

**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

PUBLIC COUNSEL’S REPLY

COMES NOW the Office of Public Counsel (“Public Counsel”) and for its reply to Liberty’s response to Public Counsel’s motion to reject tariff sheets and dismiss Liberty’s application states:

1. In its response Liberty attempts to misdirect the Commission by focusing on Liberty’s total annual revenue requirement of \$668,375,888 which it developed and used for creating both its original tariff sheets that it designed to increase its annual revenues by \$92,136,624 and its later “substitute tariff sheets” that it designed to increase its annual revenues by \$152,855,209.

2. As the Missouri Supreme Court in [*May Department Stores Co. v. Union Electric Co.*, 341 Mo. 299, 319; 107 S.W.2d 41, 52-53 \(1937\)](#), contemplated, Liberty initiated this case on November 6, 2024, by filing schedules suggesting to the Commission rates and classifications it then believed were just and reasonable,¹ rates and classifications Liberty designed to increase its annual revenues by \$92,136,624. With that \$92,136,624 increase Liberty’s targeted total annual revenues were \$607,657,303 (\$668,375,888 - \$152,855,209 + \$92,136,624).

¹ “These provisions mean that a public utility may by filing schedules suggest to the commission rates and classifications which it believes are just and reasonable, and if the commission accepts them they are authorized rates, but the commission alone can determine that question and make them a lawful charge.” Affirmed in [*State ex rel. Jackson County v. Public Service Comm’n*, 532 S.W.2d 20, 28](#) (Mo. banc 1975), *cert. denied*, 429 U.S. 822, 50 L. Ed. 2d 84, 97 S. Ct. 73 (1976), and [*State ex rel. Util. Consumers Council, Inc. v. Pub. Serv. Com.*, 585 S.W.2d 41, 48 \(Mo. 1979\)](#).

3. While Liberty tries to spin its initial filing to be for collecting \$668,375,888 annually, and its failure to design its schedules do so to be a mere technical error, as the Missouri Supreme Court recognized in *May Department Stores*, the statutory scheme is based on filing schedules, not on the amount for which the utility intended that the schedules be designed to collect. Here Liberty's schedules were designed to collect \$607,657,303 annually, not \$668,375,888.

4. By filing on February 3, 2025, its "substitute tariff sheets," Liberty admits that it does not believe that the schedules it filed on November 6, 2024, are just and reasonable. In its response to Public Counsel's and Staff's motions to dismiss Liberty also admits and confirms that it does not believe the November 6, 2024, schedules are just and reasonable.

5. Despite Liberty's assertion to the contrary, Liberty's overall annual revenues increase from \$92,136,624 to \$152,855,209 is not a technical error. Instead, it is a fundamental error that Liberty committed despite having filed numerous general rate cases since the Commission first authorized it to use a fuel adjustment clause in 2008 in Case No. ER-2008-0093.

6. The Commission has allowed substitute tariff sheets to correct errors of form and to correct errors obvious on the face of the tariff.

7. Liberty admits in paragraph number nine of its response:

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 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.

As utilities often do, Liberty proposed numerous changes to its tariff. None that Public Counsel reviewed included errors patent on their face. As Liberty asserts in its response its witness Charlotte Emery testified in her direct testimony that Liberty reclassified fuel adjustment clause revenues to base rate revenues. While that reclassification is atypical, it is no more unusual than KCP&L Greater Missouri Operations Company not rebasing its fuel adjustment clause in its general rate increase tariff filing that initiated Case No. ER-2010-0356.² Liberty's "originally proposed rate design model" to which Liberty now ascribes error was not filed with the Commission as part of its direct case—it was provided to the parties as a workpaper—and only one skilled in the art of ratemaking and familiar with Liberty's models might question whether Liberty intended to rebase its fuel adjustment clause and exclude its fuel adjustment revenues from its revenue requirement, or intended to include its fuel adjustment revenues in its revenue requirement and not rebase its fuel adjustment clause.

8. Liberty's \$60,718,585 per year error in revenues (11.8%) is not *de minimus*:
 $\$92,136,624 \div \$515,520,679^3 = 0.179$ (17.9%) and $\$152,855,209 \div \$515,520,679 = 0.297$ (29.7%).

9. For residential customers served on Liberty's Time Choice Residential Rate Plan TC-RG rate schedule, the monthly impacts on the *customer charge* and *usage charge* line items

² *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service*, Report and Order, issued July 30, 2008, effective August 9, 2008, pp. 205-206.

³ $\$668,375,888 - \$152,855,209 = \$515,520,679$.

on their bills⁴ over their current charges based on the November 6, 2024, and February 3, 2025, proposed schedules, respectively, follow:

June through September:

| Usage | Current | Proposed 11/6/2024 | Change | Proposed 2/3/2025 | Change |
|----------|----------|-----------------------|------------------|----------------------|------------------|
| 500 kWh | \$83.16 | \$107.38 | \$24.22 (29.13%) | \$115.16 | \$32.00 (38.48%) |
| 1000 kWh | \$153.31 | \$184.77 | \$31.46 (20.52%) | \$200.33 | \$47.02 (30.67%) |
| 1200 kWh | \$181.37 | \$214.33 | \$32.96 (18.17%) | \$233.01 | \$51.64 (28.47%) |
| 1500 kWh | \$223.47 | \$258.67 | \$35.21(15.75%) | \$282.02 | \$58.55 (26.20%) |

October through May:

| Usage | Current | Proposed 11/6/2024 | Change | Proposed 2/3/2025 | Change |
|----------|----------|-----------------------|------------------|----------------------|------------------|
| 500 kWh | \$83.16 | \$107.38 | \$24.22 (29.13%) | \$115.16 | \$32.00 (38.48%) |
| 1000 kWh | \$143.79 | \$174.74 | \$30.95 (21.53%) | \$189.25 | \$45.46 (31.62%) |
| 1200 kWh | \$167.09 | \$199.29 | \$32.20 (19.27%) | \$216.38 | \$49.29 (29.50%) |
| 1500 kWh | \$202.04 | \$236.11 | \$34.06 (16.86%) | \$257.08 | \$55.04 (27.24%) |

The impacts of these changes are material.

10. While 20 CSR 4240-2.080(18) allows a party to amend a pleading within ten (10) days of filing it if no other party has responded to the pleading, Public Counsel found no rule that allows tariff schedules to be amended, nor has Liberty sought leave from the Commission to amend

⁴ The bills also include the following line items: off-peak credits, FAC charges, MEEIA charges, Securitization charges, and EECR charges.

any of the tariff schedules it filed on November 6, 2024. Further, Public Counsel has found no statutory authority that would permit the Commission to do so.

11. Rule 20 CSR 4240-2.116(4) provides, “A case may be dismissed for good cause found by the commission after a minimum of ten (10) days’ notice to all parties involved.” The good cause for dismissing this case is that Liberty has admitted that the tariff sheets it filed on November 6, 2024, are not just and reasonable.

12. Public Counsel has not conceded, as Liberty asserts, that

(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.

13. As to the first assertion, what Public Counsel determined is that it did not agree with what Liberty had done, and so informed Liberty and the other parties. That communication made January 30, 2025, follows:

Liberty designed the tariff sheets that it filed to initiate this rate case to increase its annual revenues by \$92.1 million (16%) per year; however, Public Counsel does not agree that when undertaking traditional cost-of-service based ratemaking historical test year FAC revenues would be applied against that test year cost-of-service to arrive at a utility’s annual revenue requirement and resultant revenue deficiency/excess as Liberty has done with its REV ADJ 11 and EXP ADJ 1 adjustments. Without those adjustments Public Counsel believes that Liberty would model a revenue deficiency about \$152 million per year, not \$92 million.

14. As to the second assertion, Public Counsel has not reviewed Liberty’s “substitute tariff sheets” that it filed on February 3, 2025, for whether Liberty successfully designed them to collect an additional \$152,855,209 in rate revenues annually over what its currently effective rates are designed to collect.

15. As to the third assertion, Public Counsel has acknowledged Commission practice, but has not made any concession. The change that Liberty made with its substitute tariff sheets—materially increasing its designed revenue increase from \$92,136,624 to \$152,855,209—is far beyond anything the Commission has permitted by tariff sheet substitution.

16. Public Counsel raised the issue of notice in its motion pointing out that in the order in which it stated, “On November 6, 2024, The Empire District Electric Company d/b/a Liberty (Liberty or “Company”) filed tariff sheets *designed to increase its gross annual electric revenues by approximately \$92 million, or a 15.99% increase* over current base rate electric service revenues.” (Emphasis added; footnote omitted). Public Counsel also pointed out that in that order the Commission directed Commission employees to “make its order available” to the legislators who represent the public where Liberty serves, and to “make its order available . . . to the news media as appropriate.” Public Counsel has searched the Commission’s website and the web for the typical Commission press release by which the Commission notifies the news media of such matters and did not find one.

17. In blatant disregard of rule 20 CSR 4240-2.090(7)—Facts disclosed in the course of a prehearing conference and settlement offers are privileged and, except by agreement, shall not be used against participating parties unless fully substantiated by other evidence—and the principle that settlement negotiations are privileged to promote the public policy of encouraging settlement, in paragraph nos. 27-29 of its response on behalf of Liberty its attorney Diana Carter discloses privileged settlement communications.

18. On November 28, 2023, the same attorney Diana Carter filed a pleading on behalf of Liberty in Case No. ER-2021-0312 disclosing privileged settlement communications. On December 6, 2023, Public Counsel filed a reply in response to Liberty’s pleading where it pointed

out that Liberty had violated rule 20 CSR 4240-2.090(7) and the public policy of encouraging settlement by prohibiting the use of settlement discussions in evidence. A copy of that reply is attached.

19. Not only should the Commission disregard paragraph nos. 27-29 of Liberty's response, the Commission should sanction Liberty for intentionally violating rule 20 CSR 4240-2.090(7).⁵

20. If Liberty wants to proceed with a general rate case, then it should file a new application to do so.

Wherefore, in reply the Office of Public Counsel continues to move the Commission to issue an order that rejects all of the tariff sheets Liberty filed on November 6, 2024, as "substituted" (replaced) with tariff sheets it filed on February 3, 2025, and dismisses 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, and Liberty's representations to the public and the Commission's notice to the public now misleadingly represent a designed annual revenue increase of \$92,136,624, not the \$152,855,209 for which the tariff sheets now before the Commission are designed to realize.

⁵ § 386.570, RSMo.

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

Respectfully,

/s/ Nathan Williams

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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 20th day of February 2025.

/s/ Nathan Williams