

**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 REPLIES TO LIBERTY’S AND STAFF’S RESPONSES

COMES NOW the Office of Public Counsel (“Public Counsel”) and for its replies to Liberty’s and Staff’s responses states:

1. Public Counsel’s replies here are to Liberty’s and Staff’s responses to Public Counsel’s *Motion for Relief in Response to Liberty’s Refiled Case*.

Reply to Liberty’s Response

DISTINCT REQUEST

2. Liberty asserts that Public Counsel’s request that the Commission dismiss this case is in essence a renewal of its February 5, 2025, motion to reject Liberty’s November 6, 2024, tariff sheets as substituted on February 3, 2025, and dismiss Liberty’s November 6, 2024, case; it is not. Public Counsel’s current request is based on different grounds.

3. Public Counsel’s February 5, 2025, motion was based on Liberty abandoning its November 6, 2024, filing when Liberty filed substitute tariff sheets on February 3, 2025, for a \$152,855,209 increase in annual revenues because Liberty’s testimony and other support for its November 6, 2024, \$92,136,624 increase request did not support its revised \$152,855,209 increase request, and also because Liberty’s change to requesting a \$152,855,209 increase made Liberty’s and the Commission’s notices to the public that the increase was \$92,136,624 misleading.

4. In contrast, Public Counsel’s present motion, among other things, is based on Public Counsel’s recent discovery through reviewing workpapers that Liberty included projections of

2025 costs and revenues when developing its revenue requirement and FAC base rate, and the increase in the regulatory lag between test year and true-up period ending September 2024, to new rates taking effect in January of 2026. Public Counsel did not raise these grounds in its first motion to reject tariff sheets and dismiss this case, nor did it raise in that motion the other grounds it raises in its present motion.

MOTION TIMELINESS

5. In its response Liberty assumes that this rate case began November 6, 2024, and that its February 26, 2025, filing is merely a continuation of that case. That assumption is incorrect.

6. As Public Counsel explained in its February 20, 2025, reply to Liberty’s response to Public Counsel’s motion to reject tariff sheets and dismiss Liberty’s application, the fundamental authority for how a utility can change its tariff is controlled by §§ 393.140(11) and 303.150, RSMo.—file new tariff sheets.¹ That is what Liberty did on November 6, 2024, but on February 26, 2025, it withdrew those tariff sheets (and its substitute tariff sheets) and filed a second set of new tariff sheets. While filed in the same Commission docket, Liberty’s February 26, 2025, tariff filing initiated a new Commission tariff review.

7. Liberty argues that Public Counsel’s requests for a reasonable test year and true-up period are untimely because the Commission ordered a test year in response to Liberty filing different tariff sheets *before* Liberty filed the tariff sheets now before the Commission for review. Public Counsel’s requests are not untimely. The following points are explained in detail in Public Counsel’s motion. First, Liberty’s February 26, 2025, filing initiated a new tariff review, and the Commission’s December 13, 2024, *Order Establishing Test Year* was issued in response to Liberty’s November 6, 2024, tariff filing. Second, while Liberty’s test year proposal did not seem

¹ [*State ex rel. Jackson Cty. v. Pub. Serv. Com.*, 532 S.W.2d 20 \(Mo. 1975\); *May Department Stores Co. v. Union Electric Co.*, 341 Mo. 299, 319; 107 S.W.2d 41, 52-53 \(1937\).](#)

too unreasonable in November and December of 2024, it did after Public Counsel learned in February 2025 through Liberty witness workpapers that Liberty included projections into 2025 when developing its revenue requirement and FAC base factor. These projections are well beyond the true-up cutoff of September 30, 2024, that Liberty proposed and violate the matching principle—that all relevant factors bearing on cost-of-service should be examined over the same time period.² Third, Liberty’s rate base is declining at the rate of over \$9 million per month; each \$9 million equates to an annual revenue requirement reduction of nearly \$1 million per year; a regulatory lag that benefits Liberty to the detriment of its customers.

8. Liberty points to one of the Commission cases Public Counsel referenced in its motion, Case No. ER-2019-0335, as an example where the Commission decided the test year review period early in the case. Public Counsel agrees that generally the period of review for determining a utility’s cost-of-service should be decided early; however, that general principle should not override the Commission setting just and reasonable rates based on all relevant factors.

9. Also cited in Public Counsel’s motion is Case No. ER-2007-0004 where the Commission deferred deciding on whether to have a true-up period—it ordered a test year of calendar year 2005, updated through June 2006. Subsequently, the parties proposed a procedural schedule that modified the ordered update period to increase it by six months—from June 2006 to December 2006—and no true-up, and the Commission adopted the revised the update period.

10. Additionally, in another case to which Public Counsel cited—Case No. EC-2002-1—Staff filed its complaint on July 2, 2001, based on a test year of the twelve months ended June 30, 2000, updated through December 31, 2000, and proposed a procedural schedule.

² If Liberty’s November 6, 2024, was the subject of this case, Public Counsel would have requested the Commission to revisit the test year since Liberty was not forthcoming with its use of projections into 2025 for developing its revenue requirement and FAC base factor.

