

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Request of The Empire)
District Electric Company d/b/a Liberty for)
Authority to File Tariffs Increasing Rates) Case No. ER-2024-0261
for Electric Service Provided to Customers)
In its Missouri Service Area)

RESPONSE TO LIBERTY’S MOTION FOR PROTECTIVE ORDER

COMES NOW the Office of Public Counsel (Public Counsel) and, although the Commission already issued a protective order,¹ responds to Liberty’s motion for a protective order as follows:

1. On November 4, 2024, Liberty filed its motion for protective order wherein it asserts (in ¶3),

Due to the nature of certain material regarding the safety and security of Liberty’s facilities, commodity prices, fuel procurement, generation costs, and planned purchases, as well as competitively sensitive information regarding wholesale electric market participants, the “confidential” designation under Commission Rule 20 CSR 4240-2.135 may not provide adequate protection.

2. In paragraph 4 of its motion Liberty states its rationale for its motion and the relief it seeks:

To prevent harm to Liberty and/or its electric customers and to prevent the creation of a competitive advantage for those participating in this docket over Liberty and non-participating competitors, Liberty requests a protective order as set forth below.

a. Certain materials and information divulged by Liberty shall be considered to be “Highly Confidential” if so designated at the time of disclosure.

b. With regard to entities and individuals other than the Staff of the Commission, the Office of the Public Counsel, and the Missouri Division of Energy:

i. Disclosure of materials or information so designated shall be made only to attorneys and/or to such outside consultants who have executed a Commission Nondisclosure

¹ Public Counsel is a party to this case. 20 CSR 4240-2.010(1). Parties are allowed ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission. 20 CSR 4240-2.080(13). Liberty filed its pleading moving for a protective order on November 4, 2024; and the Commission issued its protective order the following day on November 5, 2024.

Agreement. No Highly Confidential information shall be provided directly or indirectly to any non-attorney individual or employee.

ii. Persons afforded access to materials or information designated “Highly Confidential” shall neither use nor disclose such materials or information for purposes of business or competition or any other purpose other than in regard to the case referenced above and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of the protective order.

iii. All material and information designated as “Highly Confidential” in the possession of any entity or person, as well as any notes pertaining to such information, shall be returned to Liberty or destroyed upon the conclusion of the referenced case.

c. If a party disagrees with the “Highly Confidential” designation of any information, the party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If the party exhausts these dispute resolution procedures, the party may file a motion challenging the designation.

3. Commission rule 20 CSR 4240-2.135(1) is clear that the Commission desires transparency in case proceedings before it:

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.

4. 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.

5. Consistent with Commission rule 20 CSR 4240-2.135(2)(B), Public Counsel requests that the Commission include in any protective order allowing the requested highly confidential designation the proponent include in a cover sheet or pleading the following requirements for the information which a proponent designates to be highly confidential:

(1) The proponent designate each of the following categories the information specifically identified to be highly confidential falls into and explain why it falls into that category:

- (a) the safety and security of Liberty’s facilities,
- (b) commodity prices,
- (c) fuel procurement,
- (d) generation costs,
- (e) planned purchases, and
- (f) competitively sensitive information regarding wholesale electric market participants;

(2) The proponent explain why disclosure of the specifically identified information would harm Liberty and/or its electric customers or create a competitive advantage for those participating in this docket over Liberty or non-participating competitors;

(3) The proponent only designate the information that qualifies as highly confidential information to the information that the proponent specifically identifies to be highly confidential, *i.e.*, identifying a document to be highly confidential in its entirety should be the exception, not the rule; and

(4) 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.”

6. In Case No. EO-2022-0040 the Commission issued a protective order that included similar disclosure requirements. A copy of that protective order is attached.

WHEREFORE, the Office of Public Counsel requests that the Commission add the above-identified requirements to the protective order that it issued in this case on November 5, 2024.

Respectfully,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

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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 6th day of November 2024.

/s/ Nathan Williams

**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) **File No. EO-2022-0040**
the Issuance of Securitized Utility Tariff)
Bonds for Qualified Extraordinary Costs)

ORDER ESTABLISHING PROTECTIVE ORDER

Issue Date: February 28, 2022

Effective Date: February 28, 2022

The Empire District Electric Company d/b/a Liberty has filed a petition seeking authority to issue securitized utility tariff bonds. Liberty filed a motion on February 11, 2022, asking the Commission to issue a protective order to establish procedures for controlling the flow of highly confidential information among the parties.

