

**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) **File No. ER-2024-0261**
for Electric Service Provided to Customers)
In its Missouri Service Area)

**ORDER DIRECTING FURTHER FILING REGARDING INFORMATION
DESIGNATED AS CONFIDENTIAL**

Issue Date: March 3, 2025

Effective Date: March 3, 2025

PROCEDURAL BACKGROUND

On February 26, 2025, The Empire District Electric Company d/b/a Liberty resubmitted all of its direct testimonies. Relevant to this order, the original testimonies were filed on November 6, 2024 (November filing). Five of those testimonies which included confidential information were objected to as not fully explaining how they were confidential, and the Commission ordered those five testimonies to be refiled. The five were re-filed with cover pages noting the confidentiality designation on December 20, 2024, (December filing), and were objected to again on the same grounds.

Before the Commission could issue an order resolving the second objection, Liberty resubmitted all of its testimonies, including the five testimonies, on February 26, 2025, (February filing).

The Commission has compared the cover pages of the five testimonies in the February filing to those in the December filing. Except as noted below, the cover pages are unchanged between the February filing and the December filing. Therefore, to save the parties the work of filing further objections and responses on the same issue, the

Commission, on its own motion, will issue this order directing Liberty to re-file four of the five testimonies from the February filing to comply with Commission rules regarding confidential information. The Commission notes that two of the five testimonies in the February filing have been filed without the cover page which was previously included in the December filing – Shawn Eck and Leigha Palumbo.

MOTION AND RESPONSE BACKGROUND

On November 14, 2024, the Office of the Public Counsel (Public Counsel) filed *Public Counsel's Motion for a Commission Order* (Motion). The Motion argued that The Empire District Electric Company d/b/a Liberty redacted certain portions of pre-filed direct testimony and schedules in violation of the Commission's rule governing submission of confidential information. On November 18, 2024, Liberty filed *Response to OPC's Motion for a Commission Order* (November Response)

On November 26, 2024, the Commission issued its *Order Granting Motion Regarding Information Designated as Confidential* (Order). In sum, the Commission found that Liberty did not offer the explanations required by rule as to how a piece of information is qualified for the confidential information protections. The Commission directed Liberty to file explanations as to why each document designated as confidential qualifies as confidential.

Additionally, the Commission found that Liberty wholly redacted some pre-filed direct testimony schedules unnecessarily. The Commission directed Liberty to review the schedules that were wholly redacted to see if any information should be un-redacted.

On December 20, 2024, Liberty resubmitted the objected-to prefiled direct testimonies with a cover page on each. Liberty also resubmitted the objected-to prefiled

direct testimony schedules, many changing from being wholly redacted to having limited redactions.

On January 26, 2025, OPC filed *Public Counsel's Motion to Enforce Order* (Enforcement Motion). OPC argued that the cover pages do not offer explanations of how the information qualifies as confidential, rather the explanation merely recites the language of the rule's applicable subsection. The Enforcement Motion also noted that one resubmitted schedule was still wholly redacted.

On February 6, 2025, Liberty filed *Liberty's Response to Public Counsel's Motion to Enforce Order* (Enforcement Response). The Enforcement Response stated that the resubmitted testimonies and schedules contained a cover page explaining the confidential designations.

LEGAL STANDARDS

Explanation Required

Commission Rule 20 CSR 4240-2.135(2)(B) states in pertinent part as follows, “[a]ny information designated as confidential shall be submitted with a cover sheet or pleading describing how such information qualifies as confidential under subsection (2)(A) of this rule, including the specific subsection relied upon and an explanation of its applicability.”

Limit on Redactions

Commission Rule 20 CSR 4240-2.135(2)(B) provides in pertinent part as follows, “[o]nly the specific information that qualifies as confidential shall be designated as such.

TESTIMONIES¹

1. Shawn Eck Testimony

The Enforcement Motion argued that the cover page of Shawn Eck’s pre-filed direct testimony did not include an explanation of how the information qualifies as confidential as a security of facilities concern or a trade secret. The cover page stated that a portion of his direct testimony and Schedule SE-1 is designated confidential pursuant to 20 CSR 4240-2.135(2)(A)7 (security of facilities) and (2)(A)8 (trade secrets) “due to the nature of the material regarding the safety and security of Liberty’s critical infrastructure and other utility facilities.”

