Exhibit No. 212

OPC – Exhibit 212
John S. Riley
Surrebuttal Testimony
File No. ER-2021-0312

Exhibit No.: ______________
Issue(s): Asbury AAO Balances/Paygo/Asbury Retirement Date/Wind Project Purchase Price Reductions/
Witness/Type of Exhibit: Riley/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2021-0312

SURREBUTTAL TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

THE EMPIRE DISTRICT ELECTRIC COMPANY D/B/A LIBERTY

FILE NO. ER-2021-0312

January 20, 2022

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Request of The Empire District Electric Company d/b/a Liberty for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	))))))	Case No. ER-2021-0312

AFFIDAVIT OF JOHN S. RILEY

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:

1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

John S. Riley
John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 14th day of January 2022.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI
TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #15637121

Tiffany Hildebrand
Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2023.

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OF

JOHN S. RILEY

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2021-0312

Q. Are you the same John S. Riley who prepared and prefiled direct and rebuttal testimony in this case on behalf of the Office of the Public Counsel?

A. Yes.

Q. Why are you testifying in surrebuttal?

A. I update the numbers I presented in the Asbury AAO spreadsheet table on page 12 of my direct testimony. Staff witness Ms. Amanda C. McMellen has taken issue with some of my adjustments there (column labeled "OPC Adjustments") to the AAO entries of Empire witness Ms. Tisha Sanderson (column labeled "Empire Column"). I also discuss whether December 12, 2019, or March 1, 2020 is the appropriate date to use for calculating the AAO balance, for purposes of establishing new rates for Empire in this case. Further, I address Staff witness Ms. Kim Bolin's and Empire witness Mr. Todd Mooney's positions concerning how to address PAYGO for rate making. Finally, I update wind project purchase price reductions that I discussed in direct and rebuttal and respond to Mr. Mooney's rebuttal discussion on the subject.

ASBURY AAO BALANCES

Q. In footnote 10 of your direct testimony you stated that you would update your adjustments presented in the table on page 12 of your direct testimony to reflect changes to them through the operation law date for new rates—April 25, 2022—and for carrying costs. Why is it important to update these adjustments out an additional 10 months—from June 2021 to April 2022?

A. The cost allocations, expenses, and carrying charges continue to accrue. Ms. Sanderson did make a tabulation for 18 months, but ratepayers are still paying for everything listed until new rates are established some 10 months later. The clock does not stop on Asbury AAO amounts until new rates go into effect, anticipated to be on April 25, 2022.

Q. What are your updated adjustments?

A. The adjusted table listing Ms. Sanderson's original entries along with my recalculated amounts extended through April 2022 is attached as JSR-S-01

Q. You updated your calculations for ten months for the passage of time after the original period of January 2020 through June 2021; did you make any other changes?

A. Yes. Knowing that the amounts Ms. Sanderson presented in direct would probably change as more information became available, I used Ms. Sanderson's direct testimony balances for my direct testimony without contesting their accuracy. As I reviewed her balances, I realized that some amounts would need corrections. For starters, I deleted her "Remaining Plant" addition as well as the "Remaining plant accumulated depreciation" balance. If in fact, this amount is to remain in service then this should not be in the AAO. In my direct testimony I also questioned Ms. Sanderson's calculation of Cash Working Capital ("CWC"), but I did not calculate CWC myself. I have now calculated CWC amounts that are specific to the AAO balances. In addition, I have recalculated the amounts for "Return on Asbury," and "Depreciation Expense." Moreover, I have included liabilities for the return allowed on the coal inventory associated with the Asbury plant.

Q. You discussed CWC in your direct testimony. How do you define CWC?

> Cash Working Capital (CWC) is a rate base component that represents a measurement of the amount of funds, on average, required for the payment of a utility's day-to-day expenses, as well as an identification of whether a utility's customers or its shareholders are responsible for providing these funds in the aggregate.

The important point here is that CWC is a rate base item and the Asbury AAO ultimately is a rate base adjustment. It stands to reason that the CWC associated with the Asbury AAO be calculated and included in the adjustment balance.

Q. What CWC balance did Ms. Sanderson include, and what did you include?

A. Ms. Sanderson <u>added</u> $128,983 to the regulatory asset meaning the shareholder was funding the amount. My calculations created a <u>deduction</u> of $13,529,367, indicating that Empire's ratepayers are funding the balance; therefore, the regulatory asset should be decreased for CWC.

