

**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 OPC’S MOTION FOR A COMMISSION ORDER**

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), by and through counsel, and in accordance with the *Order Directing Response* issued by the Missouri Public Service Commission (“Commission”) November 14, 2024, respectfully states as follows:

1. On November 6, 2024, Liberty filed its Filing Letter, revised tariffs, and the direct testimony of 20 witnesses in support thereof, collectively referred to as the “Direct Case,” in the above-captioned matter. Out of the 20 Liberty witnesses who filed direct testimony, limited portions of only five witnesses’ direct testimony were designated as Confidential in accordance with Commission Rule 20 CSR 4240-2.135(2)(A). A single schedule in one of Liberty’s twenty witnesses’ direct testimony was designated as Highly Confidential in accordance with Commission Rule 20 CSR 4240-2.135(4) and the *Order Establishing Protective Order* granted by the Commission in the matter.

2. Liberty did not simply designate portions of its Direct Case testimony or schedules Confidential or Highly Confidential without any explanation. Rather, public and confidential versions of each were prepared and filed, and each confidential version identified the specific subsection of the Commission’s Confidentiality Rule, 20 CSR 4240-2.135(2)(A), for each basis for confidential treatment. The Company’s Direct Case filing complied with the Commission’s Confidentiality Rule.

3. The Office of Public Counsel's ("OPC") *Motion for Commission Order* appears to request a separate cover sheet or pleading be developed and filed instead of reviewing the Confidential versions that identify the subsection of the Confidentiality Rule and basis for confidential treatment. Such a separate cover sheet or pleading would be duplicative, increase costs for the Company (and presumably all parties), and wrongly elevate form over substance.

4. Notably, just a few weeks ago, on October 24, 2024, three witnesses appearing on behalf of OPC filed surrebuttal testimony in Liberty Utilities (Missouri Water) LLC's pending general rate case, Case No. WR-2024-0104, with portions of their testimony designated Confidential or Highly Confidential.<sup>1</sup> OPC did not file any cover sheet or pleading regarding the Confidential or Highly Confidential material. Instead, consistent with normal practice, OPC identified the basis(es) for confidentiality on the testimony schedules themselves similar to how the Company did in its Direct Case herein.

5. On November 1, 2024, the OPC filed their Initial Post-Hearing Brief (Public and Confidential) in Evergy Missouri West, Inc.'s general rate case, Case No. ER-2024-0189, and based on review of EFIS, did not file any cover sheet or pleading that the OPC appears to allege is required under the Commission's Confidentiality Rule.<sup>2</sup>

5. The Commission's Confidentiality Rule, as cited by OPC, does not limit applicability to regulated utilities, like the Company.

6. Therefore, it is unclear when OPC adopted their new approach to demanding that others file separate cover sheets or pleadings for confidential filings to duplicate the basis(es) for confidential treatment, and whether OPC believes it is somehow exempt from its new approach.

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<sup>1</sup> Case No. WR-2024-0104, Surrebuttal Testimony of David Murray (Public, Confidential and Highly Confidential), Surrebuttal Testimony of John S. Riley (Public and Confidential), and Surrebuttal Testimony of Angela Schaben (Public and Confidential).

<sup>2</sup> Case No. ER-2024-0189, Public Counsel's Initial Post-Hearing Brief (Public and Confidential), filed on EFIS November 1, 2024.

7. In subparagraph 6(E) of *OPC's Motion for a Commission Order*, OPC alleges Liberty has not adhered to 20 CSR 4240-2.135(2)(B) by designating entire documents confidential. To be clear, the Company designated a total of seven schedules attached to witnesses' direct testimony as confidential in their entirety and did not designate any witness' entire direct testimony confidential.

a. OPC provides an example of Schedule CK-4, a J.D. Power results report, as (allegedly) inappropriately designated in its entirety as confidential. OPC misunderstands the report. The report is based on the studies performed by a third party — not Liberty — that derive economic value from not being generally known or readily ascertainable and subject to reasonable efforts to maintain their secrecy, which is why the Company identified subsection 8 (concerning trade secrets) of the Commission's Confidentiality Rule as the basis for its confidentiality.

b. Besides elevating form over substance, it is unclear what OPC seeks to accomplish with its blanket allegation. Each of the seven schedules designated as confidential in their entirety would have to be severely redacted so that additional fruitful information would not be provided to the public in very narrow areas. For example, as described at page 10, lines 20-21 of Company witness Shawn Eck's direct testimony, Schedule SE-1 provides a description of the workstreams and projects involved in the Company Cybersecurity Program. Each workstream separately and the workstreams collectively need to be maintained confidentially to prevent cyber criminals from gaining knowledge of the Company's Cybersecurity Program.

c. Furthermore, all cost information, except for competitive market sensitive information in Schedules LP-6 and TWT-2, was not designated confidential, so the public has access to volumes of data and information upon which their rates are to be based.

Consistent with section 1 of the Commission's Confidentiality Rule, the Company supports transparency for the public *unless* the material is otherwise protected by rule or law as the schedules are.

8. Nevertheless, if the Commission finds that the Company should have filed a separate cover sheet or pleading to identify the basis(es) for confidential treatment and/or that one or more of the schedules identified as confidential in their entirety should have been redacted, the Company requests 30 days to do so.

WHEREFORE, for the foregoing reasons, OPC's Motion should be denied. Liberty requests such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter

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**ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY d/b/a LIBERTY**

**CERTIFICATE OF SERVICE**

I hereby certify that the above document was filed in EFIS on this 18<sup>th</sup> day of November, 2024, with notification of the same being sent to all counsel of record, and I further certify that the above document was sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter