

**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 COMMISSION ORDER

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), and for its Response to the *Order Directing Responses* issued February 21, 2025, Liberty respectfully states as follows to the Missouri Public Service Commission (“Commission”).

Introduction

1. Liberty understands and appreciates both Commission Staff’s and the Office of Public Counsel’s (“OPC”) diligence in reviewing the Company’s rate filing and tariffs. In this response, Liberty addresses only¹ the OPC argument that the Company violated Commission Rule 20 CSR 4240-2.090(7) (the “Rule”) and “the principle that settlement negotiations are privileged to promote the public policy of encouraging settlement” when it provided the Commission with an alternative proposal of how to move forward with this case and stated it had shared the proposal with all parties and that not all parties agreed with the proposal. Given that a settlement offer was not made, the Rule does not apply. There is no Commission precedent, case law, statutes or regulations that support the proposed sanctions, and thus the Company respectfully requests that the Commission decline the request to impose sanctions.

¹ On February 26, 2025, Liberty withdrew all tariff sheets submitted in Tracking No. JE-2025-0069 and filed tariff sheets in a new tracking number (JE-2025-0127), along with a counsel filing letter, supporting testimony (including MFRs), and a motion to withdraw prior testimony that supported the withdrawn tariff sheets. Therefore, OPC’s arguments for dismissal of the now-withdrawn tariff sheets application is moot and not addressed herein.

Background

2. A brief summary of how this issue developed illustrates the lack of sanctionable conduct. By email on January 30, 2025, OPC notified Liberty that OPC believed there was an error in Liberty's tariff sheets. After determining there was an error in the tariff sheets, Liberty thanked OPC for raising the issue and promptly corrected the error by filing certain substitute sheets. OPC then filed a motion to dismiss the case on the premise that the substitute filing varied too materially from the initially filed tariff sheets. In its motion to dismiss, OPC cited to its January 30th email to the parties.²

3. Liberty then reached out to OPC and the other parties to discuss how to move forward. Liberty provided an email to all parties on February 10, 2025, with a proposal on how to proceed, including a proposed amended procedural schedule. Liberty suggested re-filing its tariff sheets, having additional notice provided to legislators and county commissions, and extending the current procedural schedule by two to three months. That communication, attached as Exhibit A, does not contain a confidential marking and does not use the word "settlement." Further, as discussed below, that communication does not constitute a "settlement offer" within the meaning of the Rule.

4. Liberty's communication was a proposal to efficiently and economically proceed without negatively impacting any parties, such as, for example, not needing to reissue discovery and duplicate efforts. In repeating its proposal to the Commission, and the status of the parties' response to it, Liberty did not violate the Rule or the general principle that settlement negotiations are privileged to promote the public policy of encouraging settlement.

² In its Reply filed herein, OPC also quoted its email from January 30, 2025.

5. Given that Liberty could not tender a joint filing because not all parties agreed to the proposal, Liberty instead filed a response to the motions to dismiss as directed by the Commission. The Response explained there is no good cause to dismiss this case and set forth the Company's alternative proposal for how to proceed, noting that the proposal had been shared with all parties and that Liberty could not obtain OPC's consent.

Argument

6. Liberty respectfully submits that there is no basis to impose sanctions or strike paragraphs 27-29 of Liberty's Response because 20 CSR 4240-2.090(7) is not implicated in this matter. The Rule states: "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." (emphasis added)

7. The subject communication was not made in a prehearing conference. A plain reading of the remainder of the Rule demonstrates that it applies when (1) a party makes a **settlement offer** *and* (2) another party attempts to use the settlement offer against a participating party. Here, neither have occurred.

8. After OPC filed a Motion to Dismiss, it was incumbent upon Liberty to address the matter. Liberty scheduled a meeting with the parties for February 11, 2025. On the day before the meeting, Liberty's counsel emailed the parties: "Good evening, all. Please see below and attached for Liberty's proposal to address Staff's and OPC's concerns and move this case forward."³ The email described the proposal and attached a revised procedural schedule for the parties' review. Liberty did exactly what a mistaken party should do – apologized for an inadvertent error, fixed the error by filing substitute tariff sheets, and, when parties continued to

³ The email is attached as Exhibit A.

express concerns, took steps to alleviate scheduling impacts on other parties by proposing a revised schedule to give the parties additional time and then moved forward by presenting the proposal to the Commission for consideration. The Company did not disclose any settlement offers as stated in the Rule, and the Company did not disclose any confidential settlement communications. This is true as to Liberty's disclosure of its February 10th email communication in its Response, just as it is true for OPC's disclosure of its January 30th email in its Motion to Dismiss and its Reply.

9. If OPC's interpretation of "settlement offer" as set forth in its Reply is accepted, counsel could never speak to one another about a matter that is later disclosed to the Commission. This is not consistent with conduct of business at the Commission. For example, the very next subsection of 20 CSR 4240-2.090 (subsection 8) requires a party to certify to the Commission how it attempted to resolve a discovery dispute with another party before filing a motion. Under the OPC's broad interpretation of "settlement offer," a party could not comply with this requirement without risking a motion for sanctions.

10. Liberty's email was a procedural proposal on how the parties could move forward – and contained no substantive settlement proposal regarding the revenue requirement, FAC rebasing, or any other ratemaking topic for which the Commission will ultimately issue findings of fact. There was no violation of the Rule or the general principle that settlement negotiations are privileged to promote the public policy of encouraging settlement.

11. The Commission has rarely had cause to apply 20 CSR 4240-2.090(7). In one of those rare instances, the Commission struck from the record a document titled "Settlement Agreement and Release of All Claims" filed by a customer who was attempting to use it against

the utility.⁴ In that proceeding, the first prong of 20 CSR 4240-2.090(7) was present on the face of the document, and the second prong was established when the customer introduced it against the utility who had made the offer. This differs from the facts of this case, as no settlement offer was presented or offered as evidence to be used against a party.

WHEREFORE, Liberty respectfully requests the Commission reject the proposed sanctions and grant Liberty such additional 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

⁴ Brett Felber, Complainant v. Union Electric Company d/b/a Ameren Missouri, Respondent (File No. EC-2023-0395) (Mo. PSC Dec. 7, 2023).

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 26th 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