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 For Electric Service Provided to Customers In its Missouri Service Area	)))))	Case No. ER-2024-0261

LIBERTY'S RESPONSE TO
STAFF'S AND OPC'S MOTIONS TO DISMISS APPLICATION

COMES NOW The Empire District Electric Company d/b/a Liberty ("Liberty" or the "Company"), and for its Response to the Missouri Public Service Commission Staff's ("Staff") and the Office of the Public Counsel's ("OPC") Motions to Dismiss Application, Liberty respectfully states as follows to the Missouri Public Service Commission ("Commission"):

Background

1. On November 6, 2024, Liberty filed its request to (1) increase its annual pro forma test year revenues by $92,136,624 and (2) shift $60,279,425[1] of test year Fuel Adjustment Clause ("FAC") tariff revenues to base rates. Both requests are premised on a total revenue requirement of $668,375,888, and the total revenue requirement request has not changed at any point in the proceeding.

A. The Shifting of Test Year FAC Tariff Revenues Is Clearly Explained in the Direct Filing.

2. Company witness Charlotte Emery's direct testimony states that reclassing the FAC related test year revenues into base rates did not affect the Company's revenue requirement of $668,375,888, as it merely reclasses test year revenues collected via the FAC tariff to the base rate revenues[2]. Ms. Emery's testimony is crystal clear on that point:

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[1] OPC indicates $60,718,585 in their motion to dismiss which is derived of the following: Test Year FAC tariff revenues in the amount of $60,279,425, adjusted for an LP load adjustment of $(522,096), Test Year EECR Revenues of $961,220, adjusted for an LP load adjustment in the amount of $1,848, and Misc. difference of $(1,812).
[2] November 6, 2024, Direct Testimony of Charlotte Emery in Case No. ER-2024-0261 at p. 33, lines 2-11.

Q. Please explain REV ADJ 1 to reclass FAC Related Revenues.

A. REV ADJ 1 is being made to reclass FAC related revenues from the FAC specific revenue general ledger accounts to the tariffed general ledger revenue accounts within the revenue requirement. These revenues represent the amount recovered from/refunded to customers via the FAC tariff. The FAC rider collects the under- or over-collection of fuel costs. Since base rates include fuel costs, it is appropriate to reclass these FAC revenues into normal tariff revenue accounts as the Company will be requesting a new fuel base amount within this case. This reclass adjustment does not impact the revenue requirement as these balances were simply reclassed within the revenue general ledger account.

In making this reclass adjustment, the pro forma test year revenue deficiency reported on Direct Schedule CTE-1 of Ms. Emery's direct testimony in the amount of $92,136,624 represents the proposed annual deficiency in revenue from the Company's pro forma test year revenue balances. The pro forma test year revenue deficiency as stated within the Company's revenue requirement calculation aligns closely to the Company's Minimum Filing Requirement ("MFR") reported in Figure 8 of Timothy S. Lyons direct testimony[3].

3. Direct Schedule CTE-6.1 shows how the adjustment to reclass FAC revenues collected from customers during the test year to base rates was performed. This schedule shows, for each rate class, the amount of test year FAC tariff revenues transferred from the test year FAC general ledger accounts to the test year base rate general ledger accounts, with a net revenue impact of $0. As an example, the test year FAC tariff revenue reclass for the residential class is displayed as:

[3] Timothy S. Lyons MFR Schedule indicates $90,961,845 compared to the $92,136,624 the difference attributable to the treatment of the EECR revenue and other minor rate design adjustments.

