

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

Elizabeth Peterson, )  
v. )  
Complainant, )  
The Empire District Electric Company d/b/a )  
Liberty, )  
Respondent. )

**ANSWER TO COMPLAINT AND MOTION TO DISMISS**

**COMES NOW** Respondent, The Empire District Electric Company, d/b/a Liberty (“Liberty” or “Company”), by and through the undersigned counsel, and for its *Answer to Complaint and Motion to Dismiss* (“Complainant”), respectfully states to the Missouri Public Service Commission (“Commission”) as follows in response to the *Complaint* filed by Elizabeth Peterson (“Complainant”):

## ANSWER

6. Liberty denies that Americans with Disabilities Act questions are within the jurisdiction of the Commission. Liberty admits that the Complainant has produced a power of attorney concerning Mr. Avery. Liberty is without sufficient information or belief to admit or deny the truth and correctness of the remaining allegations in paragraph 6, and as such, denies the same.

7. Liberty denies that Americans with Disabilities Act questions are within the jurisdiction of the Commission. Liberty denies that Commission Rule 20 CSR 4240-10.035 is in effect at this time. Liberty is without sufficient information or belief to admit or deny the truth and correctness of the remaining allegations in paragraph 7, and as such, denies the same. Liberty further denies that the remaining alleged violations found in Paragraph 7 constitute violation of a statute, tariff or Commission regulation or order.

8. Liberty states that the allegations made in Paragraph 8 are either not allegations of fact to which a response is required, or allegations and averments to which the Company is without sufficient information or belief to admit or deny, and as such, denies the same.

9. In further answer to the Complaint, Liberty provides the following information.

- Liberty has been in frequent contact with Ms. Peterson on Mr. Avery's behalf over the last several months, prior to and since the filing of this complaint.
- Ms. Peterson and Mr. Avery's meter is an analog meter with the following specifications:

Meter Manufacturer: Westinghouse  
Model Year: 1986  
Model Number: D5S/3  
Manufacturer Serial Number: 75604430

- This meter was tested on October 20, 2025, and tested initially to be 84.42% accurate. After manual modifications on the meter were performed by field

technicians, the meter still tested at only 94.68% accuracy, which falls below the  $\pm 2\%$  error for meter efficiency that the Company is bound to by its service tariff (P.S.C. Mo. No. 6, Sec. 5, Original Sheet No. 17f; See also Commission Rule 20 CSE 4240-10.030(27) (“Any electric service meter tested on complaint or for any other reason after having been in service may be considered as having been recording within allowable limits of accuracy at any possible load if it is found to register within three percent (3%) of correct registration . . . .”).

- The Company’s tariff requires it to replace the subject meter, as it is registering electricity usage at greater than 5% slower than actual consumption. (P.S.C. Mo. No. 6, Sec. 5, Sheet No. 17f).
- Liberty has attempted, on more than one occasion, to replace the subject meter with a non-communicating digital meter, an Itron C1SD.
- Ms. Peterson has requested a like-for-like replacement of the subject meter, a Westinghouse D5S/3 meter, manufactured in 1986. After vendor inquiry and surveying the market, Liberty believes that this meter is no longer in production, nor are any suitable like-for-like analog replacements available.
- The Itron C1SD meter complies with Liberty’s current service tariff for AMI Opt-Out (P.S.C. Mo. No. 6, Sec. 5, Original Sheet No. 11), which states: “Customers receiving Residential Service have the option of opting out of AMI meter reading and electing non-standard metering service. . . . Alternatively, if requested by the customer, and if a non-AMI meter is available to the Company, a non-AMI meter will remain or be installed.” The Itron C1SD meter is a non-AMI meter.

- By neither sending nor receiving broadband or radio waves, the Itron C1SD meter is also compliant with those standards set forth for “traditional meters” in Section 386.820, RSMo.
- The Commission’s impending opt-out rule (20 CSR 4240-10.035) is not yet effective. However, provision of the Itron C1SD meter would also comply with Rule 20 CSR 4240-10.035, the Final Order of Rulemaking for which was approved on January 7, 2026 (Commission File No. OX-2026-0045, Items 17 and 18).

10. Except as expressly admitted in this *Answer to Complaint and Motion to Dismiss*, Liberty denies each and every allegation contained in the *Complaint*.

