

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of The Empire District Electric )  
Company d/b/a Liberty (Empire) for )  
Authority to Implement Rate Adjustments ) **File No. ER-2021-0097**  
Related to the Company’s Fuel and ) Tariff No. JE-2021-0092  
Purchase Power Adjustment (FAC) )  
Required in 20 CSR 4240-20.090 )

In the Matter of The Empire District )  
Electric Company’s Request for Authority )  
To File Tariffs Increasing Rates for Electric ) **File No. ER-2019-0374**  
Service Provided to Customers in its )  
Missouri Service Area )

**STAFF RECOMMENDATION REGARDING VARIANCE REQUEST  
AND RATE ADJUSTMENT TARIFF SHEET**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Recommendation Regarding Variance Request and Rate Adjustment Tariff Sheet* states as follows:

**VARIANCE**

1. On October 1, 2020, Liberty-Empire filed a Motion for Variance and Notice of New FAC Charge Types, which requested a variance from Commission Rule 20 CSR 4240-20.090(8)(D)1A. As summarized in the Commission’s *Order Directing Filing and Setting Intervention Deadline* (“Order”) issued herein on October 1, 2020:

On October 1, 2020, The Empire District Electric Company d/b/a Liberty (Empire) filed a motion for variance and notice of new fuel adjustment clause (FAC) charge types. The motion requests a variance from the Commission’s Rule 20 CSR 4240-20.090(8)(D)1A, requirement that a party proposing the inclusion of costs or revenues covered by a market settlement type or schedule file notice in the case approving the utility’s FAC no later than 60 days *prior to the utility’s next fuel adjustment rate (FAR) adjustment filing*. Liberty filed its FAR adjustment on October 1, 2020. (Emphasis added)

2. Although Liberty-Empire sought a variance from the Commission's *rule*, its *tariffs* contain a nearly identical provision. See, for example, The Empire District Electric Company d/b/a Liberty, P.S.C. Mo. No. 6, Section 4, Original Sheet No. 17I, which provides in paragraph 4.B:

The Company will make a filing with the Commission giving the Commission notice of the new charge type no later than 60 days prior to the Company including the new charge type cost or revenue in a FAR filing. Such filing shall identify the proposed accounts affected by such new charge type cost or revenue, provide a description of the new charge type demonstrating that it possesses the characteristics of, and is of the nature of, the costs or revenues listed in factors PP or OSSR as the case may be, and identify the preexisting market settlement charge type(s) which the new charge type replaces or supplements;

In the present situation, the Company did not give the required 60 days' notice prior to including the new charge types in its filing, but instead gave notice of the new charge types on the same day as its FAR filing.

3. Liberty-Empire did not cite any provision of its tariff that would allow the Commission to grant a variance from the 60-day notice provision of its tariff; in fact, Liberty-Empire did not even request a variance from such provision of its tariff. Staff completed a cursory review of Liberty-Empire's tariff sheets and could not find a provision that would allow the Commission to grant Liberty-Empire a variance from its tariff provisions.<sup>1</sup> Therefore, Liberty-Empire is required to comply with its tariff

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<sup>1</sup> A tariff has the force and effect of law and is binding on the utility, the public and the PSC. This is the "Filed Rate Doctrine" or "Filed Tariff Doctrine." "As developed for purposes of the Federal Power Act, the 'filed rate' doctrine has its genesis in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251-252, 71 S.Ct. 692, 695, 95 L.Ed. 912 (1951). There, this Court examined the reach of ratemakings by FERC's predecessor, the Federal Power Commission (FPC). \* \* \* [M]any state courts have applied the filed rate doctrine of *Montana-Dakota* to decisions of state utility commissions and state courts that concern matters addressed in FERC ratemakings." *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 962, 964, 106 S.Ct. 2349, 2354-55, 2356, 90 L.Ed.2d 943, \_\_\_ (1986). Missouri courts have uniformly applied the Filed Rate Doctrine to decisions of the PSC, *see, e.g., State ex rel. AG Processing, Inc. v. Public Service Commission*, 311 S.W.3d 361 (Mo. App., W.D. 2010); *Bauer v. Southwestern Bell Tel. Co.*, 958 S.W.2d 568 (Mo. App., E.D. 1997).

