

**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-2024-0261
Tariff No. JE-2025-0069

PUBLIC COUNSEL’S MOTION TO ENFORCE ORDER

COMES NOW the Office of Public Counsel (“Public Counsel”) and moves the Commission to enforce its November 26, 2024, order on the grounds that follow:

1. In its November 26, 2024, order the Commission found, “Liberty’s filing does not fully comply with 4240-2.135(2)(B) because it is not self-evident from the citation how the information qualifies for confidentiality protection,” and ordered:

1. No later than December 26, 2024, Liberty shall file a pleading offering explanations for why each document designated as confidential qualifies as confidential. The eleven documents needing such explanation are those listed in the body of this order.

2. In its November 26, 2024, order the Commission also found:

As to the wholly redacted schedules, the Commission’s review revealed that the schedules that are wholly redacted do not even reveal the cover page, document title, column headers, or other non-confidential portions. The Commission finds that this type of full redaction unnecessarily limits the public’s information to even know a general description of a schedule that may otherwise be rightfully wholly redacted. Therefore, the Commission finds that Liberty should review the schedules that are wholly redacted to see if the cover pages, document titles, column headers, or other information can be un-redacted. Should any formerly wholly redacted schedules be found to only require partial redaction, Liberty shall file a new partially redacted public version.

And it ordered:

2. Liberty shall review the schedules listed in the body of this order that are redacted in whole to see if any information should be un-redacted. Liberty shall file any new partially redacted public versions no later than December 26, 2024.

3. While Liberty has provided more limited redactions in its December 20, 2024, compliance filing, it also added a new basis for redactions it made to Shawn Eck’s direct testimony and Schedule SE-1 [subsection 7 (security of facilities)], and to Jeffrey Westfall’s direct testimony Schedule JW-1 [subsection 1 (customer-specific information)]. Liberty went farther with its redactions in Todd Tarter’s direct testimony and Schedules TWT-2 and TWT-3 by abandoning its original claim of confidentiality based on subsection 1 (customer-specific information) for a new claim of confidentiality based on subsection 4 (Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers).

4. Despite the Commission ordering it to file “explanations for why each document designated as confidential qualifies as confidential” after finding that “it is not self-evident from the citation how the information qualifies for confidentiality protection,” Liberty’s responsive pleading continues to lack the explanations the Commission ordered. As shown in the attached Exhibit A to this motion which duplicates Liberty’s compliance pleading with the addition in redline the language of the subsection(s) of rule 20 CSR 4240-2.135(2)(A) which Liberty invokes, for the most part Liberty essentially quotes the language of the citation to the subpart of rule 20 CSR 4240-2.135(2)(A) as its “*explanation of [the] applicability [of the subsection]*” required by rule 20 CSR 4240-2.135(2)(B). Adding the language of the subsection adds nothing to explain *how* the document qualifies under that subsection.

5. In the following paragraphs Public Counsel explains how Liberty’s “explanations” are inadequate and force one to speculate how the particular subsection(s) it asserts might apply. By rule 20 CSR 4240-2.135(2)(B) the Commission has squarely placed the burden of showing entitlement to confidentiality on the party who claims it.

Shawn Eck

6. Liberty asserts that Shawn Eck’s “high-level explanation” of its Cybersecurity Program on page 10 of his direct testimony, his high level identification of targeted cybersecurity risk reductions, and his high level description of Liberty customer benefits on pages 12-13 of that testimony are all confidential “due to the nature of the material regarding the safety and security of Liberty’s critical infrastructure and other utility facilities” referencing subparts 7 (security of facilities) and 8 (trade secrets) of rule 20 CSR 4240-2.135(2)(A). Liberty also claims that Schedule SE-1, except page numbers, is confidential in its entirety for the same rule subparts.

7. Liberty still has not explained how subparts 7 (security of facilities) or 8 (trade secrets) of rule 20 CSR 4240-2.135(2)(A) apply to any of the information it has redacted from Shawn Eck’s direct testimony or Schedule SE-1 and the potential harm from making any of that information public.

Candice Kelly

8. Liberty asserts that the information in Schedule CK-1—Empire Electric JD Power Results 2022-2023—concerns trade secrets and is confidential in its entirety, except the cover page, citing to rule 20 CSR 4240-2.135(2)(A)8 (trade secrets) and quoting the language of rule 20 CSR 4240-2.135(2)(A)3 as well as subsection 8: “due to marketing analysis for services offered in competition with others, marketing analysis for services providing to utility customers, and other trade secrets.” Although rule 20 CSR 4240-2.135(2)(B) requires Liberty to do so, Liberty does not explain why rule 20 CSR 4240-2.135(2)(A)8 (trade secrets) applies to the information it has redacted from the Empire Electric JD Power Results 2022 -2023 (Schedule CK-1).

