

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

Julie Dietrich et al.,	)	
	)	
Complainants,	)	
	)	
vs.	)	<u>Case No. EC-2027-0042</u>
	)	
The Empire District Electric Company,	)	
d/b/a Liberty,	)	
	)	
Respondent.	)	

ANSWER AND MOTION TO DISMISS

COMES NOW The Empire District Electric Company, doing business as Liberty (“Liberty”), and for its *Answer*, states as follows:

I. BACKGROUND

Liberty is a duly regulated electrical corporation operating pursuant to certificates and service territory authority previously granted by the Missouri Public Service Commission (“PSC”). On January 23, 2025, the Southwest Power Pool (“SPP”) issued a Notice to Construct (“NTC”) to rebuild an existing 69 kV transmission line from Ozark Dam to Ozark South and replace it with a 161 kV transmission line (the “Project”) located in Liberty’s certified territory. See Map of the Project as **Exhibit A**.¹ Liberty has made and continues to make tremendous efforts to work with landowners to provide fair compensation for any easements that must be acquired to meet the specifications of the rebuilt transmission line.

¹ The Map includes the entire 2024 SPP ITC Project Portfolio. The Project which is the subject of the Complaint is Project Powersite and is in green on the eastside of the Map.

In planning the Project, the Company undertook a thorough review of the applicable statutes and case law concerning Certificates of Convenience and Necessity (“CCN”) in Missouri.² The Company determined that under Missouri law, it could lawfully construct the Project without seeking an additional CCN from the Commission, due to the fact that the Project is located entirely in Liberty’s certified service area pursuant to an order issued by the Missouri Public Service Commission (“Commission”) in Case No. 9420, on November 10, 1937 (23 Mo. P.S.C. 689).³ Further, the project is an upgrade to an existing transmission line. See Section II (B) below.

Complainants now request several forms of relief in their Complaint, none of which are within the Commission’s jurisdiction to grant in response to this Complaint.⁴ For that reason, Liberty asks that the Commission issue an order dismissing the Complaint.

II. ARGUMENTS

A. The Commission cannot issue declaratory judgements.

Complainants, in Paragraph 13(a)-(c), request the Commission to issue an order stating that Liberty must obtain a CCN before undertaking the Project, which is a rebuild of an existing transmission line.⁵ Missouri courts have consistently held that the Commission is an agency of limited jurisdiction. As the Missouri Court of Appeals stated in *State ex rel. Harline v. Pub. Serv. Comm’n of Mo.*, 343 S.W.2d 177 (Mo. App. 1960), the Commission has only such powers as are expressly conferred upon it by statute and

² Mo. Ann. Stat. § 393.170.

³ The Company hereby incorporates this order by reference.

⁴ See Complaint at p. 13-14.

⁵ *Id.*

those reasonably incidental thereto. This principle was reaffirmed in *City of O'Fallon v. Union Elec. Co.*, 462 S.W.3d 438 (Mo. Ct. App. 2015), where the court held that a Commission order is lawful only if the Commission acted within its statutory authority, and if a power is not granted to the Commission by statute, the Commission simply does not have that power. Further, the Commission does not possess general authority to issue declaratory judgments. See *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69 (Mo. 1982); *Jimmie E. Small*, Case No. EC-2012-0050. Complainants request the Commission issue a declaratory judgement that Liberty is required to seek an additional CCN for the Project, which the Commission cannot lawfully do.

B. Missouri Law Does Not Require an Additional CCN for Transmission Facilities Constructed Within a Utility's Existing Certificated Service Territory.

Missouri courts and the Commission have repeatedly rejected the proposition that a public utility must obtain a new CCN for each transmission facility constructed within service territory already certificated to that utility.

In *State ex rel. Harline v. Public Service Commission of Missouri*, 343 S.W.2d 177 (Mo. App. 1960), landowners sought to compel the Commission to require a utility to obtain a separate certificate before constructing a transmission line within territory already certificated to it. The court rejected that argument and held that a utility possessing an existing area certificate is not required to obtain an additional certificate for every extension or addition to its transmission facilities within its certificated territory.