Union Electric Company countered with a competing proposed procedural schedule. After numerous pleadings, on December 6, 2001, (five months after Staff filed its complaint) the Commission ordered a test year of July 1, 2000, to July 30, 2001, and a procedural schedule.

11. The test year should be a period which is most representative of what circumstances will be while the new rates are in effect, and expediency in ordering the test year should not override selecting the best test year. Typically the best one is close in time to when the new rates will take effect.

12. Liberty has made no showing of and offered no reason why a test year of the twelve months ended September 30, 2023, updated to September 20, 2024, better represents what Liberty's cost-of-service will be when new rates take effect on or about January 2, 2026, than the twelve months ended September 30, 2024, trued-up through June 30, 2025.

13. When developing its proposal Public Counsel reasonably limited the isolated adjustments during the true-up period and true-up the cut-off date to balance the workload of those adjustments with timely processing of Liberty's rate case. Further, a more current test year and true-up period leaves sufficient time before January 2, 2026, or January 26, 2026, for the Commission to process this case.

MISLEADING NOTICES

14. Liberty's paragraphs 26 to 29 of its response demonstrate Liberty's fundamental misunderstanding of the timing of the bill impacts of its FAC. In those paragraphs Liberty argues "that the net bill impact to the average residential customer using 1,000 kWh per month would be an increase between \$33 and \$39 per month" is not inconsistent with it also stating "that a residential customer using 1,000 kWh per month would see a proposed increase of approximately \$47.41 per month."

15. Liberty's argument they are not inconsistent is based on the false premise that FAC revenues are being moved into general rate revenues. They are not.

16. Liberty's FAC is designed for the differences between the amount included in Liberty's revenue requirement for fuel and fuel-related expenses used to design its general rates and Liberty's actual fuel and fuel-related expenses after it incurs them (accumulation period) to either be also collected (increase in FAC charge; under-recovery) or flowed to its customers (reduction to FAC charge which could become negative; over-recovery) (recovery period). To accomplish this Liberty's FAC has two accumulation periods each year of six months duration after the end of which Liberty's FAC charge is adjusted to flow additional revenues either to Liberty or its customers through its FAC charges over six-month recovery periods. The following table, based on actual Liberty information, illustrates this:

Liberty FAC Recovery/Accumulation Periods/Amounts		
Accumulation Period	Recovery Period	Recovery Amount
Sept 2021 to Feb 2022	June 2022 to Nov 2022	\$22,770,677
March 2022 to Aug 2022	Dec 2022 to May 2023	\$42,815,494
Sept 2022 to Feb 2023	June 2023 to Nov 2023	\$21,701,887
March 2023 to Aug 2023	Dec 2023 to May 2024	\$14,572,923
Sept 2023 to Feb 2024	June 2024 to Nov 2024	\$22,825,198
March 2024 to Aug 2024	Dec 2024 to May 2025	\$7,589,571
Sept 2024 to Feb 2025	June 2025 to Nov 2025	\$10,938,974 ³
March 2025 to Aug 2025	Dec 2025 to May 2026	TBD
Sept 2025 to Feb 2026	June 2026 to Nov 2026	TBD

In June 2025, Liberty's FAC rate will reset to recover or flow back the September 2024 to February 2025 accumulation period over- or under-recoveries.

17. Liberty's FAC rates will not change because Liberty's base rates change; however, Liberty's FAC base factor will change when Liberty's base rates change. Liberty's FAC rate will

³ Requested in Case No. ER-2025-0267 on March 31, 2025.

remain unaffected and continue to recover the under-collection or return the over-collection that occurred during the prior accumulation period until the six-month recovery period ends, regardless of Liberty's base rates changing. It is therefore inaccurate to assert that FAC revenues are "moved" to base rates. Instead, customers will continue to pay for an amount through Liberty's FAC charges that changes every six months. During the current recovery period of Dec 2024 to May 2025 this amount \$7.5 million, much less than the \$60 million Liberty attributed to the twelve months ending Sept 2023 (the recovery periods involved are Dec 2022-to-May 2023 and June 2023-to-Nov 2023 which total \$64,517,381 (\$42,815,494 + \$21,701,887). It is incorrect and misleading to characterize Liberty's proposed \$153 million annual increase in general (base) rate revenues as a "net increase" of \$92 million, and it is incorrect and misleading to say that the net bill impact to an average residential customer using 1,000 kWh per month would be an increase between \$33 and \$39 per month. Those customers will experience the full base rate increase impact—which Liberty proposes be about \$47.41 per month.

RATE DESIGN CHANGES

18. Liberty's response to Public Counsel's assertion that Liberty made rate design changes from its November 6, 2024, filing without disclosing them is that Liberty did not change its approach or methodology, but corrected its rate design model. It states, "This correction also resulted in a change to class revenue targets and the proposed rates."

19. Other than to state it is a result of correcting its rate design model, Liberty does not explain why increasing the amount of its rate increase request from \$93 million to \$153 million per year affects the respective class rate revenue responsibilities (class revenue targets). Public Counsel sees no reason why it should.

