

**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	)	<b><u>File No. ER-2024-0261</u></b>
Authority to File Tariffs Increasing Rates for	)	Tracking No. JE-2025-0127
Electric Service Provided to Customers In its	)	
Missouri Service Area	)	

**STAFF’S RESPONSE TO OPC’S MOTION FOR RELIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Response*, states the following:

1. On March 19, 2025, the Office of the Public Counsel (“OPC”) filed *Public Counsel’s Motion for Relief in Response to Liberty’s Refiled Case* (“Motion”) with the Missouri Public Service Commission (“Commission”). The OPC claims that the previously approved test year, which ends September 30, 2023, is stale and that the Commission should either dismiss the case, require a new rate case based on a more recent test year, or require updated testimony that does not rely on projections for October 1, 2023 to September 30, 2024. Staff does not support the OPC’s requested relief.

2. On March 20, 2025, the Commission directed Staff to file response to the *Motion*<sup>1</sup> no later than March 28, 2025.<sup>2</sup>

3. The Empire District Electric Company d/b/a Liberty’s (“Empire” or the “Company”) filed its *Notice of Intended Case Filing* on March 25, 2024. On August 30, 2024, the Company filed its *Request for Waiver and Motion for Expedited Treatment*. The Commission granted

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<sup>1</sup> See *Public Counsel’s Motion for Relief in Response to Liberty’s Refiled Case* filed on March 19, 2025.

<sup>2</sup> See *Order Directing Responses* filed on March 20, 2025 (The Commission directed Staff to file its response to the *Motion* no later than March 28, 2025).

Empire's request on September 19, 2024.<sup>3</sup> The Company filed its formal rate case filing and accompanying testimony on November 6, 2024.

On December 9, 2024, Staff filed its *Response to Liberty's Test Year and Updated Period Proposal*.<sup>4</sup> In that filing, Staff acknowledged that while Empire's proposed test year was technically acceptable, it was "very stale," also, Staff has longstanding concerns about the quality of certain billing data. After considering the parties' responses, the Commission issued an order on December 13, 2024, establishing Empire's test year. On the same day, all parties—including OPC—submitted a *Joint Procedural Schedule* that encompassed the now disputed test year.<sup>5</sup>

4. The OPC references EC-2002-1,<sup>6</sup> citing to the Commission's order in that case which determined that Staff's proposed test year in its complaint against AmerenUE **"would result in rates based on outdated cost information and a significant but unnecessary increase in the number of issues** to subsequently be adjusted and decided by the Commission (emphasis added)." The Commission went on to say that "[t]he Commission has further determined that the use of [the Company's] proposed test year will result in rates being based on more current and therefore more accurate data."

The difference between EC-2002-1 and this present general rate case is the standard of review. In cases where "a complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions," the Commission

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<sup>3</sup> See *Order Granting Waiver* (The Commission granted a waiver in this file of the requirement of 20 CSR 4240- 4.017(1) that this file close after 180 days if the rate case has not been filed, allowing it to remain open until January 1, 2025, or until further order of the Commission).

<sup>4</sup> The Commission offered parties to respond to Empire's proposed test year by December 5, 2025. Staff is the only party that responded.

<sup>5</sup> See *Joint Proposed Procedural Schedule* (Staff and OPC agreed to join the procedural schedule, based on the newly contested test year, with the condition that Empire supply additional data to the parties by December 19, 2024 and January 17, 2025).

<sup>6</sup> See *Staff Excess Earnings Complaint Against Union Electric Company* (AmerenUE complaint filed by Staff on July 2, 2001, where the Commission rejected Staff's proposed test year encompassing July 2000 through June 2001, opting for the Company's proposed test year encompassing July 2000 through June 2001).

has determined that **“the burden of proof at hearing rests with complainant (emphasis added).”**<sup>7</sup>

In EC-2002-1, Staff bore the burden of proof to show that the Company’s rates were unjust and unreasonable. The Commission, in EC-2002-1 was concerned about Staff introducing outdated and perhaps irrelevant data into the record. However, Staff’s concern with Empire is not irrelevant data meant to increase the complexity of this case. Staff’s concern in this case is to use the most reliable data possible; however, given the identified data quality problems in later periods, Staff believes it’s too late to file an updated case and obtain the necessary data to conduct a thorough audit.

In ER-2024-0261, Empire bears the burden of demonstrating that its proposed rate increase is just and reasonable, as previous decisions were presumed prudent. This standard is codified in statute, which states: “[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be on the... electrical corporation... and the commission shall give preference to the hearing and decision of such questions over all other questions pending before it and decide the same as speedily as possible.”<sup>8</sup>

The established test year will be approximately three (3) months older under the present circumstances. Nevertheless, Staff maintains that the burden of demonstrating that the proposed rate increase is just and reasonable lies with Empire. While we share concerns with the OPC regarding data quality, Staff believes that the Commission’s prior approval of the test year establishes a reasonable path forward.

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<sup>7</sup> See *Margulis v. Union Elec. Co.*, 30 Mo. P.S.C. (N.S.) 517, 523, 1991 WL 639117 (1991), affirmed in *State ex rel. GS Techs. Operating Co. v. Pub. Serv. Comm’n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. Ct. App. 2003), as modified on denial of rehearing (Oct. 28, 2003).

<sup>8</sup> See Section 393.150.2, RSMo.

5. The OPC states that Empire's use of 2025 natural gas prices and the established test year violates the matching principle that costs and revenues best represent an enterprise's circumstances when they are all measured for the same time period. However, the Commission regularly allows utilities to incorporate discrete, known, and measurable adjustments even when they fall outside of the established test year, as long as they're properly identified and documented. With respect to Empire's FAC base factor, Staff's position is that we prefer the most current data available. Nonetheless, we do not oppose Empire's inclusion of its proposed FAC base factor in this case, as that factor will be thoroughly evaluated within the broader context of this general rate case.

6. Staff recommends that the Commission prioritize administrative efficiency and to reject OPC's requested relief. The OPC offered that the Commission could order a more current test year—Public Counsel proposed the twelve months ending September 30, 2024, with a true-up through June 30, 2025—as a possible relief. The OPC's requested relief would restart discovery using its proposed test year. However, Staff believes the use of a true-up period would accomplish OPC's goal of utilizing more current information, at least in regard to certain cost items. Therefore, Staff recommends that the Commission order Empire to file true-up data through March 31, 2025. Staff has concerns that a later true-up date could be difficult for the Company to meet, and could result in the provision of unreliable data.

The parties will have every opportunity to test the Company's case on the record. In contrast, OPC's proposed relief would add significant complexity and disruption. Such changes at this stage could undermine the efficient resolution of this case, contrary to the Commission's responsibility to handle rate cases expeditiously.

7. Staff takes no position on OPC's issue regarding Empire's prefiled testimony of witnesses Jill Schwartz and Dmitry Balashov who are no longer employed by the Company.

**WHEREFORE**, Staff respectfully recommends that the Commission reject OPC's requested relief. Staff recommends that the Commission order Empire to file true-up data through March 31, 2025, and grant relief that is just under the circumstances.

Respectfully submitted,

**/s/ Eric Vandergriff**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all parties and/or counsel of record on this 28<sup>th</sup> day of March 2025.

**/s/ Eric Vandergriff**