Liberty’s Enforcement Response stated that Mr. Eck’s testimony and Schedule SE-1 identifies, by vendor and specific project, the scope and content of Liberty’s cybersecurity and asset security protections. The Enforcement Response further stated that public disclosure would allow bad actors to develop an attack profile.

The Enforcement Motion stated that Schedule SE-1, attached to Mr. Eck’s testimony, is wholly redacted except for page numbers. The Enforcement Response does not address why Schedule SE-1 is wholly redacted except for page numbers.

The Commission finds the explanation offered on the cover page of Mr. Eck’s testimony to be deficient in that it does not explain how the information qualifies as confidential as a security of facilities concern or a trade secret. Merely stating the information is confidential due to the nature of the material regarding the safety and security of Liberty’s critical infrastructure is insufficient as the rule requires an explanation of how such information qualifies (e.g. the information identifies, by vendor and specific

¹ All testimonies are in reference to those submitted on December 20, 2024, also referred to as resubmissions.

project, the scope and content of Liberty's cybersecurity and asset security protections, and that public disclosure would allow bad actors to develop an attack profile). The Commission will order that Liberty resubmit Mr. Eck's prefiled direct testimony and schedule with the cover page to specifically include an explanation of how the information qualifies as confidential as a security of facilities concern or a trade secret.

The Commission further finds that Schedule SE-1's wholly redacting all information except for page numbers does not comply with 20 CSR 4240-2.135(2)(B)'s statement that "[o]nly the specific information that qualifies as confidential shall be designated as such." Schedule SE-1 contains column headers and page headers that are presumptively not confidential. A non-exhaustive list of examples of non-confidential column or page headers would include "Cybersecurity Program Workstreams/Projects", "Workstream/Capability", and "Description". The Commission will direct Liberty to resubmit Schedule SE-1 with redactions limited to only the information that is meant to be protected by confidentiality.

2. Candice Kelly Testimony

The Enforcement Motion argued that the cover page of Candice Kelly's testimony does not include an explanation of how Schedule CK-4² qualifies as confidential as a trade secret. Schedule CK-4 is a power point presentation regarding a Liberty-specific report from J.D. Power. The cover page stated that Schedule CK-4 is designated confidential pursuant to 20 CSR 4240-2.135(2)(A)8 (trade secrets) "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 Enforcement Motion erroneously refers to Schedule CK-4 as Schedule CK-1.

In its November Response, Liberty explained that the report from J.D. Power is based on studies performed by a third party that derive economic value from not being generally known or readily ascertainable. Liberty's Enforcement Response noted that Liberty has paid for a subscription service to J.D. Power to obtain the marketing analysis set forth in Schedule CK-4, and allowing other utilities to obtain this information, which includes analysis of industry trends, would provide an unfair competitive advantage.

The Enforcement Motion did not raise the issue of redactions regarding this testimony.

The Commission finds the explanation offered on the cover page of Ms. Kelly's testimony to be deficient in that it does not explain how the information qualifies as confidential as a trade secret. Merely stating the information is confidential due to marketing analysis for services offered in competition with others, marketing analysis for services providing to utility customers, and other trade secrets is insufficient as the rule requires a description of how such information qualifies (e.g. the report from J.D. Power is based on studies performed by a third party that derive economic value from not being generally known or readily ascertainable, and that Liberty has paid for a subscription service to J.D. Power to obtain the marketing analysis set forth in Schedule CK-4, and allowing other utilities to obtain this information, which includes analysis of industry trends, would provide an unfair competitive advantage). The Commission will order that Liberty resubmit Ms. Kelly's prefiled direct testimony and schedules with the cover page to specifically include an explanation of how the information qualifies as confidential as a trade secret.

3. Leigha Palumbo Testimony

The cover page of Leigha Palumbo's testimony stated that Schedules LP-6 and LP-8 are designated confidential pursuant to 20 CSR 4240-2.135(2)(A)3 (marketing analysis or other market-specific information relating to services offered in competition with others). The cover page explained that Schedule LP-6 contains bank account numbers and financial information potentially impacting financial markets and Liberty's access to and terms for accessing capital. The cover page also stated that Schedule LP-8 provides the heat rates for generation units, which potentially impacts the wholesale electric market.

