

**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-2021-0312

The Office of the Public Counsel's Reply Brief

Respectfully submitted,

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Chief Deputy Public Counsel

March 8, 2022

COMES NOW the Office of the Public Counsel and for its Reply Brief states:

Both Liberty and the Midwest Energy Consumer Group’s (“MECG”) mistakenly argue there are two class cost-of-service studies in this case—one by Liberty witness Tim S. Lyons and one by MECG witness Kavita Maini—when, as Public Counsel pointed out in its initial brief, only Liberty witness Tim S. Lyons performed a class cost-of-service study. MECG witness Kavita Maini critiqued Mr. Lyons’ study, after which Mr. Lyons accepted the reasonableness of changes to his study in response to those critiques. Ultimately, the various flavors of the average and excess methods they offered and adopted for allocating production plant to customer rate classes—twelve non-coincident peak, eight non-coincident peak and five non-coincident peak—are all based on customer demand peaks. That is their fatal flaw.

The premise underlying each of these demand-based methods is that Liberty manages its generation portfolio for its customers’ demand (capacity needs); however, Liberty acquired its Neosho Ridge, North Fork Ridge, and Kings Point wind projects—a substantial part of its generation portfolio—to generate energy at a cost below Southwest Power Pool (“SPP”) market prices. In other words, the various flavors of average and excess methods that Liberty’s witness Tim S. Lyons and MECG’s witness Kavita Maini proffer in this case are based on the false premise that Liberty manages its generation portfolio for its customers’ demand when Liberty made a substantial rate base investment in that portfolio for the purpose of generating energy at a cost below SPP market prices. This flaw is fatal to the study results, no matter which production allocator they derive from an average and excess allocation method.

MECG’s reliance on Commission class revenue requirement responsibility shifts in Liberty’s (then d/b/a Empire) 2014 and 2016 general electric rate cases (Case Nos. ER-2014-0351

and ER-2016-0023) are irrelevant, because before 2017 Liberty was not managing its generation portfolio to generate energy at a cost below SPP market prices. Further, the Commission should disregard Liberty's change in its position to recommend an 8.3% increase to residential class rates relative to an overall system-wide increase of 7.6%, *i.e.*, to include an increase in its residential customers' revenue requirement responsibility by 0.7% (about 9.9% of 7.6%) more than the overall increase.¹ Liberty announced that change in position, upon which both Liberty and MECG rely, after MECG's attorney, frustrated by his inability to elicit from Liberty witness Tim S. Lyons that he had changed his position on class revenue responsibility shifts based on settlement of the overall revenue requirement,² threatened to object to the fourth settlement agreement until Liberty agreed to announce a new position after an off-the-record break in the hearing as shown the following portions of the transcript:

Your Honor, before we move on to the next witness, as you know, several parties filed a stipulation on Saturday morning. While MECG originally indicated that it did not oppose that, we have now reconsidered that and it's likely that we will be opposing that stipulation.

I don't believe it's -- it's still within our statutory timeline and I don't believe it's prejudiced anybody because that was filed on Saturday and here we are on Monday morning. So we are continuing to look at that, but I just want to make people aware that we may be filing that objection.³

* * * *

JUDGE CLARK: Okay. Which brings me to my next issue. Given that you've indicated that you're going to object, do we come back this afternoon and start the remaining issues? Because that seems to be where we are.

¹ Tr. 6:111-112.

² Tr. 6:80-98.

³ Tr. 6:104-105.

MR. WOODSMALL: I think that it's necessary, yes, Your Honor. We'll know by the end of the day whether we're going to file the objection. But I think in order to try to get as close on schedule as we can, I think it's necessary.⁴

* * * *

MR. WOODSMALL: Yes, Your Honor. So during the break, we had some discussion about some of the events that occurred this morning and to try to clarify some positions. And I think the company is going to clarify its position, which will alleviate my need to object.⁵

While MECG bemoans Liberty's industrial rates as uncompetitive as it points to rate comparisons with other providers in other geographic areas, no one elicited any evidence that a potential industrial customer chose not to locate in Liberty's service area because of the cost of electricity. Locating a business is the product of many factors—factors such as land cost, tax burden, available labor pool, labor costs, transportation constraints, state and local incentives, and others—not merely the cost of electricity.

In contrast, as Public Counsel noted in its initial brief, households in Liberty's service area in Missouri have lower overall mean and median household incomes, and higher poverty rates relative to the United States and Missouri averages.⁶ Further, they have either recently experienced or about to experience each of the following:

- Residential time-of-use opt-out rates;⁷
- The public health crisis;
- The sudden onset of high inflation;⁸

⁴ Tr. 6:107-108.

⁵ Tr. 6:109-110.

⁶ Ex. Public Counsel witness Geoff Marke direct testimony, pp. 9-10.

⁷ Non-Unanimous Partial Stipulation and Agreement filed January 28, 2022.

⁸ Ex. Public Counsel witness Geoff Marke direct testimony, pp. 10-11.

- The impending rate increase from this case;
- The impending higher Liberty FAC charges; and
- The impending bill impacts of Liberty’s upcoming securitization charge(s).⁹

For all the reasons expounded in its initial brief and here, Public Counsel continues to recommend that when it designs Liberty’s new rates the Commission not make any revenue neutral inter-class revenue requirement responsibility changes, *i.e.*, that the Commission not change the present relative rate class revenue requirement responsibilities and allocate Liberty’s revenue requirement increase—based on the fourth settlement agreement \$35,515,913 per year—as an equal percent increase/decrease across classes.

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 8th day of March 2022.

/s/ Nathan Williams

⁹ Case No. EO-2022-0040 (Storm Uri securitization); EO-2022-0193 (Asbury securitization).