

**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) Case No. ER-2024-0261
For Electric Service Provided to Customers)
In its Missouri Service Area)

LIBERTY’S RESPONSE TO STAFF’S INITIAL REPORT

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), and, in response to Staff’s Initial Report, respectfully states as follows to the Missouri Public Service Commission (the “Commission”):

Introduction

1. The current customer billing metrics ordered by the Commission were adopted to require Liberty to demonstrate that it had addressed service and billing issues before rate changes take effect. In approving the Supplemental Stipulation, the Commission made clear that these metrics were intended to function as a pragmatic mechanism to require meaningful improvement prior to rate relief. Consistent with that approach, the Commission expressly declined to define in advance how limited deviations would be interpreted and reserved that determination to its discretion. Accordingly, Staff’s Initial Report should be evaluated in light of the Commission’s articulated intent.

2. On April 16, 2026, Staff filed its Initial Report assessing Liberty’s compliance with the billing metrics for January 2026. Although the Supplemental Stipulation contemplates that Staff would submit its assessment after reviewing three consecutive months performance, Staff filed an early report. Liberty appreciates this early filing, as it allows both the Company and the Commission to consider Staff’s preliminary assessment in a timely manner.

3. Staff's conclusion that the Company did not satisfy the January metrics is based solely on two billing instances in which customers were provided 20 days to pay rather than the required 21 days. Importantly, Staff acknowledges that these two instances were "unforeseen by Empire and limited in nature," and further recognizes that the Commission must determine whether they qualify for the "limited deviations" expressly permitted under the Supplemental Stipulation. For the reasons explained below, Liberty submits that these two isolated deviations fall squarely within the limited deviations contemplated by the settlement and do not undermine the objectives the Commission sought to achieve through the billing metrics.

The Two Bills

4. In January 2026, the Company issued 179,932 bills to its Missouri customers. Of those bills, only two did not meet the agreed-to metrics in the Supplemental Stipulation by allowing only 20 days on the bill to pay, instead of 21 days. These two bills represent 0.00111% of total January bills.

5. The issue with the first bill is that the customer's account, which was opened on March 27, 2025, was mistakenly coded under the Oklahoma company code, as the customer had an Oklahoma mailing address (for a Missouri service address) and, thus, was billed under Oklahoma net terms of 20 days.¹ The customer was contacted, and the account was corrected on January 29, 2026, to the Missouri company code with applicable Missouri net terms.

6. The second bill concerned an account opened on October 7, 2025, which was also mistakenly coded under the Oklahoma company code and therefore billed under Oklahoma net terms of 20 days. This mismatch was identified through a Company control report on January 29,

¹ As the Commission is aware, the Company provides electric service in Oklahoma as well as Missouri.

2026, and shortly thereafter updated to the Missouri company code with applicable Missouri net terms.

7. Staff notes that its “review of bills from both customers did not find any indications that the customers were charged incorrectly for service.” (Memorandum, p. 10 of 11.) Staff further notes that “. . . the root cause of both instances of the Metric 3d noncompliance was a Company error not directly tied to [the SAP Billing system implementation]. . . .” (Memorandum, p. 11 of 11.)

8. To prevent similar human error in the future, the Company added a system control that monitors for mismatches between the service address and the entered company code.

9. Staff mentions that the account-coding error existed across multiple billing cycles. However, as recognized by Staff, the relevant inquiry under the Supplemental Stipulation is performance in the First Metric Filing concerning January 2026 metrics. The identified deviations do not reveal ongoing systemic billing failures or any deviations that harmed customers. The customers were billed accurately for usage, experienced no service disruptions, and suffered no adverse billing consequences beyond receiving 20 days – rather than 21 days – to remit payment. The issue was not SAP-driven, was identified by internal controls, and has since been addressed through corrective system changes. The existence of a clerical coding error that was later identified and remediated does not convert two isolated January billing variances into evidence of systemic non-compliance.

Discussion of Permitted Deviations

10. Liberty agrees with Staff’s statement that “(u)ltimately, the decision of whether Empire has satisfied the metrics is up to the Commission.” (Memorandum, p. 5 of 11.)² However,

² The Commission’s *Report and Order* in this case (p. 55) states as follows: “Additionally, Public Counsel argued that it is unclear who authorizes the referenced limited deviations from meeting the customer service and billing metrics.

