

**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. <u>ER-2024-0261</u>
for Electric Service Provided to Customers )	Tariff No. <u>JE-2025-0069</u>
In its Missouri Service Area )	

**PUBLIC COUNSEL’S SECOND MOTION FOR COMMISSION ORDER**

**COMES NOW** the Office of Public Counsel (“Public Counsel”) and for its *Second Motion for Commission Order* states:

1. Public Counsel’s initial *Motion for Commission Order* was directed to Liberty’s failure to provide explanations for its assertions of confidentiality. This motion is directed to the adequacy of the explanations Liberty has provided and the scopes of its redactions.

2. Commission rule 20 CSR 4240-2.135(2)(B) requires:

(B) Any 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. Only the specific information that qualifies as confidential shall be designated as such. In addition, each document that contains confidential information shall bear the designation “Confidential” and the paragraph(s) of 4 CSR 240-2.135(2)(A) through which that information is protected.

3. In response to Public Counsel motions, by its March 3, 2025, *Order Directing Further Filing Regarding Information Designated as Confidential* the Commission ordered,

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.

4. With this motion Public Counsel is challenging the sufficiency of certain of Liberty's confidentiality explanations and redactions.

**Shawn Eck**

5. Liberty has identified that exclusive of the schedules, its witness Shawn Eck's direct testimony "provides a holistic description of the threat that Liberty is seeking to avoid." Much of his testimony that Liberty redacted goes well beyond describing the threats and risks for which it has designed its Cybersecurity Program to address. In short, aside from his schedules, Liberty still has redacted more of his direct testimony than what is necessary to protect confidentiality.

6. Liberty asserts that Schedule SE-1 "identifies, by vendor and specific project, the scope and contents of Empire's cybersecurity and asset security protections" and that "[p]ublic 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," and, [l]ikewise, the level of a company's investment in cybersecurity is a relevant data point to building an attack profile." However, Liberty has neither listed the vendors that it has engaged nor where they are identified in Schedule SE-1, nor has it explained how Schedule SE-1 discloses the extent of its security protections or how it discloses Liberty and vendor vulnerabilities. Further, lacking any cost information, it is unclear how Schedule SE-1 discloses the level of Liberty's investment

in cybersecurity. Liberty’s explanations still are not adequate, and Liberty still has redacted more information than is appropriate for its present assertions of confidentiality.

### Candice Kelly

7. As to Schedule CK-4 Liberty asserts,

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.

8. The J.D. Power results here—**Empire Electric JD Power Results 2022 -2023**—show Liberty trends and how they compare to industry top performers and industry averages. As Public Counsel pointed out in paragraph 6(E) of its November 14, 2024, *Motion for a Commission Order*, included in Schedule CK-4 is information that Liberty’s witness Candice Kelly publicly discloses on pages 7-8 of her direct testimony. Also, Schedule CK-4 includes overall customer satisfaction index rankings—Liberty specific and mid-west region midsize segment (including average)—that JD Powers has publicly disclosed in press releases it made December 15, 2021, December 14, 2022, and December 13, 2023, that are still available on JD Powers website as of March 27, 2025.<sup>1</sup> Liberty still fails to explain how disclosing information in Schedule CK-4 that is not already public would put it at an unfair competitive disadvantage. Missouri electric utilities such as Liberty are essentially monopolies insulated from competition for residential electric customers.

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<sup>1</sup> <https://www.jdpower.com/sites/default/files/file/2021-12/2021171%20Electric%20Utility%20Residential.pdf> (2021 industry average), <https://www.jdpower.com/business/press-releases/2022-electric-utility-residential-customer-satisfaction-study> (industry average and Liberty specific) and <https://www.jdpower.com/business/press-releases/2023-electric-utility-residential-customer-satisfaction-study> (industry average and Liberty specific), respectively.

9. Public Counsel disputes that Liberty has shown entitlement to confidentiality to any of Schedule CK-4. Regardless, Liberty has redacted from Schedule CK-4 information that JD Powers or Liberty have made public elsewhere; therefore, that information should not be redacted from Schedule CK-4.

10. The Commission has statutory authority to pursue penalties for violations of its rules and orders. The statute granting that authority is section 386.570, RSMo, which follows:

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.

**Wherefore**, the Office of Public Counsel moves the Commission to decide that Liberty has not provided sufficient explanations of the applicability of the basis for confidentiality upon which it relies to comply with rule 20 CSR 4240-2.135(2)(B) for its redactions to the direct testimony of Shawn Eck, Schedule SE-1, Schedule CJK-4 and that Liberty has designated information in the direct testimony of Shawn Eck, Schedule SE-1, Schedule CJK-4 that does not qualify for confidentiality in violation of Commission rule 20 CSR 4240-2.135(2)(B) requirement that “[o]nly the specific information that qualifies as confidential shall be designated as such”; to consider

imposing penalties on Liberty for its disregard of Commission rule 20 CSR 4240-2.135(2)(B) and imposing them if it finds doing so warranted; to order Liberty to provide sufficient explanations for and redactions to the direct testimony of Shawn Eck, Schedule SE-1, Schedule CJK-4 to fully comply with Commission rule 20 CSR 4240-2.135(2)(B); and to issue such other relief which the Commission determines appropriate under the circumstances.

Respectfully,

/s/ Nathan Williams

Nathan Williams  
Chief Deputy Public Counsel  
Missouri Bar No. 35512

Office of the Public Counsel  
Post Office Box 2230  
Jefferson City, MO 65102  
(573) 526-4975 (Voice)  
(573) 751-5562 (FAX)  
[Nathan.Williams@opc.mo.gov](mailto:Nathan.Williams@opc.mo.gov)

**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 27<sup>th</sup> day of March 2025.

/s/ Nathan Williams