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-2021-0312

PUBLIC COUNSEL'S MOTION
IN RESPONSE TO LIBERTY'S MPPM NOTICE FILING

COMES NOW the Office of Public Counsel ("Public Counsel" or "OPC") and for its motion in response to Liberty's first annual MPPM notice filing (Notice of MPPM Submission), states:

1. In its first annual market price protection mechanism (MPPM) compliance filing that it made on July 28, 2023, Liberty included a PPA replacement value balance of ($8,345,691); however, the correct PPA replacement value balance is $0. This is because, as Public Counsel expert Lena Mantle, P.E., explains in her verified memorandum attached to this pleading, by the terms of the MPPM, as clarified, the PPA replacement value is $0 until Liberty's Elk River wind PPA expires at the end of 2025.

2. Aside from treating its Elk River wind PPA as if it already were expired, Public Counsel disagrees with Liberty's methodology for calculating PPA replacement value balances. As Public Counsel expert Lena Mantle, P.E., explains in her memorandum, Liberty's methodology for calculating PPA replacement values treats Missouri renewable energy standard (RES) compliance on a monthly basis when it is an annual calendar year requirement. She also explains that, instead of relying on the value of RECs created by its generation portfolio in the order of most-to-least cost effectiveness as it does for RES compliance purposes, in its MPPM calculation Liberty excludes the value of renewable

energy credits (RECs) created by its Ozark Beach hydroelectric station, the value of RECs created by solar generation owned by its customers, and the value of its banked RECs.

3. Public Counsel expert Lena Mantle, P.E., further explains that, rather than treating its geographically diverse Neosho Ridge, Kings Point, and North Fork Ridge wind stations as if they one generating resource, they should be treated separately for purposes of their costs and RES values. RECs from Kings Point and North Fork Ridge are worth 1.25 RECs from Neosho Ridge for purposes of Missouri RES compliance. The differences in the RES values of the RECs they produce, and the differences in the cost of producing electricity at each should be reflected in the PPA replacement value balances, after Liberty's Elk River PPA ends in 2025, and, as with Liberty's other generating resources, in order of cost-effectiveness, most to least.

4. Before filing this response, Public Counsel shared a draft of this motion with the Commission's Staff who requested Public Counsel to include the following statement: "Staff has reviewed Liberty's market price protection mechanism filing and supports the OPC's position to require Empire to refile its compliance filing to reflect a PPA replacement value balance of $0.00."

Wherefore, the Office of the Public Counsel responds to Liberty's first annual market price protection mechanism (MPPM) compliance filing as set forth in this pleading and attached verified memorandum, and moves the Commission to order Liberty to refile its MPPM compliance filing to reflect a PPA replacement value balance of $0, not ($8,345,691); and to provide to Liberty with guidance for its future annual MPPM compliance filings as the Commission deems fit.

Respectfully,

/s/ Nathan Williams

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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 thirteenth day of November 2023.

/s/ Nathan Williams

MEMORANDUM

To: Official Case File ER-2021-0312, *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*

From: Lena M. Mantle, PE
Senior Analyst, Office of the Public Counsel

Re: Year 1 Market Price Protection Mechanism value PPA Replacement Value

Date: November 13, 2023

In its *Report and Order*, in Case No. EA-2019-0010 (consolidated with Case No. EA-2019-0118) the Commission ordered implementation of the Market Price Protection Mechanism ("MPPM") that Liberty and other parties had designed and agreed to.[1] In that *Report and Order*, regarding the MPPM, the Commission said, "In general terms, that mechanism seeks to provide for the sharing of risk between customers and shareholders associated with the possibility of reduced market prices and wind production associated with the Wind Projects"—Liberty's Neosho Ridge, North Fork Ridge, and Kings Point wind projects.[2] In its order in that case, the Commission stated that the MPPM balances the interests of the customers and shareholders appropriately.[3]

The MPPM calculates on an annual basis an Annual Wind Value ("AWV"). One of the terms of the AWV is "the value associated with avoiding the replacement of the existing wind power purchase agreements (PPA_Replacement)."[4] PPA_Replacement is specifically defined as "PPA_Replacement Value = value associated with replacing the existing wind PPAs during the period of the guarantee, as shown on Exhibit C (row 15 excel)."[5] The "existing wind PPAs" are Liberty's Elk River and Meridian Way wind project PPAs.[6] These PPAs provide renewable energy credits ("RECs")[7] that are used to meet the Missouri renewable energy standard ("RES") requirements.