Liberty believes that Staff's proposed guidelines for the consideration of this question are too narrowly drawn and are inconsistent with the language of the Supplemental Stipulation.

11. The plain language of the Supplemental Stipulation does not require flawless performance or zero exceptions. To the contrary, the Supplemental Stipulation expressly contemplates "limited deviations," which certainly includes the two Missouri customers that were inadvertently entered into the billing system as Oklahoma customers resulting in the invoices being due within 20 days of the invoice date under the Oklahoma rules rather than 21 days under the Missouri rules.

12. The Supplemental Stipulation provides the following in paragraph 1 as to the metrics filings:

Limited deviations may be permitted with documented justification for Staff review. Any deviations must be thoroughly documented and such documentation provided to Staff for its review.

13. Thus, the only restrictions as to what may constitute permitted deviations appearing on the face of the Supplemental Stipulation are that they be "limited," with thoroughly documented justification provided to Staff for review. In interpreting the "limited deviations" standard, Staff starts with the following statement:

In reviewing the data, Staff recognized that the term "deviation," within the Supplemental Stipulation, could be read to concern quantity deviations alone. Staff concluded, however, that this reading is too narrow given other language in the Supplemental Stipulation and the regulation-based nature of the metrics. Staff therefore determined that compliance turns on the conduct underlying the deviations, not merely their number.

(Staff's Initial Report, pp. 1-2.)

The Commission has reviewed the Supplemental Stipulation and it is silent on this point. The Commission interprets this objection as a request for an advisory opinion as to how the Commission will interpret these provisions in the future. The Commission declines."

14. Here, the facts underlying those two customers fit precisely with what the Supplemental Stipulation describes as “limited deviations.” The deviations were numerically limited (2 out of 179,932 bills) with a one day difference in due date, were identified and documented, resulted from incorrect entry of the customers in Oklahoma rather than Missouri, and were not the result of any systemic billing failure. The deviations were identified and fixed, and the deviations did not result in any material harm to the customers. If two minor, isolated deviations for two accounts entered under the wrong state code are not “limited deviations,” then that language of the Supplemental Stipulation will be rendered meaningless; and the end result of delaying implementation of new rates (assuming the other two months of performance are compliant) would be a disproportionate penalty.

15. Liberty does not contend that the Commission’s analysis of limited deviations should turn on numbers alone. Rather, the appropriate inquiry is whether the underlying conduct reflects the type of customer service and billing issues the metrics were designed to identify and remediate. The Supplemental Stipulation expressly contemplates the possibility of limited deviations where documented justification exists, recognizing that isolated, non-system issues may occur even as overall compliance improves. Accordingly, while the number of deviations is one relevant consideration, the Commission’s determination should be informed by the surrounding circumstances and context – not limited to the narrow categories advanced in Staff’s Initial Report as follows:

- 1) It represents an exception that is allowed for in Commission rules and/or reflected in the language of the metrics.
- 2) The bill was printed by the billing system but was then caught and reversed by Empire before being sent to the customer. Thus, the customer was not presented with a bill that did not comply with the metric.
- 3) Similar to the “normalized” language for the Customer First Performance Metrics in the Non-Unanimous Global Stipulation and Agreement, Staff is

willing to exclude “certain extraordinary events that occur from time to time, which (1) are beyond the control of the utility such as an act of nature, and (2) may affect the utility’s ability to meet the performance metrics.” This is contingent upon Empire providing evidence documenting both the event and its impact.

(Staff’s Initial Report, p. 2.)

16. Nothing in the Supplemental Stipulation limits permissible deviations to the three categories proposed by Staff. Those categories do not appear in the text of the agreement and were not adopted by the Commission. To the contrary, the Commission expressly noted that the Supplemental Stipulation is silent as to who authorizes deviations and declined to provide additional guidance, confirming that such determinations are reserved to the Commission’s judgement based on the circumstances presented. Staff’s proposed framework therefore reflects a unilateral narrowing of the deviation provision rather than an interpretation grounded in the Commission’s order.

