

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

In the Matter of the Application of Empire)
District Electric Company d/b/a Liberty for)
Approval of New or Modified Tariffs for) File No. ET-2026-0184
Service to Large Load Customers)

MOTION FOR PROTECTIVE ORDER

COMES NOW Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”) and, pursuant to Commission Rule 20 CSR 4240-2.135(4), requests that the Missouri Public Service Commission (“Commission”) issue a protective order establishing enhanced protections for the commercially sensitive information described herein before granting any applications to intervene. In support of this request, Liberty respectfully states as follows:

1. In accordance with 20 CSR 4240-2.135(6), absent a specific order issued under 20 CSR 4240-2.135(4), information designated as “Confidential” pursuant 20 CSR 4240-2.135(2)(A) may be available to (i) the attorneys of record for a party in this proceeding, (ii) persons designated by a party as an “outside expert” in this proceeding, and (iii) to employees of a party if those employees are working as subject-matter experts for the attorneys or intend to file testimony, so long as the employees file the certification required by 20 CSR 4240-2.135(7).

2. In addition to information that may be designated as “Confidential” by Liberty in the course of this proceeding, including “customer-specific information,” “employee-sensitive personnel information,” and the “strategies employed, to be employed or under consideration in contract negotiations,” 20 CSR 4240-2.135(2)(A)(1), (2), and (6), certain information that may be the subject of discovery requests, later-filed testimony, or other disclosures in this proceeding should not be made available to any party or its representatives other than the Commission and its

advisors, Commission Staff, the Office of the Public Counsel (“OPC”), and their respective advisors and Staff.

3. For example, Liberty may be required to disclose detailed, commercially sensitive, and proprietary information regarding prospective (or executed) Large Load customer arrangements, including customer-specific load, location, development, pricing, cost, operational, credit support, and commercial information (“Large Load Customer Information”), and/or as the terms and details of any Electric Service Agreement (“ESA”) entered into with a Large Load customer and any related agreements or contracts that pertain to serving that customer (collectively, “Customer Agreements”).¹

4. “Confidential” designation under 20 CSR 4240-2.135 does not provide adequate protection for Large Load Customer Information and Customer Agreements because it would allow disclosure of such information to in-house representatives of non-state-agency parties who may have competitive relationships with Liberty, its counterparties, or prospective Large Load customers. Disclosure of this information could irreparably harm Liberty and Large Load customer(s) by revealing commercially sensitive terms, development plans, cost information, pricing information, and negotiation strategy in a manner that could affect relative bargaining positions in other transactions.

5. Therefore, to promote administrative efficiency, preserve the transparency contemplated by Liberty’s Application and supporting testimony, and protect highly sensitive Large Load Customer Information and Customer Agreements, the Company respectfully requests that the Commission authorize Liberty to designate this information as “Highly

¹ Liberty clarifies that to date, it has not entered into any ESAs with customers who would qualify for service under its proposed Schedule TS-LL, but is preemptively making these requests in the event it were to enter into such agreements during the pendency of this proceeding.

Confidential/Highly Sensitive.” The Company further requests that the protective order entered in this proceeding operate prospectively to cover Large Load Customer Information and Customer Agreements developed under Schedule TS-LL and required to be provided or filed with the Commission or through a Commission proceeding in the future, rather than requiring the Company to seek a separate determination of protected status for each agreement as it is executed.

6. Under 20 CSR 4240-2.135(4), a motion for “greater protection” must include an explanation of the following:

- A. The information to be protected;
- B. The harm to the disclosing entity or the public that might result from disclosure of the information; and
- C. How the information may be disclosed while protecting the interests of the disclosing entity and the public.

7. **Information to be Protected:** Here, the Highly Confidential/Highly Sensitive Information includes: (A) the negotiated terms and conditions of any Customer Agreements, including ESAs; any related power purchase agreements; upfront, prepayment, and/or contribution in aid of construction (“CIAC”) arrangements; interconnection agreements; credit support instruments; and, any other customer-specific agreements or instruments used to implement Schedule TS-LL; (B) any documents reflecting the terms and conditions of the Customer Agreements; and, (C) Large Load Customer Information, including customer-specific data, customer pricing, supply costs, business relationships, market data, development plans, site-selection information, other proprietary data, and protected trade secrets.

8. While no such information is contained in the Company’s Application or direct testimony, to the extent any information falling within these categories is produced in discovery,

later-filed testimony, or as other evidence presented in this case, the Company requests it be designated as Highly Confidential/Highly Sensitive. The information for which Highly Confidential/Highly Sensitive treatment is sought is not nor will be made available in public sources.

9. **Potential Harm to Disclosing Entities and/or the Public:** Missouri Supreme Court Rule 56.01(c)(7) provides that protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way” Here, the Highly Confidential/Highly Sensitive Information requires “greater protection” than that afforded by 20 CSR 4240-2.135(2) for three reasons. First, the marketplace for Large Load development is highly competitive, and information regarding site selection, pricing, supply arrangements, infrastructure requirements, credit support, and contract terms is closely guarded by market participants as a matter of course. Large Load customers routinely negotiate these arrangements under nondisclosure agreements and treat the details of their site-selection process, negotiated rates, financial terms, and contractual commitments as highly confidential commercial information because disclosure could reveal competitively sensitive information to other entities competing for the same sites, capacity, infrastructure, or preferred terms. Given the pace of Large Load demand growth in Missouri and nationally, and the number of utilities and jurisdictions seeking to attract this load, disclosure of proprietary and highly confidential information could place both Liberty and its prospective Large Load customers at a competitive disadvantage and chill the candid negotiations Schedule TS-LL is intended to support. Greater protection for this category of information is therefore necessary to ensure that Liberty and its Large Load customers may continue negotiations with confidence

that proprietary and commercially sensitive terms will not become part of the public record or be disclosed to parties with potentially competing commercial interests.