The Missouri Court of Appeals subsequently reaffirmed that principle in *Empire District Electric Co. v. Cox*, 588 S.W.2d 263 (Mo. App. 1979), holding that once a public

utility has been certificated to serve a defined area, it need not obtain a new certificate each time an extension or improvement within that certificated area becomes necessary.

The Commission has applied the same rule in later transmission-line proceedings, recognizing that additional CCN authority is generally required only when facilities extend outside a utility's existing certificated territory. See, e.g., *In re Union Electric Co.*, Case No. EA-2013-0089 (Mo. PSC Apr. 24, 2013); *Grain Belt Express Clean Line LLC*, Case No. EA-2016-0358 (Mo. PSC Aug. 16, 2017)

Further, the Court of Appeals has stated that “[O]nce a public utility has been permitted by a certificate of convenience and necessity to provide service to a territory, the company can only perform its duty by extending its lines and facilities as required.” *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 33 (Ao. App., W.D. 2005). While specific authority from the Commission is required to build an electric plant, it is not required for transmission lines. *Harline*, supra; *StopAquila.Org*, supra. “The terms “electric plant” and “transmission lines” are not synonymous under the Public Service Commission Law.” *StopAquila.Org*, at pp. 36-37.

Because the Project is located within Liberty's certificated service territory, Liberty does not need an additional CCN for the project and Complainants have therefore failed to allege facts sufficient to establish any violation of § 393.170, RSMo., or Commission Rule 20 CSR 4240-20.045.

Complainants argue that because this transmission line build is part of SPP's transmission planning process it somehow negates Liberty's CCN authority in its certified territory.⁶ Liberty is a member of the SPP by virtue of an order of the Commission

⁶ Complaint ¶ 6.

authorizing its membership.⁷ Liberty's Commission-approved membership in SPP does not negate or alter its authority to serve as provided by its certificate of authority.

Finally, Complainants address the fact that the Project, which is the subject of this Complaint, is part of a broader portfolio of transmission line projects which Liberty is undertaking to ensure reliability of the transmission system. The map in **Exhibit A** indicates where the other two projects will eventually traverse. Complainants allege that Liberty should have followed a similar course of action to the Ameren Transmission Company in Illinois ("ATXI") in its Denny-Zachary-Thomas Hill-Maywood (DZTM) Project, where Complainants allege that ATXI sought a CCN for three interrelated transmission projects, because one of the three projects was located outside Ameren Missouri's certified territory. Liberty notes that ATXI is a separate entity from Ameren Missouri and ATXI has no certificated service area CCN in the State of Missouri. Thus, Liberty's situation is wholly distinct from the ATXI situation.

For all of these reasons, the Commission should expeditiously issue an order dismissing the *Complaint*.

C. The Commission has no authority to enjoin condemnation proceedings, adjudicate tort claims, or annul contracts.

The Complainants' prayer for relief in Paragraph 13(d)-(h) requests Commission determinations or investigations related to negotiation of private contracts in the normal course of utility management. As an initial matter, Liberty denies any allegation that its agents or employees made misrepresentations to landowners while negotiating easements necessary to undertake the Project. Notwithstanding that denial, the

⁷ *In the Matter of The Empire District Electric Company's Submission of its Interim Report Regarding Participation in the Southwest Power Pool, Inc.*, Order Granting Interim Approval, Case No. EO-2012-0269 (September 25, 2025).

Commission, as an agency of limited jurisdiction, lacks the authority to: (1) enter a monetary judgment; (2) enforce, construe, or annul contracts; (3) construe the Missouri Merchandising Practices Act; or (4) adjudicate tort claims. *Buck v. Union Elec. Co.*, No. ED 113772, 2026 WL 1791463 (Mo. Ct. App. 2026).