(which effectively means it is required to comply with the Commission rule) and must be held to the 60-day requirement.<sup>2</sup>

#### **RATE ADJUSTMENT TARIFF SHEET**

4. On October 1, 2020, The Empire District Electric Company, a Liberty Utilities company (“Liberty-Empire” or “Company”) filed one proposed tariff sheet, 1st Revised Sheet No. 17q Canceling Original Sheet No. 17q, bearing a proposed effective date of December 1, 2020, to revise the Current Period Fuel Adjustment Rates (“FARs”) of its Fuel Adjustment Clause (“FAC”). The Commission assigned it Tariff Tracking No. JE-2021-0092. Liberty-Empire filed a substitute tariff on October 22, 2020, to correct and clarify the Jurisdictional Factor on Line 4. No other tariff amounts were affected.

5. Concurrently on October 1, 2020, Liberty-Empire made a FAC true-up filing in File No. EO-2021-0098 to identify the true-up amount of \$(1,423,471) which is the over-recovery from its customers during the 22nd Recovery Period of its FAC. This amount is included with the over-recovery amount equal to 95% of the difference between (a) Liberty-Empire’s Missouri jurisdiction actual fuel and purchased power costs plus net emissions allowance costs less off-system sales revenue and renewable energy credits revenue and (b) Liberty-Empire’s Missouri jurisdiction net base energy cost during

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<sup>2</sup> In *State ex rel. St. Louis County Gas Co. v. Public Service Commission*, 315 Mo. 312, 317 (Mo. Sup. Ct., Division 1, 1926) the court stated that “[a] schedule of rates and charges filed and published in accordance with the foregoing provisions acquires the force and effect of law; and as such it is binding upon both the corporation filing it and the public which it serves. It may be modified or changed only by a new or supplementary schedule, filed voluntarily, or by order of the commission. . . . If such a schedule is to be accorded the force and effect of law, it is binding, not only upon the utility and the public, but upon the Public Service Commission as well.” In a somewhat similar case, the court stated “**Without some such provision [i.e., a provision allowing the Commission to authorize departures from the tariff in exceptional cases] in the [tariff] the commission could not authorize the company to make an exception in the application of its approved rule** [citing the *St. Louis County Gas* discussed above].” (Emphasis added) *State ex rel. Kennedy v. Public Service Commission*, 42 S.W.2d 349, 353 (Mo. Sup. Ct., Division 2, 1931)

Accumulation Period 24 (“AP24”), which is equal to (\$2,575,706), plus interest equal to \$(17,232), when calculating new FARs in this case. This results in a dollar amount<sup>3</sup> of (\$4,016,409) used to calculate the FARs for AP24.

6. Because of a difference in line losses, there are different FARs for service taken at secondary voltage level and at primary and above voltages levels; the resulting rates are in the column marked “Proposed” in the following table:

Fuel Adjustment Rates (\$ Per kWh)			
Voltage Level	Present	Proposed	Difference
Primary	\$0.00043	\$(0.00186)	\$0.00229 Decrease
Secondary	\$0.00043	\$(0.00190)	\$0.00233 Decrease

7. Based on a monthly usage of 1,000 kWh, the proposed change to the FAR will decrease the Fuel Adjustment Charge of a Liberty-Empire residential customer’s bill from \$.43 to \$(1.90), a decrease in the customer’s bill of \$2.33 per month.<sup>4</sup>

8. Other than the items set forth in the accompanying Staff Report Memorandum (which is incorporated herein by reference) and Liberty-Empire’s proposed true-up amount in its true-up filing in File No. EO-2021-0098, Staff is not aware of any other matter pending before the Commission that affects or is affected by this filing.

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<sup>3</sup> The dollar amount used to calculate the Current Period FAR is called the Fuel and Purchased Power Adjustment (“FPA”).