10. Second, Liberty expects that service to Large Load customers may require negotiations with third-party developers, contractors, suppliers, generation counterparties, transmission providers, and other entities involved in developing the generation, transmission, distribution, and related facilities necessary to serve Large Load customers. Liberty and these counterparties may be subject to confidentiality obligations with respect to each other's information, particularly with respect to costs, pricing, commercial terms, development timelines, and project-specific requirements. Disclosure of that information could harm Liberty, its counterparties, and ultimately its customers by undermining ongoing negotiations, weakening bargaining positions, or discouraging counterparties from engaging candidly with Liberty regarding project-specific solutions.

11. Third, consistent with the Application and Ms. Emery's concurrently-filed direct testimony, Liberty is willing to file executed ESAs with the Commission for informational purposes so long as appropriate confidentiality protections are in place. That approach advances transparency while preserving the confidential treatment necessary for customer-specific implementation details. To promote administrative efficiency and ensure consistent protections for the categories of Highly Confidential/Highly Sensitive Information at issue in this case, the Company requests that the terms of the Protective Order apply prospectively to Customer Agreements and Large Load Customer Information developed under Schedule TS-LL, rather than requiring Liberty to return to the Commission each time a new Customer Agreement is executed. Requiring Liberty and its customers to seek separate protections for each individual agreement would create a lack of certainty; impose an unnecessary administrative burden on the Company,

its customers, and the Commission; create the risk of inadvertent disclosure during the period between execution and Commission action; and likely result in redundant proceedings because the categories of information at issue—customer pricing, supply costs, credit support, business relationships, market data, development plans, and the terms of the agreements themselves—would already have been deemed Highly Confidential/Highly Sensitive by the Commission. Because the same concerns attach to the categories of information as a whole, rather than any single agreement, a prospective, standing designation is the most efficient and appropriate approach.

12. **How the Information May be Disclosed While Protecting the Interests of the Disclosing Entity and the Public:** Granting Liberty’s Motion for Protective Order will allow relevant information to be made available to the Commission, Commission Staff, OPC, and their respective advisors and Staff while preventing access by parties or representatives whose commercial interests could be affected by the disclosure of competitively sensitive Large Load Customer Information or Customer Agreements. This approach balances transparency and regulatory review with the customer-protection, commercial certainty, and administrative-efficiency objectives reflected in Schedule TS-LL and the Company’s Application.

13. Accordingly, Liberty requests the Commission issue a Protective Order as follows:
- a. Information designated as “Confidential” is subject to the standard protocols included in Commission Rule 20 CSR 4240-2.135. All persons authorized to access Confidential information in this case shall complete the non-disclosure agreement attached hereto as **Exhibit A**.
 - b. Parties may additionally designate as “Highly Confidential/Highly Sensitive Information” the following categories of information: (1) the negotiated terms and conditions of any Customer Agreements, including ESAs, any related power purchase agreements; upfront, prepayment, or CIAC arrangements; interconnection agreements; credit support instruments; and, any other customer-specific agreements or instruments used to implement Schedule TS-LL; (2) any documents reflecting the terms and conditions of the Customer Agreements; and (3) Large Load Customer Information, including customer-

specific data, customer pricing, supply costs, business relationships, market data, development plans, site-selection information, other proprietary data, and protected trade secrets.

- c. No entities or individuals other than the Commission, Commission Staff, OPC, and their respective advisors and Staff shall be permitted to access any information designated Highly Confidential/Highly Sensitive.
 - a. Persons afforded access to materials or information designated “Highly Confidential/Highly Sensitive Information” shall neither use nor disclose such materials or information for any business, competitive, commercial, or other purpose unrelated to this case, and shall keep the materials and information secure and confidential in accordance with the purposes and intent of the protective order.
 - b. All materials and information designated as “Highly Confidential/Highly Sensitive Information” in the possession of any entity or person, as well as any notes, summaries, excerpts, or analyses containing or reflecting such information, shall be returned to the party disclosing the same or destroyed upon the conclusion of the referenced case.
- d. To promote administrative efficiency, consistent treatment, and the transparency contemplated by the Company’s Application and supporting testimony, this Protective Order shall apply with equal force to any Customer Agreement entered into between Liberty and a counterparty related to service to a Large Load customer under Schedule TS-LL after the date the Protective Order is entered, as well as any Large Load Customer Information produced or filed in connection with such Customer Agreement.
- e. If any party disagrees with the designation of any information as Highly Confidential/Highly Sensitive Information, that party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If these dispute resolution procedures are exhausted without resolution, the party may file a motion challenging the designation.
- f. Consistent with 20 CSR 4240-2.135(10), any “Confidential” information shall be denoted as follows: ****confidential information****. Relatedly, any “Highly Confidential/Highly Sensitive Information” shall be designated as follows: ****highly confidential/highly sensitive information****.

WHEREFORE, Liberty respectfully requests that the Commission issue a protective order consistent with the terms requested herein and direct use of the Non-Disclosure Agreement forms marked as **Exhibit A** hereto.

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

I hereby certify that the above document was filed in EFIS on this 11th day of September, 2026, with notification of the same being sent to all counsel of record.

/s/ Kevin A. Thompson
Kevin A. Thompson