

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 STATE OF MISSOURI
3 TRANSCRIPT OF PROCEEDINGS
4 MOTION HEARING
5
6

7 In the Matter of the)
8 Clarification of PPA) Case No. EO-2026-0101
9 Replacement Values for)
10 The Empire District Electric)
11 Company's d/b/a Liberty's)
12 Market Price Protection)
13 Mechanism)

14
15 TUESDAY, JANUARY 20, 2026
16 1:30 p.m.
17
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19 Jefferson City, MO
20 via WebEx
21
22

23 VOLUME 2
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JOHN CLARK, Presiding
SENIOR REGULATORY LAW JUDGE

KAYLA HAHN, Chair,
MAIDA J. COLEMAN,
GLEN KOLKMEYER,
JOHN MITCHELL,
COMMISSIONERS

26 Transcribed by:
27
28 Vincent Rose

1 THE COURT: Let's go on the record.
2 Today's date is January 20 of 2026, and the current time
3 is 1:30 p.m. This motion hearing is being held via
4 Webex for the convenience of the parties. The
5 commission has set aside this time for a motion hearing
6 in the case captioned as; In the matter of the
7 Clarification of PPA Replacement Values for the Empire
8 District Electric Company doing business as Liberty's
9 Market Price Protection Mechanism. And that is file
10 number EO-2026-0101.

11 My name is John Clark. I'm the
12 regulatory law judge presiding over this matter. And
13 I'm going to begin by asking the attorneys for the party
14 to enter their appearance, starting with Liberty.

15 MS. CARTER: Good afternoon, Judge.
16 Diana Carter and Sarah Knowlton for the Empire District
17 Electric Company doing business as Liberty. And we will
18 also have Charlotte Emery on the line.

19 THE COURT: Okay, thank you. On behalf
20 of the commission staff?

21 MR. VANDERGRIFF: Good afternoon, Your
22 Honor. Eric Vandergriff and Travis Pringle here on
23 behalf of Staff.

24 THE COURT: Thank you.

25 MR. VANDERGRIFF: Judge, do I need to do

1 our business address, or are we good?

2 THE COURT: I think we're good. Thank
3 you. And on behalf of the Office of Public Counsel.

4 MR. WILLIAMS: Nathan Williams, Chief
5 Deputy Public Counsel. My information's in the record.

6 THE COURT: Okay. Thank you, Public
7 Counsel. And I remind everyone that I can rule on
8 procedural and substantive issues at this kind of
9 conference pursuant to 20 CSR 4240-2.090, subsection 6.

10 I don't usually call motion hearings. I
11 can think of this maybe the second one I've called in
12 all the time I've been here. This started out in
13 another case. And correct me if I'm wrong on any of
14 this. If I remember correctly, it was one of my cases.
15 And Public Counsel requested clarification in regards to
16 the PPA replacement values based upon a stipulation and
17 agreement.

18 And I believe that got bumped down the
19 road and into another case, and somehow, ended up, most
20 recently, in a Liberty rate case before being kicked
21 into its own case and returned to me to see if we can
22 reach a solution into this.

23 And so I opened this as a separate case.
24 And at some point, I scheduled -- I asked the parties to
25 submit a procedural schedule. And I believe I got some

1 pushback from the Office of Public Counsel, who
2 basically said, "No, we don't want to file testimony.
3 We don't believe that this deserves a procedural
4 schedule. We think this is the wrong procedure for
5 this. We think that once the commission has made a
6 determination on a stipulation and agreement, that that
7 stipulation -- that the commission essentially takes
8 ownership of it. It's the commission's decision, and
9 they can interpret it however they like." Did I
10 misphrase that, Mr. Williams?

11 MR. WILLIAMS: You omitted that it's an
12 opposed stipulation and agreement. So it's actually
13 positions of the parties.

14 THE COURT: Okay. So it's a position
15 statement pursuant to commission rules because it was a
16 non-unanimous? Is that correct?