FERC (a)	GL Account (b)	Description (c)	Reference (d)	Total Company Test Year Ending Balance (e)	Reclass (f)	Total Company Reclassed Ending Balance (g) = (e) + (f)	Missouri Test Year Allocations (h)	Total Missouri Test Year Ending Balance (i) = (g) x (h)	REV ADJ 1 FAC Revenues (j)
IAL									
440	440010	Residential Sales-Arkansas	TB 09-2023	$ 7,843,039	$ -	$ 7,843,039	0.00%	$ -	$ -
440	440011	Residential Sales-Ark-Unbilled		15,652	-	15,652	0.00%	-	-
440	440020	Residential Sales-Kansas		14,432,598	-	14,432,598	0.00%	-	-
440	440021	Residential Sales-Ks-Unbilled		(165,883)	-	(165,883)	0.00%	-	-
440	440030	Residential Sales-Missouri		253,061,029	-	253,061,029	100.00%	253,061,029	24,954,395
440	440031	Residential Sales-Mo-Unbilled		(1,633,700)	-	(1,633,700)	100.00%	(1,633,700)	-
440	440034	Residential Sales-MO-FAC		24,954,395	-	24,954,395	100.00%	24,954,395	(24,954,395)
440	440040	Residential Sales-Oklahoma		6,535,373	-	6,535,373	0.00%	-	-
440	440041	Residential Sales-Ok-Unbilled		(105,053)	-	(105,053)	0.00%	-	-
449	449102	Res Sales-MO- Refund		-	-	-	0.00%	-	-
		Total Residential Revenues:		304,937,451	-	304,937,451		276,381,724	(0)

4. Company witness Timothy Lyons' direct testimony and schedules are likewise clear. For example, his testimony explains that the proposed monthly bill for an average residential customer will increase by 19.15%, as compared to a current customer bill *that includes FAC and other approved line-item charges*.[4]

5. Moreover, Figure 8 in Mr. Lyons' direct testimony, which presents a minimum filing requirement, provides the average customer bill and aggregate annual impact for each customer class.[5] Figure 8 is likewise accurate, as it compares the increase in rates inclusive of rebasing the FAC tariff revenues received from customers during the test year.

6. As noted, the total revenue requirement request of $668,375,888 has not changed at any point in the proceeding. The pro forma test year base rate revenue requirement deficiency of $152,855,209 (which the substitute tariff sheet filing is designed to collect) is offset by the level of FAC and Energy Efficiency Cost Recovery ("EECR") tariff revenue received in the test year in the amount of $60,718,585, resulting in the pro forma test year revenue deficiency of $92,136,624 that is indicated within the Company's revenue requirement calculation and its MFRs. This demonstrates that there is no harm to Liberty's customers as a result of the Company having the opportunity to cure its initial tariff sheet error by making the substitute tariff sheet filing. However, it is important to note the dynamic relationship between the proposed pro forma test year average

[4] November 6, 2024 Direct Testimony of Timothy S. Lyons in Case No. ER-2024-0261 at p. 31, lines 8-9.
[5] November 6, 2024 Direct Testimony of Timothy S. Lyons in Case No. ER-2024-0261 at p. 32, lines 12-13.

aggregate increase/respective customer bill impact and the level of FAC tariff revenue collected. Because the FAC tariff rate changes twice a year, the impact on the average aggregate revenue/ customer bill impact will shift as the FAC tariff rate is modified (or any other tariffed charge changes, such as securitization). Below is a view of the currently approved FAC base factor cost and the various FAC rate charges for a residential customer from the Company's test year through current. Utilizing the Company's proposed fuel base rate of $16.59, the estimated aggregate revenue deficiency and corresponding customer bill impact could vary. Specifically, the estimated aggregate revenue deficiency could range between approximately $92,136,624 and $128,583,592.