<sup>4</sup> Subject to further adjustment dependent on Liberty-Empire’s response as to whether providing the full 60-day notice for consolidation of SPP charge types will further impact this FAR filing.

9. Staff has verified that Liberty-Empire is not delinquent on any assessment and has filed its 2019 annual report. Liberty-Empire is current on its submission of its Surveillance Monitoring reports as required in 20 CSR 4240-20.090(6) and its monthly reports as required by 20 CSR 4240-20.090(5).

10. Staff has determined that the rate adjustment is in compliance with Commission Rule 20 CSR 4240-20.090 and Section 386.266 RSMo. However, due to the 60-day notice provision in its tariff discussed above, Staff cannot *at this time* recommend that the tariff sheet filed herein by Liberty-Empire be approved. Staff is uncertain as to whether allowing the full 60 days to elapse would cause any financial impacts to the current FAR filing, relating to the consolidation of the charge types. Based on its examination and analysis of the information Liberty-Empire filed and submitted in this case, Staff recommends the Commission order Liberty-Empire to provide further details of any financial changes to the current FAR filing, within 7 days, resulting from providing the full 60 days' notice as provided in Liberty-Empire's tariff. Staff will supplement its recommendation on the current FAR filing once Liberty-Empire responds.

**WHEREFORE**, Staff recommends that the Commission issue an order denying Liberty-Empire's request for variance due to the 60-day notice provision of its tariff and ordering Liberty-Empire to make a filing to provide further details of any financial changes to the current FAR filing, within 7 days, resulting from providing the full 60 days' notice as provided in Liberty-Empire's tariff.

Respectfully submitted,

**/s/ Jeffrey A. Keevil**

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Missouri Public Service Commission

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 30<sup>th</sup> day of October 2020.

**/s/ Jeffrey A. Keevil**

## MEMORANDUM

TO: Missouri Public Service Commission Official Case File  
File No. ER-2021-0097, Tariff Tracking No. JE-2021-0092  
The Empire District Electric Company

FROM: Lisa Wildhaber, Senior Utility Regulatory Auditor  
Brooke Mastrogiannis, Utility Regulatory Supervisor  
Cynthia M. Tandy, Utility Regulatory Auditor

DATE: /s/ Brad Fortson 10/30/2020                      /s/ Jeff Keevil 10/30/2020  
Energy Resources Department / Date                      Staff Counsel Department / Date

SUBJECT: Staff Recommendation Regarding Tariff Sheet Filed to Change Rates Related  
to The Empire District Electric Company d/b/a Liberty-Empire's Fuel  
Adjustment Clause .

DATE: October 30, 2020

### Summary and Staff Recommendation

On October 1, 2020, The Empire District Electric Company ("Liberty-Empire" or "Company") filed one (1) proposed tariff sheet, 1st Revised Sheet No. 17q Canceling Original Sheet No. 17q, bearing a proposed effective date of December 1, 2020, to revise its Current Period Fuel Adjustment Rates<sup>1</sup> ("FARs") of its Fuel Adjustment Clause ("FAC") used to determine the Fuel Adjustment Charge<sup>2</sup> on customers' bills. Liberty-Empire also filed direct testimony of its witness Charlotte T. Emery on October 1, 2020 and submitted to Commission Staff ("Staff") work papers in support of the proposed tariff sheet. The Commission assigned the tariff sheet to Tariff Tracking No. JE-2021-0092. Empire filed a substitute tariff on October 22, 2020, to correct and clarify the Jurisdictional Factor on Line 4. No other tariff amounts were affected and Empire did not file substitute testimony.<sup>3</sup>

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<sup>1</sup> The Current Period FARs for service at primary voltage and above and for service at secondary voltage are located on lines 14 and 15, respectively, of proposed 1st Revised Sheet No. 17q.

<sup>2</sup> The actual line item on the customer's bill is: Fuel Adjust Charge.