Q. How did you calculate CWC for the Asbury AAO?

A. To determine the CWC amounts, I followed the same format as you will find on Staff's Cash Working Capital Accounting Schedule 08. An annualized amount of cost was determined and the Revenue and Expense lags were applied which produced an annual amount of CWC required. Bear in mind that these are items specific to this AAO and that the costs are being funded by ratepayers through rates, but Empire is not paying these amounts. This is a CWC issue for the entire 28 months. Since the timeframe in question is 28 months, I divided the calculated annual CWC requirement by 12 to generate a monthly amount, and then projected the monthly amount out 28 months to the end of April 2022. .

Q. What CWC assets/expenses did you isolate to the Asbury AAO?

A. I calculated the income taxes associated with Asbury by multiplying the net asset value of Asbury by the rate of return developed in Empire's last general rate case, then applied the combined state and federal effective tax rate of 23.84%. I used $155,044,297 multiplied by 6.77%[1] which equals $10,496,499 of net income, and then multiplied the result by the combined tax rate to determine that the annual income tax associated with Asbury is $2,502,365. I adjusted this $2,502,365 result by a net lag of 319.96 to generate a $2,193,580 negative annual CWC requirement. I then divided this annual amount by 12 to get the monthly impact, and multiplied that result by 28 to get the cumulative CWC impact from January 2020 through April 2022. The result is a negative CWC requirement of $5,118,354 through the operation of law date in this case. Please note that income tax for CWC is entirely different than and separate from income tax expense in the revenue requirement. CWC is an adjustment to rate base, whereas income tax expense is a cost of service input calculated from net income. Income tax expense is recognized in the tax gross-up factor used for calculating the Asbury AAO regulatory liability.

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[1] 6.77% was the calculated Rate of Return set by the Commission in the Amended Report and Order in case No. ER-2019-0374

Q. What CWC balance did you calculate for the non-existent fuel inventory at the Asbury site?

A. The fuel Inventory amount is $2,414,632. I applied the revenue lag of 45.04 and the 365 day expense lag (net 319.96) to this balance to produce a negative $2,116,674 per year. I then carried this balance out to April 2022 for a 28-month balance of negative $4,938,905.

Q. Why did you apply a 365 expense lag to the non-existent Asbury coal inventory?

A. This reflects that the cost has been included in rates even though Empire never had this inventory of coal at Asbury. This follows the same calculations that were applied to the income tax. This methodology was confirmed in the decision made by the Commission in Case No. GR-2021-0108 where the nonpayment of income tax warranted a 365-day expense lag[2].

Q. How is the non-existent Asbury coal inventory an unpaid expense for ratemaking purposes?

A. In the previous case, Case No. ER-2019-0374, the Commission included 60-days of coal inventory at Asbury in Empire's rate base when setting rates in that case, and ordered the Asbury AAO to accompany its inclusion of the retired Asbury plant as if it were not retired when designing those rates. I am certain that all the parties involved in the case now recognize that Empire had no coal available at Asbury and that it purchased no coal to generate electricity at Asbury after November 2019. When rates became effective in that case, there was no coal on-site at the Asbury plant. Company witnesses have testified that

[2] Gr-2021-0108, Report & Order, page 24 – 29 with emphasis on section 72. "An expense lag of a year recognizes the revenue is being provided by customers, but is never being paid out by the utility as an expense."

no coal was purchased from January 2020 through April 2021. Following the same line of thinking that income taxes are not paid out yet have been collected from the ratepayer, a 365-day lag should be applied to the coal inventory that was never purchased yet funded by ratepayers.

Q. Does the fact that the Commission included a return on the 60-days of coal inventory at Asbury by including it in Empire's rate base in Empire's last rate case have CWC implications?

A. Yes. The coal inventory in the previous calculation was a rate base item the Commission afforded a rate of return. That in turn, generated a profit on the $2.4 million of $163,471[3]. The income taxes associated with this line item were $38,971. Applying the lags and then taking the requirement out 28 months produces a negative CWC adjustment of $79,713.

Q. Did you perform any other Asbury AAO specific CWC calculations?

A. Yes. I performed two others that are easily identifiable—property taxes and interest. I adopted Ms. Sanderson's property tax amount of $2,860,004 that was used in her AAO. I used Staff's CWC Schedule 08 revenue lag of 45.04 and the expense lag of 91.11. The complete calculations produce a negative $2,490,162 for the 28 months January 2020 to April 2022.