The issue of whether the Commission could adjudicate complaints related to negotiations of easements was recently discussed at the Commission and in the Courts in *Missouri Off. of Pub. Couns. v. Evergy Missouri W., Inc.*, 728 S.W.3d 568 (Mo. Ct. App. 2025), decided by the Missouri Court of Appeals, Western District, in November of 2025. In that case, landowners filed formal complaints with the Commission against Evergy Missouri West (“Evergy”), alleging that Evergy had engaged in fraudulent conduct — specifically, making false statements to landowners — in order to obtain easements for the Fayetteville Project. The Commission dismissed all complaints after Evergy abandoned the project and dismissed its condemnation proceedings, finding that no live controversy remained, which the Court of Appeals confirmed. However, in that case the Commission acknowledged that “while it is proper for the Commission to investigate and review Evergy’s methods and practices during a general rate case, it must refrain from managing any public utility.” *Missouri Off. of Pub. Couns. v. Evergy Missouri W., Inc.*, 728 S.W.3d 568 (Mo. Ct. App. 2025).

Therefore, even if the Commission were to accept the allegations in the *Complaint* as true, which the Company categorically denies, Complainants are not entitled to the relief requested as a matter of law. Questions concerning eminent domain, easement rights, condemnation procedures, and the acquisition of property interests are matters

committed to the jurisdiction of Missouri courts. The Commission does not possess authority to enjoin condemnation proceedings or adjudicate private property disputes.

III. Specific Answers to Allegations in Complaint

1. With respect to the allegations contained in Paragraph 1 of the *Formal Complaint*, Liberty denies the characterization of the facts and disputes the conclusions of law. The Commission may not issue a declaratory judgment nor declare any principle of law or equity. See Section I (A) above for legal arguments.

2. Liberty is without sufficient information to either admit or deny the allegations contained in Paragraph 2 of the *Formal Complaint* and therefore denies the same.

3. Liberty admits the allegations contained in Paragraph 3 except that the address of its principal place of business is 602 S. Joplin Ave.

4. With respect to the allegations contained in Paragraph 4 of the *Formal Complaint*, Liberty states that the law speaks for itself. In further response, Liberty admits that it has not applied for a CCN with respect to a proposed transmission line upgrade in Christian and Taney Counties, Missouri. It is Liberty's position that a CCN is not required in this case. Liberty provides electric service in several Missouri counties, including Taney and Christian Counties, as authorized by a CCN issued by the Commission in Case No. 9420, on November 10, 1937 (23 Mo. P.S.C. 689). See Section 3(A) above concerning Liberty's supporting legal argument.

5. With respect to the allegations contained in Paragraph 5 of the *Formal Complaint*, Liberty states that the law speaks for itself.

6. With respect to the allegations contained in Paragraph 6 of the *Formal Complaint*, Liberty states that the orders and regulations of the FERC speak for

themselves. Liberty admits it is a member of the SPP by virtue of an order of the Commission approving its membership.⁸ Liberty denies that a CCN is required for a proposed transmission line upgrade in Christian and Taney Counties, Missouri.

7. With respect to Paragraph 7 of the Formal Complaint, Liberty admits that SPP has directed or conditionally directed Empire to construct certain transmission upgrades arising from the 2024 Integrated Transmission Plan, including upgrades associated with the existing transmission facilities between Ozark Dam and Ozark South. The applicable SPP notices, project identifiers, scopes, cost estimates, and dates speak for themselves. Liberty denies the complainants' characterization of those notices, projects, and facilities and denies the remaining allegations contained in Paragraph 7.

8. Liberty denies the characterization that the naming convention used by the Company is a "misnomer" and admits the remaining allegations contained in Paragraph 8 of the Formal Complaint.

9. Liberty admits that it published information concerning certain electric transmission projects on its public website. The website and the statements appearing thereon speak for themselves. Liberty denies the complainants' characterizations of the website, the project names, and the regulatory scope or interrelationship of the projects, and denies the remaining allegations contained in Paragraph 9.