#### **MOTION TO DISMISS**

11. The Complainant has failed to state a claim to which the Commission can grant relief as the *Complaint* does not cite a violation of statute, Commission regulation, or provision of the Company’s tariff.

12. “The PSC ‘is a creature of statute and can function only in accordance with’ its enabling statutes. Its ‘powers are limited to those conferred by ... statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted.’” State ex rel. Mogas Pipeline LLC v. Mo. PSC, 366 S.W.3d 493, 496 (Mo. 2012) (citations omitted).

13. The Commission has no Missouri statute that gives it jurisdiction over complaints against public utilities that are based on the Americans with Disabilities Act. Thus, Complainant’s reliance on alleged violation of the Americans with Disabilities Act focuses on matters not within this Commission’s jurisdiction.

14. Further, the Complainant's request for an analog meter is not required by statute, rule, tariff or order.

15. In its *Final Order of Rulemaking* concerning Rule 20 CSR 4240-10.035 that was approved on January 7, 2026 (Commission File No. OX-2026-0045, Items 17 and 18), the commission considered Complainant's position that the rule needed to specify that a traditional meter is an analog meter. The Commission responded as follows:

The purpose of the proposed rule is to set out a process allowing customers to opt out of having an advanced meter or hub meter in compliance with the statutory requirements. Section 386.820, RSMo, defines "traditional meter." Therefore, the commission does not need to define traditional meter beyond the language in the statute.

16. Section 386.820(5), RSMo, defines "traditional meter" for purposes of the statutory provisions that will be applicable as of July 1, 2026,<sup>1</sup> as follows

"Traditional meter", a commercially available meter that is unable to transmit usage information and is only intended to be read by an individual through a visual display. A traditional meter is not designed or capable of transmitting usage data by using radio waves or broadband over power lines, allowing two-way communication between the meter and the utility or its agents, or allowing a utility or its agents to control a customer's thermostat, appliance, or service. A traditional meter does not include an advanced meter that has certain functionality turned off or deactivated.

17. The meter desired by Complainant is neither required today, nor will it be required when Section 386.820, RSMo, and Commission Rule 20 CSR 4240-10.035 become effective.

18. The Commission Staff's Motion to Suspend Procedural Orders filed on January 8, 2026, stated in part that the *Complaint* and subsequent filings:

... allege no actual facts which, if taken as true, would permit the Commission to find either that the meter in question is unsafe, unlawful, or otherwise in violation of any statute, Commission regulation, or tariff within the Commission's

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<sup>1</sup> "Commencing July 1, 2026, a residential utility customer may at any time communicate with the utility that the customer would like to opt out of using an advanced meter or hub meter." Section 386.820.2(1), RSMo.

jurisdiction to enforce, or that the Company's handling of this customer's service violated any such statute, regulation, or tariff. The submission does not identify any applicable tariff provision or regulatory requirement that was breached, nor does it allege measurable conditions, technical noncompliance, or specific conduct that would support such a finding.

(Motion to Suspend Procedural Orders, para. 2, pp. 1-2).

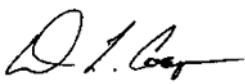
19. A complaint must *necessarily* include an allegation of a violation by Liberty of a law or of a Commission rule, order or decision or it does not invoke the Commission's jurisdiction. *Tari Christ v. Southwestern Bell Tele. Co. et al.*, 2003 Mo. PSC LEXIS 37 (Case No. TC-2003-0066, *Order Regarding Motions to Dismiss*, Jan. 9, 2003) (citing *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993)).

20. The Commission should dismiss the *Complaint*.

**WHEREFORE**, having fully answered the *Complaint*, Liberty moves the Commission dismiss this Complaint for failure to state a claim on which the Commission can grant relief and grant such further relief as the Commission deems just and reasonable.

Respectfully submitted,

**BRYDON, SWEARENGEN & ENGLAND, P.C.**

By: 

Dean L. Cooper Mo. Bar #36592  
P. O. Box 456  
Jefferson City, Missouri 65102-0456  
Telephone: (573) 635-7166  
Email: [dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

**ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY (D/B/A LIBERTY)**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail to all parties of record, this 30<sup>th</sup> day of January 2026.

  
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D. J. Clegg