Interest payments specific to Asbury were calculated using Mr. David Murray's Capital Structure debt/equity percentages. Mr. Murray has identified 52.5% of the capital structure as debt and an overall debt cost of 3.76%. I applied these factors to the $155,044,297 of

[3] $2,414,632 * 6.77% = $163,471

net assets[4]. The annualized amount comes to $3,060,574 with a negative CWC requirement of $386,303, which carried out to the end of April 2022 (essentially the operation of law date) will be $901,374.

Q. What is the total negative CWC requirement that you directly associate with the Asbury AAO?

A. The CWC calculations as a whole generated a negative $13,529,367 that I included in the updated spreadsheet as a reduction to the regulatory asset.

Q. Did you make any other adjustments to Ms. Sanderson's direct Asbury AAO regulatory asset and regulatory liability calculations?

A. Yes. I calculated the original 18 month "Return on Asbury" to be $5,744,749. This was accomplished by using $155,044,297 for the Asbury regulatory asset and applying the rate of return of 6.77%. The resulting $10,496,499 was divided by 12 and multiplied by 18. The profit was carried out another 10 months, and the total return on the shuttered Asbury plant was $24,491,832.

Q. Did you adjust Ms. Sanderson's depreciation expense for Asbury?

A. Yes. I applied Staff's depreciation expense from the original Accounting Schedule 05 from Case No. ER-2019-0374 and came up with an 18-month total of $15,633,538. I carried that out another 10 months which brought the total to $24,318,837.

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[4] $155,044,297 * 52.5% = 81,398,256, $81,398,256* 3.76%(cost of debt) = $3,060,574

Q. Did you make any adjustments to Ms. Sanderson's "Other O&M Expenses" for Asbury?

A. Only to extend the calculation to the total as of April 2022.

Q. Did you make any other adjustments to Ms. Sanderson's Asbury AAO amounts?

A. I included a line item for "Return on Fuel Inventory."

Q. Why?

A. As I explained about my CWC calculations regarding the non-existent coal inventory at Asbury, Empire did not have or purchase any coal for Asbury, but the Commission included $2.4 million in Empire's rate base for it. This rate base amount produced a 6.77% return, which totaled $245,206 for the first 18 months of the AAO period. The total for the 28 months ending April 2022 is $381,432.

Q. With all your corrections and changes to Empire's Asbury AAO totals, what are your balances for the Asbury AAO regulatory asset, regulatory liability, and the net of them?

A. As of April 2022, I reduced the regulatory asset from Ms. Sanderson's $159,140,741 to $139,100,298.

As of April 2022, I increased the regulatory liability with the gross up calculation to $80, 471,933.

After taking into consideration the ADIT and Excess ADIT balances, the remaining balance prior to any Asbury AQCS investment adjustment is $10,234,349.

Q. Is OPC proposing any Asbury AQCS investment adjustment?

A. I would direct you to the testimony of Dr. Geoff Marke who discusses leaving Empire responsible for the $122 million AQCS addition that was intended to extend the life of Asbury into 2035.

If Empire were to be left to absorb this premature retirement then the remaining Asbury plant balance to amortize in rates would be a <u>negative</u> $112,178,482.

Q. Staff witness Ms. Amanda McMellen has taken issue with your removal of original amounts for remaining plant, fuel inventory, CWC, and deferred taxes from the AAO balance. What is Staff's reasoning for including these amounts?

A. Staff points to the Commission approved list of items that should be tracked in the AAO for determination in this current case. I am not taking issue with the original list of items, but rather arguing for what should be the Commission's ultimate adjustment for Asbury and the possible amortization in rates. Just because the items were ordered tracked does not mean they should be included in the final total to address in rates.

Q. Why did you remove the above referenced line items from the Asbury AAO total?

A. The "Remaining Plant" and associated accumulated depreciation should not be an adjustment in the AAO. It certainly should not be an addition to the plant in service balance. I was original confused about the purpose of this entry, but now I see that any remaining plant would be included in the current case and should not be an addition to the AAO regulatory balance. There should be no adjustment to the current plant-in-service balance.

Ms. McMellen points to fuel inventory as one of the "cost elements that are currently included in rates and were affected by the Asbury retirement."[5] As several witnesses have now pointed out, there was no coal at the Asbury plant when it was shut down. There is no disputing that the $2.4 million of fuel was included in rates but to explain it as a "cost element" is a misnomer. The Company did not purchase $2.4 million in coal for Asbury so the line item should be excluded.

The CWC was recalculated to include AAO specific CWC elements, and the ADIT and excess ADIT were replaced with the total balances related to Asbury, which are lines 33 and 34 on my Schedule.