Recovery Period	Base Fuel Rate[6]	FAC Tariff Rate	Total Fuel Rate	Proposed ER-2024-0261
Jun. 1, 2022	$23.38	$12.97	$36.35	$16.59
Dec. 1, 2022[7]	$16.04	$17.98	$34.02	$16.59
Jun. 1, 2023	$8.70	$9.44	$18.14	$16.59
Dec. 1, 2023	$8.70	$7.27	$15.97	$16.59
Jun. 1, 2024	$8.70	$8.11	$16.81	$16.59
Dec. 1, 2024	$8.70	$3.42	$12.12	$16.59

B. The $668,375,888 Total Revenue Requirement is Clearly Explained in the Direct Filing.

7. In addition to explaining that the pro forma test year revenue deficiency is based on utilizing the pro forma test year revenue balances, it is clear that Liberty's total revenue

[6] Base Fuel Rate associated with the Recovery Period lags behind the Base Fuel Rate approved in a general rate proceeding.
[7] Accumulation period March 2022 – May 2022 had a FAC Base factor of $23.38, June 2022 – August 2022 had a FAC Base factor of $8.70. The $16.04 is an average rate.

requirement is $668,375,888. For example, Ms. Emery's (1) Direct Schedule CTE-1 at line 14 and (2) Direct Schedule CTE-5 at line 1 contain this calculation.

8. Mr. Lyon's direct testimony explains that the overall cost of service "indicates a total revenue requirement of $668.4 million."[8] Figure 7 of his testimony also shows the total revenue requirement:[9]

Figure 7: Target Revenues

Rate Class	Proposed Revenues	Current Revenues	Increase $	Increase %
NS-RG Residential	$ 1,701,898	$ 1,464,585	$ 237,313	16.2%
TC-RG Residential	317,015,660	270,137,974	46,877,686	17.4%
TP-Residential	166,347	139,625	26,721	19.1%
NS-GS General Service	2,681,891	2,325,993	355,898	15.3%
TC-GS General Service	73,772,061	64,426,224	9,345,837	14.5%
TC-GS General Service	2,138	1,718	420	24.5%
NS-LG Large General	27,486,414	23,656,046	3,830,368	16.2%
TC-LG Large General	123,033,855	106,273,833	16,760,023	15.8%
NS-SP Small Primary	12,888,356	11,390,402	1,497,955	13.2%
TC-SP Small Primary	1,791,735	1,582,377	209,358	13.2%
LP-Large Power	91,505,724	80,596,257	10,909,467	13.5%
TS-Transmission	6,852,609	6,030,270	822,339	13.6%
SPL-Municipal Lighting	18,975	17,061	1,914	11.2%
MS-Miscellaneous	4,371,783	3,667,864	703,918	19.2%
PL-Private Lighting	4,890,737	4,391,404	499,333	11.4%
LS-Special Lighting	195,705	137,633	58,072	42.2%
Total Company	**$ 668,375,888**	**$ 576,239,264**	**$ 92,136,624**	**16.0%**

Mr. Lyons' Direct Schedule TSL-5 (page 49 of 54) likewise contains this information.

C. Liberty's Substitute Tariff Sheets to Conform to the Evidence in its Direct Filing.

9. Liberty's originally proposed rate design model used to calculate the respective tariff sheet base rates did contain an error. The rate design model erroneously indicated that the test year revenue collected via the Company's FAC and EECR tariffs would continue to be collected from customers even though the Company's application clearly indicated these items would be rebased within the proceeding. The rate design model did not properly shift the test year

[8] November 6, 2024 Direct Testimony of Timothy S. Lyons in Case No. ER-2024-0261 at p. 28, lines 7-9.
[9] November 6, 2024 Direct Testimony of Timothy S. Lyons in Case No. ER-2024-0261 at p. 30, lines 1-2.

revenue that was collected through the Company's FAC and EECR tariffs to proposed base rates. As a result, the originally filed base tariff rates were inaccurate. This error was limited to the rate design model and respective tariff sheets. The Commission should not dismiss this rate case based on this inadvertent tariff error. Liberty's minimum filing requirements, schedules, and the hundreds of data request responses it has subsequently provided are materially unaffected by the rate design error and corresponding tariff rate error.

