

**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 (Empire) for Authority to)
Implement Rate Adjustments Related to the Company’s) Case No. ER-2021-0332
Fuel and Purchased Power Adjustment (FAC))
Required in 20 CSR 4240-20.090)

MOTION FOR CLARIFICATION AND RECONSIDERATION

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), and for its Motion for Clarification and Reconsideration, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

Summary

1. On May 19, 2021, the Commission issued an order, to be effective May 31, 2021, regarding the Company’s request to elongate the period of time for cost recovery of the extraordinary fuel and purchased power expenses associated with Winter Storm Uri (the “*Order*”).

2. **Request for Reconsideration.** The *Order* provides that, with its fuel adjustment rate filing, Liberty seeks to defer an under-collection of \$1,293,237 (\$1,283,722 under-collected actual fuel costs plus \$9,515 interest) for Recovery Period 23 of Liberty’s FAC and that “(n)either Staff nor Liberty made any new arguments or explained how the deferral of the true-up amount is authorized under Liberty’s current tariff.” Liberty’s fuel adjustment rate filing does not seek deferral of the approximately \$1.3 million under-collection from Recovery Period 23.

3. Instead, with its fuel adjustment rate filing, Liberty only seeks deferral, with a continued expectation of recovery subject to review for prudence, of extraordinary fuel and purchased power costs associated with Winter Storm Uri (\$168,720,211 of the \$176,066,737 representing 95% of the FAC-eligible fuel and purchased power costs from Winter Storm Uri (February, 2021)). As such, with this Motion, Liberty seeks reconsideration of the Commission’s decision to reject

Liberty's proposed tariff sheet on this basis that the under-collected amount from Recovery Period 23 is being deferred.

4. **Alternative Request for Clarification.** The *Order* rejects the tariff sheet filed by the Company and directs the Company to file a new tariff sheet, with disputed amounts excluded. The Company is not aware of any amounts that are in dispute and is of the understanding that Staff, OPC, and the Company are all in agreement that the FAR should be set to zero effective June 1, 2021. As such, with this Motion, Liberty seeks clarification regarding the Commission's expectations and intent regarding a new tariff sheet to be filed by the Company.

Discussion and Argument

5. Pursuant to its approved tariffs, Commission Rule 20 CSR 4240-20.090(8), and other applicable law, Liberty filed a proposed tariff sheet, bearing a proposed effective date of June 1, 2021, to revise its current period Fuel Adjustment Rates ("FARs") of its Fuel Adjustment Clause ("FAC").

6. For the subject Accumulation Period, Liberty's actual total energy costs eligible for the FAC were significantly higher than the base energy cost included in Liberty's current Missouri rates (approved in its last general rate case). Under normal circumstances, the Company would file a FAC rate tariff that is designed to recover 95 percent of the energy cost differences for the entire Accumulation Period, or approximately \$167,436,489, over a six month Recovery Period. This would result in an incremental increase to the average residential customer of approximately \$81 per month.

7. In an effort to assist customers and minimize the impact of the prudently incurred, but unprecedented, fuel and purchased power costs which resulted from Winter Storm Uri, the Company filed for approval to defer \$168,720,211 (of the \$176,066,737 representing 95% of the

FAC-eligible fuel and purchased power costs from February, 2021), while continuing to have a reasonable expectation of recovery subject to a prudence review. This continued reasonable expectation of recovery of prudent costs that would normally flow through the FAC is key to easing the economic impact on customers, without resulting harm to the Company and an unconstitutional taking.¹ This reasonable expectation of recovery of the deferred Winter Storm Uri costs would be the same as any other FAC-eligible fuel and purchased power costs incurred by the Company on behalf of Missouri customers, as these costs would normally have been recoverable from customers (subject to a future prudence review) through the FAC mechanism.

8. Although the FAC rules and Liberty's FAC tariff do not speak specifically to deferrals, there is also no express prohibition of a related deferral, nor is there any statement in the FAC statute (RSMo. 386.266) that provides that the terms of a utility's FAC mechanism override all other statutory provisions. Additionally, as noted in previous filings in this matter, the Commission's FAC rules and the Company's tariff speak to the potential exclusion of "extraordinary costs" from the FAC mechanism.

9. The "extraordinary costs" language, coupled with the applicability of RSMo. §393.140(8),² gives the Commission full authority to allow the deferral of \$168,720,211 of the fuel and purchased power costs incurred by Liberty on behalf of its customers in February of 2021 (Winter Storm Uri), with the Company continuing to have a reasonable expectation of recovery of these costs, subject to a future prudence review.

¹ As explained in the Direct Testimony of Charlotte T. Emery filed herein on behalf of Liberty, the "extraordinary" costs proposed by the Company to be removed from the FAC mechanism need to remain as a deferred debit on the Company's Generally Accepted Accounting Principles ("GAAP") financial statements; and for this to occur, the Company needs to have a reasonable expectation of recovery.