<sup>3</sup> In their October 22<sup>nd</sup> filing letter for the changes, Empire stated: "The Missouri Energy Ratio on the tariff sheet has been changed to be consistent with tariff specifications, and footnotes were added to explain the calculation discrepancies (Schedule CTE-2, page 1). Additionally, the formula for the accumulation period Total Missouri Energy Ratio was updated to ensure that it is being calculated according to tariff specifications, and the formula for the accumulation period Total Missouri Energy Ratio was updated on the workpaper labeled 08-2020 Missouri Fuel Adjustment Worksheet (Schedule CTE-2, page 2)." Further, in their October 22<sup>nd</sup> letter filing, Empire provided a reason for the increase in the Missouri Energy Ratio (J): "The Missouri Energy Ratio increased in the months of June, July, and August. This increase occurred because three of the four GFR customers opted to terminate service as of June 1, 2020. As such, Missouri Retail kwh Sales account for a larger portion of the overall Total System kwh Sales."

On October 1, 2020, Liberty-Empire filed a Motion for Variance and Notice of New FAC Charge Types, which requested a variance from Commission Rule 20 CSR 4240-20.090(8)(D)1A. This Commission Rule requires notice of new market settlement types no later than sixty (60) days prior to the due date of the utility's next FAR filing. Staff notes that the Motion is a request for variance from the Rule, however the FAC tariff includes the same language as the Rule concerning the sixty day notice of new market settlement types but does not include any provision to allow a request for variance<sup>4</sup>. The two new charge types are a consolidation of the previous 37 charge types, which is explained in further detail in this staff recommendation. While Staff is not opposed to the consolidation of the charge types, Staff suggests the full 60 days for notice must elapse, as required by the Rule since Liberty-Empire's FAC tariff also includes the Rule language but does not include any provision to allow a request for variance. Staff is unclear as to whether allowing the full days to elapse would cause any financial impacts to the current FAR filing, relating to the consolidation for these charge types. Based on its examination and analysis of the information Liberty-Empire filed and submitted in this case, Staff recommends the Commission order Liberty-Empire to provide further details of any financial changes to the FAR filing, within 7 days of the filing of this recommendation, resulting from Staff suggesting the full 60 days notice must be provided. Staff will supplement its recommendation on the current FAR filing once Empire responds.

### **Liberty-Empire's AP24 FARs**

The testimony and work papers include information that supports Liberty-Empire's calculation of the dollar amount<sup>5</sup> used to calculate the FARs for Accumulation Period 24 ("AP24"). That dollar amount is \$(4,016,409) and results from:

1. The amount of \$(2,575,706), found on Line 7 of 1st Revised Sheet No. 17q, which is equal to 95% of the difference between: a) Liberty-Empire's Missouri jurisdiction<sup>6</sup> actual fuel costs plus purchased power costs plus net emissions

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<sup>4</sup> See Staff's Cover Pleading for additional discussion.

<sup>5</sup> The dollar amount used to calculate the Current Period FAR is called the Fuel and Purchased Power Adjustment ("FPA") which is located on line 11 of proposed 1st Revised Sheet No. 17q.

<sup>6</sup> Missouri Energy Ratio (J) = (Missouri retail kWh sales)/(Total system kWh sales), where Total system kWh sales includes sales to municipalities that are associated with Liberty-Empire and excludes off-system sales. See Original Sheet No 17aa. For AP24, J is equal to 85.52% as reflected on line 4 of 1st Revised Sheet No. 17q, as substituted on October 22, 2020.. The 85.52 J factor is derived from dividing total Missouri Retail kWh Sales for this accumulation period by the Total System kWh Sales for this accumulation period. As explained in footnote 2 of the current tariff, Liberty-Empire calculates (TEC-B)\*J on a monthly basis, and Line 5 is the sum of each month's calculation. . For



allowance costs less off-system sales revenue<sup>7</sup> and less renewable energy credits (“REC”) revenue and b) Liberty-Empire’s Missouri jurisdiction net base energy cost<sup>8</sup> during AP24; plus

2. The true-up amount of \$(1,423,471)<sup>9</sup> which is the over-recovery amount of the FARs for Recovery Period 22 (“RP22”), found on Line 8 of 1st Revised Sheet No. 17q; plus
3. The interest for AP24, a portion of RP22<sup>10</sup>, and a portion of RP23<sup>11</sup>, plus total interest of \$1,250.46 on the Asbury adjustment, all equal to \$(17,232), found on Line 10 of 1st Revised Sheet No. 17q.

