

**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 )

**MOTION FOR EXPEDITED TREATMENT AND ORDER NUNC PRO TUNC**

**COMES NOW** The Empire District Electric Company (“Liberty” or “Company”) and, pursuant to Commission Rule 20 CSR 4240-2.080(14), submits its Motion for Expedited Treatment and Order Nunc Pro Tunc concerning the *Amended Report and Order* issued by the Commission in the above-captioned matters on September 22, 2022 (the “*Financing Order*”).

**Nunc Pro Tunc**

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

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<sup>1</sup> *In the Interest of D.E.W.*, 617 S.W.3d 514, 516-17 (Mo. App. 2021).

2. The issuance of an order nunc pro tunc concerning the *Financing Order* is appropriate, in that the intended decision of the Commission on the subject issue can be seen by reference to the record (Finding of Fact 222) but, by inadvertence or mistake, the corresponding ordered paragraph contained conflicting language.<sup>2</sup> With the issuance of a nunc pro tunc order, “the same may be put to record as of the date it should have been done.” *Id.*

### **Matter to Be Corrected**

3. The *Financing Order* directs that, before “issuance of any securitized utility tariff bonds under this Financing Order, Liberty must file compliance tariff sheets that conform to the tariff provisions in this Financing Order, but with rate elements identified as estimates.” In working with the parties to reach agreement on these compliance tariff sheets, a conflict was discovered between Finding of Fact 222 and Ordered Paragraph 9.

4. Regarding imposition and collection of the securitization charge, Ordered Paragraph 9 of the *Financing Order* directs, in part, as follows:

. . . If there is a partial payment of an amount billed, the amount paid must first be allocated first between the indenture trustee and Liberty based on the ratio of the billed amount for the securitized utility tariff charge to the total billed amount, excluding any late fees, and second, any remaining portion of the payment must be allocated to late fees.

5. Finding of Fact 222, however, contains similar, but slightly different language in regard to collection of the securitization charge (emphasis added):

If any customer does not pay the full amount it has been billed, the amount will be allocated first to the securitized utility tariff charges, **unless a customer is in a repayment plan under the Commission’s Cold Weather Rule**, in which case payments will be prorated among charge categories in proportion to their percentage of the overall bill, with first dollars collected attributed to past due balances, if any.

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<sup>2</sup> *Frankfort Ky. Nat. Gas Co. v. Frankfort*, 276 Ky. 199, 123 S.W.2d 270, 272 (1938).

6. The difference between Finding of Fact 222 and Ordered Paragraph 9 represents a clerical error that is apparent on the face of the *Financing Order*, and the Commission has the authority to clarify this matter with no impact on the effective date and finality of the *Financing Order*. In this regard, Liberty requests an *Order Nunc Pro Tunc* so that Ordered Paragraph 9 is consistent with the partial payments language found in Finding of Fact 222.

7. Specimen tariff sheets, utilizing the language of Finding of Fact 222, are being submitted separately, at this time.

### **Expedited Treatment**

8. Pursuant to Commission Rule 20 CSR 4240-2.080(14), Liberty submits that good cause for expedited treatment exists in that the issue described herein is an impediment to reaching consensus on the tariff sheets Liberty must file in accordance with Ordered Paragraph 8 of the Financing Order. Resolution of this matter in an expedited fashion will allow the parties to prepare the tariff sheets referenced above in a timely manner and will not result in any harm. Liberty further states that this Motion is being filed as quickly as possible after it became clear that a Commission response would be necessary to resolve the issue for the submission of tariff sheets.

**WHEREFORE**, The Empire District Electric Company d/b/a Liberty respectfully requests an Order Nunc Pro Nunc clarification of the Commission's *Amended Report and Order* as described herein.

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 17<sup>th</sup> day of November, 2023, and sent by electronic transmission to all counsel of record.

/s/ Diana C. Carter