10. On January 30, 2025, OPC contacted Liberty to inquire as to whether the tariff sheets were correct. At that point, OPC was fully aware that the Company's filed proposed base rates contained within the tariff sheets were calculated only on the pro forma test year annual deficiency of $92,136,624. Indeed, OPC's email correspondence to the parties stated, "Public Counsel believes that Liberty would model a revenue deficiency about $152 million per year, not $92 million." It was thus evident to OPC that Liberty's Application requests shifting the $60,718,585 in test year FAC tariff revenues into base rates, along with the pro forma test year annual deficiency of $92,136,624. In response to OPC's inquiry, Liberty submitted substitute tariff sheets on February 3, 2025, reflecting base rates that incorporate both the pro forma test year annual deficiency of $92,136,624 and the shift of $60,718,585 in test year FAC tariff revenue and EECR revenues.

11. Additionally, on February 4, 2025, Liberty responded to OPC data request 8016, which is attached hereto as Attachment A, inquiring if Liberty completed a proof of revenue analysis to check whether the revenues produced by the rates on its proposed tariff sheets would match the requirement shown on its 2024 MO Revenue Requirement Model. In its response, the Company indicates it did prepare a proof of revenue analysis. The response further explained the error in the rate design/cost of service study workpaper indicating that the proposed rates were

inadvertently designed without rebasing the test year FAC and EECR revenues. Additionally, the response concludes with a reconciliation between the Company's revenue requirement and the corrected rate design model.

D. OPC and Staff File Motions to Dismiss.

12. On February 5, 2025, OPC and Staff filed Motions to Dismiss this entire rate proceeding on the mistaken premise that the substitute tariff sheets increase the pro forma test year aggregate annual deficiency by an additional $60,718,585. This is not true. Liberty's Direct Filing is replete with evidence of its requested total revenue requirement, which plainly includes reclassing the FAC tariff revenues into base rates. As such, the substitute tariff sheets merely conform the tariff sheets to the remainder of Liberty's Direct Filing, as acknowledged by OPC in its inquiry of January 30, 2025.

13. OPC's Motion requests the Commission to reject Liberty's tariff sheets and "dismiss[] Liberty's application because through Liberty's own actions Liberty's application does not comply with the purpose and intent of rules 20 CSR 4240-2.065(1) and 20 CSR 4240-3.030, which are the rules that (1) describe when a tariff filing establishes a case and (2) prescribes the information that must be filed by electric utilities seeking a rate increase, respectively."[10]

14. Staff's Motion requests dismissal of Liberty's rate application and proposed tariffs. It alleges that Liberty's substitute tariff filing materially changed both the conditions of its original filing and the other parties' opportunity to make their cases, and that almost two months of the statutorily authorized eleven-month suspension period have elapsed.

15. On February 6, 2025, the Commission issued an *Order Directing Responses* by February 14, 2025. The Commission stated that Liberty should respond to both Motions because

[10] OPC's Motion to Reject Tariff Sheets and Dismiss Application at page 3.

the two present different legal arguments. For efficiency, Liberty has filed a consolidated response that addresses each argument presented by OPC and Staff.

Argument

A. Standard of Review

16. Neither OPC nor Staff rely on a Commission rule or prior order that contemplates dismissal of an entire rate proceeding based on a calculation error in tariff sheets, especially when the minimum filing requirements and supporting direct testimony and schedules repeatedly stated Liberty's request. Indeed, OPC concedes that "the Commission has allowed utilities to make technical corrections to tariff sheets before they go into effect."[11]

17. Commission rule 20 CSR 4240-2.116(4) states that a "case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved." OPC and Staff do not address, and thus did not establish, whether there is good cause to dismiss this proceeding. In 2021, OPC moved to dismiss a utility's application for an accounting authority order for storm costs.[12] In denying the motion to dismiss, the Commission stated that in "considering OPC's motion to dismiss the Commission is limited to review of ... the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true and liberally grants to plaintiff all reasonable inferences therefrom. As the movant, OPC has the burden of establishing that the elements pled by Evergy fail to state a cause of action."[13]

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[11] OPC's Motion to Reject Tariff Sheets and Dismiss Application at ¶ 6.
[12] In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for an Accounting Authority Order Allowing the Companies to Record and Preserve Costs Related to the February 2021 Cold Weather Event, Case No. EU-2021-0283 (Aug. 4, 2021).
[13] *Id.* (internal citations omitted).

