

**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 )

**RESPONSE 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 February 11, 2022, Liberty filed its motion for protective order in which it, in part, states (in ¶4),

Due to the nature of certain material regarding commodity prices, fuel procurement, generation costs, and planned purchases, as well as competitively sensitive and confidential information regarding wholesale electric market participants, the “confidential” designation under Commission Rule 20 CSR 4240-2.135 may not provide adequate protection. To prevent harm to Liberty and prevent the creation of a competitive advantage for parties to this proceeding over Liberty and non-party competitors, Liberty requests a protective order as follows:

a. Materials and information divulged by Liberty or other parties shall be considered to be “Highly Confidential” if so designated at the time of disclosure.

2. Commission rule 20 CSR 4240-2.135(1) is clear that the Commission shares Public Counsel’s desire for transparency:

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.

3. 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.

4. Consistent with Commission rule 20 CSR 4240-2.135(2)(B) the Commission should include in any protective order allowing the requested highly confidential designation the following requirements:

(1) That the proponent identify which of the following categories the information falls into:

(a) commodity prices,

(b) fuel procurement,

(c) generation costs,

(d) planned purchases, or

(e) competitively sensitive and confidential information regarding wholesale electric market participants;

(2) That the proponent explains why the information would create a competitive advantage for parties to this proceeding over Liberty and non-party competitors;

(3) That the proponent only designate the information that qualifies as highly confidential information to that information; and

(4) That the proponent mark the specific information by preceding and following it with double asterisks and mark each page of the document in the center of the footer with “Highly Confidential.”

5. Further, the Commission should either incorporate the requirements of Commission rule 20 CSR 4240-2.135(2) regarding confidential information in its protective order, or remind Liberty of those requirements, in particular the requirement of describing how the information qualifies as confidential under subsection (2)(A) of rule 20 CSR 4240-2.135, including the specific subsection relied upon and an explanation of its applicability.

**WHEREFORE**, the Office of Public Counsel requests that the Commission include the above-identified requirements in any protective order it issues in this case limiting who may access particular information in this case.

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 15<sup>th</sup> day of February 2022.

/s/ Nathan Williams