

# 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 )

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

## ORDER GRANTING IN PART AND DENYING IN PART OPC’S SECOND MOTION FOR COMMISSION ORDER

Issue Date: April 17, 2025

Effective Date: April 17, 2025

### PROCEDURAL BACKGROUND

On November 14, 2024, the Office of the Public Counsel (Public Counsel) filed *Public Counsel’s Motion for a Commission Order*, and 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 responded, and on November 26, 2024, the Commission found in OPC’s favor that Liberty did not explain how information is qualified for the confidential information protections. The Commission also found that Liberty wholly redacted some pre-filed direct testimony schedules unnecessarily, and directed Liberty to review and resubmit those schedules.

On December 20, 2024, Liberty resubmitted the objected-to prefiled direct testimonies with a cover page on each. Liberty also resubmitted the objected-to schedules, many changing from being wholly redacted to having limited redactions.

On January 26, 2025,<sup>1</sup> OPC filed *Public Counsel's Motion to Enforce Order*. OPC argued that the added cover pages still do not comply with Commission rules. On February 6, Liberty filed *Liberty's Response to Public Counsel's Motion to Enforce Order*. On March 3, the Commission found partially in OPC's favor and partially in favor of Liberty.

## **CURRENT MOTION**

On March 27, OPC filed *Public Counsel's Second Motion for Commission Order* (Motion). The Motion argued that two of Liberty's prefiled direct testimonies continue to violate Commission rules regarding confidentiality.

On April 8, Liberty filed *Liberty's Response to OPC's Second Motion for Commission Order* (Response). No other parties responded to the Motion.

## **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."

Commission Rule 20 CSR 4240-2.135(2)(A) provides that information may be designated as confidential if that information is:

- 1) customer-specific information;
- 2) employee-sensitive personnel information;

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

- 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.

### **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."

## **TESTIMONIES AT ISSUE**

### **1. Shawn Eck Testimony**

The Motion argued that Shawn Eck's pre-filed direct testimony and its attached Schedule SE-1 are redacted more than necessary. The Motion argued that the redactions go beyond descriptions of the threats and risks of Liberty's Cybersecurity Program. Similarly, the Motion argued that while Liberty's explanation of confidentiality states that bad actors would know specific vendors, Schedule SE-1 does not actually list the vendors nor where they are identified in Schedule SE-1. The Motion also argued that the explanation of confidentiality does not adequately disclose how Schedule SE-1 discloses the extent of its security protections or how it discloses vulnerabilities. The Motion also

objects to Liberty's claim of keeping confidential its investment in cybersecurity as Schedule SE-1 does not include cost information.

The Response argued that the redactions comply with the Commission rule, and that they are confidential due to the nature of the material regarding the safety and security of Liberty's critical infrastructure and other utility facilities. The Response stated that the material identifies, by vendor and specific project, the scope and contents of Liberty's cybersecurity and asset security protections. The Response further argued that the confidential information in Mr. Eck's testimony refers to and provides a holistic description of the threats that Liberty is seeking to avoid.

OPC argues that Schedule SE-1 does not include cost information; however, Mr. Eck's statement of confidentiality does mention investments. Specifically, Mr. Eck's statement of confidentiality states in relevant part, "Likewise, the level of a company's investment in cybersecurity is a relevant data point to building an attack profile." The Commission interprets that this refers to the risk of a bad actor knowing the types or descriptions of the scope and breadth of various security projects. In a hypothetical example, the concern would be that the bad actor could infer that the investment is in padlocks and not combination locks. Protecting the information of the security 'investment', therefore, seems more likely to be a concern referring to general information of an investment rather than a specific dollar amount. Accordingly, the Commission finds that the general information of investment is sufficient to warrant confidentiality protection.

OPC's objection that Schedule SE-1 does not list actual vendors nor where they are identified in Schedule SE-1 appears unfounded in that the Commission identified at

least five vendors named in the document. Moreover, project description details may provide unintended contextual clues as to the identities of other vendors.

The Commission has reviewed the redactions in Mr. Eck's direct testimony and Schedule SE-1. Mr. Eck's direct testimony is partially redacted on pages 10, 12, and 13. In general terms, the Commission finds that the redacted portions of Mr. Eck's direct testimony discusses Liberty's overall cybersecurity program, its aims, and expected outcomes. Also in general terms, the Commission finds that the redacted portions of Mr. Eck's Schedule SE-1 reference internal security processes, vendors, and risk management plans.

Based on the above, the Commission finds that Mr. Eck's statement of confidentiality is in compliance with the rule. The Commission finds that the limited redactions of pages 10, 12, and 13 of Mr. Eck's prefiled direct testimony and the redactions in Schedule SE-1 are also in compliance with the rule.

