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	)))))	File No. ER-2021-0312

LIBERTY'S RESPONSE TO OPC'S MPPM MOTION

COMES NOW The Empire District Electric Company d/b/a Liberty ("Liberty" or the "Company"), and in response to Public Counsel's Motion in Response to Liberty's MPPM Notice Filing ("OPC's MPPM Motion"), Liberty requests an order denying OPC's MPPM Motion and respectfully states as follows to the Missouri Public Service Commission ("Commission"):

1. Pursuant to paragraph 21(c) of the Fourth Partial Stipulation and Agreement approved in this general rate case docket on March 9, 2022, all costs and revenue components of the Market Price Protection Mechanism ("MPPM"):

> shall be tracked including the revenues included in the FAC to assure that all costs and/or revenues are appropriately treated. Balances as of the end of each MPPM year will be submitted to the Commission 60 days following the end of each MPPM year. Since Paygo has a base amount included in the Wind Revenue Requirement, any amount above/below the base amount will be incorporated into the MPPM calculation to ensure a timely capturing of costs and/or revenues.

2. Liberty's first MPPM year ended May 31, 2023; and on July 28, 2023, Liberty timely filed its Notice of MPPM Submission. On November 13, 2023, the Office of the Public Counsel ("OPC") then submitted its MPPM Motion, requesting that Liberty be ordered by the Commission to refile its MPPM submission and stating as follows:

> In its first annual market price protection mechanism (MPPM) compliance filing that it made on July 28, 2023, Liberty included a PPA replacement value balance of ($8,345,691); however, the correct PPA replacement value balance is $0. This is because . . . by the terms of the MPPM, as clarified, the PPA replacement value is $0 until Liberty's Elk River wind PPA expires at the end of 2025.

3. Liberty properly tracked and reported all costs and revenue components of the MPPM, including the PPA replacement value. At no time did Liberty agree, or the Commission order, that the PPA replacement value is zero until the end of 2025. It is helpful to understand the origin of the MPPM in order to understand why OPC's MPPM Motion should be denied.

4. **Step 1: Liberty's Customer Savings Plan, Case No. EO-2018-0092**. The MPPM was initially conceived during Liberty's Customer Savings Plan docket, as the result of negotiations between Liberty and participating stakeholders: the Staff of the Commission ("Staff"), the Department of Energy, Renew Missouri, and the Midwest Energy Consumers Group. The Non-Unanimous Stipulation and Agreement, to which the participating stakeholders were signatories, codified the MPPM in its original form, although adoption of the MPPM was not ordered in the Customer Savings Plan docket.

5. The purpose of the MPPM was predicated on Staff's review of the analysis of the benefits identified in Liberty's Customer Savings Plan which were presented in the Present Value Revenue Requirement ("PVRR") provided by Liberty's third-party consultant, Charles River Associates, and what Staff considered "uncertainty due to changing dynamics in the competitive marketplace."[1] Staff expressed concerns regarding upfront capital costs and the potential for "limited, if any" benefits to customers during the first 10 years.[2] The resultant mechanism was the MPPM. In this original version of the MPPM, the formula was "Wind Revenues – Wind Revenue Requirement + PPA Replacement = Annual Wind Value." Although different elements existed such as an upper dead band and lower dead band, as well as Annual Wind Value exposure caps, the primary function of the MPPM was to compare some of the benefits of the wind projects to which the parties agreed, with the revenue requirement over the first 10 years of the life of the

[1] EO-2018-0092: Staff Affidavit in Support of Non-Unanimous Stipulation And Agreement, page 4.
[2] EO-2018-0092: Rebuttal Testimony of John Rogers, page 17, line 8.

wind projects and to create a regulatory liability that could be refunded to customers if the benefits did not exceed the costs.

6. **Step 2: Liberty's Applications for Certificates of Convenience and Necessity, Case No. EA-2019-0010**. During the regulatory proceeding in Missouri for Certificates of Convenience and Necessity ("CCNs") for the wind projects, and in follow-up to the Customer Savings Plan docket, a number of elements both old and new were discussed and negotiated regarding the MPPM. OPC also proposed its own "Customer Protection Plan."[3] OPC recommended a mechanism similar to the MPPM, **but OPC recommended removal of items such as the capacity credit and the PPA replacement**. OPC argued that that these items should be removed "(b)ecause Empire has so much existing generation resources, during the Hedging Period the wind projects will have no capacity value for Empire's customers and the wind projects will have no replacement value for Empire's current wind PPAs."[4] Further, OPC argued that Liberty "has excess generation capacity and, therefore, does not need the additional generation of the Wind Projects."[5]

7. In the CCN proceeding, a Non-Unanimous Stipulation and Agreement was signed by Liberty and the participating stakeholders from the Customer Savings Plan docket: Staff, the Department of Energy, Renew Missouri, and the Midwest Energy Consumers Group. Appendix B of the Non-Unanimous Stipulation and Agreement provided the MPPM framework to which the signatories agreed. In the Report and Order granting the requested CCNs, issued June 19, 2019, **the Commission found that the proposed conditions of OPC's recommended "Customer Protection Plan" were unreasonable**. The Commission disagreed with OPC's premise "that the

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[3] Case No. EA-2019-0010: Office of Public Counsel's Initial Brief, pages 27-28.
[4] Case No. EA-2019-0010: Office of Public Counsel's Positions on Listed Issues, page 4.
[5] Case No. EA-2019-0010: Report and Order, page 50.

