

**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-2024-0261

**The Office of the Public Counsel’s Response to Staff and Liberty**

COMES NOW the Office of the Public Counsel and responds to Staff’s Initial Report and Liberty’s response to that report as follows:

1. In its *Initial Report* Staff presents its analysis that for the month of January 2026 Liberty twice failed to meet one of the metrics it is required to meet before its general rates increase. Staff created a framework for analyzing permissible limited deviations from metric compliance and, using that framework, determined that these instances were not permissible deviations. Staff also presents its analysis for a third event of metric noncompliance billed in January 2026 which it determined was not a permissible deviation, but Staff excluded attributing that event to January 2026 for purposes of the *Supplemental Stipulation and Agreement* metrics based on its agreement with Liberty "that for purposes of the metrics the scheduled bill date, instead of the bill print date, will be the determining factor for the month a bill will count in the metrics."<sup>1</sup> Public Counsel disagrees with Staff’s exclusion of the third event because both the scheduled bill date and the bill print date should be captured for each month for purposes of the metrics.

2. In its response Liberty does not dispute that it failed to meet the metrics, but argues that those failures are permissible limited deviations such that the Commission should view that Liberty sufficiently has satisfied the metrics for January 2026 for that month to be a month in

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<sup>1</sup> See pages 9-10 of 11 of Staff’s April 16, 2026, memorandum filed as part of Staff’s Initial Report.

which Liberty has met the metrics specified in the *Supplemental Stipulation and Agreement* the Commission adopted and ordered.

3. Public Counsel agrees with Staff and Liberty that what the Commission intended by the language in the *Supplemental Stipulation and Agreement* it adopted and ordered controls whether Liberty sufficiently has satisfied the metrics for the month of January 2026.

4. Because it is the Commission's intent that controls, any agreements between Staff and Liberty as to the meaning of that language made after the Commission adopted it are irrelevant, as are their interpretations of which the Commission was unaware before it adopted the *Supplemental Stipulation and Agreement* except to the extent that they are based on information available before the Commission adopted the *Supplemental Stipulation and Agreement*. Here the meaning of the language in the *Supplemental Stipulation and Agreement* is not one of contract construction; instead, it is one of Commission intent by its order. See, e.g., [\*State ex rel. Union Elec. Co. v. PSC\*, 399 S.W.3d 467 \(Mo. Ct. App. 2013\)](#).

5. Even during this case before the Commission issued its Report and Order on January 14, 2026, the reliability of Liberty's data was suspect;<sup>2</sup> therefore, the Commission should have intended that permissible limited deviations from metric compliance be rare.

6. For its analysis of whether noncompliance with the *Supplemental Stipulation and Agreement* metrics was due to a permissible limited deviation, Staff used the following criteria:

In deciding whether an instance of noncompliance may still qualify as a permissible deviation, the Commission should consider whether the instance falls within one of three categories:

- 1) It represents an exception that is allowed for in Commission rules and/or reflected in the language of the metrics.

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<sup>2</sup> See Ex. 105, Staff witness Kim Cox direct testimony, p. 20, to which Public Counsel cited at page 44 of its Initial Brief.

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.

7. The Commission should view the metrics that it has adopted strictly and limit the permissible deviations from those metrics to no more than the criteria Staff used. Public Counsel would clarify the language of Staff’s first criterion to expressly state that the exception must be explicitly expressed in the rule or metric: 1) It represents an exception that explicitly is allowed for in Commission rules and/or explicitly stated ~~reflected~~ in the language of the metrics.

8. Public Counsel concurs with Staff that the two instances of Liberty applying Oklahoma billing timeframes because it misidentified the accounts as being Oklahoma accounts is a billing system error within Liberty’s control.

9. As indicated in the last sentence of the first paragraph of this response, Public Counsel disagrees with Staff that the instance of Liberty issuing a final bill during January 2026, based on estimated zero usage is outside the scope of the billing and customer service metrics because that bill has a scheduled bill date of November 24, 2025.

10. As stated in the next-to-last sentence of the first paragraph of this pleading, according to Staff, Liberty and Staff agreed that scheduled bill dates are to be used for the three-consecutive months evaluations for billing and customer service metric compliance: "Staff and

Empire have agreed that for purposes of the metrics the scheduled bill date, instead of the bill print date, will be the determining factor for the month a bill will count in the metrics.”<sup>3</sup>

11. The plain language of the *Supplemental Stipulation and Agreement* does not support Staff and Liberty’s agreement that for purposes of applying the estimated billing metric the scheduled bill date controls. As to this issue, in relevant part, the *Supplemental Stipulation and Agreement* states, “This Supplemental Agreement establishes specific billing and customer service metrics that Liberty is required to meet for three consecutive months, starting on January 1, 2026, prior to implementing any changes to customer rates, . . .” and

No later than the 15th of a month, the Company shall file a status report for the prior month in this docket indicating the number of instances of noncompliance with the provisions provided below, and at least a summary explanation of the causes or reasons for those instances of noncompliance. The Company shall maintain adequate documentation of those instances to facilitate Staff or Commission review. The Company shall cooperate with Staff’s review of each status report.

a. Eliminate initial and final estimated bills for service in compliance with Commission Rule. To the extent that the Company was unable to obtain a read for reasons beyond the control of the Company, the Company shall provide the reason that the inability was beyond the Company’s control. (Footnote citation to Commission rule omitted).

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12. According to Staff, Liberty issued an estimated final bill of zero dollars to a customer during January 2026 when Liberty had an actual final meter read which, perhaps serendipitously, was zero dollars.<sup>4</sup> According to Staff, this was an electronic billing system error, not one created manually—“When the billing system attempted to obtain a final read after the meter was removed, it was unable to find the meter and thus defaulted to an estimate read

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<sup>3</sup> See pages 9-10 of 11 of Staff’s April 16, 2026, memorandum filed as part of Staff’s Initial Report.

<sup>4</sup> See pages 8-10 of 11 of Staff’s April 16, 2026, memorandum filed as part of Staff’s Initial Report.

marking.”<sup>5</sup> This is a circumstance that should be captured for evaluating the *Supplemental Stipulation and Agreement* metrics for the period of January 2026.

**Wherefore**, for the reasons set forth above, the Office of Public Counsel concurs with Staff that during January 2026 not only has Liberty not met the *Supplemental Stipulation and Agreement* billing and credit metrics the Commission adopted and ordered, Liberty’s failures to meet them are not permissible limited deviations.

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 23<sup>rd</sup> day of April 2026.

/s/ Nathan Williams

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<sup>5</sup> See page 8 of 11 of Staff’s April 16, 2026, memorandum filed as part of Staff’s Initial Report.