B. OPC's Motion Fails to Establish Good Cause.

18. OPC concedes three critical points: (1) OPC determined, based on Liberty's direct filing, that Liberty was seeking to increase its annual pro forma test year revenues by $92,136,624 *and* shift $60,718,585 from the test year FAC tariff revenue to base rates; (2) Liberty's February 3, 2025 substitute tariff sheets conform the proposed tariff sheets to those requests; and (3) the Commission has historically permitted technical corrections to tariff sheets by way of substitution. These three admissions warrant denial of OPC's Motion, especially given that the Commission will liberally grant Liberty all reasonable inferences from its application.

19. While Liberty admits its tariff sheets and filing letter contained an error, and apologizes for such error, the replacement tariffs and accompanying filing letter are a technical correction to conform the tariff sheets to the relief requested in the remainder of Liberty's filing. OPC alleges that "Liberty filed [replacement tariff sheets] to increase the amount of the annual revenues it is seeking in this rate case—from $92,136,624 to $152,855,209, an increase of $60,718,585."[14] But this is demonstrably false. Ms. Emery's and Mr. Lyons' testimony, schedules, and MFRs repeatedly disclose Liberty's requested relief, including that $92,136,624 is the pro forma test year deficiency in annual aggregate revenues *after* the approximate $60 million is shifted from the test year FAC tariff revenues to base rates. As such, OPC's claim that "Liberty's application does not comply with the purpose and intent of Commission general rate case rules 20 CSR 4240-2.065(1) and 20 CSR 4240-3.030" is mistaken.

20. If OPC's Motion is granted, a utility's general rate case could be dismissed for a technical error, even if the remainder of the direct filing is accurate and complete. Respectfully,

[14] OPC's Motion to Reject Tariff Sheets and Dismiss Application at ⁋ 7.

an extraordinary remedy is only warranted when there is an extraordinary reason for it—an erroneous tariff calculation falls well below the high bar of dismissal.

21. OPC's reliance on Section 393.140(11), RSMo, which requires "thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect," for tariff changes is also unavailing. The Commission has already suspended Liberty's tariff sheets for eleven months; there is no suggestion that Liberty would attempt to charge the rates set forth in the substitute tariff sheets within thirty days; and the majority of the suspension period is remaining.

C. Staff's Motion Fails to Establish Good Cause.

22. Staff's Motion to Dismiss suggests that Liberty's substitute tariff sheets "increase its base rates an additional $60,718,585 over and above the $92,136,624 increase requested in its original filing (and which its Direct Testimony presumably supports)."[15] While the Company's substitute tariff sheets do increase base rates an additional $60,718,855 from its original tariff submission, utilizing the pro forma test year balances, the aggregate proposed revenue deficiency remains approximately the same. Further, the Company's proposed revenue requirement of $668,375,888 remains unchanged.

23. Staff alleges that the tariff error has "deprived potential interveners of material information that could have factored into their desire to intervene," including "county commissions where Empire serves."[16] Staff also claims that the "substitute tariff filing eliminates almost two months of the statutorily-authorized eleven-month suspension period."[17]

[15] Staff's Motion to Dismiss the Application of The Empire Electric District Company for a Rate Increase at ⁋ 2.
[16] Staff's Motion to Dismiss the Application of The Empire Electric District Company for a Rate Increase at ⁋ 3.
[17] Staff's Motion to Dismiss the Application of The Empire Electric District Company for a Rate Increase at ⁋ 4.

