

**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 )

**LIBERTY’S COMMENTS CONCERNING STAFF’S PROPOSED ORDER**

**COMES NOW** The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”) and, provides to the Missouri Public Service Commission (“Commission”) the following comments concerning Staff’s Proposed Consolidated Financing Order:

1. On June 30, 2022, the Commission issued its Order Directing Filing of Draft Financing Order, wherein it ordered Liberty to file a proposed consolidated financing order by July 13, 2022, Staff to file a proposed consolidated financing order by July 20, 2022, and any other party wishing to file a proposed consolidated financing order to do so no later than July 20, 2022.
2. Liberty filed its proposed financing order on July 13, 2022, in conjunction with the filing of its Initial Brief. Staff filed its Proposed Consolidated Financing Order (“Staff’s Proposed Order”) on July 20, 2022. No other party filed a proposed order.
3. Having had the chance to review Staff’s Proposed Order, Liberty seeks to provide the following comments, not to reargue the matters contained in the briefs, but to point out certain matters that could result in unintended consequences if adopted as written.

## Finance Team Access

4. Staff's Proposed Order calls for a "Finance Team" consisting of "designated Commission Staff representatives and financial advisors, and outside bond counsel to review and approve the securitized utility tariff bonds and the associated transactions." Staff Order, p. 7 of 45, para. 12 (emphasis added).

5. Paragraph 14 of Staff's Proposed Order (p. 8 of 45) further states as follows:

No member of the Finance Team will have authority to direct how Liberty places the securitized utility tariff bonds to market although they shall be permitted to attend all meetings, participate in all calls, e-mails, and other communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds.

(emphasis added).

6. In contrast, RSMo, Section 393.1700.2(3)(h) indicates in part:

The commission shall have the authority to designate a representative or representatives from commission staff, who may be advised by a financial advisor or advisors contracted with the commission, to provide input to the electrical corporation and collaborate with the electrical corporation in all facets of the process undertaken by the electrical corporation to place the securitized utility tariff bonds to market so the commission's representative or representatives can provide the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis. Neither the designated representative or representatives from the commission staff nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market although they shall be permitted to attend all meetings convened by the electrical corporation to address placement of the bonds to market.

(emphasis added).

7. The change from the statutory language of "provide input," "collaborate" and "attend all meetings convened by the electrical corporation to address placement of the bonds to market" to Staff's proposal to "review and approve" the securitized utility tariff bonds and associated transactions" and "attend all meetings, participate in all calls, e-mails, and other

communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds” represents a significant expansion of required participation.

8. Notwithstanding the practice in other states, the statute does not contemplate a Finance Team having the right to “review and approve” the securitized utility tariff bonds and associated transactions. The statute clearly states that [a Finance Team] does not have authority to direct how Liberty places the bonds to market. Furthermore, the statute defines the role of the designated representative and financial advisor to providing input and collaborating with the electrical corporation, so that it can provide the Commission with an opinion on the reasonableness of the pricing, terms and conditions of the securitized utility tariff bonds on an expediated basis.

9. While it was likely not intended by Staff, the provision as written would seemingly require a breach of privilege as to meetings, calls, e-mails, and other communications between Liberty and counsel relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds. Involvement of the Finance Team in those communications would necessarily operate as a waiver of the attorney-client privilege. Similarly, Liberty should be able to communicate with its advisors without participation by the Finance Team.

10. Additionally, the provision proposed by Staff seems to even encompass communications in which Liberty may not be involved, which is not contemplated by the statute . For example, there will likely be calls between underwriters and investors in which Liberty personnel will not participate and in addition to potentially exposing Liberty to securities law liability, it would be logistically impossible for Liberty to ensure Finance Team participation in such calls.

11. On the other hand, Liberty would expect the Finance Team to participate in regular working group calls concerning documents under construction and the resolution of open issues. As the process moves toward marketing and pricing, there would likely be market update calls

convened by the Company that would require invitation of the Finance Team in accordance with the statute. Moreover, drafts of documents and power points would need to be shared so that the Finance Team could provide input. Lastly, at pricing, the Finance Team would be invited to participate when decisions are made by Liberty as it is in no one's interest for the Issuance Advice Letter to suggest rejection.

12. The requirement that the Finance Team participate in "all meetings, participate in all calls, e-mails, and other communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds" exceeds the statutory direction and is not practical.

WHEREFORE, The Empire District Electric Company d/b/a Liberty respectfully submits these comments for the Commission's consideration.

Respectfully submitted,

**ATTORNEYS FOR THE EMPIRE DISTRICT  
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 26<sup>th</sup> day of July, 2022,  
and sent by electronic transmission to all counsel of record.

/s/ Dean L. Cooper