The Current Period FAR of \$(.00178) per kWh (Line 13 of 1st Revised Sheet No. 17q) is equal to the FPA Amount of \$(4,016,409) divided by the forecasted Missouri net system input (“NSI”) for RP24 of 2,257,566,452 kWh, found on Line 12 of 1st Revised Sheet No. 17q.

Because of a difference in line losses, there are different FARs for service taken at primary and above voltage levels and at secondary voltage level. When accounting for line losses for the different voltage levels, the proposed FARs are \$(.00186) per kWh for customers receiving service at primary voltage level and above, and \$(.00190) per kWh for customers receiving service at secondary voltage level. Liberty-Empire’s present FARs are \$.00043 per kWh for customers receiving service at primary voltage level and above and \$.00043 per kWh for customers receiving service at secondary voltage level.<sup>12</sup>

Fuel Adjustment Rates (\$ Per kWh)			
Service Voltage Level	Present	Proposed	Difference
Primary	\$.00043	\$(.00186)	\$0.00229 Decrease
Secondary	\$.00043	\$(.00190)	\$0.00233 Decrease

this reason, the calculation of the total energy cost minus the net base energy cost (line 3) multiplied by the Missouri Energy Factor (line 4) does not equal the amount entered on line 5. Line 3 multiplied by line 4 equals \$(3,045,850).

<sup>7</sup> For AP24, this amount is \$56,521,028 as reflected on line 1 of 1st Revised Sheet No. 17q.

<sup>8</sup> For AP24, this amount is \$60,082,592 as reflected on line 2 of 1st Revised Sheet No. 17q.

<sup>9</sup> Liberty-Empire’s RP22 true-up filing is contained in File No. EO-2021-0098.

<sup>10</sup> Recovery Period 22 is December 2019 through May 2020.

<sup>11</sup> Recovery Period 23 is June 2020 through November 2020.

<sup>12</sup> Lines 14 and 15 of 8th Revised Sheet No. 17ac.

Based on a monthly usage of 1,000 kWh, the proposed change to the FAR will decrease the Fuel Adjustment Charge of a Liberty-Empire residential customer's bill from \$.43 to \$(1.90), a decrease in the customer's bill of \$2.33 per month.<sup>13, 14</sup> The accumulation periods, recovery periods, and other specifications of Liberty-Empire's existing FAC are set out in its currently effective tariff sheets.

On page 6, line 9 through line 22 of her filed testimony, Company witness Charlotte T. Emery describes the reasons for the decrease in the FAR's base rates:

Q. How did Liberty-Empire's average energy costs for the Accumulation Period compare to the costs included in base rates?

A. Liberty-Empire's average energy costs per kWh decreased below the level built into its base electric rates, which is why the FAC rate tariff filed by the Company seeks a decrease in the rates charged to the Missouri customers. More specifically, Liberty-Empire's Missouri base rates included an average cost of energy per kWh of net system production of \$0.02415 during the Accumulation Period of March 2020 through August 2020. Liberty-Empire actually incurred average energy costs of \$0.02272 per kWh during the Accumulation Period, which is \$0.00143 per kWh, or about 5.93 percent less, than the average cost built into base rates. Pursuant to Liberty-Empire's FAC tariff, the Company is requesting to return to its Missouri customers the net of 95 percent of this decrease plus approximately \$1,423,471 of over-recovered energy cost and \$17,232 of interest expense from the Recovery Period ending May 31, 2020. This is an average of \$.00178 per kWh sold during the upcoming Recovery Period.

