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AUDIO RECORDING
IN RE: EMPIRE DISTRICT ELECTRIC COMPANY TO FILE
TARIFFS INCREASING RATES
VOLUME VIII
CASE NO. ER-2021-0312
DECEMBER 19, 2023

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1 LAW JUDGE CLARK: Let's go on the record.
2 Today is December 19th, 2023, and the current time is
3 2:00 o'clock p.m. This prehearing conference is being
4 conducted via Webex. The commission has set aside
5 this time for a procedural conference in the case
6 captioned as in the matter of the request of the
7 Empire District Electric Company, doing business as
8 Liberty for authority to file tariffs increasing rates
9 for electric service provided to customers in its
10 Missouri service area, and that is file number
11 ER-2021-0312, and though that rate case is long since
12 concluded, we are still having things filed in it.

13 My name is John Clark. I'm the regulatory
14 law judge overseeing this matter today. I'm going to
15 begin by asking the attorneys for the parties to enter
16 their appearance starting with Liberty.

17 MS. CARTER: Hi. This is Diana Carter for
18 the Empire District Electric Company, doing business
19 as Liberty.

20 LAW JUDGE CLARK: Okay. Thank you,
21 Ms. Carter.

22 And on behalf of commission staff.

23 MS. MERS: Nicole Mers on behalf of staff.

24 LAW JUDGE CLARK: Thank you, Ms. Mers.

25 On behalf of the Office of the Public

1 Counsel.

2 MR. WILLIAMS: Nathan Williams, chief
3 deputy public counsel appearing on behalf of the
4 Office of Public Counsel and the public.

5 LAW JUDGE CLARK: Thank you, Mr. Williams.
6 Are there any parties that are in
7 attendance that I have missed?

8 Okay. Probably all wondering why I called
9 this procedural conference, and Liberty filed its
10 market price protection mechanism or MPPM data, and I
11 guess there was -- OPC filed a motion disagreeing with
12 Liberty's PPA replacement values, and can somebody
13 explain to me what a PPA replacement value is?

14 MS. MERS: Judge, I can try to make an
15 attempt, and hopefully -- I've got some staff people
16 on. They can jump in if I say something incorrectly,
17 but the PPA replacement value is in this market
18 protection mechanism to kind of risk share between the
19 ratepayers, Liberty, and I guess there's a
20 disagreement on when it kicks in, but that the PPAs
21 that they have for two of their -- two of their
22 existing PPAs when those expire, what credit and how
23 much credit, I guess, when that credit kicks in for
24 that, does that get applied to the market protection
25 mechanism to -- to give Liberty value for that and the

1 accounting that's done.

2 LAW JUDGE CLARK: Okay. Well, thank you
3 for that explanation. That gives me at least a
4 starting place.

5 MR. WILLIAMS: Judge, if I may?

6 LAW JUDGE CLARK: Go right ahead,
7 Mr. Williams.

8 MR. WILLIAMS: My understanding of that PPA
9 is similar to what Nicole related. I think the origin
10 had to do with the RES standard and the recs that are
11 generated. The PPAs she's referring to create recs
12 that are applied to -- towards meeting Liberty's
13 requirements under the RES standard, and with the
14 ending of those particular purchase power agreements,
15 something need -- Liberty needed something in order
16 to, I guess, have owned and control generation for
17 meeting its rec requirements under the RES, and the --
18 the PPA replacement term in the MPPM, to my
19 understanding, is to recognize that the wind farms
20 that Liberty put into place, the 600 megawatts will
21 generate recs; although, those were not built for
22 purposes of meeting the RES standard. Recs they
23 generate will provide some value for meeting that
24 standard in the future, and my understanding is that
25 the PPA replacement value and MPPM is directed towards

1 that purpose.

2 LAW JUDGE CLARK: All right.

3 MR. WILLIAMS: I believe I laid that out in
4 an OPC's pleading.

5 LAW JUDGE CLARK: To a large degree, yes,
6 you did. And that doesn't mean that I necessarily
7 have a grasp on it, but my understanding is that
8 Liberty filed it with some PPA values, replacement
9 values, and that OPC or public counsel basically said,
10 no, those values should be zero, and Liberty or --
11 replied basically saying, no, we think we're correct
12 and that those values are correct which leaves me in a
13 bit of a conundrum because this doesn't feel like a
14 situation where a -- a hearing is called for, but
15 I'm -- I'm going to be honest. I don't know, so.