17 MR. WILLIAMS: It was an opposed non-
18 unanimous.

19 THE COURT: And was there an opposition
20 filed or was that treated as unanimous?

21 MR. WILLIAMS: It was filed.

22 THE COURT: Okay. So the commission --

23 MR. WILLIAMS: But you may need to go
24 back to the certificate case to see that.

25 THE COURT: Okay. Well, I may in fact do

1 that. Anyway, I was ready to charge ahead, but the more
2 I thought about Public Counsel's argument, the more I
3 thought it had some credence. But I also had some
4 questions, which is why I decided to do this as a motion
5 hearing instead of just asking the parties to brief it.

6 So I'm going to open it up to Public
7 Counsel. And so if you want to kind of lay out your
8 argument as to why we shouldn't have a procedural
9 schedule and why the commission should do what it wants.

10 MR. WILLIAMS: Basically, back in the
11 certificate case for the wind farms, part of the
12 condition that the commission imposed was based on an
13 objective to a non-unanimous stipulation and agreement
14 that included this -- what did they call it? MPPM --
15 the market price protection mechanism. And a piece of
16 that entails the -- what are we calling this part of it?

17 It's a very complicated thing basically.
18 And there's one component in it, or aspect of it, that,
19 in particular, Public Counsel disagrees with how Liberty
20 has calculated when it's filed its annual reportings.
21 Because this is a rather -- it's like a 10-year deal
22 that is supposed to assure that there's some benefit to
23 customers. And if there's not enough attributed to the
24 wind farms, then the utility basically contributes to
25 show that there is benefit to the customers. So it's

1 the replacement term that we're having the issue with.

2 Let's see.

3 THE COURT: My -- and excuse me for
4 interrupting. And my understanding of that -- and
5 correct me if I'm wrong -- is that for the first five
6 years, Public Counsel is of the opinion that that should
7 be zero. And I believe that's because these were pre-
8 existing resources, and therefore, shouldn't benefit
9 from that. Is that correct or am I oversimplifying
10 that?

11 MR. WILLIAMS: And I don't think there's
12 -- I think there's agreement about that. It's, PPA
13 replacement is -- Liberty Oil Empire had two purchase
14 power agreements with wind farms that were set to
15 expire. And one of them has. They've since renewed
16 that one. We're not arguing that that renewal has
17 impact on the PPA.

18 I mean, you could make an argument, the
19 parties contemplated and the commission contemplated
20 that it was only to have that benefit during the time
21 those -- basically, the concept was, those PPA
22 agreements provided renewable energy credits. And then
23 whenever those renewable energy credits were no longer
24 available from those PPAs, the wind farms would fill
25 that void. That's the fundamental concept that drives

1 | it.

2 Where we have a disagreement is about
3 what the mechanism the commission approved provides for
4 how you calculate that benefit. One of the agreements
5 did expire. Like I said, we're not arguing that since
6 it's been renewed. That term's vitiated as to that
7 agreement because the commission and the parties were
8 not contemplating that PPA would be extended.

9 So we're not making that argument. But
10 we are saying that how Liberty is doing the calculation
11 is understating the value to be looked at for purposes
12 of determining what happens at the end of the MPPM when
13 it's looked at for rate purposes.

14 And there are actually, like I said, two
15 PPAs. I believe the other one still has not run out.
16 But my understanding is, for capacity purposes, Liberty
17 is extending that -- will seek to and probably extend
18 that one as well. And may have the option to do it. I
19 don't know offhand.

20 THE COURT: Where's the five-year of
21 zeros coming?

22 MR. WILLIAMS: That's the term of the PPA
23 that expired from the -- the PPA had a term of --
24 remaining term of about five years from the date the
25 MPPM was put into place. That mechanism was authorized.

1 So since you were getting the -- since Liberty was
2 getting the recs from the PPAs during the time that the
3 PPAs were in a place, there would be no -- the value
4 would be zero.

5 After that ended, then whenever the wind
6 farms were providing benefit, then the utility would --
7 that benefit would be recognized in -- for the rec
8 values.

9 THE COURT: And why is this issue 100
10 percent in the commission's yard?

11 MR. WILLIAMS: Because the commission is
12 the one that ordered the MPPM.

13 THE COURT: And it's Public Counsel's
14 opinion that it's basically whatever the commission
15 thought it was approving.