Wind Projects only have benefits if they are necessary to meet capacity."[6] Rejecting OPC's proposal, the Commission ordered that the MPPM, as described in Appendix B to the Non-Unanimous Stipulation and Agreement, shall be implemented.

8. **Step 3: General Rate Case, Case No. ER-2021-0312**. The Direct Testimony of OPC witness Lena Mantle discussed the MPPM as negotiated and approved in the EA-2019-0010 CCN docket and proposed changes for the Commission's consideration. OPC witness Mantle admitted that OPC did not participate in negotiating the final design of the MPPM, as approved in EA-2019-0010, due to OPC's concerns about the framework to which all other parties agreed. As a result, in the general rate case, OPC witness Mantle requested to clarify certain elements of the MPPM and modify other elements of the MPPM. Significant to the issue now before the Commission, **OPC requested that the Commission modify the MPPM to exclude any PPA replacement benefit**.[7] OPC witness Mantle offered an alternative: inclusion of a benefit equal to the lesser of the least-cost manner of meeting the RES at the time renewables are needed or the portion of the wind projects revenue requirement consistent with the RES requirement; the energy to meet the RES would come from the Missouri wind projects because of the 1.25 multiplier when Missouri generation is used to meet Missouri's RES; and the RES requirement of the Missouri wind projects is the total RES non-solar requirements minus the generation of Ozark Beach.[8]

9. On February 5, 2022, Liberty, Staff, and OPC signed the Fourth Partial Stipulation and Agreement to settle a list of outstanding rate case issues, including any clarification or modification of the MPPM ("4th Stipulation"). The proposed revisions that OPC offered in their early draft of the 4th Stipulation were nearly verbatim to the proposed modifications provided by

[6] Case No. EA-2019-0010: Report and Order, page 50.
[7] Case No. ER-2021-0312: Direct Testimony of Lena Mantle, pages 19-20.
[8] Case No. ER-2021-0312: Direct Testimony of Lena Mantle, page 2, lines 6-15.

OPC in Schedule LMM-D-3 attached to OPC witness Mantle's Direct Testimony. Throughout the course of negotiations to determine a mutually agreeable position that balanced the positions of the parties, it is clear and unambiguous that while Liberty did accept some clarifications proposed by OPC, **the Company did not accept other revisions that were contrary to the spirit of the original MPPM as approved in the EA-2019-0010 CCN docket**.

10. The result of the 4th Stipulation was a negotiated and balanced position to which Liberty, OPC, and Staff agreed. The attachments to this filing provide the clear provenance for the language that was ultimately included in the executed and approved 4th Stipulation and, just as importantly, **the agreement by OPC to remove the language to which the Company objected**.[9] The Company never agreed, nor was it ever contemplated outside of OPC's proposed modifications, to reduce the PPA replacement by generation from Ozark Beach or residential solar, or to include a stacking and weighting of renewable energy credits for the purpose of RES compliance.

11. With the submission of OPC's MPPM Motion, OPC has ignored that some of its MPPM proposals were rejected by Liberty (and the Commission) and has ignored that execution of the 4th Stipulation required puts and takes from all stakeholders and resulted in a balanced process to which all parties agreed (and the Commission approved).[10] Liberty is properly tracking all costs and revenue components of the MPPM, and, for its first MPPM submission herein, Liberty properly included a PPA replacement value balance of ($8,345,691). At no time did Liberty agree, or the Commission order, that the PPA replacement value is zero until the end of 2025 – as is again being asserted by OPC.

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[9] Attached hereto as Appendix A are email communications between Liberty and OPC from February of 2022 in Case No. ER-2021-0312.
[10] Case No. ER-2021-0312: Report and Order, page 5.

12. In addition to this substantive basis for denial of OPC's MPPM Motion, as a procedural matter, the motion should be denied on the basis that the issue is not yet ripe. The affidavit attached to OPC's MPPM Motion even states that OPC "has neither the time nor resources to conduct a comprehensive review of all of the components of Liberty's year 1 MPPM submission" and seeks to reserve the right "to raise additional and similar issues in the future regarding Liberty's annual MPPM submissions." Any dispute regarding the MPPM calculations should be brought forward in a future rate case where Liberty is seeking recovery or rates are otherwise being established based on the MPPM calculations.

WHEREFORE, Liberty respectfully submits its Response to OPC's MPPM Motion, requests an order denying the same, and requests such additional relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail to all counsel of record on this 28th day of November, 2023.

/s/ Diana C. Carter_________