BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company d/b/a Liberty (Empire) for Authority to Implement Rate Adjustments Related to the Company's Fuel and Purchase Power Adjustment (FAC) Required in 20 CSR 4240-20.090	))))))	Case No. ER-2021-0332 Tracking No. JE-2021-0178

PUBLIC COUNSEL'S RESPONSE TO STAFF'S RECOMMENDATION

COMES NOW the Office of Public Counsel (Public Counsel) and responds to the recommendation of the Commission's Staff on Liberty's tariff filing to adjust its fuel adjustment clause rates as follows:

Staff Recommendation

1. "[The Commission's] Staff recommends that the Commission issue an interim rate adjustment order (1) approving Empire's 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 (2) containing language per Liberty's request that (A) the Commission finds that it is likely that extraordinary costs deferred by Liberty ordinarily recovered through the fuel adjustment clause mechanism will be provided recovery in future base rate levels if found prudent, and (B) Any and all ratemaking determinations regarding the extraordinary cost deferral are reserved for future rate proceedings."

2. The Commission's Staff' also advises the Commission, "Although the true-up amount is included in line 8 of Empire's FPA amount in AP25, it was ultimately included in the total $168,720,211 extraordinary costs that Empire has requested to defer related to the February Storm Uri, and thus the true-up amount was not included in Empire's FPA amount on line 11."

Summary Response to Staff Recommendation

3. 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"; however, as explained below, Public Counsel disagrees with Liberty's method for determining that rate and including extraordinary costs on line 1 of that tariff sheet, although a footnote could be added to line 1 that indicates the extraordinary amount. The following 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 lines 1-17 appropriately reflects only non-extraordinary costs, and yields a FAR of zero:

	Accumulation Period Ending		February 28, 2021
1	Total Energy Cost (TEC) = (FC + PP + E – OSSR - REC)		$ 58,688,240
2	Net Base Energy Cost (B)	-	$ 60,428,674
	2.1 Base Factor (BF)		0.02344
	2.2 Accumulation Period NSI (S_{AP})		2,578,334,000
3	(TEC-B)		$ (1,740,434)
4	Missouri Energy Ratio (J)	*	0.7764
5	(TEC - B) * J		$ (1,351,286)
6	Fuel Cost Recovery	*	0.95
7	(TEC - B) * J * 0.95		$ (1,283,722)
8	True-Up Amount (T)	+	$ 1,293,237
9	Prudence Adjustment Amount (P)	+	0
10	Interest (I)	+	$ (9,515)
11	Fuel and Purchased Power Adjustment (FPA)		$0.00
12	Forecasted Missouri NSI (S_{RP})	÷	2,127,904,000
13	Current Period Fuel Adjustment Rate (FAR)	=	$0.00000
14	Current Period FAR_{PRIM} = FAR x VAF_{PRIM}		$0.00000

15	Current Period FAR_{SEC} = FAR x VAF_{SEC}		$0.00000
16	VAF_{PRIM} = 1.0464		1.0464
17	VAF_{SEC} = 1.0657		1.0657

4. Public Counsel opposes Staff's recommendation that the Commission issue an advisory opinion speculating now that it is likely the Commission will allow Liberty to recover through future base rates the extraordinary costs it prudently incurred for the six-month accumulation period of September 2020 to February 2021 ("AP 25").

5. Public Counsel disagrees with Staff's advice to the Commission that Liberty's proposed FAR is not based on including the true-up amount of $1,293,237 for Recovery Period 23 Liberty reported in its Case No. EO-2021-0333 true-up filing.

Public Counsel's Tariff Sheet Rationale

6. Liberty determined the FAR it proposes by targeting it to be zero. Because fuel adjustment clauses are intended and designed to flow fuel-related costs/benefits to customers such result-oriented targeting is inappropriate. Despite disagreeing with Liberty's method, Public Counsel's view is that reasonable minds may differ on the magnitude of the non-extraordinary fuel-related costs that Liberty incurred for the six-month accumulation period of September 2020 to February 2021 ("AP 25").

7. One way to measure when fuel adjustment clause costs during an accumulation period do not include extraordinary costs is by the highest historical fuel adjustment rate the Commission has approved for Liberty. Liberty's highest Commission-approved fuel adjustment rate the Commission has approved for Liberty's secondary customers is $0.00758, which the Commission authorized in Case No. ER-2018-0270 for Liberty's June 2018 through November 2018 fuel adjustment clause recovery period.

8. For the first five months of the September 2020 to February 2021 accumulation period ("AP 25")—September 2020 to January 2021, Liberty's FAC costs totaled $8,630,248 less than the amount Liberty recovered through its base rates. Adding $23,500,000 to the negative $8,630,248 as additional Liberty non-extraordinary fuel adjustment costs during the accumulation period of September 2020 to February 2021 ("AP 25") yields a fuel adjustment clause secondary rate of $0.00757, essentially the same rate as the historical maximum of $0.00758.

9. With this range of up to $23,500,000 relative to the $7,346,526 Liberty used and Staff recommends, Public Counsel is comfortable that the $7,346,526 is within the range of what are not extraordinary costs Liberty incurred due to Storm Uri in the accumulation period of September 2020 to February 2021 ("AP 25") for purposes of Liberty's fuel adjustment rates for this upcoming June to November 2021 recovery period ("RP 25").

10. Like the FAR Empire filed, the FAR Public Counsel calculated above includes a true-up amount of $1,293,237for recovery period 23.