16 MR. WILLIAMS: Well, it ordered what it
17 thought it was ordering, I hope.

18 THE COURT: Well, that's kind of where
19 we're getting down into the weeds here. And that's
20 where I think I've got my questions. And that is,
21 there's essentially kind of three ways of looking at it,
22 which -- and one of them was thrown out, which is, it
23 doesn't really matter what the parties thought in any
24 way, shape, or form.

25 They submitted the stipulation. Whether

1 it was clear enough or not, it was submitted and the
2 commission approved it. And whatever the commission
3 intended to approve, that's what it meant. And then
4 that leads to kind of a secondary question, which is,
5 you know -- and it's not as much at play here.

6 But I think in a larger, it is. Is, you
7 know, that's great where we still have some of the
8 surviving commission that's here that may have made the
9 initial decision. But what do we do if we're like 20
10 years down the road? Is it whatever that commission
11 decides, looking back at it? I mean, how do we
12 determine what was meant at the time, or does that even
13 matter?

14 MR. WILLIAMS: Well, the commission can
15 only act through orders. So what it meant is what it
16 ordered. The only clarification I see available in
17 terms of what it intended is what it had in front of it
18 at the time it made its decision.

19 And as you have just pointed out,
20 commissioners come and go. But it's the commission that
21 spoke, and it's the commission that has the authority to
22 say what it meant when it spoke.

23 THE COURT: And I was doing some research
24 -- and I meant to get in a little earlier today than I
25 did. I was doing some research into non-unanimous

1 stipulation and agreements for another case. And I ran
2 across a case. I think it had one of our more familiar
3 names, like defender for some, you know, one of the ones
4 that we frequently see.

5 And I remember there was a section where
6 the Court of Appeals was chiding the commission for not
7 considering the intent of the parties in regard to their
8 stipulation. And I can't imagine why the Court of
9 Appeals would do that if we're not meant to look at what
10 the parties meant since -- well, it's their meeting in
11 the minds, it's their agreement.

12 Oftentimes, when these things are
13 approved, they're approved on very general language.
14 And I think the assumption is that the parties
15 understand the specifics that reside under that very
16 general language.

17 MR. WILLIAMS: I don't think I would
18 disagree with you, probably if you were talking about an
19 unopposed or a unanimous stipulation and agreement or
20 settlement. That's not what you have here.

21 THE COURT: Why does that make a
22 difference? At the end of the day, the commission's
23 approving a stipulation.

24 MR. WILLIAMS: I disagree with that. I'd
25 say, at the end of the day, the commission ordered what

1 the parties had put in front of it for the stipulation.

2 THE COURT: All right. So taking that
3 out, you're saying if we take it as it's, you know, this
4 is a position statement. And you're saying essentially
5 what the commission did in approving that was not
6 approve the non-unanimous stipulation, but approve the
7 provisions of the stipulation individually as though
8 they were issues.

9 MR. WILLIAMS: I guess you could
10 characterize that. Or I would say it adopted the
11 writing it had in front of it as its order. Maybe it
12 should have gone up for being vague, but it wasn't
13 challenged that way in the court. So we have what we
14 have in front of us.

15 THE COURT: Okay. I'm going to allow
16 Liberty to respond, and then I'm going to give Staff an
17 opportunity to weigh in. Go ahead, Liberty.

18 MS. CARTER: Thanks, Judge. A couple
19 things. The MPPM concept started in the customer
20 savings plan docket, but nothing was finalized there.
21 And then as Mr. Williams said, we have the CCN docket.
22 And that is the first time the commission had an order
23 accepting the terms of the MPPM. And that's where there
24 was the non-unanimous opposed settlement. But then the
25 commission did put the terms in their order.

1 But then we also have the rate case, ER-
2 2021-0312, where OPC acknowledged in testimony in that
3 case that they weren't part of the original MPPM. They
4 said it wasn't clear. They asked for clarification, and
5 we reached a settlement there that included OPC. And I
6 don't believe there was any opposition to that
7 settlement, and it was approved as unanimous by the
8 commission. And that wording is quite clear and --

THE COURT: Isn't that for clarification?