### **Retirement of Asbury Generation Facility**

The retirement date of Asbury was an issue in the most recent general rate case, Case No. ER-2019-0374. The previous Fuel & Purchased Power Adjustment Clause ("FAC") filing, Case No. ER-2020-0311, originally included coal inventory adjustments related to the Asbury generating facility. After the Office of the Public Counsel proposed rejecting the tariff and removal of the disputed \$2,103,771 Asbury fuel expenses, and the Commission issued its Order Rejecting Tariff to Change Fuel Adjustment Rates, Liberty-Empire filed a revised tariff on June 5, 2020, reflecting removal of the disputed Asbury related costs. After discussions between all parties, a Global, Unanimous Stipulation and Agreement was filed on October 2, 2020 and approved by the Commission on October 7, 2020, which reflected Liberty-Empire's

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<sup>13</sup> In Charlotte T. Emery's direct testimony, on page 7 lines 8 through 11, she states, "This Accumulation Period coincided with the adverse impacts of COVID-19 on Liberty-Empire's and the Southwest Power Pool's load levels. Additionally, natural gas prices were much lower than budgeted during the period."

<sup>14</sup> Subject to further adjustment dependent on Liberty-Empire's response as to whether providing the full 60 day notice for consolidation of SPP charge types will further impact this FAR filing.

agreement to not seek recovery of \$1,925,886 coal inventory adjustment through the FAC, with deferral of that amount to FERC Account 182.3, Other Regulatory Assets, for consideration in Liberty-Empire's next general rate case. The Stipulation also directed that \$177,885 of costs attributable to undistributed coal expenses were eligible for recovery through the FAC. As such, the current FAC filing reflects inclusion of the \$177,885 undistributed coal expenses, reduced to \$141,557 after applying the Missouri allocation factor and the 95% sharing mechanism<sup>15</sup>.

### **Southwest Power Pool ("SPP") Charge Types**

On October 1, 2020, Liberty-Empire filed a Motion for Variance and Notice of New FAC Charge Types, which addressed two new charge types that will be reported on SPP Settlement Statements, relating to Jointly Owned Units. Company witness Charlotte T. Emery's Testimony on page 15, lines 6 through 21, explains the background of the two new charge types:

In August 2020, SPP went live with Combined Interest Resource ("CIR") Modeling which allows Jointly Owned Units ("JOU") to model units as a single resource with combined interests rather than individual units. It is my understanding this new functionality will address flaws created in a 2017 JOU market design change that was approved to address gaming opportunities. SPP, through its working group activities and Market Monitoring Unit review, submitted to FERC what is now the CIR modeling as a solution to the JOU market flaws. FERC approved the language for CIR modeling in July 2019 but SPP members had to wait until SPP's Settlement System Replacement Project ("SSRP") was complete (February 2020) before adding the new CIR functionality to the settlement system which occurred on August 1, 2020. Although the FERC approved changes technically created two new charge types that will be reported on the SPP Settlement Statements, (Day-Ahead Combined Interest Resource Adjustment Amount and Real-Time Combined Interest Resource Adjustment Amount) these new charge types are really just a consolidation of the existing charge types that Liberty-Empire receives for units for which are designated as JOU's and have selected the CIR modeling option."

Liberty-Empire's response to Data Request 0001 provided further background and explanation for the change in charge types. It is Staff's understanding that JOU's were previously registered in SPP as separate resources under separate asset owners, with settlement as separate resources based on the ownership shares. The new modeling reflects the JOU's as a single resource, instead of separate resources, with final settlement in SPP based on the ownership shares.

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<sup>15</sup> See Charlotte Emery's Direct Testimony, pages 12-13, for an explanation of these calculations.

Based on the responses to Data Request 0001 and 0002, it is Staff's understanding that the two new charge types and removal of the previous 37 charge types are merely a reflection of the new modeling process, with no additional costs incurred due to the change in charge types. The response to Data Request 0002 states: "There is no change in costs. The CIR is a consolidation of the existing charge types to enable a more efficient market and eliminate gaming opportunities, as identified by the SPP Market Monitoring Unit (MMU). Since the CIR is a consolidation of existing charges, there is no language change in the tariff necessary as there are no new market products created as a result of these consolidated charges."