Prompted by the signatories to the *Fourth Partial Stipulation and Agreement* in Case No. ER-2021-0312, the Commission approved that settlement agreement, which includes clarification of aspects of the MPPM,[8] including the MPPM PPA replacement value. Importantly, as to stated

[1] *Non-Unanimous Stipulation and Agreement* filed on April 5, 2019. OPC objected to this Stipulation and Agreement on April 12, 2019.
[2] ¶6p, p. 59.
[3] P. 29.
[4] *Appendix B* to Case No. EA-2019-0010 *Report and Order*, *Appendix B to the Non-Unanimous Stipulation and Agreement*, File EA-2019-0010, *Market Protection Provision*, ¶3, p 17.
[5] *Id*. ¶2, p. 16.
[6] *Id*. ¶3, p. 17.
[7] One REC is created for each mega-watt hour ("MWh") generated.
[8] Case No. ER-2021-0312, March 9, 2022, *Order Approving Stipulations and Agreements*. The stated MPPM issues were (from Amended List of Issues filed January 28, 2022):

Issue 18.(a) "Is it necessary and appropriate for the Commission to make changes to the MPPM in this case?," the signatories to the *Fourth Partial Stipulation and Agreement* agreed, and the Commission approved, that the changes to the MPPM were to clarify it: "Clarification only."

The clarification of the PPA replacement value in the *Fourth Partial Stipulation and Agreement* follows:

iv. A PPA replacement value will be calculated:

- For any renewable compliance standard not met by the existing wind PPAs through life of the MPPM;
- Based on the energy from the wind projects being used to meet the renewable standards that is not met by existing solar requirements (e.g., currently 2% of Missouri RES).

Liberty's Elk River and Meridian Way wind PPAs have not expired; therefore, Liberty did not avoid replacing either of them before the end of the first year of the MPPM ten-year guarantee period and, further, Liberty had enough RECs from these wind PPAs and its other qualifying renewable resources to comply with the Missouri renewable energy standard for calendar year 2022 without any RECs from its Wind Projects. However, in its first MPPM filing to report the costs and benefits of the first year of the ten-year MPPM guarantee period, Liberty incorrectly has included a PPA Replacement Value benefit of more than \$8.3 million. Because neither Liberty's Elk River wind PPA nor its Meridian Way wind PPA has expired, the appropriate PPA replacement value is zero.

Inclusion of a PPA Replacement Value in the MPPM

Currently Liberty is complying with the Missouri renewable energy standard ("RES") in large part through its Elk River and Meridian Way wind PPAs; however, Liberty entered into those PPAs not to comply with the Missouri RES but for its generating resource portfolio. Because Liberty executed these PPAs prior to the Missouri RES requirement in 2011, the costs of these PPAs are

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18. Market Price Protection Mechanism ("MPPM")
    (a) Is it necessary and appropriate for the Commission to make changes to the MPPM in this case?
    (b) If so,
        i. Should the rate base revenue requirement component remain formulaic or only change with the effective dates of new rates?
        ii. What costs should be included?
        iii. What revenues should be included?
        iv. How should the PPA replacement value be calculated?
        v. When should a jurisdictional allocation factor be applied?
        vi. Should the MPPM include interest on the cumulative costs/gains?
        vii. If the cumulative value at the end of ten years is a net cost, how should the net cost be shared between customers and Empire?
    (c) How should the components in Empire's MPPM be tracked?

excluded in the calculation of Liberty's cost to comply with the Missouri RES.[9] Liberty's Ozark Beach hydro facility also qualifies for the Missouri RES. Like the wind PPAs, Liberty acquired Ozark Beach hydro generating station prior to 2011. Therefore, Liberty's costs of Ozark Beach also are excluded as costs Liberty incurs for Missouri RES compliance. In addition, Liberty utilizes RECs from its customer-owned solar facilities, as allowed by Commission rule,[10] to meet its RES requirements. Because Liberty's customer-owned solar and Ozark Beach hydro facility generate electricity in Missouri, their RECs are increased by 0.25 for meeting Missouri's RES. For purposes of Missouri RES compliance, a REC is good for three years from the date it is created.[11] Therefore, RECs from these facilities that are not used can be banked for later use.

Liberty's Elk River and Meridian Way wind PPAs expire at the end of 2025 and 2028, respectively. As those PPAs expire, Liberty will need to rely on other sources to meet its Missouri RES requirements. Although Liberty did not acquire the Wind Projects to comply with Missouri's RES, the parties recognized that the Wind Projects could be used to meet Missouri's RES. In the MPPM, Liberty is given value for the availability of the Wind Projects as REC resources for Liberty's compliance with the Missouri RES as Liberty's Elk River and Meridian Way wind PPAs expire. Appendix B to the *Non-Unanimous Stipulation and Agreement* in Case No. EA-2019-0010 includes this benefit as part of "the value associated with avoiding **the replacement** of the existing wind power purchase agreements." (Emphasis added). The Commission recognized this in its *Report and Order* where it stated that value for replacing the energy from Liberty's Elk River and Meridian Way PPAs would only be included as a benefit in the MPPM calculations **as those PPAs expire** at the end of 2025 and 2028.[12]

Ignoring the express definition of PPA replacement value, "PPA_Replacement Value = value associated with replacing the existing wind PPAs during the period of the guarantee," in the MPPM and that the *Fourth Partial Stipulation and Agreement* in Case No. ER-2021-0312, is to clarify, not modify, the MPPM, Liberty has chosen to calculate a PPA replacement value that includes a RES benefit from the Wind Projects in its first year. It did so by including a "PPA replacement value" for the difference only between its non-solar Missouri RES requirement and the RECs generated by the Elk River and Meridian Way wind PPAs. Liberty chose to ignore the RECs produced by its Ozark Beach hydro facility and the RECs Liberty receives for customer-owned solar generation. Liberty treats RECs from its Wind Projects as if they are necessary for it to meet its Missouri RES requirements even while the Elk River and Meridian Way wind PPAs are still creating RECs for Liberty. This meets neither the intent nor the definition of the PPA replacement value in the MPPM. It is a meaningless amount that credits shareholders for benefits Liberty's customers did not receive.