10 MS. CARTER: What's that, Judge?

11 THE COURT: Sorry to interrupt. Doesn't
12 it say -- I mean, doesn't it say in that unanimous
13 stipulation for clarification purposes?

14 MS. CARTER: Yes, for clarification
15 purposes, a PPA replacement value will be calculated for
16 any renewable compliance standard not met by the
17 existing wind PPAs through the life of the MPPM. So we
18 have that as well. We can't just look at the CCN. We
19 have that clarification that was agreed upon by all
20 parties and approved in an order from the commission in
21 the 2021 rate case.

22 So first, from Liberty's end, this isn't
23 ripe for a decision. We're not seeking any recovery of
24 dollars at this time. No order is needed. We're not
25 doing anything on the MPPM at this time. So we would

1 say no order is needed at all. It is OPC that requested
2 an order at this time.

3 If there is an order, then we believe the
4 language is clear on its face. No interpretation is
5 needed whatsoever, including not the commission's
6 intent. It's just the wording. Whether or not
7 clarification was needed coming out of the CCN order, we
8 got that clarification in the 2021 rate case. It's
9 clear on its face. There's no statement about the PPA
10 replacement value being zero for five years. It will be
11 calculated anytime the standard is not met with the
12 existing wind PPAs.

13 But then our third position, Judge, would
14 be, if there's going to be an order and if you're saying
15 the language is not clear on its face -- so there has to
16 be an interpretation -- that order will be binding on
17 Liberty in a future rate case. Then due process
18 dictates that we get to have testimony.

19 Whether that's adoption of the testimony
20 we've already filed -- because we fully put this all on
21 paper in another case -- even though then the issue got
22 kicked down the road, that would be fine, or we do it
23 again here. But if you're going to be issuing an order
24 and taking this up saying the language isn't clear on
25 its face, then that order is going to be binding on us

1 in a future rate case, then due process dictates that we
2 get to have testimony.

3 THE COURT: I would agree with you if
4 that's what we were saying -- if we were saying that the
5 language was vague. But I think we're just being asked
6 to clarify. And if we're being asked to clarify, I
7 don't know what due process rights you have in that
8 regard.

9 MS. CARTER: Well, it's either clear on
10 its face or it doesn't need -- and it therefore doesn't
11 need clarification. But if it needs further
12 clarification, even though we already had a proceeding
13 where an order was issued to clarify it, then I believe
14 we need the opportunity to have our testimony put into
15 the evidence -- put into evidence.

16 THE COURT: And you had -- this was a
17 similar argument that I remember made before in the 312
18 case, in which Liberty said, "Well, we don't have to
19 deal with this now at all. This is 10 years. We don't
20 really have to deal with this until we're pushing up
21 against that 10-year window."

22 And at the time, if I remember, Public
23 Counsel said, "No, we think this needs to be interpreted
24 now for this reason." And it got -- like I said, it's
25 been kicked down twice. I don't know that the

1 commission wants to kick it further down the road or
2 consider it in the future.

3 I guess you've addressed kind of --
4 Diana, you've addressed kind of the factual how this
5 came about and what cases it went through. But you
6 really haven't addressed Public Counsel's argument,
7 which is why isn't this 100 percent within the bounds of
8 the commission to do whatever they want with.

9 MS. CARTER: Well, I guess, Judge, to
10 that, the commission doesn't get to just issue orders
11 whenever they want to issue an order. It does need to
12 be ripe for decision. And I don't have the sights in
13 front of me, but the courts have been clear on that,
14 that you can't issue just advisory orders. It needs to
15 be --

16 THE COURT: Well, how would this be
17 advisory if it was saying, this is to be calculated this
18 way?

19 MS. CARTER: And for what purpose? It's
20 not ripe for a decision. This will be taken up in a
21 rate case in, I think now what would be five more years?
22 I'm not sure --

23 THE COURT: But isn't this designed to
24 lay out how this is to work until such a time?

25 MS. CARTER: Yes, Judge. And I believe

1 it is clear on its face how it is to be calculated. And
2 Liberty is doing that.

