

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 3rd day of  
April, 2025.

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 )

**File No. ER-2024-0261**

**ORDER DENYING MOTION FOR RELIEF**

Issue Date: April 3, 2025

Effective Date: April 3, 2025

**Procedural Background**

On November 6, 2024, The Empire District Electric Company d/b/a Liberty filed tariff sheets designed to increase its gross annual electric revenues. Due to an error, several of those tariff sheets were substituted on February 3, 2025.<sup>1</sup>

On February 26, Liberty withdrew all of its submitted tariff sheets, and filed a new set of tariff sheets. Also on February 26, Liberty submitted new prefiled direct testimony along with a motion requesting withdrawal of all of its previously filed prefiled direct testimony. In suspending the February 26 tariff sheets, the Commission reset the operation of law date by 89 days, which is equivalent to the number of days from Liberty's original filing to the corrective filing on February 3.

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<sup>1</sup> All dates refer to 2025 unless otherwise indicated.

On March 19, the Office of the Public Counsel (OPC) filed *Public Counsel's Motion for Relief in Response to Liberty's Refiled Case* (Motion). The Motion sought one of three remedies based on several objections to Liberty's filing of February 26.

On March 28, Liberty filed *Liberty's Response to Public Counsel's Motion for Relief* (Liberty's Response). Also on March 28, the Staff of the Commission (Staff) filed *Staff's Response to OPC's Motion for Relief* (Staff's Response).

On April 2, OPC filed *Public Counsel's Replies to Liberty's and Staff's Responses* (OPC's Reply).<sup>2</sup>

### **Test Year**

The Motion raised a concern with the currently ordered test year of the twelve months ending September 30, 2023, updated through September 30, 2024. The Motion set forth comparative historical data of prior rate cases and ordered test years to argue that the ordered test year in this case should be updated.

Liberty's Response stated that the total revenue requirement request has not changed at any point in the proceeding. Liberty's Response further stated that the Commission set December 5, 2024, extended to December 9, 2024, as the time for responses to Liberty's requested test year. The only response filed was from Staff.

Liberty's Response stated that the Commission issued its order setting the test year on December 13, 2024. Liberty's Response stated that no motion for reconsideration of that order was filed. Liberty's Response argued that the Commission's 89-day extension of the operation of law date has no material impact on the Commission's finding

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<sup>2</sup> Commission Rule 20 CSR 4240-2.080(13) does not specifically mention allowing a party's reply to responses from "other parties" as was requested in the Commission's March 20, 2025, *Order Directing Responses* (which set a time for responses to OPC's Motion), but the Commission will nevertheless address this filing.

of December 13, 2024, that the test year that was selected by Liberty was reasonable. Liberty's Response argued that OPC's lack of timely objection, either to the request for the test year itself or to the order actually setting the test year, precludes OPC from now arguing the test year is unreasonable.

OPC's Reply argued that the filing of the February 26 tariff sheets initiates a new tariff review. OPC's Reply argued that the Commission's finding that the test year that was selected by Liberty was reasonable was issued December 13, 2024, which is before Liberty filed the tariff sheets of February 26. OPC's Reply further argued that the test year ordered became unreasonable in February due to Liberty's use of projections when developing its revenue requirement and Fuel Adjustment Clause (FAC) base factor (discussed below).

Liberty's Response further argues that the only material change that could impact the Commission's finding that the requested test year was reasonable is the 89-day change to the operation of law date. Liberty argued that an 89-day delay is immaterial as it relates to the reasonableness of the test year. OPC's Reply argued that a test year should be a period which is most representative of what circumstances will be while the new rates are in effect. OPC's Reply argued that Liberty has made no showing why the ordered test year better represents what its cost-of-service will be on or after January 2, 2026, when new rates take effect.

Staff's Response stated that it does not support OPC's Motion. Staff's Response takes issue with a cited case<sup>3</sup> relied upon by OPC and noted the difference in the burden of proof in the cited case and the present case. The cited case was a complaint regarding

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<sup>3</sup> File No. EC-2002-1, Staff of the Missouri Public Service Commission, Complainant vs. Union Electric Company, d/b/a AmerenUE, Respondent.

rates brought by Staff. Staff, as the complainant, had the burden of proof. Staff's Response noted that in a general rate case the burden of proof is on the utility. Staff's Response also argued that it is too late for Liberty to file an updated case and for Staff to obtain the necessary data to conduct a thorough audit of a new test year.

Staff's Response noted that the established test year will be approximately three months older due to the 89-day reset of the operation of law date; however the burden of demonstrating that the proposed rate increase is just and reasonable still lies with Liberty. Staff argued that it believes that the Commission's prior approval of the test year establishes a reasonable path forward.

The Commission agrees with the argument set forth by Liberty's Response, and finds that OPC's objections to the ordered test year are out-of-time.