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[9] Commission rule 20 CSR 4240-20.100(2)(C); § 393.1030.2(1), RSMo. limits the maximum average retail rate impact increase to one percent.

[10] Commission rule 20 CSR 4240-20.100(4)(I) includes "a condition of receiving a solar rebate from an electric utility is that all right, title, and interest in and to the RECs associated with the new or expanded solar electric system that qualifies the customer generator for the solar rebate is transferred to the electric utility paying the rebate."

[11] § 393.1030.2, RSMo.

[12] Pages 27 through 28.

Future Estimates of PPA Replacement Value

The PPA replacement values included in the MPPM should be zero until Liberty's PPA with Elk River wind project expires at the end of 2025. However, assuming Liberty will at that time calculate PPA replacement values as it did in this submission, there are some components of Liberty's calculation of the RES replacement value that I want to address now.

First, in its workpapers Liberty calculated a monthly RES need and associated RES value. Section 393.1030, RSMo, statutorily mandates compliance with the RES each calendar year. Therefore, the RES value in the MPPM should be consistent with meeting the RES each calendar year, not each month.

Second, the RES values should be calculated in a manner that most cost-effectively meets the RES needs.[13] This is because the RES statute requires that the statutory rate increase limit of one percent for complying with the RES is to be calculated using "[Liberty's] cost of compliance with least-cost renewable generation."[14] The renewable generation resources in its generation portfolio that Liberty acquired before the RES have no cost associated with them for meeting the RES making them Liberty's most cost-effective resources to meet the RES.

Liberty did not acquire Ozark Beach hydroelectric station, or its Elk River and Meridian Way wind PPAs to meet its RES requirements. Sited in Missouri, each REC Ozark Beach creates counts as 1.25 RECs for meeting the RES. Thus, when Liberty's Elk River PPA ends December 31, 2025, then the RES value for the PPA Replacement Value should be based on applying the RES value from Liberty's most cost-effective resources (Ozark Beach, customer-owned solar RECs, and Meridian Way PPA, all zero RES cost resources) and banked RECs[15] to the RES requirement. Then, if insufficient, Liberty should look to its Wind Projects. Liberty did not include the RES value of these zero RES cost resources in its calculation of its RES values, even though these are its least cost ways to comply with the RES, and how it states it complies with the RES in its rule 20 CSR 4240-20.100 RES compliance filings.

Starting after 2025, and when Liberty properly uses Wind Project RECs to satisfy its annual Missouri RES requirements, then, for purposes of the PPA replacement value, Liberty should use the Missouri jurisdictional cost of each specific Wind Project to determine the calendar year RES values for each Wind Project, then, independently for each Wind Project and in order of cost-effectiveness, apply those calendar year RES values against Liberty's Missouri RES need for that calendar year until that need is met. Each Wind Project is independent, and RECs from the Missouri Wind Projects are valued 25% more than the RECs from the Kansas Wind Project (Neosho Ridge) for Missouri RES compliance purposes. For determining the RES value to meet its RES need for its first MPPM submission, Liberty combined all three of the Wind Projects for a common $/MWh value for its Wind Projects with no recognition of the extra 25% value of the RECs of the Missouri wind projects. Each Wind Project has different unique attributes and

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[13] Least-cost and cost-effective are not requirements of the RES. In addition, currently there are no consequences for utilities regarding incomplete RES filings or filings not in compliance with the Commission rules. Therefore the RES filings should not be the measuring stick for compliance with the MPPM.

[14] § 393.1030.2(1), RSMo.

[15] RECs created in the previous three years that were not used for compliance or sold.

characteristics that affect its RES value and the need could have been met with a single wind project. A blatant characteristic that was ignored is that Neosho Ridge is sited in Kansas, while Kings Point and North Fork Ridge are sited in Missouri making a REC from these wind projects worth 1.25 times a REC generated in Kansas. Another cost difference is that each wind project has different grid interconnection points and costs.

Future MPPM Annual Wind Values

The Office of Public Counsel has neither the time nor resources to conduct a comprehensive review of all of the components of Liberty's year 1 MPPM submission. It reserves the right to raise additional and similar issues in the future regarding Liberty's annual MPPM submissions.

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

AFFIDAVIT OF LENA M. MANTLE

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

COMES NOW LENA M. MANTLE and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Memorandum* and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.

Lena M Mantle
Lena M. Mantle
Senior Analyst

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 13th day of November, 2023.

TIFFANY HILDEBRAND
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES AUGUST 8, 2027
COLE COUNTY
COMMISSION #15637121

Tiffany Hildebrand
Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.