16 MS. CARTER: Judge, this is Diana. I would
17 just throw out there the possibility that nothing
18 probably needs to be done in this docket, at least
19 from Liberty's standpoint since this is an old rate
20 case docket. We are required, I believe, to make the
21 filings in this case number that, that was part of the
22 (inaudible) or part of an order was that we would make
23 the filings in this rate case number, but from
24 Liberty's standpoint, this isn't a -- a live issue
25 that needs the commission's attention right away on an

1 emergency basis, and I -- I understand not wanting to
2 wait 10 years which is when it would become truly
3 relevant is after 10 years, but to me, it would make
4 sense to have it in a rate case in an active rate
5 case.

6 LAW JUDGE CLARK: And -- and I don't know.
7 Like I said, I got -- when I looked at these and often
8 times it appears that the parties may be negotiating
9 or attempting to reach an agreement and that wasn't
10 the impression I got. So the impression it -- I
11 didn't think this was an emergency, but I did
12 certainly want to address it so that nobody thought it
13 had dropped off my radar.

14 Mr. Williams, is this something that you
15 believe needs to be resolved now or is this an -- is
16 this an appropriate -- because I'll pick the two
17 fighting parties or is this appropriate for a rate
18 case?

19 MR. WILLIAMS: I think the sooner this is
20 resolved the better. In my view, it's an issue of
21 what did the commission mean whenever they ordered the
22 MPPM to be complied with, and I know you -- or I
23 believe you don't have the calculations that underlie
24 Liberty's calculation of the values, but basically, I
25 think it's a -- the commission needs to provide

1 clarity as what it intended to be done under the MPPM
2 and whether or not Liberty has complied with what the
3 commission intended by its filing. If it needs to be,
4 I guess, set up by a complaint saying we feel that it
5 doesn't comply with the commission's order, we can do
6 that, but I think it's something that needs to be
7 resolved very soon, and I really don't care what case
8 it's done in.

9 LAW JUDGE CLARK: Okay. Well, that's two
10 perspectives on that, and when there's a -- when
11 there's disagreement, I always tend to go with trying
12 to resolve it as opposed to pushing it off. I don't
13 feel like a complaint needs to be filed to initiate
14 this further. I think OPC has put their position out
15 there. However, it does sound like we made this is --
16 maybe something where a hearing might be required.
17 But given what you said, Mr. Williams, and given what
18 you said, Ms. Carter, is there any opposition to me
19 breaking this issue out into its own docket?

20 MS. CARTER: No objection from Liberty.

21 LAW JUDGE CLARK: Mr. Williams?

22 MR. WILLIAMS: I thought it was clear.
23 Certainly not.

24 LAW JUDGE CLARK: Okay. Are you okay with
25 handling this in a different docket?

1 MR. WILLIAMS: Yes.

2 LAW JUDGE CLARK: Okay. Now, Mr. Williams,
3 you said that you thought this was something where the
4 commission needed to clarify what it meant.

5 Ms. Carter, is that your position as well?

6 MS. CARTER: That's a hard one to answer,
7 Judge. No. We think the -- it's clear on its face
8 and that we calculated things correctly based on the
9 language in the approved stipulation, but OPC does
10 disagree with that.

11 LAW JUDGE CLARK: Okay.

12 MR. WILLIAMS: Judge, I don't think -- or I
13 don't view this to be something like a contractual
14 dispute. I think it's clearly a matter of whether or
15 not what Liberty has done complies with the
16 commission's order where it directed the parties to
17 comply -- or follow the MPPM.

18 LAW JUDGE CLARK: Okay.

19 MR. WILLIAMS: And in my view, that means
20 the MPPM as the commission envisioned it.

21 LAW JUDGE CLARK: Bear with me for just a
22 second. I'm both writing and trying to think.

23 MR. WILLIAMS: And to that end, I don't see
24 how -- what the parties thought they were negotiating
25 when they -- negotiated the MPPM by way which public

1 counsel did not join in has any bearing in it. I
2 think the question was, what did the commission view
3 that it was ordering the parties to do, and is what
4 (inaudible) compliant with that.

5 LAW JUDGE CLARK: Here's what I'm going to
6 do to start with, because I don't honestly have a
7 better notion at this point. I am going to break this
8 out into a separate docket, give it its own docket
9 number. I'm going to go ahead and issue some kind of
10 notice of that case, and then I'm going to have to
11 think about what to do from there whether it's a
12 simple matter of the commission simply determining
13 what it meant when -- when it ordered the -- to follow
14 the MPPM or whether the commission wants input from
15 the parties. So I think that's where I'm going to
16 start with. I know that doesn't sound like a -- a --
17 a solid point, but I don't really want to order a
18 procedural schedule in this older rate case, and I
19 don't know that that's where we need to go in the new
20 case, so.

