

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

In the Matter of the Petition of The Empire District)
Electric Company d/b/a Liberty to Obtain a)
Financing Order that Authorizes the Issuance of) Case No. EO-2022-0040
Securitized Utility Tariff Bonds for)
Qualified Extraordinary Costs)

In the Matter of the Petition of The Empire District)
Electric Company d/b/a Liberty to Obtain a)
Financing Order that Authorizes the Issuance of) Case No. EO-2022-0193
Securitized Utility Tariff Bonds for Energy)
Transition Costs Related to the Asbury Plant)

SUGGESTIONS IN OPPOSITION TO OPC MOTION FOR CLARIFICATION

COMES NOW The Empire District Electric Company d/b/a Liberty, and in opposition to the Motion for Clarification filed herein by the Office of the Public Counsel (“OPC”), Liberty respectfully states as follows:

1. The Commission issued a *Report and Order* in this matter on August 18, 2022. Timely motions for reconsideration, clarification, and/or rehearing were filed by Liberty and OPC. On September 22, 2022, the Commission issued an *Amended Report and Order*. Again, timely motions for reconsideration, clarification and/or rehearing were filed by Liberty and OPC.
2. Following the Commission’s subsequent denial of all rehearing applications, timely appeals of the Commission’s *Amended Report and Order* were then taken by Liberty and OPC to the Missouri Court of Appeals – Western District. The Commission certified its record, and the court issued a briefing schedule. Liberty filed its first brief with the court on February 10, 2023. On February 28, 2023, OPC voluntarily dismissed its appeal, but Liberty’s appeal remains pending.

3. On February 9, 2023, OPC filed a Motion for Clarification herein, asking the Commission “to clarify its Amended Report and Order with regard to the carrying costs.” OPC states as follows: “(i)t appears to Public Counsel that the Commission’s ordered paragraph which states carrying costs on the combined Storm Uri costs and Asbury balance at a rate of 5.16% is inconsistent with its separate decisions for carrying costs at the rate of 4.65% for the Storm Uri costs and the Asbury balance.”
4. OPC did not previously raise this issue. In particular, OPC did not address the issue in a timely rehearing application filed after this Commission issued the *Amended Report and Order*, although the ordering paragraph in question appears on the face of that order.
5. Although OPC purports to seek mere clarification at this time, it is clear that OPC seeks a statement from the Commission that the ordering clause in question is incorrect and should be changed. The reference to 5.16% could have been addressed in response to a timely motion before this Commission, but OPC did not raise it. At this time, in the face of Liberty’s pending appeal and opposition to OPC’s request, the Commission cannot alter or modify the *Amended Report and Order* that is on appeal or enter a new order that undermines, reinterprets, or displaces the ordering clauses of the *Amended Report and Order*. See *AG Processing Inc. v. MoPSC*, 408 S.W.3d 175 (Mo.App. W.D. 2013); *State ex rel. Mo. Cable Telecomms. Association v. MoPSC*, 929 S.W.2d 768 (Mo.App. W.D. 1996).

WHEREFORE, Liberty respectfully submits its Suggestions in Opposition to OPC’s Motion for Clarification and requests such relief as is just and proper under the circumstances.

Respectfully submitted,

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ELECTRIC COMPANY D/B/A LIBERTY**

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 28th day of February, 2023, and sent by electronic transmission to all counsel of record.

/s/ Diana C. Carter