While Staff is not opposed to the consolidation of the charge types resulting from the new CIR modeling option, Staff suggests the full 60 day notice requirement is required. While Staff understands that once the full 60 day notice requirement is met the consolidation of the charge types will not result in any financial changes to the costs and revenues reported in future FAR filings, Staff is unclear if the 60-day period causes any financial changes to the current FAR filing, since the new charge types became effective during August 2020, the last month under this FAR filing's accumulation period. As such, Staff requests that the Commission order Liberty-Empire to provide details and explanations regarding any financial repercussions of allowing the 60 day notice period to elapse. Staff's further recommendation regarding approval of this FAR filing would be determined after receiving this additional information from Liberty-Empire.

### **Missouri Joint Municipal Electric Utility Commission (MJMEUC)**

Empire's current agreement with the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") is a 5-year agreement for Empire to sell energy and capacity to the cities of Monett and Mount Vernon, Missouri. Empire's energy sold to MJMEUC under the agreement will be billed to the cities of MJMEUC resulting in a reduced portion of Empire's total fuel expense assigned and billed to Empire's retail customers. Empire will also sell energy back to the SPP on behalf of MJMEUC. The MJMEUC agreement is a full and partial requirement sales contract. In the Commission's Report and Order in the most recent general rate case, Case No. ER-2019-0374, the Commission stated, "Empire's current FAC tariff language does not allow revenues from its MJMEUC contract to flow through its FAC. The Commission further finds that the FAC tariff should not be revised to allow revenue

from MJMEUC contracts to flow through the FAC... The Commission will order additional reporting for Empire to file with its FAC monthly reports and Fuel Adjustment Rate filing workpapers, including a detailed listing of all costs incurred due to the MJMEUC contracts and revenues that Empire receives from MJMEUC.”<sup>16</sup> The purpose of the additional filing requirements is to show that the energy purchased from Empire related to the MJMEUC contract will be billed to the cities via MJMEUC and thus reduce a portion of the fuel expense charged to Empire’s retail customers. The reduced fuel expense is intended to show that the energy purchases for these cities do not flow through the FAC. Staff was able to verify the current filing does reflect removal of the MJMEUC revenues and reduced fuel expense, in compliance with the Commission’s order.

### **Staff Review**

Staff reviewed Liberty-Empire’s proposed 1st Revised Sheet No. 17q Canceling Original Sheet No. 17q, the direct testimony of Liberty-Empire witness Charlotte T. Emery filed on October 1, 2020, and Liberty-Empire’s monthly filings and work papers for AP24. Staff verified that the actual fuel costs plus purchased power costs plus net emissions allowance costs less off-system sales revenues and less REC revenues, match the fuel costs plus purchased power costs plus net emissions allowance costs less off-system sales revenues and less REC revenues in Liberty-Empire’s proposed 1st Revised Sheet No. 17q Canceling Original Sheet No. 17q. Staff also reviewed Liberty-Empire’s monthly interest rates that are applied to the monthly over- and under-recovery amounts for AP24, a portion of RP23, and a portion of RP22 and the calculation of the monthly interest amounts. The information filed with the tariff sheet and work papers include sufficient data to calculate the FARs for AP24.

Attachment A includes three charts that provide a summary of Liberty-Empire’s twenty-four (24) FAC rate adjustment filings. Chart 1 illustrates a) Liberty-Empire’s FARs for primary and secondary voltage service levels for each of the twenty-four (24) accumulation periods, and b) that there have been thirteen (13) positive FARs and eleven (11) negative FARs. Chart 2 illustrates Liberty-Empire’s FAC cumulative under-collected amount<sup>17</sup> at the end of

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<sup>16</sup> Commission’s *Amended Report and Order*, page 72, filed on July 23, 2020.

