

**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
OPC’S SECOND MOTION FOR COMMISSION ORDER**

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), and in response to the Second Motion for Commission Order (“Motion”) filed on March 27, 2025, by the Office of the Public Counsel (“OPC”) and the *Order Directing Responses* issued March 28, 2025, Liberty respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. Commission Rule 20 CSR 4240-2.135(2)(A) provides that, without first obtaining a protective order, information may be designated as confidential if that information is:

- 1) customer-specific information;
- 2) employee-sensitive personnel information;
- 3) marketing analysis or other market-specific information relating to services offered in competition with others;
- 4) marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;
- 5) reports, work papers, or other documentation related to work produced by internal or external auditors, consultants, or attorneys, except that total amounts billed by each external auditor, consultant, or attorney for services related to general rate proceedings shall always be public;
- 6) strategies employed, to be employed, or under consideration in contract negotiations;
- 7) relating to the security of a company’s facilities; or
- 8) concerning trade secrets, as defined in section 417.453, RSMo.

2. RSMo. §417.453 defines “trade secret” as “information, including but not limited to, technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique, or process,” that has “independent economic value, actual or potential, from not being

generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use” and is “the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

3. Additionally, Missouri Supreme Court Rule 56.01(c) provides that protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including . . . that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.”

4. Under a confidential designation, the materials so designated are not available to the general public. However, all parties to the case and the Commission have access to the material for purposes of this case.

5. Out of the 20 Liberty witnesses who filed direct testimony in this matter, limited portions of five witnesses’ direct testimonies are designated as confidential in accordance with Commission Rule 20 CSR 4240-2.135(2)(A). OPC initially challenged the confidential designations for all five pieces of testimony. Liberty provided additional explanations and revisions, and, at this time, OPC “is challenging the sufficiency of certain of Liberty’s confidentiality explanations and redactions” for two witnesses: Shawn Eck and Candice Kelly (Motion, ¶4).

Shawn Eck - Cybersecurity

6. Subparts (7) and (8) of Rule 2.135(2)(A) provide that, without first obtaining a protective order, information may be designated as confidential if that information relates to the security of a company’s facilities or is concerning trade secrets. As explained in the confidential designation cover page filed herein, portions of pages 10, 12, and 13 and Schedule SE-1 of Mr. Eck’s direct testimony are designated confidential in accordance with Commission Rule 20 CSR

4240-2.135(2)(A)7 and 8 due to the nature of the material regarding the safety and security of Liberty's critical infrastructure and other utility facilities. The material identifies, by vendor and specific project, the scope and contents of Liberty's cybersecurity and asset security protections.

7. Liberty recognizes the importance of providing transparent and accurate testimony and information in response to regulatory inquiries. The Company, however, must also be cognizant of the potential risks associated with disclosing the sensitive information included in Mr. Eck's testimony to the public in a way that could inadvertently expose critical infrastructure or systems to cybersecurity threats. As noted, public 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.

8. Similar security information was presented by Liberty affiliates before the New Hampshire Public Utilities Commission in Docket No. DE 23-039 and before the New York Public Service Commission in Docket Nos. 23-W-0235 and 24-G-0668, with confidentiality being granted in all instances.

9. The confidential designations in Mr. Eck's testimony were made by Liberty in recognition of its ongoing responsibility to protect public safety and national security and to support the continued reliability of critical infrastructure. The confidential information in Mr. Eck's testimony refers to and provides a holistic description of the threats that Liberty is seeking to avoid. Cumulatively, the confidential testimony provides a detailed description of Liberty's cybersecurity efforts and protections, falling squarely within the category of "(r)elating to the security of a company's facilities" in 20 CSR 4240-2.135(2)(A)7 and trade secrets under subsection 8 of the rule.

10. OPC argues that “(m)uch of his testimony that Liberty redacted goes well beyond describing the threats and risks for which it has designed its Cybersecurity Program to address” and that “Liberty’s explanations still are not adequate, and Liberty still has redacted more information than is appropriate for its present assertions of confidentiality.” (Motion, ¶¶ 5-6) OPC, however, does not explain any need or intended purpose behind the request for this information to be public.

11. From Liberty’s standpoint, the risks flowing from disclosure are simply so great that they plainly outweigh the public interest in further transparency. If a cyber attack on Liberty’s system is successful, it could have a catastrophic impact on the Company and its customers.

Candice Kelly – J.D. Power Proprietary Analyses

12. The confidential designation cover page accompanying the direct testimony of Candice Kelly explains that Schedule CK-4, which contains the Empire Electric JD Power Results from 2022-2023, is designated confidential due to marketing analysis for services offered in competition with others, marketing analysis for services provided to utility customers, and other trade secrets.

13. Subparts (3), (4), and (8) of Rule 2.135(2)(A) provide that, without first obtaining a protective order, information may be designated as confidential if it represents “marketing analysis or other market-specific information relating to services offered in competition with others” or “marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers,” or is “concerning trade secrets, as defined in section 417.453, RSMo.”

14. The J.D. Power results fit precisely within the definitions of the referenced rule subsections. Subsection (5), reports, work papers, or other documentation related to work produced by external consultants, is also applicable.

15. Liberty paid for a subscription service from J.D. Power to obtain the marketing analysis set forth in Schedule CK-4, in relation to the service provided by Liberty to its customers, and the licensing agreement with J.D. Power specifically provides that confidentiality shall be maintained, that J.D. Power owns the intellectual property rights in its work product, that its work product is protected by copyright laws, and that its work product contains trade secrets.¹

16. In Case Nos. ER-2022-0129 and ER-2022-0130, Evergy provided J.D. Power score results on February 21, 2024. It appears the scores were designated confidential in their entirety, with no objection to the designation. Liberty requests the same treatment in this case.

Response Regarding OPC's Request for Penalties

17. OPC notes that the Commission has statutory authority to pursue penalties for violations of its rules and orders, pursuant to the authority granted to the Commission by RSMo. §386.570 (Motion, ¶10). Liberty agrees with this statement. Liberty, however, believes the exercise of this authority would be inappropriate in these circumstances and would not be supported by the applicable law or facts.

18. Each confidential designation made by Liberty in this matter was initially made consistent with past practice and continues to be made upon a reasonable and good faith belief that the subject document or information is properly “confidential” pursuant to Commission Rule 20 CSR 4240-2.135(2)(A). Liberty has diligently worked in good faith to comply with the orders of the Commission and the requests of OPC.

¹ The Syndicated License and Services Agreement provides that “(e)ach party will protect the other party’s Confidential Information with at least the degree of care with which it protects its own Confidential Information of a similar nature, but in no event with less than reasonable care” and that “Client further acknowledges that: (a) the Information is an original compilation protected by applicable copyright laws; (b) JDP has dedicated substantial resources to collect, manage and compile the Information; and (c) the Information contains trade secrets of JDP.”

19. As explained above, the Company believes that the confidential designations in the direct testimonies of Shawn Eck and Candice Kelly should be maintained. In the event the Commission determines that additional material should be made public, Liberty submits that OPC's request for statutory penalties should still be denied.

WHEREFORE, Liberty respectfully submits this Response to OPC's Second Motion for Commission Order and requests OPC's Motion be denied in full and requests such other relief as is just and proper under the circumstances.

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 8th day of April, 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