Leigha Palumbo

9. Liberty asserts that the information it has redacted in Schedule LP-6 to the direct testimony of Leigha Palumbo is entitled to confidentiality because it “contain[s] marketing analysis or other market specific information related to services offered in competition with others” and “bank account numbers and financial information potentially impacting financial markets and the Company’s access to and terms for accessing capital,” citing to rule 20 CSR 4240-2.135(2)(A)3 (Marketing analysis or other market-specific information relating to services offered in competition with others). Although rule 20 CSR 4240-2.135(2)(B) requires Liberty to give one, Liberty does not explain why the bank account, rate and interest amounts it has redacted qualify as protected “marketing analysis or other market-specific information relating to services offered in competition with others,” nor do its claims that they potentially could impact financial markets or access to and terms for accessing capital do so.

10. Liberty asserts that the information it has redacted from Schedule LP-8 is entitled to confidentiality because it is “heat rates for generation units . . . potentially impacting the wholesale electric market” invoking the Commission’s protective order in this case. While the explanation should include how making these generation unit heat rates public might impact the wholesale electric market and Liberty, the Commission’s protective order does not require Liberty to give that explanation. Because Liberty’s redactions are limited to the generation unit heat rates they do not include information beyond that it asserts is highly confidential.

11. Public Counsel believes that if Liberty’s confidentiality claims for Leigha Palumbo’s direct testimony schedules were correct, then the revised redactions it has made to those schedules are appropriate for purposes of rule 20 CSR 4240-2.135(2)(B).

Todd W. Tarter

12. Liberty has abandoned its claim of rule 20 CSR 4240-2.135(2)(A)1 (customer-specific information) confidentiality for its redactions to Todd W. Tarter's direct testimony, Schedule TWT-2, and Schedule TWT-3. Instead, Liberty now relies on rule 20 CSR 4240-2.135(2)(A)4 (Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers)¹ for its revised redactions. Liberty's redactions to Todd W. Tarter's direct testimony and schedules are limited to an annual revenue amount for a power purchase agreement with MJMEUC and certain dollar amounts relating to Liberty generating unit costs and revenues. For its explanation Liberty says, "[T]hey contain marketing analyses or other market-specific information relating to services offered in competition with others, including detailed information at the resource level and market negotiated prices and conditions that could result in anti-competitive behavior that might unreasonably impact the competitive process."

13. As with its other claims of confidentiality, Liberty has not explained how its annual revenue amount for a power purchase agreement with MJMEUC, and certain dollar amounts relating to Liberty generating unit costs and revenues qualify as "marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers."

¹ While it cites to rule 20 CSR 4240-2.135(2)(A)4 Liberty states the language of rule 20 CSR 4240-2.135(2)(A)3: "Marketing analysis or other market-specific information relating to services offered in competition with others."

14. Public Counsel believes that if Liberty's confidentiality claims for Todd W. Tarter's direct testimony and schedules were correct, then the revised redactions it has made to that testimony and those schedules are appropriate for purposes of rule 20 CSR 4240-2.135(2)(B).

Jeffrey Westfall

15. Liberty asserts that its descriptions and justifications of certain infrastructure projects it completed since Liberty's last electric general rate case included in Jeffrey Westfall's direct testimony and Schedule JW-1 qualify for confidentiality by rule 20 CSR 4240-2.135(2)(A)7 (security of facilities) except one project, project DR0176, which it asserts qualifies by rule 20 CSR 4240-2.135(2)(A)1(customer-specific information). For its explanation it states for other than project DR0176, the testimony and schedule "contain[] important security, cybersecurity and safety information related to the Company's substations and network and for project DR0176 in Schedule JW-1 "contains customer-specific information."

16. Like its other claims of rule 20 CSR 4240-2.135 confidentiality, Liberty has not provided the required rule 20 CSR 4240-2.135(2)(B) explanation of how the descriptions and justifications of the completed infrastructure projects relate to the security of a company's facilities or how the description and justification of completed project DR0176 discloses customer-specific information. Liberty's public version of Schedule JW-1 includes the following in the column labeled, "Funding Project Description" for project DR0176: "Replace SWG at Northpark Mall." Public Counsel does not see where Liberty's confidential version of Schedule JW-1 includes more customer specific information about project DR0176 in the description and justification cell for that project.

Statutory Penalties

17. The Commission has statutory authority to pursue penalties for violations of its rules and orders. The statute granting that authority is section 386.570, RSMo, which follows:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.
2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.
3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

18. As shown above, although this Commission ordered Liberty to provide them, Liberty still has not offered the explanations required by 20 CSR 4240-2.135(2)(B).

Wherefore, the Office of Public Counsel moves the Commission to determine that The Empire District Electric Company d/b/a Liberty still has not provided the explanations required by rule 20 CSR 4240-2.135(2)(B) which the Commission ordered Liberty to provide in its November 26, 2024, *Order Granting Motion Regarding Information Designated as Confidential*, and order Liberty to show good cause within ten days' of the Commission's order why the information for which Liberty claims confidentiality should be withheld from public access in this proceeding, and issue such other relief which the Commission determines appropriate under the circumstances.

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 27th day of January 2025.

/s/ Nathan Williams