Extraordinary Costs

11. Public Counsel agrees with both Liberty and Staff that Liberty incurred extraordinary costs due to Storm Uri. In its recommendation, the Commission's Staff goes beyond recommending that the Commission approve Liberty's proposed tariff sheet and recommends that the Commission find that it is likely to allow Liberty to recover through future base rates both (1) the extraordinary costs Liberty incurred during its six-month accumulation period of September 2020 to February 2021 ("AP 25") that would have flowed through Liberty's fuel adjustment clause if they were not extraordinary, and (2) the true-up amount of Liberty's under-recovery of the costs Liberty flowed to customers during its recovery period of June to November 2020 ("RP 23"). The Commission's Staff is recommending that the Commission issue an advisory opinion on how it

might rule in a future general rate case on a request by Liberty to recover extraordinary costs it incurred due to Storm Uri when the Commission is considering all relevant factors for deciding rates. No one has cited any authority for the Commission to issue such an advisory opinion, and, as the Commission stated in its July 1, 2008, *Report and Order* in *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief*, Case No. EM-2007-0374, 17 MoPSC3d, 338, 361, 2008 Mo. PSC LEXIS 693, 266 P.U.R.4th 1 (Mo. P.S.C. July 1, 2008), "[S]imilar to the appellate courts in our state, the Commission does not decide hypothetical or nonexistent issues, and will not render an advisory opinion where there is no case in controversy.[43]"

12. Further, with regard to extraordinary costs and fuel adjustment clauses, Commission rule 20 CSR 4240-20.090(8)(A)2.A.(XI) provides: "Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason." Thus, extraordinary costs do not flow through Liberty's fuel adjustment clause.

13. Aside from doing so being an advisory opinion, there are a number of other grounds for why the Commission should not issue an order in this case that gives Liberty authority for how it accounts for extraordinary Storm Uri costs that it incurred. First, Liberty does not have a pending

[43] See Warren v. Warren, 601 S.W.2d 683, 687 (Mo. App. 1980); Order Partially Dismissing Application for Failure to State a Claim, In the Matter of the Application of Middle Fork Water Company for an Order Initiating an Investigation to Ascertain the Value of the Company's Property Devoted to the Public Service, Case No. WO-2007-0266, 2007 WL 923935 (Mo. P.S.C.) Issued March 20, 2007, Effective March 30, 2007; Order Denying Motion to Open Case, *In the Matter of the Necessity of Approval of Transiting Services Agreements Under Section 252 of the Telecommunications Act of 1996 and Related Issues*, Case No. TO-2005-0407 (Jun. 7, 2005). See also State ex rel. County of Jackson v. Missouri Pub. Serv. Comm'n, 985 S.W.2d 400, 403 (Mo. App. 1999) (declining to review issues raised by respondent "in terms of all future cases" since that was "effectively a request for an advisory opinion on hypothetical questions"); State ex rel. Missouri Cable Television Ass'n v. Missouri Pub. Serv. Comm'n, 917 S.W.2d 650, 652 (Mo. App. 1996) (dismissing appeal because there was no live controversy, but "[o]nly a hypothetical question for which appellant seeks an advisory opinion.")

application requesting such accounting authority. Commission rule 20 CSR 4240-2.060 (4) governs applications for variances in general, including those from the accounting required by 20 CSR 4240-20.030. Second, the affidavit of Liberty's witness Charlotte Emery raises due process concerns as, unlike an application, that testimony is insufficient to satisfy due process in that it provides insufficient notice. Third, if the purpose of an order allowing a variance from how amounts are recorded by rule is to defer them on a utility's books into a test year, as updated and trued-up, in a subsequent general rate case, then, since Liberty filed a notice on March 26, 2021 docketed in Case No. ER-2021-0312 that it intends to file such a general rate case soon, there is no regulatory purpose served by such an order, as February 2021 undoubtedly can, and will, be within the test year as updated and trued-up. See, *In the Matter of the Application of St. Joseph Light & Power Company for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Case No. EO-2000-845, 9 MoPSC3d 481, 485, *Report and Order*, (Decided December 14, 2000). Further, any order authorizing the deferral of costs and revenues needs to prescriptively specify them, and neither Liberty nor Staff have done so. The Commission's rate treatment of extraordinary Storm Uri costs is not ripe until Liberty files its next general rate case.

June to November 2020 recovery period True-up

14. In the second paragraph of its recommendation pleading Staff states, "Although the true-up amount is included in line 8 of Empire's FPA amount in AP25, it was ultimately included in the total $168,720,211 extraordinary costs that Empire has requested to defer related to the February Storm Uri, and thus the true-up amount was not included in Empire's FPA amount on line 11."

15. Liberty's fuel adjustment clause requires that Liberty recover in this upcoming June to November 2021 recovery period ("RP 25") any under-recovery during its June to November

2020 recovery period ("RP 23"), and does not allow such true-up amounts to be deferred to some future general rate case. The first sentence of § 386.266.5, RSMo, provides: "The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 4 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint." In short, Liberty's FAC rates for recovery period 25 must be designed to recover the true-up amount under-collected during recovery period 23, and not otherwise.

16. Public Counsel has reviewed Liberty's workpapers and believes that Liberty is not seeking to defer the June to November 2020 recovery period ("RP 23") true-up amount of $1,293,237, despite Staff's statements to the contrary.

WHEREFORE, the Office of the Public Counsel responds to the Commission's Staff's recommendation on Liberty's fuel adjustment clause rate tariff sheet filing as set forth above, and recommends the Commission reject Liberty'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, 1st Revised Sheet No. 17q, and order Liberty to file a new 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 consistent with Public Counsel's above response to Staff's recommendation.

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 12th day of May 2021.

/s/ Nathan Williams