

**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)	

LIBERTY’S RESPONSE TO PUBLIC COUNSEL’S MOTION TO ENFORCE ORDER

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), and for its Response to the Office of Public Counsel’s (“Public Counsel”) Motion to Enforce Order, Liberty respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. On November 6, 2024, Liberty submitted its filing cover letter, revised tariffs, and the direct testimonies and schedules of 20 witnesses in support thereof. Out of the 20 Liberty witnesses who filed direct testimony, limited portions of five witnesses’ direct testimonies were designated as Confidential in accordance with Commission Rule 20 CSR 4240-2.135(2)(A). A single schedule 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 this matter.

2. Liberty rereviewed its direct testimony confidential designations in response to the motion of Public Counsel and the Commission’s *Order Granting Motion Regarding Information Designated as Confidential*. On December 20, 2024, Liberty resubmitted the direct testimonies and schedules of Shawn Eck, Candice Kelly, Leigha Palumbo, Todd Tarter, and Jeffrey Westfall in confidential and public versions. The resubmitted direct testimonies and schedules contained a cover page explaining the confidential designations therein.

3. On January 27, 2025, Public Counsel filed its Motion to Enforce Order, claiming that Liberty's December 20, 2024 resubmitted testimonies and explanations do not contain the explanations required by 20 CSR 4240-2.135(2)(B). This Response is filed pursuant to the Commission's January 28, 2025 *Order Directing Responses*.

4. Liberty disagrees that the confidential designations it provided with the resubmitted testimonies and explanations are deficient in any respect, as the designations state the basis for the confidential protection Liberty asserts. To allay Public Counsel's concerns, Liberty will again explain the basis for the confidential designations in each of the testimonies and schedules at issue.

Shawn Eck

5. The cover page accompanying the resubmitted direct testimony of Shawn Eck on December 20, 2024 explains that the "information provided is designated 'Confidential' in accordance with Commission Rule 20 CSR 4240-2.135(2)(A)7 and 8 due to the nature of the material regarding the safety and security of Liberty's critical infrastructure and other utility facilities."¹ The information designated as confidential are (1) brief portions of Mr. Eck's testimony and (2) Schedule SE-1.

6. Schedule SE-1 identifies, by vendor and specific project, the scope and contents of Empire's cybersecurity and asset security protections. Public disclosure of this information would allow adversarial parties and bad actors to develop an attack profile, as the bad actor would know (1) the specific vendors Liberty has engaged; (2) the extent of the security protections; and (3) vulnerabilities that Liberty or the vendors may have. Likewise, the level of a company's investment in cybersecurity is a relevant data point to building an attack profile. The confidential information in Mr. Eck's direct testimony refers to SE-1 and provides a holistic description of the

¹ Case No. ER-2024-0261 at EFIS Docket Entry 62.

threats that Liberty is seeking to avoid. Cumulatively, the confidential direct testimony and SE-1 provide a detailed description of Liberty’s cybersecurity efforts and protections, which falls squarely within the category of “Relating to the security of a company's facilities” in 20 CSR 4240-2.135(2)(A)7 and trade sections under subsection 8.

Candice Kelly

7. The cover page accompanying the resubmitted direct testimony of Candice Kelly on December 20, 2024 explains that the “information provided is designated ‘Confidential’ ... due to marketing analysis for services offered in competition with others, marketing analysis for services providing to utility customers, and other trade secrets.”² The information designated as confidential is Schedule CK-4, which contains the Empire Electric JD Power Results from 2022-2023. Public Counsel erroneously refers to the confidential schedule as CK-1. CK-1 is a typical customer bill.

8. The J.D. Power results fit precisely within the definition of “marketing analysis for services providing to utility customers.” Liberty has paid for a subscription service from J.D. Power to obtain the marketing analysis set forth in Schedule CK-4. Allowing other utilities to obtain this information, which includes analysis regarding industry trends, would provide an unfair competitive advantage as those utilities could access this marketing analysis without incurring an investment comparable to Liberty.

Leigha Palumbo

9. The cover page accompanying the resubmitted direct testimony of Leigha Palumbo on December 20, 2024 explains that the “information provided is designated ‘Confidential’ in accordance with Commission Rule 20 CSR 4240-2.135(2)(A)3, as it contains marketing analysis

² Case No. ER-2024-0261 at Docket Entry 63.

or other market specific information related to services offered in competition with others,” with respect to Schedule LP-6 and Schedule LP-8.³ The cover page further states that Schedule LP-6 is confidential because it “contain[s] bank account numbers and financial information potentially impacting financial markets and the Company’s access to and terms for accessing capital.” In addition, the cover page explains that LP-8 is confidential because “providing the heat rates for generation units is HIGHLY CONFIDENTIAL potentially impacting the wholesale electric market.”