3 THE COURT: Now, I believe there were
4 sample documents provided. And this is in the CCN case
5 maybe. And those documents did appear to indicate that
6 the first five years for certain assets would be zero.

7 MS. CARTER: Respectfully, no, Judge. It
8 does show, based on those estimated values, it would
9 total zero. But it doesn't just put a zero in. For
10 example, in 2021, it estimates Elk River will have an
11 output of 560 megawatts, and Meridian Way will have an
12 output of 308 megawatts.

13 And based on those estimated values, then
14 the renewable energy standard would be met. And
15 therefore, it's a zero. But the actual values were not
16 560 and 308 in 2021. That sample --

17 THE COURT: Can we stop and --

18 MS. CARTER: -- you're pointing to in
19 2022, it shows 563 and 311, those weren't the actual
20 values.

21 THE COURT: Can we stop and back up just
22 a second? Because you said something interesting to me.
23 You said in those cases where the renewable energy
24 standard values -- that those would not be zero because,
25 in fact, those estimates didn't come to be and they did

1 not meet their renewable energy standard values,
2 correct?

3 MS. CARTER: Yes.

4 THE COURT: So would it be a zero if they
5 had?

6 MS. CARTER: Yes. Yes, because the
7 language is, for any renewable compliance standard not
8 met by the existing wind PPAs through the life of the
9 MPPM, a PPA replacement value will be calculated. So
10 you do have to look at the actual megawatt outputs from
11 the existing PPAs.

12 THE COURT: Thank you. And finally, did
13 Staff want to weigh in on this? I can't hear you, Mr.
14 Vandergriff. I believe you're still muted.

15 MR. VANDERGRIFF: Yes, Your Honor. I'm
16 going to allow Marina to weigh in on it if you're
17 comfortable with it.

18 THE COURT: Whom?

19 MR. VANDERGRIFF: All right. So our
20 position remains that the PPA should be calculated as
21 zero according to the stipulation and the clarification
22 that was later agreed upon in the fourth stipulation and
23 agreement.

24 As far as this hearing is concerned, and
25 the procedure with it, Staff's position is that the

1 commission does have the authority to conduct this
2 administrative proceeding however it deems just and
3 reasonable. And if the commission is going to make an
4 interpretation consistent with what was listed in these
5 stipulations and agreement, then our position is, is
6 that we are fine with the procedural schedule as it was
7 originally drafted.

8 We wouldn't need that much time for new
9 testimony. However, given what we've heard from both
10 the Office of the Public Counsel and Empire here, if the
11 commission is to proceed on with evidentiary hearing
12 because of dispute effects, then we'd need more time for
13 testimony. Because some of this wasn't really
14 anticipated with regards to interpreting the stipulation
15 and agreements in both of those cases.

16 So I don't know if we necessarily agree
17 with some of the factual conclusions that Empire
18 reached. Actually, I know we didn't. And if you wanted
19 more information, I'm more comfortable with allowing
20 Marina Gonzalez, who testified in ER-2024-0261, for your
21 information regarding that. Do you have any questions,
22 Your Honor?

23 THE COURT: Well, I don't really want to
24 get in -- I appreciate that you had somebody here who
25 could answer questions, but I'm not really as much on a

1 fact-finding mission. I'm trying to kind of limit this
2 to whether or not the commission should be having an
3 evidentiary hearing or whether we should just be
4 clarifying it based upon our interpretation of it.

5 So I appreciate you having somebody here.
6 You did remind me -- I forgot -- there were a number of
7 stipulations in that underlying 312 case. If I remember
8 right, there were four stipulations in that. And I
9 don't remember whether all of them were non-unanimous or
10 not.

11 Well, I really have nothing else. Thank
12 you for answering my questions.

13 MR. WILLIAMS: Judge, if I may?

14 THE COURT: I am going to say real quick,
15 in regard to what you were saying, Mr. Irving, the
16 parties -- I asked the parties to submit a procedural
17 schedule. Did I order one in this case? No, I haven't
18 yet, because that's why we're here.