## **2. Candice Kelly Testimony**

Schedule CK-4, attached to the prefiled direct testimony of Liberty witness Candice Kelly, is a power point presentation regarding a Liberty-specific report from J.D. Power. Virtually all of Schedule CK-4 is redacted. The Motion argued that information contained in Schedule CK-4 which is redacted is publicly disclosed on pages 7-8 of Ms. Kelly's direct testimony. The Motion also stated that Schedule CK-4 includes overall customer satisfaction index rankings that J.D. Power has publicly disclosed in press releases and that are still available on the J.D. Power website as of March 27, 2025. The Motion concluded that because the information is public elsewhere, then it should not be redacted from Schedule CK-4.

The Response noted that subsection 5 of 20 CSR 4240-2.135(2)(A), related to reports, work papers, or other documentation related to work produced by external consultants, is applicable to the redactions in Schedule CK-4; however, Ms. Kelly's statement of confidentiality on the cover sheet makes no mention of confidentiality pursuant to subsection 5. The Response additionally argued that subsections 3 and 4 are also applicable; however, the cover sheet makes no mention of confidentiality pursuant to subsections 3 or 4. The Response further stated that the Liberty's 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; however, the statement of confidentiality does not include this explanation.

The Commission has reviewed Schedule CK-4 and the cover sheet explaining how the information qualifies as confidential. The cover sheet stated, in pertinent part, that the information is confidential under subsection 8 "due to marketing analysis for services offered in competition with others, marketing analysis for services providing to utility customers, and other trade secrets". The cover sheet further stated that the J.D. Power report is the product of a paid subscription.

The Commission finds that the statement of confidentiality on the cover page of Liberty witness Ms. Kelly's testimony and Schedule CK-4 only cites to subsection 8 (trade secrets) of the Commission's confidentiality rule; however, it uses the language from subsections 3, 4, and 8. The Commission also finds that the statement of confidentiality does not include any reference to subsection 5 even though Ms. Kelly's statement of

confidentiality references the paid subscription to J.D. Power and Liberty's Response argued subsection 5's applicability.

Therefore, the Commission finds the explanation offered on the cover page of Ms. Kelly's testimony to be deficient in that it does not cite the subsection of the rule being relied upon (or subsections, as the case may be), does not sufficiently explain that it is confidential as a report prepared by an outside consultant, and does not explain that confidentiality is a requirement of Liberty's licensing agreement with J.D. Power. Neither subsections 3 or 4 are cited in Ms. Kelly's cover page; however, the language of subsections 3 and 4 is used in the explanatory language. Because Ms. Kelly's cover page does not include these citations or explanations, the Commission finds Ms. Kelly's statement of confidentiality to not be in compliance with the rule.

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, including all subsections relied upon being cited with reasons given to support each cited subsection.

Turning to OPC's objection that Ms. Kelly's prefiled direct testimony discloses information that is redacted in Schedule CK-4, the Commission finds the argument presented by OPC to be persuasive. Generally, Liberty cannot claim information to be confidential in one document while it publicly discloses the same information in another document. The Commission finds the redactions of Schedule CK-4 are not in compliance with the requirement of 20 CSR 4240-2.135(2)(B) that "[o]nly the specific information that qualifies as confidential shall be designated as such."

The Motion also argued for additional removal of redactions regarding certain information because J.D. Power has publicly disclosed such information in its press releases and also on the J.D. Power website. The Commission does not have information regarding Liberty's licensing contract with J.D. Power; thus, it cannot say what may or may not violate Liberty's confidentiality agreement with its consultant. Liberty should reexamine the information already made public by J.D. Power and determine if, without breaching its contract with J.D. Power, that information can be made public in this proceeding. Otherwise, Liberty should supplement Ms. Kelly's filing to include how the publicly available information can be obtained.

**THE COMMISSION ORDERS THAT:**

1. *Public Counsel's Second Motion for Commission Order* is granted in part and denied in part.
2. No later than April 25, 2024, Liberty shall resubmit the prefiled direct testimony and schedules of Candice Kelly in compliance with the requirements stated in the body of this order. Specifically, Schedule CK-4 shall not redact any information which is included in the public version of Ms. Kelly's prefiled direct testimony.
3. Liberty shall reexamine whether it can disclose information already made public by J.D. Power and determine if, without breaching its contract with J.D. Power, that information can be made public in this proceeding. If Liberty is not able to disclose the information already made public by J.D. Power, then Liberty should supplement Ms. Kelly's filing to include how the publicly available information can be obtained.
4. This order shall be effective when issued.





**BY THE COMMISSION**

*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 17<sup>th</sup> day of April, 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 17<sup>th</sup> day of April 2025.**



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

**MISSOURI PUBLIC SERVICE COMMISSION**

**April 17, 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**

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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.