

**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) Case No. EO-2022-0040
the Issuance of 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) Case No. EO-2022-0193
the Issuance of Securitized Utility Tariff)
Bonds for Energy Transition Costs Related)
to the Asbury Plant)

**PUBLIC COUNSEL’S SUGGESTIONS IN SUPPORT
OF ITS MOTION FOR CLARIFICATION**

COMES NOW the Office of Public Counsel (Public Counsel) and offers the following suggestions in support of its motion for the Commission to clarify the apparent discrepancy in its Amended Report and Order:

1. “The commission may correct its own orders *nunc pro tunc*.” 20 CSR 4240-2.160(4)

2. Missouri courts have explained *nunc pro tunc* as follows:

Nunc pro tunc is a common law power which allows a court that no longer has jurisdiction over a case to maintain jurisdiction over its records so the court may correct clerical mistakes in the judgment arising from either scrivener's errors or from omissions that are indicated in the record. [McGuire v. Kenoma, LLC, 447 S.W.3d 659, 663 \(Mo. banc 2014\)](#). For a *nunc pro tunc* order to be appropriate, the clerical error must be discernible from the record. [Pirtle v. Cook, 956 S.W.2d 235, 243 \(Mo. banc 1997\)](#). *Nunc pro tunc* cannot be used to add anything to the judgment that is not in some way already reflected in the record, even if a judge should have included or intended to include the omission or has a laudatory motive in wanting to amend the judgment." [DiSalvo Properties, LLC v. Purvis, 498 S.W.3d 530, 534 \(Mo. App. E.D. 2016\)](#).¹

3. This Commission has the authority to issue *nunc pro tunc* orders.

¹ [In the Interest of D.E.W., 617 S.W.3d 514, 516-17 \(Mo. App. 2021\)](#).

The general rule with reference to the entry of *nunc pro tunc* orders is that when it can be seen by reference to a record what was intended to be entered but by inadvertence or mistake on the part of the judge or clerk it had not been, the same may be put to record as of the date it should have been done by a *nunc pro tunc* order. These rules in respect to entering and signing orders are generally applicable to municipal legislative bodies and administrative or quasi judicial commissions.²

4. Although this Commission presently does not have jurisdiction over the substance of this case, it does have authority to issue orders making *nunc pro tunc* corrections.

5. With regard to relief for clerical errors, the Missouri Supreme Court has gone so far as to treat the omission of the words "vexation or" from an affidavit required by statute to pursue an appeal as an inadvertent error or mistake visible on the face of the affidavit and proceeded to decide the merits of the appeal. [Cassidy v. St. Joseph, 247 Mo. 197, 152 S.W. 306 \(1912\)](#).

Wherefore, because the clarification of the carrying costs that the Office of Public Counsel seeks in its motion is for a clerical error that is apparent on the face of the Commission's Amended Report and Order, the Commission has the authority to clarify those carrying costs.

Respectfully,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-4975 (Voice)
(573) 751-5562 (FAX)
Nathan.Williams@opc.mo.gov

² [Frankfort Ky. Nat. Gas Co. v. Frankfort, 276 Ky. 199, 123 S.W.2d 270, 272 \(1938\)](#).

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 1st day of March 2023.

/s/ Nathan Williams