19 Okay. So my understanding, just from
20 Staff, is that if a procedural schedule is ordered,
21 you'll need sufficient time to put testimony together,
22 correct?

23 MR. VANDERGRIFF: Yes, Your Honor.

24 THE COURT: All right. Thank you. All
25 right. Thank you all for being here today. Thank you

1 for answering my questions. And I will try and process
2 this fairly quickly. And the commission will decide
3 what it wants to do with it. Thank you very much.

4 MR. WILLIAMS: Judge --

5 THE COURT: Yes.

6 MR. WILLIAMS: Judge, may I?

7 THE COURT: Go ahead, Mr. Williams.

8 MR. WILLIAMS: I believe Diana mentioned
9 -- well, she did mention some underlying bases. She
10 said for the zeros in the stipulation and agreement
11 document, I believe that was --

12 THE COURT: I remember there was some
13 sample documents that were included. And in those
14 sample documents for certain assets, the first five
15 years were listed as zero.

16 MR. WILLIAMS: Correct, that's what I'm
17 referring to. I believe she gave information that's not
18 in the -- was never in the record about what the amounts
19 were that were used for the calculations to get those
20 zeros. At least I'm now aware that there were --

21 THE COURT: Oh, you mean the estimated
22 versus actual?

23 MR. WILLIAMS: Yes.

24 THE COURT: Yeah, I gathered that.

25 MR. WILLIAMS: Okay. I wanted to make a

1 point about that. And --

2 MS. CARTER: Oh, it is from the -- it is
3 from the order itself -- from the attachment.

4 MR. WILLIAMS: And then the other thing I
5 wanted to point out is, there is a live controversy
6 because Staff and Public Counsel both disagree with how
7 Liberty has done the calculations. So there's actually
8 a dispute. The issue really is, what did the commission
9 mean, and is what Liberty's doing compliant with it?

10 So you would need to have -- and you have
11 some work papers, I know. But you would need to have, I
12 believe, in front of you, Liberty's calculations for
13 evaluating whether it complies with what the commission
14 ordered.

15 THE COURT: So are you saying there's
16 insufficient evidence as it is now, without pulling
17 something in from somewhere else?

18 MR. WILLIAMS: That's -- they've made --
19 at least once on orders papers --

20 THE COURT: It sounds an awful lot like
21 you're arguing for a proceeding.

22 MR. WILLIAMS: I think it's in the -- I
23 think sufficient information is in the 312 proceeding.
24 But I'm telling you, there is a live controversy. And I
25 think it's -- we think it's important now because

1 there's five more years before it will have impact in a
2 rate case potentially. And of course, that commission
3 may or may not follow what the parties contemplated when
4 they came up with the MPPM or what the commission
5 intended when it ordered it originally.

6 I'm not disputing that it is right for a
7 rate case, but I am saying there is a dispute currently
8 as to how the -- I'll call it accounting's going on, the
9 reporting, and whether that is compliant with the
10 commission's rule.

11 THE COURT: Okay. And if I remember
12 correctly, Public Counsel determined that they thought
13 it was to be zero for those first five years. At that
14 time, they went to Staff, and Staff said, "Oh, yeah, we
15 agree." And then Liberty said, "No, we don't agree with
16 that."

17 MR. WILLIAMS: I think that's fair.

18 THE COURT: Okay. All right. Well, I'm
19 going to -- you've answered my questions. Thank you
20 very much. And we're going to adjourn unless there's
21 anything else the commission needs to take out. All
22 right. Thank you very much. We're adjourned. Let's go
23 off the record.

24

25 (End of audio recording.)

1 CERTIFICATE OF TRANSCRIPTIONIST

2

3 I, VINCENT ROSE, do hereby certify:

4

5 That said audio transcription is a true

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7

8 I further certify that I am not

9 interested in the outcome of said action, nor connected

10 with, nor related to any of the parties in said action,

11 nor to their respective counsel.

12

13 IN WITNESS THEREOF, I have hereunto set

14 my hand this 25th day of January, 2026.

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 Vincent Rose

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