OPC's Enforcement Motion argued that the cover page does not include an explanation of how Schedule LP-6's bank account numbers and financial information potentially impacting financial markets and Liberty's access to and terms for accessing capital qualifies as confidential under the subsection for marketing analysis or other market-specific information. The Enforcement Motion also argued that the cover page does not explain how making the rates public might impact Liberty or the wholesale market; however, the Enforcement Motion acknowledged that this was not required.

The Enforcement Reply stated that for Schedule LP-6, it designated the bank account numbers as confidential to protect its financial information and to prevent unauthorized access. Liberty also argued that lenders being able to ascertain interest rates from other financial institutions may impact the interest rate offered. The Enforcement Reply, regarding Schedule LP-8, stated that heat rates are considered by traders in determining when units are likely to be dispatched in the wholesale market,

which, if disclosed, could implicate a commercial disadvantage to Liberty by allowing other utilities to beat Liberty to market.

The Enforcement Motion acknowledges that if Liberty's confidentiality claims for this testimony were found to be correct, then the revised redactions are appropriate.

The Commission finds the explanation offered on the cover page of Ms. Palumbo's testimony to be acceptable regarding Schedule LP-6 in that it explains that it contains bank account numbers and financial information. However, the Commission finds the cover page's explanation for Schedule LP-8 to be deficient in that it does not explain how the heat rates for generation units qualify as confidential. Merely stating that it could potentially impact the wholesale electric market is insufficient as the rule requires a description of how such information qualifies (e.g. heat rates are considered by traders in determining when units are likely to be dispatched in the wholesale market, which, if disclosed, could implicate a commercial disadvantage to Liberty by allowing other utilities to beat Liberty to market). The Commission will order that Liberty resubmit Ms. Palumbo's prefiled direct testimony and schedules with the cover page to specifically add an explanation of how the information in Schedule LP-8 qualifies as confidential as a marketing analysis or other market-specific information relating to services offered in competition with others.

The Commission finds the limited redactions of Schedules LP-6 and LP-8 to be in compliance with 20 CSR 4240-2.135(2)(B)'s statement that "[o]nly the specific information that qualifies as confidential shall be designated as such."

4. Todd W. Tarter Testimony³

The Enforcement Motion argued that the cover page of Todd W. Tarter's testimony does not include an explanation of how the information qualifies as confidential as marketing analysis or other market-specific information. The cover page stated that a portion of his direct testimony and Schedules TWT-2 and TWT-3 are designated confidential pursuant to 20 CSR 4240-2.135(2)(A)³⁴ (marketing analysis or other market-specific information relating to services offered in competition with others). The cover page explains that the information includes 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.

The Enforcement Reply stated that the information related to specific fuel and power sources involve negotiated prices and agreements. Liberty explains that if publicly disclosed, competitors could determine the prices at which Liberty is willing to buy and sell energy. Further, if Liberty publicly discloses this information, adverse parties could no longer respond to requests for proposals or enter into future agreements with Liberty. Liberty also explains that the redaction of the revenues received from a certain customer is because this revenue results from an arms-length negotiated price.

The Enforcement Motion acknowledges that if Liberty's confidentiality claims for this testimony were found to be correct, then the revised redactions are appropriate.

³ The Enforcement Motion noted that Mr. Tarter's testimony previously claimed confidentiality under the rule reference for customer-specific information, but now relies on the rule reference to marketing analysis or other market-specific information. However, OPC cited no rule that would be violated by this change.

⁴ The Commission interprets the cover page's reference to (2)(A)4 as a typo because the cover page's sentence quotes the wording of (2)(A)3.

The Commission finds the explanation offered on the cover page of Mr. Tarter's testimony related to marketing analysis or other market-specific information to be acceptable in that it explains that the redacted information includes detailed information at the resource level, including market negotiated prices and conditions, which could result in anti-competitive behavior that might unreasonably impact the competitive process.

The Commission finds the limited redactions of Mr. Tarter's direct testimony and Schedules TWT-2 and TWT-3 to be in compliance with 20 CSR 4240-2.135(2)(B)'s statement that "[o]nly the specific information that qualifies as confidential shall be designated as such."

