

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

In the Matter of The Empire District)
Electric Company’s d/b/a Liberty (Empire))
Fuel Costs Related to the Extraordinary) Case No. EU-2021-0274
Weather Event of February 2021)

**PUBLIC COUNSEL’S MOTION TO DISMISS
THE EMPIRE DISTRICT ELECTRIC COMPANY’S
VERIFIED WINTER STORM URI AAO APPLICATION**

COMES NOW the Office of Public Counsel (“Public Counsel”) and moves to dismiss The Empire District Electric Company d/b/a Liberty’s *Verified Winter Storm Uri AAO Application* for “an AAO from the Commission authorizing the Company to track and defer, beginning February of 2021, in a regulatory asset, the remaining impact of Winter Storm Uri. Costs to be deferred to a regulatory asset should include: (1) the remaining 5% of fuel and purchased power costs from February, 2021; (2) carrying costs on the total February 2021 fuel and purchased power expenditures at the Company’s weighted average cost of capital; and (3) other costs specifically related to Winter Storm Uri, including outside legal fees,” as follows:

1. As a preliminary matter, the Office of Public Counsel disagrees with Liberty’s characterization in paragraph six of its application that the \$168,720,211 shown as the “deferred amount” on line eight of the agreed-upon tariff sheet P.S.C. Mo. No. 6, § 4, 2nd Revised Sheet No. 17q represent[s] 95% of Liberty’s FAC-eligible fuel and purchased power costs from February, 2021. It is the Office of Public Counsel’s position that, as Liberty and the Commission’s Staff previously have both characterized it, the \$168,720,211 are extraordinary costs. As extraordinary costs they are not eligible for recovery through Liberty’s fuel adjustment clause. Instead, they are relevant factors for the Commission to consider when designing Liberty’s new rates in Liberty’s now pending general rate increase case, Case No. ER-2021-0312.

2. In a December 14, 2000, Report and Order by which it rejected an application for an accounting authority order, the Commission stated, “Implicit in the Commission's previous orders regarding requests for AAOs is a requirement that there must be some reason why the expense to be deferred could not be immediately included for recovery in a rate case.”¹ As Liberty states in its application in this case, Liberty has a general electric rate case pending before the Commission docketed as Case No. ER-2021-0312 that it filed on May 28, 2021. In that case Liberty is requesting that the Commission order a test year of the twelve months ended September 30, 2020, updated through June 30, 2021. February, 2021 is within Liberty’s proposed update period. While the Commission has ordered neither the test year, update period, nor any true-up period for that case, the Commission has suspended the effective date of the tariff sheets Liberty filed to initiate that case until April 25, 2022. Further, as Liberty states in its application here (paragraph 10), Liberty is requesting the Commission in that case that to allow it to recover the \$168,720,211 based on “a recovery period of 13 years.”

3. Liberty here is requesting that the Commission authorize it to defer in a regulatory asset what it describes as “(1) the remaining 5% of fuel and purchased power costs from February, 2021; (2) carrying costs on the total February 2021 fuel and purchased power expenditures at the Company’s weighted average cost of capital; and (3) other costs specifically related to Winter Storm Uri, including outside legal fees.” Liberty has not averred that any of these costs will fall outside the historical information that can be in evidence before the Commission when it makes decisions for Liberty’s new rates in Case No. ER-2021-0312, and Public Counsel is unaware of any reason why, like the \$168,720,211, the Commission cannot address them in that case.

¹ Case No. EO-2000-845, pp. 8-9.

4. In paragraph ten of its application Liberty states, “As, however, was noted in Empire’s general rate case filing, Empire plans to seek securitization of the Winter Storm Uri costs if that becomes a possibility under new legislation during the pendency of the rate case.” The “new legislation” to which Liberty is referring is HB 734.² Governor Parson has not signed HB 734, which the Legislature delivered to him on May 25, 2021. If Governor Parson signs HB 734 it would not become law until August 28, 2021.

5. Rule 20 CSR 4240-2.116(4) provides, “A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved.”

WHEREFORE, having shown above the “good cause” required by rule 20 CSR 4240-2.116(4), the Office of the Public Counsel moves the Commission to dismiss Liberty’s *Verified Winter Storm Uri AAO Application*.

Respectfully,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-4975 (Voice)
(573) 751-5562 (FAX)
Nathan.Williams@opc.mo.gov

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 28th day of June 2021.

/s/ Nathan Williams

² CCS SS SCS HSC HB 734, 2021 Regular Session, pp. 22-51, §§ 393.1700-1715.