Q. Would you summarize your differences with Staff witness McMellen?

A. Staff takes issue with my deleting these items because the AAO list included the tracking of the balances. I have removed the line items in an effort to provide the AAO balance that should be addressed in this case.

PAYGO

Q. Staff witness Ms. Kim Bolin has reiterated that Paygo should be included in Empire's FAC. Do you believe it is possible to include Paygo in the current FAC tariff?

A. No I don't. Paygo is not a "production" revenue in the sense that Empire caused the generation. The tax equity partner is not really a party to this general rate case so I'm inclined to believe that Paygo does not fall under the current revenues allowed in the tariff. Paygo is also only calculated once a year, hence my suggestion that some conservative estimate be

[5] Case No. ER-2021-0312, McMellen rebuttal, page 2, lines 10,11

included in general revenue requirement with the remaining amounts tracked to the next rate case.

ASBURY RETIREMENT DATE

Q. When should the Commission consider Asbury retired?

A. For all intents and purposes, Asbury was nonoperational December 12, 2019, but for the sake of any Commission decision in this rate case, January 1, 2020, should be the basis for any adjustment due to the Commission's decision to commence the Asbury AAO on January 1.

Q. Company witness Mr. Aaron Doll testified that "Asbury was not de-designated from the SPP market until March 1, 2020. This date reflected the 6-month window required by SPP to perform studies relating to reliability. Up until March 2020, the unit was still registered in the market and staffed for possible production."[6] How do you respond?

A. His statements don't reflect the reality of Empire's actions. One, is that no coal was shipped to Asbury since November of 2019, and there was no coal on-site after the morning of December 12, 2019. To state that the plant was capable of production is misleading. Staffing the plant was a waste of resources. It was obvious that no one intended to ignite the "pilot light" again. If we are to believe Empire's contention that this was an aging, inefficient relic but still staffed and capable of production then what time of the year could this generation facility possibly ever make a profit? The answer: In the dead of winter. But Empire made a conscious decision to cease shipping coal to Asbury on October 7, 2019[7]. The Commission

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[7] OPC Appeal Brief No. WD84090 dated Jan. 12, 2021, page 10, fifth paragraph

[7] OPC Appeal Brief No. WD84090 dated Jan. 12, 2021, page 10, fifth paragraph

found in Empire's last rate case that Asbury last operated December 12, 2019. By Empire's choice and actions, that is the last date that Asbury was used and useful.

WIND PROJECT PURCHASE PRICE REDUCTIONS

Q. You testified in your rebuttal testimony that you expected more clarity from Empire about the revenues and generation figures from the three wind projects. Can you now accurately adjust the impacts on Empire's rate base due to PTCs, pre ownership generation and generation at the wind projects after it took ownership of each until the April 25, 2022 operation-of-law date?

A. I can make a close approximation, and the Commission can order Empire to update the information to solidify the adjustments before the operation-of-law date. There are several moving parts to put together to come up with revenues and the generation that should reduce the rate base amounts of the wind projects. Empire just provided some updated DR responses on January 12, 2022. Empire updated DR 8125 (Schedule JSR-S-02) on Wednesday the 12th to convert estimated revenues and expenses to "actual" for the months of February through November, 2021. There was no validating workpapers accompanying the schedule so there is no way for me to understand what "expenses" are included in the "Total Company Projected Monthly Expenses".

Q. What are your specific concerns with Empire's expenses in that updated data request response?

A. When the monthly wind revenues/liability through November were updated to actual totals, (JSR-S-02, Page 1 Updated B-4) the listed monthly expenses are wildly inconsistent and much larger than the estimates Empire provided in its earlier project presentations. This is puzzling due to the expected steady fixed costs that were portrayed in many of the Company's presentations, workpapers, and data request answers. Variable costs should be a minimal portion of the monthly expenses.

This is shown in Ms. Sanderson's workpaper for the wind test year income statement (Sch. JSR-S-02, page 2 schedule F-3). One of the dominating aspects within this financial statement is that the overwhelming majority of the expenses are made up by prearranged agreements. It also appears that three of the stated expenses would be annual lump sum payments that would not affect monthly expense amounts. Sanderson schedule F-3 Operating Income Detail indicates that only about $1.45 million of the expected $22 million in annual expenses will be variable in nature. I expect that the projected expenses were calculated with some degree of accuracy and that the monthly average expenses should be somewhere around $1.83 million.

Q. If you average the known revenues and average out the projected expenses, what do you calculate as the net revenues of the wind projects up to the operation-of-law date?