### **Projections Subsequent to the Ordered Update Period**

The Motion also raised a concern that a Liberty's witness testified to the impacts of a purchased power agreement (PPA) contract that will not occur until June 1, 2025, which is outside of the ordered update period. The Motion argued that the matching principle requires that costs and revenues best represent an enterprise's circumstances when they are all measured for the same time period.

Liberty's Response argued that its proposed FAC base factor is based on annualizing and normalizing fuel and purchase power components utilizing known and measurable amounts for fuel, purchased power, market revenue, transmission costs, and other components. Liberty stated that its proposed new FAC base factor in this case was developed with the same hourly cost production model that it used in the past three

Missouri rate cases. Liberty's Response argued that disputes concerning its approach would be appropriately addressed by testimony and the hearing process.

Staff's Response stated that 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. With respect to Liberty's FAC base factor, Staff's position is to prefer the most current data available. Nonetheless, Staff's Response did not oppose Liberty's inclusion of its proposed FAC base factor in this case, as that factor will be thoroughly evaluated within the broader context of this general rate case. Staff recommended that the Commission prioritize administrative efficiency and reject OPC's requested relief.

OPC's Reply concurred with Staff's Response regarding discrete adjustments; however, OPC's Reply argued that Liberty did not disclose that its case incorporated discrete adjustments based on projections beyond the ordered test year.

Nevertheless, Staff stated it believes the use of a true-up period would accomplish OPC's goal of utilizing more current information, at least in regard to certain cost items. Staff recommended that the Commission order Liberty to file true-up data through March 31, 2025. Staff has concerns that a later true-up date could be difficult for the Company to meet, and could result in the provision of unreliable data.

Liberty's Response stated that Liberty is agreeable to the inclusion of a true-up mechanism on terms agreed to among the parties and/or as ordered by the Commission.

## **Other Issues**

The Motion also stated a concern with the prefiled testimony of Liberty witness Leigha Palumbo. The Motion argued that two of witness Palumbo's schedules are contradictory to each other in stating the average net bill impact to residential customers.

Liberty's Response argued that the statements are not contradictory, and explained that one is a net amount without FAC and Energy Efficiency Cost Recovery (EECR) charges, while the other is a gross amount.

OPC's Reply argued that Liberty has a fundamental misunderstanding of the timing of the bill impacts of its FAC. OPC's Reply argued that Liberty's argument is based on the false premise that FAC revenues are being moved into general rate revenues. OPC's Reply states that 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. OPC's Reply argued that it is incorrect and misleading to characterize Liberty's increase as net increase as customers will experience the full base rate increase impact.

The Motion also argued that Liberty's filing letter of February 26 stated that testimonies were submitted identical to those filed on November 6, 2024, with the exception of limited changes to reflect correction of the amount of the requested base rate revenue requirement increase and the presentation of the impact of rebasing the fuel and purchase power components. OPC argued that there are changes to Liberty's rate design proposals for its Time Choice Residential Rate Plan Schedule. OPC also alleges changes in Liberty's class revenue responsibilities.

Liberty's Response stated that there was no change to Liberty's approach or methodology to its proposed rate design in the testimony and schedules between filings. Liberty states its original proposed rate design model used to calculate the respective

tariff sheet base rates contained an error. The rate design model erroneously indicated that the test year revenue collected via the FAC and EECR charges would continue to be collected from customers. The rate design model did not properly shift the test year revenue that was collected through the FAC and EECR charges to the proposed base rates. Liberty's Response stated that the error was limited to the rate design model and the base tariff rates. The correction of the error in the rate design model resulted in an increase in base rate revenues. This correction also resulted in a change to class revenue targets and the proposed rates.

Liberty argued a similar rationale for the change in the proposed block rates, in that the increase in class revenue targets coupled with no change in the customer charge resulted in higher kWh usage rates. Liberty's Response stated that the change in kWh usage rates was not uniform between the head block and the tail block because Liberty proposed to increase block one by the amount of customer costs not recovered in the customer charge. OPC's Reply argued that it sees no reason why the change in the requested rate increase should affect the respective class rate revenue responsibilities.

### **Prefiled Testimony of Non-Witnesses**

The Motion objected to Liberty prefiling the written testimony of individuals whom it does not intend to offer as witnesses in this case as they are no longer employed by Liberty.

Liberty's Response stated that it plans to have current Liberty witnesses adopt and sponsor the testimony filed by those employees who have since left, and that this process is consistent with Commission practices. Staff's Response took no position on OPC's concern with the subject testimony.

OPC's Reply argued that OPC is unaware of any time that has been allowed when the witness was unavailable at the time the testimony was prefiled. OPC's Reply argued that allowing witnesses to adopt testimony prejudices 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.

## **DISMISSAL**

The Motion requested dismissal of Liberty's rate case.<sup>4</sup> As the Commission has rejected OPC's argument against the ordered test year, the remaining arguments in favor of dismissal are as follows:

- the use of projected costs beyond the ordered test year and update period to calculate the FAC;
- contradictory witness statements;
- changes to rate design and proposed block rates; and
- use of prefiled testimony of former employees.