10. Liberty admits that certain correspondence to property owners described the proposed work as part of a larger, multi-phase effort to strengthen the electric grid. The correspondence speaks for itself. Liberty denies any characterization or legal

⁸ *In the Matter of The Empire District Electric Company's Submission of its Interim Report Regarding Participation in the Southwest Power Pool, Inc.*, Order Granting Interim Approval, Case No. EO-2012-0269 (September 25, 2025).

conclusion that the quoted communications establish that the separate SPP network upgrades constitute a single asset or project for purposes of Missouri law or Commission regulations.

11. Liberty admits that it retained Contract Land Staff (“CLS”) and that its agents contacted various persons. Liberty is without sufficient information to either admit or deny the other allegations contained in Paragraph 11 of the *Formal Complaint* and therefore denies the same.

12. With respect to the allegations contained in Paragraph 12 of the *Formal Complaint*, Liberty states that the law speaks for itself. Liberty denies that CLS agents mischaracterized information to Complainants.

13. Liberty admits that it obtained appraisals in connection with certain proposed easement acquisitions. The appraisals, title materials, and engagement instructions speak for themselves. Liberty denies that it improperly instructed any appraiser, misrepresented its existing property rights, or improperly reduced compensation, and denies the remaining allegations contained in Paragraph 13.

14. Liberty admits the allegations contained in Paragraph 14 of the *Formal Complaint*.

15. With respect to the allegations contained in Paragraph 15 of the *Formal Complaint*, Liberty states that the law speaks for itself. See Section 3(A) above concerning Liberty’s supporting legal argument.

16. With respect to the allegations contained in Paragraph 16 of the *Formal Complaint*, Liberty states that the law, including the regulations and orders of the Missouri

Public Service Commission, speaks for itself. See Section 3(A) above concerning Liberty's supporting legal argument.

17. With respect to the allegations contained in Paragraph 17 of the *Formal Complaint*, Liberty states that the law speaks for itself. See Section 3(A) above concerning Liberty's supporting legal argument.

18. With respect to the allegations contained in Paragraph 18, the facts of Case No. EO-2025-0087 speak for themselves. Liberty denies the facts of this case are analogous to the Project.

19. With respect to the speculative allegations contained in Paragraph 19 of the *Formal Complaint*, Liberty is without sufficient information to either admit or deny them and therefore denies the same.

20. Liberty admits that the facilities referenced in Paragraph 20 operate within the interconnected regional transmission system and that Liberty's website used a highway analogy to explain the respective functions of 345 kV and 161 kV facilities to the public. Liberty denies that the identified network upgrades serve no independent purpose, denies the complainants' characterization of the projects as functionally dependent, and denies the remaining allegations contained in Paragraph 20.

21. With respect to the speculative allegations contained in Paragraph 21 of the *Formal Complaint*, Liberty is without sufficient information to either admit or deny them and therefore denies the same.

22. Liberty admits the allegations contained in Paragraph 22 of the *Formal Complaint*.

23. Liberty denies all allegations of the *Formal Complaint* not specifically admitted

herein.

24. Liberty denies that it has violated any Missouri statutes, Commission regulations or orders, or its Commission-approved tariff with respect to the matters alleged in the *Formal Complaint*.

25. Liberty denies that the Complainants are due any of the requested relief. Moreover, Liberty denies that the Commission has authority or jurisdiction to order certain of the relief requested by Complainant in the *Formal Complaint*, specifically Subparts (d), (e), and (g) of the prayer. As to Subpart (f) of the prayer, the Commission may not direct its General Counsel to seek penalties against the Company unless it has first found that the Company violated a Missouri statute, or a Commission rule or order, or its Commission-approved tariff.

WHEREFORE, the Company respectfully requests the Commission issue an Order dismissing this Complaint as a matter of law, and grant such additional relief as is just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

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**ATTORNEYS FOR THE EMPIRE DISTRICT
ELECTRIC COMPANY DOING BUSINESS AS
LIBERTY**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was sent by electronic mail to all parties of record this _____ day of September 2026.

/s/ Kevin A. Thompson