A. Using Ms. Sanderson's own B-4 Wind Revenue spreadsheet, in JSR-S-02, page 3, I have developed an estimated Missouri jurisdictional amount of net revenues of $31,218,964 from the wind projects that should be a reduction to Empire's rate base due to this amount being collected by the Company prior to the projects being included in rates.

Q. Ms. Sanderson included allocation factor columns in her Wind Revenue/Liability spreadsheet that reduced the final amount assigned to Missouri. Should you consider these allocations in your calculations?

A. Absolutely not. In three separate cases Empire has presented and explained the tax equity agreement. Three times now we have been told that Empire will receive 100% of the revenues from the project for the first five years. Yet, here, for the first time, Ms. Sanderson includes a "Composite Ownership Factor" to reduce the calculated revenues by nearly half in an effort to reduce the net revenues available to lower Empire's rate base. The tax equity partner is entitled to none of the revenues and no factor should be applied.

The same can be said of the 85% PISA liability factor. It has no place in the revenues or expenses of the wind projects, and should be eliminated.

Until Empire provides auditable revenues and expenses that pertain to the generation of energy up to the operation-of-law date of this rate case, then $31,218,964 should be the amount to reduce rate base for energy production from February 2021 to April 2022.

Q. In his rebuttal testimony, Mr. Mooney takes issue with your characterization of test power. What is your response?

A. He's probably accurate in his criticism. The generation revenues I have been focusing on have been from the production of the wind projects prior to the wind projects being included in Empire's rate base for setting general rates. This would include generation from the time the projects became operational to when new rates go into effect in April 2022. This would include the net revenues I detailed earlier in my testimony and also all the PTC's collected by LUCo prior to Empire's ownership.

Q. Mr. Mooney pointed out in his direct testimony and reiterated in his rebuttal testimony "that the purchase agreements call for a reduction of the purchase price of the Wind Projects based on that economic value and, therefore, reduced the purchase price and, ultimately, the rate base associated with the Wind Projects."[8] Are there other wind project revenues that affect Empire's rate base for these wind projects?

A. As I pointed out in my rebuttal testimony, the purchase and sale agreement only considers a percentage of the PTCs generated by LUCo. The agreement doesn't mention generation revenues or the remaining PTC amount.

Q. You quoted a Deloitte publication in your rebuttal testimony, which stated that all revenues produced before the owner/operator's acceptance of the project assets are considered test revenues and test revenue is treated as a reduction of construction work-in-process in accordance with ASC 970-10-20.[9] If the Commission does not view these pre-Empire ownership revenues to be test revenues, should they still be a deduction to Empire's rate base?

A. Certainly. Mr. Mooney himself has stated that these profits would be turned over to Empire. Let's refer back to his direct testimony where he states this intention.

> **Q. Will LUCo profit from the development of the North Fork Ridge and Kings Point Wind Projects"**
>
> A. No, it will not. To the extent that LUCo would be entitled to any development fee or profits associated with the North Fork Ridge and Kings Point Wind Project, it will not retain any such fees or profits. The amount of such profits, if any,

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[8] Mooney rebuttal, page 7, lines 15-18
[9] Riley rebuttal, quote on page 9

> that LUCo will relinquish to Empire will be determined once final project costs are known in July, 2021.[10]

All the net revenues I mentioned earlier should be transferred to Empire and reduce the rate base of the projects.

Q. Are there any other revenues that affect Empire's rate base?

A. Yes. As Mr. Mooney references in his direct and rebuttal testimony, the purchase agreement states a percentage of generated PTCs will be retained by LUCo and Empire will receive the rest. Attached is JSR-S-03 which are Empire's responses to OPC data requests 8081, and 8081.2 which detail the calculations. Since LUCo will be forwarding all of its profits, we can expect the remaining portion of PTCs to be received by Empire. This will further reduce the purchase price of the wind projects by an additional $937,411, with updates to follow. JSR-S-03, Page 2.

Q. What is your total adjustment to the purchase prices of the wind projects so far?

A. As of this writing my total reduction is $32,156,375. The Commission should order Empire to update the wind generation revenues to as close to the operation-of-law date as possible.

Q. Could you summarize your purchase price reduction arguments?

A. Yes. Any revenues whether it be generation, RECs or PTCs, that were produced prior to the operational law date should be a reduction of the total wind project rate base.

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[10] Mooney direct, page 16, lines 11-17

Q. Does this conclude your surrebuttal testimony?

A. Yes.