17. Further, Staff’s first two categories do not represent standards for permissible deviations at all. Rather, they describe circumstances in which no deviation exists – either because the conduct is expressly permitted by rule or because the customer never received a non-compliance bill. Treating these situations as the exclusive benchmarks for “permitted deviations” improperly collapses the distinction between compliance and deviation that the Supplemental Stipulation expressly preserves.

18. As such, Staff is suggesting that permissible limited deviations under the Supplemental Stipulation are only those that flow from “certain extraordinary events that occur from time to time, which (1) are beyond the control of the utility (1) such as an act of nature, and (2) may affect the utility’s ability to meet the performance metrics.” This is the language that the parties agreed to and set forth in the Non-Unanimous Global Stipulation and Agreement with

regard to the yet-to-be-agreed-to Customer First Performance Metrics. This language is not contained in the Supplemental Stipulation for applicability to the metrics now at issue.

19. Staff argues that the “Supplemental Stipulation does not set out a specific number of permissible deviations or a method for calculating that figure. If Staff or any party were to assume an acceptable number, there would be no agreed-upon basis for it.” (Memorandum, p. 8 of 11.) Liberty agrees – the signatories did not specify a set number. Similarly, the signatories did not specify that permissible deviations may only be the result of an extraordinary event beyond the control of Liberty, such as an act of nature. The Supplemental Stipulation reflects the Commission’s desire to require meaningful compliance with Commission rules, while recognizing that limited deviations may occur and should be evaluated in context. As noted by the Commission, delaying implementation of a rate increase pursuant to the Supplemental Stipulation “is a just and reasonable outcome necessary to support Empire’s safe and adequate service while taking into account both the billing and customer service failings that customers have endured since April 2024, and the interests of Empire’s investors.” (*Report and Order*, pp. 60-61.)

20. In approving the Supplemental Stipulation, the Commission recognized that the “testimonials of customer service and billing failures tied to the implementation of Customer First has been overwhelming.” (*Report and Order*, p. 53.) The Commission further stated:

Addressing the customer service and billing issues is a priority for the Commission. Staff’s opinion was that the implementation of Customer First compromised Empire’s ability to provide safe and reliable service at just and reasonable rates. The Commission agrees and finds that authorizing an increase in rates prior to the customer service and billing issues being addressed would result in unjust and unreasonable rates.

(*Report and Order*, p. 53.) The Commission determined “that Empire’s ongoing billing and customer service problems require improvement before a rate increase can be authorized.” (*Id.* at p. 55.) Further, in approving the Supplemental Stipulation, the Commission expressly rejected

outright denial of any rate increase and instead adopted a pragmatic approach requiring improvement in the billing system before authorizing a delayed and phased-in revenue increase. Interpreting the metrics in a matter that treats two immaterial clerical deviations as rendering an entire month non-compliant would be contrary to the Commission's own language in the *Report and Order*. (*Id.* at pp. 53-54.)

21. Liberty submits that, in determining what constitutes a limited deviation under the Supplemental Stipulation, the Commission may appropriately consider factors such as the number of circumstances identified, whether those circumstances reflect a systemic problem, and whether they relate to the Company's SAP billing system.

22. While Liberty sets high performance expectations and strives for excellence, the Supplemental Stipulation recognizes that "limited deviations may be permitted." The January deviations are extremely limited in number, do not represent a systemic problem, nor do they suggest any issue with the SAP billing system. Accordingly, Liberty believes that they should qualify as limited deviations within the meaning of the Supplemental Stipulation.

Conclusion

23. For the reasons stated above, the Company respectfully submits that its January 2026 billing performance reflects compliance with the metrics approved by the Commission, with only limited, documented deviations expressly contemplated under the Supplemental Stipulation. Liberty requests that the Commission consider Staff's Initial Report in light of the Commission's stated intent, the absence of systemic billing failures, and the corrective actions already implemented, and conclude that the January 2026 metrics do not warrant a finding of non-compliance.

WHEREFORE, Liberty respectfully submits this Response to Staff's Initial Report and requests such relief as is just and proper under the circumstances.

Respectfully submitted,

ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY
d/b/a LIBERTY

/s/

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 21st day of April, 2026, with notification of the same being sent to all counsel of record; and I further certify that the above document was sent by electronic transmission to all counsel of record.

/s/ Diana C. Carter