5. Jeffrey Westfall Testimony

The cover page of Jeffrey Westfall's testimony stated that a portion of his direct testimony and Schedule JW-1 are confidential. The cover page indicated that two subsections of the confidentiality rule apply, with the first being that certain information for projects DA0640, DR-188, TA0925, TA0941, and TR150 is designated confidential pursuant to 20 CSR 4240-2.135(2)(A)7 (security of company facilities). The cover page explains that the redacted information for those projects contains important security, cybersecurity and safety information related to Liberty's substations and network.

The cover page also stated that 20 CSR 4240-2.135(2)(A)1 (customer specific information) applies to certain information regarding project DR0176. The cover page stated that it contains customer-specific information.

The Enforcement Motion argued that the cover page does not include an explanation of how the information qualifies as confidential due to security concerns or

customer specific information. Regarding the claim of customer specific information, OPC noted that the name of the project is redacted in one column, but included in the public version of another column.

The Enforcement Reply stated the description and justification of certain projects have been designated as confidential because the projects pertain to the security of Liberty's assets, and stated that the rationale is the same as that given for Mr. Eck's testimony – that public disclosure would allow bad actors to develop an attack profile. Liberty restated that one project is designated confidential as it contains customer-specific information, but did not address OPC's observation that the name of the customer is public version of another column.

The Enforcement Motion did not raise the issue of redactions regarding this testimony.

The Commission finds the explanation offered on the cover page of Mr. Westfall's testimony related to security of facilities to be acceptable in that it explains that the redacted information includes important security, cybersecurity and safety information related to Liberty's substations and network.

As to the customer-specific information of project DR0176's being designated confidential, the Commission is unclear why one column naming the customer is public while another column naming the customer is confidential. This issue was raised in the Enforcement Motion but not addressed in the Enforcement Reply. Therefore, the Commission finds the cover page's explanation deficient as information generally should not be public in one column but confidential in another without an explanation as to why it is confidential only in that column, if it is deemed confidential due to customer-specific

information. The Commission will order that Liberty resubmit Mr. Westfall's prefiled direct testimony and schedules with the cover page to specifically add an explanation of how the information of project DR0176 qualifies as confidential as customer-specific and why it is only confidential in one column.

Lastly, the Commission finds the limited redactions of Mr. Westfall's direct testimony and Schedule JW-1 to be in compliance with 20 CSR 4240-2.135(2)(B)'s statement that "[o]nly the specific information that qualifies as confidential shall be designated as such."

THE COMMISSION ORDERS THAT:

1. No later than March 17, 2025, Liberty shall resubmit the prefiled direct testimonies and schedules as follows:

a. Shawn Eck Testimony

- i. resubmit Mr. Eck's prefiled direct testimony and schedule with the cover page to specifically include an explanation of how the information qualifies as confidential as a security of facilities concern or a trade secret;
- ii. resubmit Schedule SE-1 with redactions limited to only the information that is meant to be protected by confidentiality;

b. Candice Kelly Testimony

- i. resubmit Ms. Kelly's prefiled direct testimony and schedules with the cover page to specifically include an explanation of how the information qualifies as confidential as a trade secret;

c. Leigha Palumbo Testimony

- i. resubmit Ms. Palumbo's prefiled direct testimony and schedules with the cover page to specifically add an explanation of how the information in Schedule LP-8 qualifies as confidential as a marketing analysis or other market-specific information relating to services offered in competition with others;

d. Jeffrey Westfall Testimony

- i. resubmit Mr. Westfall's prefiled direct testimony and schedule with the cover page to specifically add an explanation of how the information of project DR0176 qualifies as confidential as customer-specific and why it is only confidential in one column.

2. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Charles Hatcher, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2016.

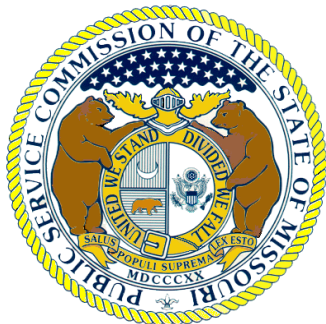
Dated at Jefferson City, Missouri,
On the 3rd day of March, 2025

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 3rd day of March 2025.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 3, 2025

File/Case No. ER-2024-0261

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Nancy Dippell". The signature is written in a cursive, flowing style.

**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.