

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

In the Matter of the Tenth Prudence Review of )  
Costs Subject to the Commission-Approved ) **Case No. EO-2023-0087**  
Fuel Adjustment Clause of The Empire District )  
Electric Company d/b/a Liberty )

**STAFF RESPONSE TO ORDER DIRECTING STAFF TO REPLY  
TO PUBLIC COUNSEL’S RESPONSE**

**COMES NOW** Staff of the Missouri Public Service Commission and for this Response to the Commission’s *Order Directing Staff to Reply to Public Counsel’s Response* (“Order”) issued June 9, 2023, states as follows:

1. On February 28, 2023, Staff filed *Staff’s Tenth Prudence Review Report of costs related to the Fuel Adjustment Clause* (FAC) of The Empire District Electric Company d/b/a Liberty in this matter.

2. On March 10, 2023, the Office of the Public Counsel (OPC) filed *Public Counsel’s Response* to Staff’s report. In its *Response*, OPC requested the Commission to direct Staff to amend its report to address an outage at Liberty’s Neosho Ridge wind farm in March of 2022.

3. On June 9, 2023, roughly three months after OPC filed its *Response*, the Commission issued an *Order Directing Staff to Reply to Public Counsel’s Response* (the Order).

4. The Order directed Staff to “file an update to its Tenth Prudence Review Report of costs related to the FAC of Liberty that addresses the March 2022 Neosho Ridge wind farm outage and its impact on Liberty customers,” or “[a]lternatively, Staff may file a reply to *Public Counsel’s Response* indicating that an updated prudence review

report is unnecessary, citing the reasons for its position,” or “a pleading stating when it expects to file its report/reply,” all no later than June 30, 2023.

5. Commission Rule 20 CSR 4240-20.090(11)(B) provides in part as follows:<sup>1</sup>

The staff shall file notice within ten (10) days of starting its prudence review and shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after initiating its prudence review. **Parties to the prudence review proceeding shall have ten (10) days after the staff files its recommendation to request a hearing. The commission shall issue an order not later than thirty (30) days after the staff files its recommendation if no party requests a hearing.** (Emphasis added)

6. It should be noted that OPC did not, and has not, requested a hearing, which is the only responsive pleading contemplated by the Rule. Instead, OPC requested that “the Commission direct its Staff to amend its Report to address the Neosho Ridge outage and its impacts on customers.” Staff is the Staff of the Commission, not the Staff of the OPC, and does not exist to perform OPC’s bidding. If OPC wants to conduct a further prudence review of the Neosho Ridge outage it is certainly free to do so, and Staff is aware that OPC has sent data requests to Liberty regarding the Neosho Ridge outage (the majority of which data requests were sent after Staff filed its Report on February 28, 2023). To have OPC seek to have the Commission direct Staff to amend its FAC Prudence Report and address certain issues of OPC’s choosing, and presumably reach an outcome to OPC’s liking, is simply untenable given the number of disputes that arise between OPC and Staff.

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<sup>1</sup> The Rule also provides that the Commission can extend the case processing timeline for good cause shown. Section (22) of the Rule further provides that provisions of the Rule may be waived by the Commission for good cause.

7. OPC apparently reached its conclusion that Staff did not review the Neosho Ridge outage because “[t]he Staff’s Report does not mention the Neosho Ridge outage.” (OPC Response, paragraph 13) This reflects a basic misunderstanding by OPC of Staff’s Report. In Staff’s prudence review reports, Staff generally only specifically addresses items Staff sees as problematic, since to specifically address everything reviewed would be too lengthy and serve no real purpose. Various outages occur throughout any review period, and are reviewed by Staff. **Contrary to OPC, Staff reviewed the Neosho Ridge outage as part of its review.** The fact that this outage is not specifically mentioned in the Report does not mean otherwise. Staff conducted this prudence review consistent with how it has performed the previous nine prudence reviews for Liberty (Empire)’s FAC, as well as prudence reviews Staff has conducted for the FACs of the other regulated IOUs in Missouri that have a Commission-approved FAC.

8. It must also be remembered that this prudence review and report address *costs related to the Fuel Adjustment Clause* during this review period; out-of-period or non-FAC related costs, if any, resulting from the Neosho Ridge outage are not addressed by this review, nor are they intended by the applicable rules to be addressed herein. For the reasons discussed in greater detail in the Staff Memorandum filed contemporaneously herewith, which was prepared by Technical Staff that participated in the prudence review and preparation of the Staff Report, an updated prudence review report from Staff is unnecessary, particularly at this time.

**WHEREFORE** Staff submits this pleading and the contemporaneously filed Staff Memorandum in Response to the Commission's *Order Directing Staff to Reply to Public Counsel's Response* issued June 9, 2023, and requests the Commission issue an order denying OPC's Request.

Respectfully submitted,

**/s/ Jeffrey A. Keevil**

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 30<sup>th</sup> day of June 2023.

**/s/ Jeffrey A. Keevil**