10. As to Schedule LP-6, Liberty designates bank account numbers as confidential in order to protect its financial information and to prevent unauthorized access to its accounts. Further, if lenders can ascertain the interest rates in Schedule LP-6 that Liberty has obtained from other financial institutions, the lenders may not offer their best interest rates to Liberty, which will cause a competitive disadvantage to both Liberty and its customers. In short, the interest rates in Schedule LP-6 could become the floor for other lenders, which could result in higher costs of debt than if the information is treated confidentially.

11. Regarding Schedule LP-8, public disclosure of the heat rates could negatively affect Liberty’s place in the wholesale electric market. Heat rates are considered by traders in determining when units are likely to be dispatched in the wholesale market. Should this information be disclosed, Liberty could incur a commercial disadvantage by allowing other utilities to beat Liberty to the market based on the knowledge gleaned from the heat rates.

Todd Tarter

12. The cover page accompanying the resubmitted direct testimony of Todd Tarter on December 20, 2024 explains that the redactions to Mr. Tarter’s direct testimony, Schedule TWT-

³ Case No. ER-2024-0261 at Docket Entry 64.

2 and Schedule TWT-3 “contain[] marketing analyses or other market-specific information relating to services offered in competition with others, including detailed information at the resource level and market negotiated prices and conditions that could result in anti-competitive behavior that might unreasonably impact the competitive process.”⁴

13. Schedule TWT-2 contains a summary of Liberty’s fuel and purchased power costs. Liberty has redacted the generation cost, revenue, and net cost per MWH for each individual fuel and power source. The total costs by category (such as natural gas transportation/storage, thermal, generation, purchase power agreements) have not been redacted. Information related to specific fuel and power sources involve negotiated prices and agreements. Should this information be publicly disclosed, competitors can determine the prices at which Liberty is willing to buy and sell energy, which can be used by those competitors to Liberty’s disadvantage in subsequent negotiations. Further, if counterparties learn that Liberty publicly discloses this information, the counterparties could no longer respond to requests for proposals or enter into future agreements with Liberty. Likewise, in Schedule TWT-3, Liberty has redacted one data point—the revenues received from MJMEUC. The basis for this redaction is the same as TWT-2, as this revenue results from an arms-length negotiated price.

Jeffrey Westfall

14. The cover page accompanying the resubmitted direct testimony of Jeffrey Westfall on December 20, 2024 explains that the redactions to Mr. Westfall’s direct testimony and Schedule JW-1 are confidential because it “contains important security, cybersecurity and safety information related to the Company’s substations and network,” and “contains customer-specific information.”⁵

⁴ Case No. ER-2024-0261 at Docket Entry 65.

⁵ Case No. ER-2024-0261 at Docket Entry 66.

15. Schedule JW-1 contains the Transmission and Distribution additions since the last rate case. The FERC function, funding project number, funding project description, and activity cost are provided publicly for all projects. For five projects, the description and justification have been designated as confidential because the projects pertain to the security of Liberty's assets pursuant to 20 CSR 4240-2.135(2)(A)1. The need to keep this information confidential is the same as described in the portion of this Response pertaining to Mr. Eck's testimony. One additional project is designated as confidential because it contains customer-specific information pursuant to 20 CSR 4240-2.135(2)(A)1. For the other roughly 50 projects, no confidential designations have been made.

16. Liberty disputes that it has not complied with the Commission's order to provide the basis for its confidential designations in the resubmitted direct testimonies and schedules of Shawn Eck Candice Kelly, Leigha Palumbo, Todd Tarter, and Jeffrey Westfall. As such, Liberty further denies that statutory penalties are warranted.

WHEREFORE, Liberty respectfully requests the Commission to deny Public Counsel's Motion to Enforce Order and find there is no basis to require Liberty to further supplement the confidentiality designations at issue in this matter.

Respectfully submitted,

/s/ Diana C. Carter

Diana C. Carter MBE #50527
428 E. Capitol Ave., Suite 303
Jefferson City, Missouri 65101
Joplin Office Phone: (417) 626-5976
Cell Phone: (573) 289-1961
E-Mail: Diana.Carter@LibertyUtilities.com

/s/ Jermaine Grubbs

Jermaine Grubbs MBE #68970
602 S. Joplin Ave.
Joplin, Missouri 64801

Cell Phone: (417) 317-9024
E-Mail: Jermaine.Grubbs@LibertyUtilities.com

/s/ Monica H. Braun
Monica H. Braun, KBA No. 93058
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, KY 40507
(859) 231-3000
monica.braun@skofirm.com

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 6th day of February, 2025, 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 all counsel of record.

/s/ Diana C. Carter