<sup>17</sup> A positive under-collected amount means the Total Energy Cost (defined on line 1 of 1st Revised Sheet No. 17ac as  $TEC = (FC + PP + E - OSSR - REC)$ ) is greater than the Net Base Energy Cost (defined on line 2 of 8th Revised Sheet No. 17ac as  $B = BF \times S_{AP}$ ). Conversely, a negative under-collected amount means the Total Energy Cost is less than the Net Base Energy Cost.

each of the twenty-four (24) accumulation periods with the cumulative under-collected amount through AP24 of approximately \$31 million. Chart 3 illustrates Liberty-Empire's FAC cumulative under-collected percentage of cumulative total energy costs at the end of each of the twenty-four (24) accumulation periods with the cumulative under-collected percentage through AP24 of approximately 2%.

### **Staff Recommendation**

Liberty-Empire filed the 1st Revised Sheet No. 17q Canceling Original Sheet No. 17q, and based on Staff's review, Staff has determined that the adjustment is in compliance with Commission Rule 20 CSR 4240-20.090, Section 386.266 RSMo, and Liberty-Empire's FAC embodied in its tariff.

Commission Rule 20 CSR 4240-20.090(8)(H)<sup>18</sup> provides in part:

(H) Within sixty (60) days after the electric utility files its testimony and tariff sheet(s) to adjust its FARs, the commission shall either—

1. Issue an interim rate adjustment order approving the tariff sheet(s) and the adjustments to the FARs;

2. Allow the tariff sheet(s) and the adjustments to the FARs to take effect without commission order; or

3. If it determines the adjustment to the FARs is not in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the electric utility's most recent general rate proceeding, reject the proposed rate sheets, suspend the timeline of the FAR adjustment filing, set a prehearing date, and order the parties to propose a procedural schedule. The commission may order the electric utility to file tariff sheet(s) to implement interim adjusted FARs to reflect any part of the proposed adjustment that is not in question.

Liberty-Empire has requested that the 1st Revised Sheet No. 17q Canceling Original Sheet No. 17q filed on October 1, 2020, as substituted on October 22, 2020, become effective on December 1, 2020. Thus, the tariff sheet was filed with sixty (60) days' notice. Based on its examination and analysis of the information Liberty-Empire filed and submitted in this case, including the Motion for Variance, Staff recommends the Commission order Liberty-Empire to provide further details of any financial changes to the FAR filing within seven days of the filing of this recommendation, resulting from Staff suggesting the full 60 days notice must be provided. Staff will supplement its recommendation on the current FAR filing once Empire responds.

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<sup>18</sup> Effective January 30, 2019.

Staff has verified that Liberty-Empire has filed its 2019 annual report and is not delinquent on any assessment. Liberty-Empire is current on its submission of its Surveillance Monitoring reports as required in 20 CSR 4240-20.090(6) and its monthly reports as required by 20 CSR 4240-20.090(5).

Staff's recommendation in this case is solely based on the accuracy of Liberty-Empire's calculations, and is not indicative of the prudence of the fuel costs during AP24.

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of The Empire District Electric )  
Company d/b/a Liberty (Empire) for )  
Authority to Implement Rate Adjustments ) **Case No. ER-2021-0097**  
Related to the Company’s Fuel and ) Tracking No. JE-2021-0092  
Purchase Power Adjustment (FAC) )  
Required in 20 CSR 4240-20.090 )

In the Matter of The Empire District )  
Electric Company’s Request for Authority )  
To File Tariffs Increasing Rates for Electric ) **Case No. ER-2019-0374**  
Service Provided to Customers in its )  
Missouri Service Area )

**AFFIDAVIT OF BROOKE MASTROGIANNIS, CYNTHIA M. TANDY  
AND LISA WILDHABER**

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF COLE )

**COME NOW** Brooke Mastrogiannis, Cynthia M. Tandy and Lisa Wildhaber, and on their oath declares that they are of sound mind and lawful age; that they contributed to the foregoing Staff Recommendation Regarding Variance Request and Rate Adjustment Tariff Sheet; and that the same is true and correct according to their best knowledge and belief, under penalty of perjury.

Further the Affiants sayeth not.

/s/ Brooke Mastrogiannis  
Brooke Mastrogiannis

/s/ Cynthia M. Tandy  
Cynthia M. Tandy

/s/ Lisa Wildhaber  
Lisa Wildhaber