The motion explains that certain material regarding commodity prices, fuel procurement, generation costs, and and planned purchases, as well as competitively sensitive and confidential information regarding wholesale electric market participants will not be adequately protected by the “confidential” designation under Commission Rule 20 CSR 4240-2.135. As permitted by the rule, Liberty requests a protective order to increase the level of protection for that particularly sensitive information.

On February 15, 2022, the Office of the Public Counsel filed a response to Liberty’s motion for protective order. Public Counsel does not oppose the motion, but asks the Commission to remind Liberty of the public’s interest in being able to see the basis for the Commission’s decision and of Liberty’s obligation to comply with the requirements of the Commission’s rule regarding the handling of confidential information, 20 CSR 4240-2.135.

The Commission shares Public Counsel's concerns, and will remind Liberty that the issuance of a protective order does not limit its obligation to comply with the requirements of the Commission's rules.

The Commission will grant the motion, including some of the modifications proposed by Public Counsel.

THE COMMISSION ORDERS THAT:

1. The following Protective Order is established:
 - a. Materials and information divulged by Liberty, or other parties, shall be considered "Highly Confidential" if so designated at the time of disclosure.
 - b. In designating material as Highly Confidential, the proponent of such classification shall identify into which of the following categories the information falls:
 - i. Commodity prices;
 - ii. Fuel procurements;
 - iii. Generation costs;
 - iv. Planned purchases; or
 - v. Competitively sensitive and confidential information regarding wholesale electric market participants.

Further, the proponent of classification shall explain why a public or confidential classification of the information would create a competitive advantage for parties to this proceeding over Liberty and non-party competitors.

c. With regard to entities and individuals other than the Staff of the Commission and the Office of the Public Counsel:

- i. Disclosure of materials and information so designated shall be made only to attorneys and/or such outside consultants who have executed a Commission Non-Disclosure Agreement. No Highly Confidential information shall be provided directly or indirectly to any non-attorney party employee or other individual.
- ii. Persons afforded access to materials or information designated “Highly Confidential” shall neither use nor disclose such materials or information for purposes of business or competition or any other purpose other than in regard to the case referenced above and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of this protective order.
- iii. All material and information designated as “Highly Confidential” in the possession of any entity or person, as well as any notes pertaining to such information, shall be returned to the designating party or destroyed upon conclusion of the referenced case.

d. If a party disagrees with the “Highly Confidential” designation of any information, the party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If the party exhausts these dispute resolution procedures, the party may file a motion challenging the designation.

2. Nondisclosure forms for use in accessing confidential information in these cases are attached to this order as Exhibit A (for access to “Confidential” information) and Exhibit B (for access to “Highly Confidential” information).

3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Morris L. Woodruff, Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 28th day of February, 2022.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

NONDISCLOSURE AGREEMENT

For Case No.: _____
(To Access Confidential Information)

I, _____, have reviewed the Commission's Rule at 20 CSR 4240-2.135
on the _____ day of _____, 20_____.

I have requested review of the confidential information produced in Case No. _____
on behalf of _____.

I hereby certify that:

- (a) Only employees of a party that are acting as an expert for that party or that have been retained for this case as an outside expert for that party may receive confidential information;
- (b) An employee is a person in the service of his or her employer whose services are controllable by the employer;
- (c) I am an employee of _____ [state name of intervenor] acting as its expert and/or its employee who intends to file testimony in this docket, or I am an outside expert for _____ [state name of intervenor] retained to provide expert consultation or testimony in this docket;
and
- (d) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135.

Dated on this _____ day of _____, 20_____.

Signature & Title

NONDISCLOSURE AGREEMENT

(To Access Confidential Information)
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Employer

Party

Address

Telephone

E-Mail Address

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

NONDISCLOSURE AGREEMENT

For Case No.: _____
(To Access Highly Confidential Information)

I, _____, have reviewed the Commission's Rule at 20 CSR 4240-2.135
on the _____ day of _____, 20_____.

I have requested review of the highly confidential information produced in Case No.
_____ on behalf of _____.

I hereby certify that:

- (a) Only an outside expert retained by a party in this case may receive highly confidential information;
- (b) I am an employee of _____ acting as an outside expert for _____ [state name of intervenor] retained to provide expert consultation or testimony in this docket;
and
- (c) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135 and all terms of the Protective Order issued by the Commission in this docket.

Dated on this _____ day of _____, 20_____.

Signature & Title

NONDISCLOSURE AGREEMENT

(To Access Highly Confidential Information)

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Employer

Party

Address

Telephone

E-Mail Address

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 28th day of February, 2022.




Morris L. Woodruff
Secretary



MISSOURI PUBLIC SERVICE COMMISSION

February 28, 2022

File/Case No. EO-2022-0040

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.