20. Liberty’s billed FAC and EECR charges are based on per kWh rates. Neither FAC charges nor EECR charges are based on fixed costs to provide electric service; therefore, one would expect that if Liberty “moved them to base rates” as it asserts, then when moving from rates designed on a \$93 million increase in annual revenues to rates designed on a \$153 million increase without other rate design changes, the usage rate blocks for a rate schedule would increase by the same increment. That is not the case for Liberty’s Time Choice Residential Rate Plan Schedule TC-RG rate schedule:

	Summer			Winter		
	\$153 M	\$93 M	difference	\$153 M	\$93 M	difference
First 600 kWh, per kWh	0.19774	0.18275	0.01499	0.19774	0.18275	0.01499
Additional kWh, per kWh	0.16837	0.1478	0.02057	0.13981	0.12273	0.01708

21. Liberty says, “The change in kWh usage rates was not uniform between the head block and the tail block because the Company proposed to increase block one by the amount of customer costs not recovered in the customer charge.” The impacts on the usage blocks for Liberty’s Time Choice Residential Rate Plan Schedule TC-RG rate schedule above counter that statement. Public Counsel has not done any analysis to dispute that Liberty designed its first block to recover customer costs not recovered in its customer charge in its February 26, 2025, case; however, in his November 6, 2024, direct testimony on page 31 Liberty witness Timothy S. Lyons testified, “The proposed volumetric charges for the first 600 kWh of usage reflect customer costs not recovered in the proposed customer charge.” In other words, Liberty had designed the first block usage rates for that customer class to recover its customer costs not recovered through its customer charge when it designed its rates for a \$93 million annual increase in revenues.

PREFILED TESTIMONY OF NON-WITNESSES

22. In response to Public Counsel's objection to Liberty prefiling testimony of Jill Schwartz and Dmitry Balashov whom it does not intend to call as witnesses, but does intend to have current Liberty employees adopt, Liberty makes no argument and states, "On this last issue, Liberty plans to have current Company witnesses adopt and sponsor the testimony filed by those employees who have since left the utility, as was noted in the Company's cover letter. This process is consistent with the Commission's practices, and no further response to this issue is required."

23. Liberty is correct that generally the Commission has allowed witnesses to adopt as their own the prefiled testimony of other witnesses who are no longer available because they have changed employment or for other significant reasons. However, Public Counsel is unaware of any time that has been allowed when the witness was unavailable at the time the testimony was prefiled. Certainly Liberty has not raised any extenuating circumstance that would warrant allowing it to do so here. As Public Counsel pointed out in its motion and as Liberty reiterated in its response, Liberty plans to have current employees adopt that testimony in the future. To allow it to do so will prejudice other parties who will be deprived of a fair opportunity to explore the credentials and experiences of whomever ultimately adopts those testimonies in advance of deposition and cross-examination.

Reply to Staff's Response

24. Public Counsel is unsure of why Staff refers to the fact that Staff had the burden of proof in Case No. EC-2002-1, but concurs with Staff that Liberty has the burden of proof in this case, including both the burden of production and the burden of persuasion.

25. In its response Staff states that it shares "concerns with the OPC regarding the data quality." Public Counsel assumes that Staff is referring to the staleness of that data for purposes

of setting forward-looking rates, which is Public Counsel’s concern with a test year of the twelve months ended September 30, 2023, updated through September 30, 2024.

26. In response to Public Counsel revealing that Liberty used 2025 information for developing its FAC base rate and revenue requirement in derogation of the matching principle, Staff observes, “However, the Commission regularly allows utilities to incorporate discrete, known, and measurable adjustments even when they fall outside of the established test year, as long as they’re properly identified and documented.” Public Counsel concurs in that observation; however, Liberty proposed the test year and update period the Commission adopted for Liberty’s November 6, 2024, rate case filing, and Liberty did not disclose in what it filed at the Commission that its case incorporated discrete adjustments based on projections beyond its proposed test year, even as updated.

27. Staff has provided no context for why it “has concerns that a later true-up date [(later than March 31, 2025)] could be difficult for the Company to meet, and could result in the provision of unreliable data.”

28. Liberty has not represented that it cannot provide by August 29, 2025, data through June 2025 for the limited true-up items Public Counsel proposed: capital structure, rate base, customer growth, depreciation expense, property tax, payroll, FAS 87/106, and fuel and purchased power expense, to include, but not be limited to, updated contracts prices for coal, wind power, fuel transportation and fuel storage, rate case expense. Public Counsel has no reason to share Staff’s concerns with Liberty’s ability to timely provide the limited true-up data that Public Counsel has proposed.

Wherefore, the Office of Public Counsel replies to the responses of Liberty and Staff as stated above and continues to move the Commission to adopt one of the three alternatives it offered

in paragraphs 25-27 of its motion for relief in response to Liberty's refiled case which are stated sequentially in Public Counsel's order of preference, or grant such other relief the Commission finds appropriate in 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

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 2nd day of April 2025.

/s/ Nathan Williams