

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

**In the Matter of 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**)
)
) **File No. ER-2021-0312**
)
)

**EMPIRE DISTRICT RETIRED MEMBERS & SPOUSES ASSOCIATION, LLC's
STATEMENT OF POSITION**

COMES NOW, the Empire District Retired Members & Spouses Association, LLC
(EDRA), by and through counsel, and for its Statement of Position in the above styled matter,
states as follows:

30. Retiree Issues

(b) Is Empire meeting the merger stipulation employee benefit obligations to its retired employees?

Statement of Position:

No. In the Stipulation and Agreement as to EDRA (Agreement) approved in Case No. EM-2016-0213 (the merger case), The Empire District Electric Company d/b/a Liberty (Liberty) agreed to the following:

(2) For ten (10) years following the closing of the Transaction, Empire will not make any change to any benefit offering (defined as the health benefit design and cost sharing mechanism) that would be materially adverse to any person qualifying for such benefit as of that date, so long as (1) there is no material change of applicable state or federal law, rule or regulation, or the application of existing law, that would impair the ability of Empire to provide the benefit or substantially increases the cost to Empire of providing the benefit; or (2) there is no change to the Commission's current practice authorizing the tracking and cost recovery of benefit offerings and including such costs in cost of service for ratemaking purposes. Empire agrees to use its best efforts to include in cost of service the expense of the benefit offerings. After ten (10) years following the close of the transaction, retirees shall be given the same benefit offering as similarly situated retirees of Liberty Utilities. (emphasis added)

Notice of any disputes or controversy concerning the continued availability of a benefit offering shall be provided to the opposing party in writing not less than thirty (30) days prior to the initiation of any adjudicative action or proceeding to enforce this commitment, including arbitration.

Arbitration will only be used to resolve any dispute by the mutual agreement of the parties. If arbitration is agreed to by the parties, then the American Arbitration Association (AAA) rules shall govern such proceeding, with a petition to be filed with the AAA unless the parties mutually agree to waive such requirement. Each party shall select one (1) AAA approved arbitrator, and the two (2) party selected AAA arbitrators shall then select a neutral third AAA approved arbitrator, with such third neutral AAA approved arbitrator costs to be shared by the parties. All arbitrators shall be experts in the field of the dispute. Each party shall bear the costs associated with the arbitration, including, but not limited to, legal fees and arbitrator costs for the arbitrator that party selects. All arbitrations shall be held in Joplin, Missouri or in such other location as the parties may agree. All procedural schedules shall be set by the arbitration panel, with the final order issued no later than one-hundred fifty (150) days from the date of the written notice of dispute. All arbitration awards are binding on the parties.

As reflected in the direct and surrebuttal testimony of William L. Gipson, inconsistencies in Liberty's responses to EDRA data requests and Liberty witness Charlotte Emery's rebuttal testimony have caused EDRA to have serious concerns about whether Liberty is honoring its agreement to provide the promised benefits.

Based on discussions between EDRA and Liberty at the time of the merger, it was EDRA's understanding that the benefit offering (defined as the health benefit design and cost sharing mechanism) in place for Empire retirees at the time of the merger would continue "as is" for 10 years after the merger, and after that, post-retirement benefits would be no worse than for those similarly situated across the combined Liberty organization. The discussion at the time of the merger was never whether benefits would continue beyond the 10-year period—rather, it was about what kind of coverage or plan that the Empire retirees would be transitioned to after the 10 years.

In discussions with Liberty during the merger case, EDRA asked Liberty to provide examples of benefit offerings for similarly situated retirees of Liberty Utilities. Liberty indicated that it had such examples but did not have the information at hand. It was suggested that EDRA issue a data request for that information. So, EDRA issued DR 14 and Liberty's response was to provide information and Financial Reports for the post-retirement benefits of five Liberty companies. Empire also sent out at the time of the merger a mailing to Empire retirees assuring them that their retirement benefits would continue "as is" for a period of time, and then "post-retirement benefits will be no worse than those similarly situated across the combined organization".

In its monitoring function, EDRA intervened in subsequent rate cases (including this one) and attempted to gauge Liberty's plans after the initial 10-year period has run. In response to several EDRA data requests, Liberty responded that there are no post-retirement benefits for Liberty retirees, which seemed to indicate that Liberty had no plans to continue post-retirement benefits for Empire retirees beyond the 10-year period. However, in response to another EDRA data request, Liberty provided updated information and Financial Reports for the five Liberty companies identified in its response to EDRA DR 14 in the merger case. So, given that there is some question as to whether Liberty intends to end post-retirement benefits after the 10-year period, Liberty is not meeting its obligations to Empire retirees under the Agreement.

Given all of the confusing and inconsistent responses from Liberty, EDRA is requesting that the Commission approve revisions to paragraph (2) language for the Agreement as detailed in the surrebuttal testimony of William L. Gipson. These revisions would make clear that post-retirement benefits would continue after the 10-year period, while giving Liberty the flexibility

to transition the Empire retirees to another plan, so long as Empire retiree benefits remain materially the same.

WHEREFORE, EDRA respectfully submits the above Statement of Position in this case for the Commission's consideration.

Respectfully Submitted,

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ATTORNEYS FOR EDRA

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 31st day of January, 2022.

/s/ Terry M. Jarrett