24. Staff's Motion is premised on its speculation that potential intervenors elected not to seek intervention based on its misunderstanding of the rate increase. Such claim is, of course, speculative, and assumes that a party who would move to intervene in an $152 million case would find a $92 million case unimportant. Moreover, parties who frequently intervene in Liberty rate cases have intervened and are participating in this matter. Liberty agrees to send an additional notice to the county commissions where Empire serves to mitigate any misunderstanding. Also, customer notice of the local public hearings has not yet been provided. As such, Liberty can work with all parties to provide notice that all parties believe affords sufficient information to customers.

25. Regarding Staff's concern that two of the eleven months of the suspension period have elapsed, those two months do not need to be restarted. This is because the test year and updated financial information that are used for inputs into the determination of a utility's revenue requirement calculation are not impacted by the error contained within the Company's rate design model. Furthermore, as mentioned previously, the overall revenue requirement calculation requested by the Company has not changed since its initial application and its subsequent tariff substitution. As such, the evidence Liberty has tendered remains valid, and the two months that have elapsed have been well spent by all parties in prosecuting the case.

26. If this docket is closed and Liberty is required to prepare an entirely new rate case filing based upon a new test year, there is the potential for significant harm. Pursuant to Section 386.266 RSMo. and Liberty's FAC, Liberty is required to file a general rate case with the effective date of new rates to be no later than June 1, 2026. This would mean rushing to prepare a new case to be filed in June of 2025. This would also cause unnecessary duplication of efforts by all parties, who as of February 14, 2025, have issued 405 data requests to Liberty and render meaningless the parties' time and efforts from the last few months.

D. Liberty's Efforts to Address OPC's and Staff's Concerns

27. Since receiving the Motions to Dismiss, Liberty has sought to address OPC's and Staff's concerns. At Liberty's invitation, all parties attended a virtual meeting on February 11, 2025 regarding the Motions to Dismiss. Prior to the meeting, Liberty submitted a proposal to the parties under which (1) Liberty would withdraw the tariff sheets filed November 6, 2024, and substituted February 3, 2025, and that (2) Staff and OPC would withdraw the Motions to Dismiss. Liberty also offered that (3) in the current docket, Liberty shall file "new" revised tariff sheets with a current issue date and 30-day requested effective date, along with corrected direct testimony and MFRs only as needed to address the base rate tariff sheets issue; (4) the test year and update period would remain the same; (5) the parties would request the Commission issue an order suspending the "new" revised tariff sheets and send notice to the County Commissions and Missouri Legislators (and allow for additional interventions); (6) the parties would agree upon and submit a revised proposed procedural schedule that will move current dates out between two and three months; and (7) the data requests on Liberty's direct filing do not need to be re-issued.

28. Liberty's proposal resolves OPC's and Staff's concerns: it eliminates any harm associated with the base rate tariff sheets containing an error for two months of the suspension period, as it extends the remaining events in the procedural schedule by a similar time period; and it ensures that any party who did not seek intervention because the party did not understand the rate request can request leave to do so, with new notice being provided to County Commissions and Legislators.

29. Liberty regrettably could not obtain OPC's consent to its proposal. Given that the proposal alleviates the alleged harm related to the error in the base rate tariff sheets, it appears that OPC is seeking to impose punitive harm upon Liberty or additional rate reductions from Liberty

for an inadvertent technical error. The record in this proceeding demonstrates that Liberty fully disclosed its rate request and promptly corrected the technical error upon learning of it. There is no good cause to dismiss this entire proceeding.

WHEREFORE, Liberty respectfully requests the Commission to deny OPC's and Staff's Motions to Dismiss and permit the proceeding to continue in accordance with the previously issued procedural schedule. In the alternative, and pursuant to the proposal laid out in section D paragraph 27 above, Liberty requests that the Commission allow Liberty to file "new" revised tariff sheets herein by February 28, 2025, and issue an amended scheduling order.

Respectfully submitted,

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ATTORNEYS FOR THE EMPIRE DISTRICT
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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 14th 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