

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

In the Matter of the Application of The)
Empire District Electric Company d/b/a)
Liberty to Obtain a Certificate of)
Convenience and Necessity to Enhance)
System Resiliency)
Case No. EA-2023-0131

RESPONSE IN OPPOSITION TO LIBERTY’S MOTION FOR PROTECTIVE ORDER

COMES NOW the Office of Public Counsel (Public Counsel) and responds to Liberty’s motion for a protective order as follows:

1. On March 15, 2023, Liberty filed its motion for protective order wherein, in part, it states (in ¶4):

Due to the nature of certain material regarding proprietary market information, commodity prices, competitive strategies, and planned purchases, as well as accredited capacity ratings for discrete units and forward resource adequacy positions, the “confidential” designation under Commission Rule 2.135 may not provide adequate protection. To prevent harm to Liberty and prevent the creation of a competitive advantage over Liberty and non-party competitors, Liberty requests a protective order as follows:

- a. Certain materials and information divulged by Liberty shall be considered to be “Highly Confidential” if so designated at the time of disclosure. Any such designation shall be made in good faith.
- b. With regard to entities and individuals other than the Staff of the Commission and the Office of the Public Counsel:

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2. In support of its motion, Liberty cites to Missouri Supreme Court rule 56.01(c) as follows:

Missouri Supreme Court Rule 56.01(c) provides that protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including . . . that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.”

3. Commission rule 20 CSR 4240-2.135(1) makes clear that the Commission desires transparency in proceedings before it:

All items filed in case proceedings before the commission shall be open to the public unless protected pursuant to this rule or otherwise protected by law.

4. Liberty provides no explanation for why it views the confidential designation afforded by Commission rule 20 CSR 4240-2.135(2) to be inadequate for the “proprietary market information, commodity prices, competitive strategies, and planned purchases, as well as accredited capacity ratings for discrete units and forward resource adequacy positions” categories it identifies and pleads be protected because “the ‘confidential’ designation under Commission Rule 2.135 may not provide adequate protection.”

5. Commission rule 20 CSR 4240-2.135(2) provides:

(2) Confidential Designation.

(A) Any person may submit to the commission, without first obtaining a protective order, information designated as confidential if that information is—

1. Customer-specific information;
2. Employee-sensitive personnel information;
3. Marketing analysis or other market-specific information relating to services offered in competition with others;
4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;
5. Reports, work papers, or other documentation related to work produced by internal or external auditors, consultants, or attorneys, except that total amounts billed by each external auditor, consultant, or attorney for services related to general rate proceedings shall always be public;
6. Strategies employed, to be employed, or under consideration in contract negotiations;
7. Relating to the security of a company’s facilities; or
8. Concerning trade secrets, as defined in section 417.453, RSMo.

B) Any information designated as confidential shall be submitted with a cover sheet or pleading describing how such information qualifies as confidential under subsection (2)(A) of this rule, including the specific subsection relied upon and an explanation of its applicability. Only the specific information that qualifies as confidential shall be designated as such. In addition, each document that contains confidential information shall bear the designation “Confidential” and the paragraph(s) of 4 CSR 240-2.135(2)(A) through which that information is protected.

6. For failing to show why the protections of Commission rule 20 CSR 4240-2.135(2) are inadequate, the Commission should deny Liberty's motion.

7. Every protective order the Commission issues should include the requirements it has imposed for confidential information in Commission rule 20 CSR 4240-2.135(2)(B). The Commission should limit the scope of the protection it affords to circumscribed categories, require those invoking the protection to limit what is designated to be highly confidential to specific information, not entire documents which contain that information. Further, the Commission should require the proponent to include a cover sheet wherein the category of protected information the information falls into is identified, why the information falls into the identified protected category(ies) is explained. Moreover, the Commission should require whomever is invoking the protection to mark the information by preceding and following it with double asterisks and by marking each page of the document where such protected information appears in the center of the footer with the words "Highly Confidential."

WHEREFORE, the Office of Public Counsel opposes Liberty's motion for a protective order as set forth above, and recommends Commission protective orders not only be circumscribed in scope, but include disclosure requirements consistent with Commission rules 20 CSR 4240-2.135(1) and 20 CSR 4240-2.135(2)(B) as set forth in paragraph seven above.

Respectfully,

/s/ Nathan Williams

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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 22nd day of March 2023.

/s/ Nathan Williams