

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

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

**PUBLIC COUNSEL'S APPLICATION TO THE COMMISSION TO  
RECONSIDER/REHEAR ITS ORDER DENYING OBJECTIONS**

COMES NOW the Office of Public Counsel (Public Counsel) and applies to the Commission to reconsider/rehear its order whereby it denied "*Public Counsel's Objections*, filed March 20, 2026, objecting to the Commission taking administrative notice of specific portions of documents,"<sup>1</sup> as follows:

1. The decision section of the Commission's order where it denied (overruled) Public Counsel's objections to the Commission taking administrative notice of certain portions of documents is reproduced following:

Liberty's first MPPM submission was filed in Case No. ER-2021-0312 and it was there that Public Counsel raised the MPPM issue. The Commission then moved the MPPM issue to Liberty's next rate case, Case No. ER-2024-0261 for resolution of the MPPM issue. The documents from that case were admitted as evidence.

The documents Public Counsel objects to are in the case where Public Counsel introduced the MPPM issue or were admitted into evidence for the purpose of resolving the MPPM issue. The documents are relevant to the MPPM issue, were previously admitted, or would require the creation of needless duplicative testimony for this case.

Therefore, the Commission will grant the requests of both Staff and Public Counsel to take administrative notice of documents from other cases and deny the objections of Public Counsel to the Commission taking notice of specific documents.

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<sup>1</sup> Ordered August 28, 2026, in its *Order Granting Administrative Notice and Denying Objections*.

2. As the Commission states, the case where Public Counsel raised the MPPM issue—how the PPA replacement values are calculated—for which the Commission later opened this case is Case No. ER-2021-0312.

3. Staff requested the Commission to take administrative notice of several documents from Case No. ER-2021-0312. Of those documents, Public Counsel only objected to those parts of a pleading Liberty filed on November 28, 2023, which included confidential settlement communications that Public Counsel has not waived. Those settlement communications were not disclosed to the Commission before November 28, 2023, which is well after the March 9, 2022, date when the Commission clarified the MPPM in Case No. ER-2021-0312 by its *Order Approving Stipulations and Agreements* in Case No. ER-2021-0312. Among the stipulations and agreements the Commission approved by that order was the *Fourth Partial Stipulation and Agreement* which included language to clarify the Commission-approved MPPM, including the “PPA replacement value.”

4. Not only are the settlement communications Liberty disclosed in its November 28, 2023, *Liberty’s Response to OPC’s MPPM Motion* inadmissible as evidence because they are privileged, those communications also are inadmissible because they are wholly irrelevant to the Commission’s intent both when it approved the MPPM and ordered the signatories to the MPPM to comply with the MPPM, and when it clarified the MPPM. The Commission was unaware of them before November 28, 2023, well after the Commission clarified the MPPM on March 29, 2022,<sup>2</sup> and approved it on June 19, 2019.<sup>3</sup>

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<sup>2</sup> Case No. ER-2021-0312, *Order Approving Stipulations and Agreements*, issued March 9, 2022, effective March 19, 2022.

<sup>3</sup> Case No. EA-2019-0010, *Report and Order*, issued June 19, 2019, effective June 29, 2019.

5. The other portions of documents to which Public Counsel objected were admitted into evidence in Case No. ER-2024-0261 *after* the Commission withdrew the MPPM issue from Case No. ER-2024-0261 and opened this case specifically to address it.<sup>4</sup> In short, the MPPM evidence in that case was never admitted into the evidentiary record for purposes of resolving the MPPM issue. Further, like the settlement communications in Liberty's pleading from Case No. ER-2019-0312, portions of the documents from Case No. ER-2024-0261 to which Public Counsel objected also reveal the same privileged settlement discussions for which Public Counsel never has waived its privilege. Moreover, most of the information in the portions of the documents to which Public Counsel objected is duplicative—it recounts factual history taken from documents in Case Nos. EA-2019-0010 and ER-2021-0312.

6. Consistent with Public Counsel's explanations in its suggestions in support of its objections, what the signatories to the MPPM intended is irrelevant; what the Commission intended for the signatories to do when it ordered them to comply with the MPPM is what is relevant. Likewise, what the signatories to the Commission-approved MPPM clarifying stipulation and agreement intended by that clarification is irrelevant;

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<sup>4</sup> Case No. ER-2024-0261, Tr. XI; 132:

As Ms. Emery makes her way to the stand, the Bench would like to discuss the issue -- MPPM issue, which was raised in opening statements and also discussed in the parties via e-mail. I just wanted to make sure to let all the parties know that that order has officially been issued today separating that issue from this case.

· · · · · It has established its own case and that Case Number is EO-2026-0101. Again, that is EO-2026-0101. The Commission has designated that case to be the -- the case that addresses Liberty's market price protection mechanism. Okay. I think that takes care of that announcement.

what the Commission intended for the signatories to do when it ordered them to comply with that stipulation and agreement is what is relevant.

7. Not only are the parts of the testimony from Case No. ER-2024-0261 to which Public Counsel objects the Commission take notice irrelevant to any issue the Commission decided in that case—the Commission expressly separated that issue from Case No. ER-2024-0261 before any of the MPPM testimony was admitted into evidence, that testimony also is irrelevant in this case because it includes information regarding Liberty’s intent of which the Commission was unaware both when it issued its order “approving” the MPPM in Case No. EA-2019-0010 and when it issued its order “approving” the clarification of the MPPM in Case No. ER-2021-0312. As explained above, revelations of the signatories’ intent when signing a settlement agreement are irrelevant for discerning the Commission’s intent when it issued its orders approving and ordering those signatories to perform the settlement agreement.

Wherefore, the Office of Public Counsel applies to the Commission to reconsider/rehear its denial of Public Counsel’s objections filed March 20, 2026, objecting to the Commission taking administrative notice of specific portions of documents and, instead, sustain them.

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 3<sup>rd</sup> day of September 2026.

/s/ Nathan Williams