21 If you'll give me a little time to process
22 that, what I'll do right now is -- is open -- is open
23 this in a new docket, but since a party has expressed
24 that they do -- that they would prefer to try and
25 reach a resolution on this before the next rate case

1 as opposed to putting it in the next rate case, I'm
2 going to take a good look at it and see if it makes
3 sense. Off the top of my head, it does sound like it
4 makes sense to -- if somebody wants to address it now
5 to address it now.

6 MR. WILLIAMS: Judge, will you file that
7 notice in the ER docket so that we can look there for
8 it or how -- how are you planning on setting up the
9 new docket?

10 LAW JUDGE CLARK: I was planning on setting
11 up the new docket by opening a -- basically
12 transferring over the pleadings related to this,
13 copying those pleadings over into a new docket to
14 initiate that docket and essentially assigning it a
15 case number, and then issuing notice that there is
16 this new case, and I would -- I think it would be
17 appropriate given that this is a spin off of a rate
18 case to automatically make parties from the rate case
19 parties to this case.

20 MR. WILLIAMS: Okay. That makes sense.

21 LAW JUDGE CLARK: That's -- off the top of
22 my head, that's what I'm thinking.

23 MR. WILLIAMS: Judge, I suggest that you
24 probably want to see how Liberty did the calculations
25 for doing an evaluation of whether it comports with

1 the -- what the commission envisioned with the MPPM.
2 I know you have how -- what OPC represented about
3 them, but I think you'd want to see the underlying
4 calculations themselves.

5 LAW JUDGE CLARK: Is Liberty opposed to
6 providing those?

7 MS. CARTER: No, Judge. We provided work
8 papers to the parties and would be happy to file those
9 as well.

10 LAW JUDGE CLARK: Okay. Well, I'm not
11 going to -- I'm not just going to order you to do that
12 during this conference. I will take a look at it, and
13 if -- if -- if, after looking at it, I agree with you,
14 Mr. Williams, then we'll issue an order to that
15 effect.

16 MR. WILLIAMS: That makes sense. Will it
17 be an EO docket?

18 LAW JUDGE CLARK: Hold on just a second.
19 You said EL?

20 MR. WILLIAMS: EO, other --

21 LAW JUDGE CLARK: EO.

22 MR. WILLIAMS: I'm just guessing.

23 LAW JUDGE CLARK: It's a reasonable good
24 guess that would most likely be my expectation, but I
25 don't know. Usually, what happens is, I say, I would

1 like this case in a new docket and somebody gives it a
2 number and I say that's a new number, so that's --

3 MR. WILLIAMS: Okay.

4 LAW JUDGE CLARK: That's how that happens.

5 MR. WILLIAMS: That's fine. Thank you.

6 MS. CARTER: That's pretty awesome.

7 LAW JUDGE CLARK: I -- I -- I would be lost
8 without mine, so. I will certainly agree with that.
9 I do have some wonderful legal assistants and
10 paralegals assisting me.

11 All right. I -- I'm sorry that this is so
12 short, but like I said, I came into this not knowing
13 where this sits. I think I've got a little bit better
14 idea. I appreciate everybody taking time to do this.
15 I didn't give staff an opportunity to weigh in on
16 this. Did staff have anything they wanted to say?

17 MS. MERS: No, not at this moment. I'm
18 sure we'll have quite the opportunity to in the new
19 docket.

20 LAW JUDGE CLARK: All right. Okay. Well,
21 I'm not going to waste anybody else's time then. I
22 will -- I will break this out into a new docket, issue
23 an initial notice adding the rate case parties, and
24 you will all see that, and then I may order some
25 initial filing.

1 Are there any other issues or matters that
2 need to be addressed by the commission before I
3 adjourn this procedural conference?

4 MR. WILLIAMS: I believe not.

5 LAW JUDGE CLARK: All right. I hear none.
6 Thank you all, and we will go off the record.

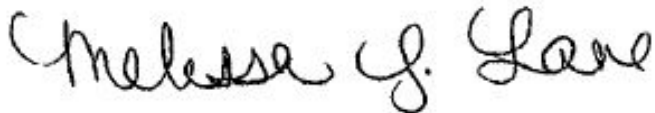
7 MR. WILLIAMS: Thank you.

8 (Audio ended.)
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