² RSMo. 393.140(8) provides, in part, that the Commission "have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."

10. On May 3, 2021, the Staff Recommendation to Approve Tariff Sheet was filed. On May 12, 2021, the Office of the Public Counsel (“OPC”) filed a response to Staff’s recommendation. OPC recommended the Commission reject the proposed FAC tariff, but OPC also stated:

Public Counsel does not oppose a “Current Period Fuel Adjustment Rate” of zero as shown on line 13 of Empire’s proposed Tariff Sheet, P.S.C. MO. No. 5, Sec 4, 2nd Revised Sheet No. 17q, Canceling P.S.C. Mo. No 5, Sec 4 and including only non-extraordinary costs when determining that ‘Current Period Fuel Adjustment Rate’ . . .

Essentially, OPC disagrees with how the FAR calculation is presented.

11. In reply to OPC’s response to Staff’s Recommendation to Approve Tariff Sheet, Staff made a filing noting that “Staff agrees with OPC that Liberty-Empire’s proposed FAR does include the true-up amount of \$1,293,237.” The Company also submitted a reply, reiterating that “(t)he rates for Liberty’s Recovery Period 25, as set forth in Liberty’s proposed FAC tariff, are specifically designed to recover the true-up amount under-collected during Liberty’s Recovery Period 23.”

12. On May 19, 2021, the Commission issued its *Order*, to be effective May 31, 2021. Among other things, the *Order* provides:

As required by Commission Rule 20 CSR 4240-20.090(8)(H), the Commission will reject the tariff sheet, Tariff No. JE-2021-0178, suspend the timeline for the fuel adjustment rate filing in this case, set a date for a prehearing conference, order the parties to propose a procedural schedule, and order Liberty to file a tariff sheet to implement interim adjusted fuel adjustment rates to reflect any part of the proposed adjustment not now in question.

13. The total under recovery of \$167,436,489 for accumulation period 25 is reported on line 7 of Liberty’s originally proposed tariff sheet. This amount is reduced by the extraordinary costs of \$168,720,211, identified in Ms. Emery’s Direct Testimony and shown on page two of Schedule CTE-2, resulting in a total over recovery of \$1,283,722. As noted in testimony and Staff’s and the Company’s replies to OPC, in addition to interest expense of \$9,515, Liberty also included the

under recovered true-up amount of \$1,293,237 from Recovery Period 23 (approved by the Commission in Case No. EO-2021-0333), in the FPA calculation. This brought the FAR to \$0, as reflected in the Company's originally proposed tariff sheet. As such, Liberty seeks reconsideration of the Commission's decision to reject Liberty's proposed tariff sheet on this basis that the under-collected amount from Recovery Period 23 is being deferred.

14. If the Commission, upon reconsideration, affirms its decision to reject the tariff sheet originally submitted by Liberty, the Company seeks clarification as to which costs should be reflected in the new tariff sheet to be submitted by Liberty. The *Order* directs Liberty "to file a tariff sheet to implement interim adjusted fuel adjustment rates to reflect any part of the proposed adjustment not now in question." Since all parties are in agreement that the FAR should be set to zero, and that the calculation resulting in a FAR of zero involves the recovery of the approximately \$1.3 million under-collection from Recovery Period 23, Liberty seeks the Commission's further guidance as to what should be filed at this time.

15. It would be inappropriate for Liberty's FAR (which currently provides for a monthly credit to customers) to continue in effect through a prolonged hearing process in this matter, as that would mislead customers regarding the impact of Winter Storm Uri on fuel and purchase power costs and would simply result in the need for an even larger increase in the future. Additionally, the Company will be filing a general rate case at the end of this month, and a decision on the FAR may impact the Company's rate case proposals. Consequently, Liberty requests a decision on this Motion as soon as possible but no later than May 26, 2021.

WHEREFORE, Liberty requests that the Commission reconsider its *Order* and issue an interim rate adjustment order approving Liberty's originally filed tariff sheet, P.S.C. MO. No. 5, Sec 4, 2nd Revised Sheet No. 17q, Canceling P.S.C. Mo. No 5, Sec 4, 1st Revised Sheet No. 17q,

to become effective June 1, 2021, subject to true-up and prudence reviews, and containing language that the Commission finds that Liberty may continue to have a reasonable expectation of recovery of the prudent, extraordinary costs deferred by Liberty (but ordinarily recovered through the FAC mechanism). Liberty requests such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter

Diana C. Carter MBE #50527

428 E. Capitol Ave., Suite 303

Jefferson City, Missouri 65101

Joplin Office Phone: (417) 626-5976

Cell Phone: (573) 289-1961

E-Mail: Diana.Carter@LibertyUtilities.com

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 21st day of May, 2021, with a copy of the same sent to all counsel of record.

/s/ Diana C. Carter