The Commission finds that concerns with projected costs for the FAC, contradictory witness statements, possible changes to rate design, and the use of prefiled testimony of former employees can be appropriately addressed by testimony and the hearing process.

## **ORDER NEW TEST YEAR**

The Motion, in an alternative to dismissal, first requested the Commission to order a new test year and order Liberty to file updated testimony based on the new test year.

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<sup>4</sup> The requested remedy also includes the Commission ordering Liberty to refile its rate case but restrict the time period of its test year, and also restricting the time period of an update/true-up period.



The Commission's finding *supra* that the Motion's objection to the ordered test year is out-of-time is applicable here.

### **ORDER NEW TESTIMONY**

The Motion offers a second alternative to dismissal in requesting the Commission order Liberty to file updated direct testimony that does not rely on projections and from witnesses intended to be called to testify at the evidentiary hearing. The second alternative also requests a true-up period ending June 30, 2025.

The Motion's support for this comes from its argument that some Liberty witnesses used financial projections in formulating their testimony, and that two Liberty witnesses are no longer employed by Liberty. OPC's concerns with witness statements is more appropriately addressed by testimony and the hearing process.

The Commission's finding *supra* that the Motion's objection to the ordered test year is out-of-time is again applicable to this requested remedy for a true-up period.

Staff and Liberty have preliminarily agreed with OPC to the addition of a true-up period; however, there remains disagreement on the end date of the true-up period. Thus, the Commission will order the parties to confer to seek agreement on the end date of the true-up period.

#### **THE COMMISSION ORDERS THAT:**

1. The Motion for Relief is denied.
2. No later than April 14, 2025, the parties shall jointly submit an agreed-upon end date for a true-up period. If the parties cannot agree, statements of a preferred end date for a true-up period or statements why no true-up period is necessary shall be filed no later than April 14, 2025.
3. This order shall be effective when issued.



**BY THE COMMISSION**

*Nancy Dippell*

Nancy Dippell  
Secretary

Hahn, Ch., Coleman, Kolkmeier,  
and Mitchell CC., concur.

Hatcher, Senior Regulatory Law Judge

**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 3<sup>rd</sup> day of April 2025.**



*Nancy Dippell*  
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**Nancy Dippell**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**April 3, 2025**

**File/Case No. ER-2024-0261**

**MO PSC Staff**

Staff Counsel Department  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
staffcounsel@psc.mo.gov

**Office of the Public Counsel  
(OPC)**

Marc Poston  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
opcservice@opc.mo.gov

**Consumers Council of Missouri**

John Coffman  
871 Tuxedo Blvd.  
St. Louis, MO 63119-2044  
john@johncoffman.net

**Empire District Retired  
Members & Spouses  
Association, LLC**

Douglas Healy  
3010 E. Battlefield, Suite A  
Springfield, MO 65804  
doug@healylawoffices.com

**Empire District Retired  
Members & Spouses  
Association, LLC**

Terry Jarrett  
306 Monroe St.  
Jefferson City, MO 65101  
terry@healylawoffices.com

**IBEW Local Union 1474**

Michael Amash  
6803 West 64th Street  
Suite 300  
Overland Park, KS 66202  
mea@blake-uhlig.com

**IBEW Local Union 1474**

Garrison Howell  
6803 West 64th Street  
Suite 300  
Overland Park, KS 66202  
grh@blake-uhlig.com

**Influent Energy**

Andrew Zellers  
1100 Main St. 4th Fl  
Kansas City, MO 64105  
andy.zellers@influentenergy.com

**Liberty (Empire)**

Diana Carter  
428 E. Capitol Avenue, Suite 303  
Jefferson City, MO 65101  
diana.carter@libertyutilities.com

**Liberty (Empire)**

Dean Cooper  
312 East Capitol  
P.O. Box 456  
Jefferson City, MO 65102  
dcooper@brydonlaw.com

**Liberty (Empire)**

James Flaherty  
216 S. Hickory  
P.O. Box 17  
Ottawa, KS 66067  
jflaherty@andersonbyrd.com

**Liberty (Empire)**

Jermaine Grubbs  
601 S. Joplin Ave.  
Joplin, MO 64801  
jermaine.grubbs@libertyutilities.com

**Midwest Energy Consumers  
Group**

Tim Opitz  
308 E. High Street, Suite B101  
Jefferson City, MO 65101  
tim.opitz@opitzlawfirm.com

**MO PSC Staff**

Eric Vandergriff  
200 Madison Street  
Jefferson City, MO 65101  
eric.vandergriff@psc.mo.gov

**Renew Missouri**

Nicole Mers  
915 Ash Street  
Columbia, MO 65201  
nicole@renewmo.org

**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**

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