riley, pp. 7-8; Ex. 209, OPC witness Riley surrebuttal, pp. 5-6.
[95] Ex. 209, OPC witness Riley surrebuttal, Sch. JSR-S-01, pp. 2, 4.
[96] Ex. 208C, OPC witness Riley rebuttal, p. 18.

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customers should get the benefit of an income tax on Asbury profit regulatory liability amount of $2,956,013.[97]

Customer Incurred Depreciation Expense

Issue 3) Asbury

I) What is the value of the Asbury AAO regulatory liability?

S) What is the amount of depreciation expense?

Because the Commission allowed Liberty to recover through general rates for Asbury as if it were an operating supply-side resource, including depreciation expense for Liberty's investment in Asbury, it required Liberty to book that depreciation expense. Liberty's customers are entitled to the benefit of the depreciation expense that Liberty received for plant that was unused and useless, but for which they continued to pay until June 2022. OPC witness Riley calculated the depreciation expense that Liberty's customers paid in rates for Asbury after Liberty retired Asbury by using the Staff's depreciation rates for Asbury from Case No. ER-2019-0374, and applying them to the Asbury plant balance from that case, then netting the result with the result of applying those same rates to the Asbury plant balance from Case No. ER-2021-00312 to get the annual depreciation expense for the retired Asbury plant balance. The result is $10,865,340 per year.[98] When calculated for the period January 2020 to June 2022, the total is $26,257,905.[99] Liberty's customers should get the benefit of an Asbury depreciation expense regulatory liability amount of $26,257,905.

[97] Ex. 209, OPC witness Riley surrebuttal, Sch. JSR-S-01, pp. 2, 4.
[98] Ex. 208C, OPC witness Riley, p. 17.
[99] Ex. 209, OPC witness Riley surrebuttal, Sch. JSR-S-01, pp. 2, 4.

Customer Incurred Non-Labor O&M Expense

Issue 3) Asbury

I) What is the value of the Asbury AAO regulatory liability?

Because the Commission allowed Liberty to recover through general rates for Asbury as if it were an operating supply-side resource, including Asbury non-labor operation and maintenance expenses, it required Liberty to book those non-labor operation and maintenance expenses specific to Asbury. Liberty's customers are entitled to the benefit of those non-labor operation and maintenance expenses that Liberty ceased to incur at Asbury, but for which they continued to pay until June 2022. Liberty's customers should get the benefit of an Asbury non-labor O&M expense regulatory liability amount of $ 9,555,759.[100]

Asbury net present value discount rate

Issue 3) Asbury

V) What is the appropriate discount rate to use to calculate the net present value of Asbury costs that would be recovered through traditional ratemaking?

Issue 5)

A) What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri and Asbury through securitization?

Like the Storm Uri bonds OPC discussed in its **Storm Uri Net Present Value Discount Rate** section of this brief, if Liberty issues Asbury bonds, the appropriate annual rate to use for determining the net present value of the ongoing bond costs is the secured bond rate because the risk of the cash flows associated with the costs secured by the bonds is reflected in the bond rate.[101] In contrast, the risk of the cash flows associated with the costs the Commission allows in rates is

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[100] Ex. 208C, OPC witness Riley rebuttal, p. 18 (Other O&M Expenses); Ex. 209, OPC witness Riley surrebuttal, Sch. JSR-S-01, pp. 2, 4.

[101] Ex. 206C, OPC witness Murray rebuttal, p. 15; Tr. 7:511-13.

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determined by the rate the Commission uses for determining the underlying costs. Because, as explained in the **Asbury Carrying Costs** section of this brief, Asbury was neither used nor useful after December 2019, *i.e.*, it provided no benefit to Liberty's customers after December 2019, like the costs of funding the costs of goods sold, Liberty should not continue to profit on its investment in Asbury. In other words, at most, the Commission should use a discount rate based on its cost of debt, or, if the Commission allows a profit, it should use a discount rate based on Liberty's actual cost of capital, not one based on its Commission-authorized rate of return.[102]

Asbury Summary

Of the $141 million Liberty is seeking to include in bond proceeds for Asbury, the Commission should not include the following:

Up to $125.25 million	Resource Portfolio Management Imprudence
$**__ ** to 5.7 million	Asbury decommissioning costs
$15.2 million	Asbury Cash Working Capital
$7.0 million	Asbury Labor
$5.6 million	Asbury Property Tax
$1.7 million	Abandoned Asbury Projects
$16.5 million	Asbury Income Tax Deduction
$1.5 million	Asbury Basemat Coal
$18.0 million	Return on Asbury & Coal Pile
$3.0 million	Income Tax on Return on Asbury & Coal Pile
$26.3 million	Asbury Depreciation Expense
$ 9.6 million	Asbury Non-Labor O&M Expense

Once it determines the balance, rather than the $4.8 million in carrying costs based on Liberty's Commission-authorized 6.77% rate of return, the Commission should include carrying

[102] Ex. 206C, OPC witness Murray rebuttal, pp. 15-16.

costs calculated at LUCo's average short-term debt rate for each month from June 2022 through the date Liberty issues it Asbury bonds.

CONCLUSION

For the reasons stated above, this Commission should reduce the amounts it allows Liberty to recover through secured bonds for Storm Uri qualified extraordinary and Asbury energy transition costs, use Liberty Utilities Company's monthly short-term interest rates for determining carrying cost, and use the bond rates and Liberty's actual cost of capital for determining net present values.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 13th day of July 2022.

/s/ Nathan Williams

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