

**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) Case No. ER-2024-0261
for Electric Service Provided to Customers)
In its Missouri Service Area)

**PUBLIC COUNSEL'S OBJECTIONS TO THE COMMISSION ADMITTING EXHIBITS
NOS. 1000 AND 1001 AND HOLDING AN EVIDENTIARY HEARING ON THEM**

COMES NOW the Office of Public Counsel (“Public Counsel”) and, for its objections to the Commission admitting into evidence Exhibit 1000—the October 6, 2025, *Non-Unanimous Global Stipulation and Agreement*—and Exhibit 10001—the December 12, 2025, *Supplemental Stipulation and Agreement*, and holding an evidentiary hearing regarding those exhibits, states:

1. On December 23, 2025, after Consumers Council of Missouri had filed its reply brief, but before the other parties, including Public Counsel, filed theirs, the Commission issued two orders. In the first the Commission directed the parties to file by January 2, 2026, their objections to the Commission admitting into the evidentiary record Exhibit 1000—the October 6, 2025, *Non-Unanimous Global Stipulation and Agreement*—and Exhibit 1001—the December 12, 2025, *Supplemental Stipulation and Agreement*—as Commission exhibits. In the second the Commission set an evidentiary hearing at 9:00 AM on January 7, 2026, directing that the parties to the agreements and their witnesses appear “to respond to Commission questions and cross-examination regarding the [*Supplemental Stipulation and Agreement*] and the [*Non-Unanimous Global Stipulation and Agreement*] and the interplay between them.”

2. The Commission references its rule 20 CSR 4240-2.110(3) in the title of its order scheduling the evidentiary hearing. The text of that rule follows: “When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters

at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.” That rule is inapplicable. Closer is Commission rule 20 CSR 4240-2.110(8), the text of which follows:

(8) A party may request that the commission reopen the record for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing a motion to reopen the record for the taking of additional evidence. The motion shall assert the justification for taking additional evidence including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

While the rule speaks of what is required of parties, the Commission gave none of the grounds listed in that rule as a basis for admitting into the evidentiary record in this case Exhibits 1000 or 1001, or what transpires at its ordered 9:00 AM, January 7, 2026, evidentiary hearing.

3. On October 6, 2025, the signatories to the *Non-Unanimous Global Stipulation and Agreement* filed that agreement with the Commission.¹ On October 8, 2025, both Public Counsel and Consumers Council of Missouri timely filed their objections. Commission rule 20 CSR 4240-2.115(2)(D) states the consequence: “A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.” The signatories to the *Non-Unanimous Global Stipulation and Agreement* expressly acknowledged that consequence in the first paragraph of their agreement: “If

¹ By order issued April 10, 2025, the Commission set the evidentiary hearing in this case for October 6-17, 2025, reserving October 20, if needed. By order issued September 16, 2025, the Commission changed the hearing dates to October 6, and October 8-20 noting that October 13 was a state holiday. In response to a joint motion that parties were pursuing settlement, the Commission revised the hearing start date to October 8, 2025, and changed some other filing dates. In response to the filing of the *Non-Unanimous Global Stipulation and Agreement* on October 6, 2025, the officer presiding over this hearing contacted the parties about delaying the hearing to start on October 14, 2025. With their agreement he did so by an order dated October 6, 2025.

this Agreement is objected to by any party and thus cannot be treated as unanimous and approved as such under the Commission's rules, the Signatories will use this Agreement as their joint position for the evidentiary hearing, with all Signatories presenting and supporting this Agreement as the proper resolution of every issue." The Commission completed the scheduled October 14-17&20, 2025 primary evidentiary hearing in this case on October 14-16, 2025.

4. After the primary evidentiary hearing, but before briefs were filed, at the Commission's November 5, 2025, open meeting, Chair Hahn said,

As I previously mentioned, in my view, Liberty has not yet satisfied its burden that an increase to its revenue requirement or a rate increase will result in just and reasonable rates. What I feel I need and what I think the customers deserve is for Liberty to make documented improvements in its billings and service before a rate increase is implemented.

As I also mentioned, I think there are a lot of positives to the non-unanimous agreement, but one thing that is lacking is the requirement that Liberty make improvements before any rate increase takes effect. I particularly like the customer first performance metrics contemplated in the agreement. Had signatories created a framework that required parties to develop and implement customer service metrics that Liberty was required to meet before any of the rate increases were effective, I think that would have been an effective framework I could see resulting in just and reasonable rates.

I'd request the parties revisit the proposed stipulation to ensure that any customer metrics are met prior to any rate increase and continue to provide the company a glide path to rate recovery through phased-in rates as previously contemplated in the stipulation. And I'd also request—that the parties—that only the parties that signed the stipulation have a seat at the table when determining those metrics. In theory, this should be something that both OPC and Consumers Council could find agreeable. This is going to be tough for the new management team. But if anyone can turn this company around, I believe that they can. And when they do, I'd like to provide them a path for recovery so that eventually they also become a premium utility in our state. No doubt that our customers will benefit from a well-performing utility that Liberty has the potential to become. But until then the customers' interest must come first, and they have spoken loud and clear.

The other Commissioners expressed their agreement with Chair Hahn.

5. When the Commission held its November 5, 2025, open meeting, initial post-hearing briefs were due November 6, 2025, and reply briefs were due November 14, 2025. After the Commission’s November 5, 2025, open meeting, the Commission granted the following briefing extension requests initiated by the parties who were negotiating the *Supplemental Stipulation and Agreement*:

Date request filed	Initial Brief due date	Reply Brief due date
November 5, 2025	November 17, 2025	November 25, 2025
November 13, 2025 ²	December 1, 2025	December 8, 2025
November 25, 2025	December 5, 2025	December 15, 2025
December 5, 2025	December 12, 2025	December 22, 2025
December 12, 2025	December 16, 2025	December 23, 2025

6. Liberty filed the *Supplemental Stipulation and Agreement* with the Commission on Friday, December 12, 2025, the same day that it last filed to extend the briefing schedule.³ On December 16, 2025, both Public Counsel and Consumers Council of Missouri timely filed their objections to the *Supplemental Stipulation and Agreement*.

7. As with the *Non-Unanimous Global Stipulation and Agreement* Public Counsel’s and Consumers Council of Missouri’s objections to the *Supplemental Stipulation and Agreement* by operation of Commission rule 20 CSR 4240-2.115(2)(D) became “merely a position of the

² Contemporaneously with granting the November 13, 2025, briefing extension request on November 14, 2025, the Commission further suspended the effective date of Liberty’s tariff sheets from January 2, 2026, to January 26, 2026.

³ While short (just over one business day), the Commission had an opportunity to extend the briefing schedule after 3:44 PM, Friday, December 12, 2025, when signatories to the *Supplemental Stipulation and Agreement* filed it and Tuesday, December 16, 2025, when initial briefs were due by the order the Commission issued at 3:12 PM, Friday, December 12, 2025.

signatory parties to the stipulated position, except that no party shall be bound by it.” Further, “[a]ll issues . . . remain for determination after hearing.” The hearing concluded on October 16, 2024: “JUDGE HATCHER: Thank you. With that, we are adjourned. We are at rec- -- we are not at recess. We're adjourned for the whole hearing. Schedule for Monday is cancelled, the schedule for tomorrow is cancelled. We are adjourned. Thank you all. Off the record.⁴

8. Commission rule 20 CSR 4240-2.150(1) states, “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Missouri statute §386.410.1, RSMo, provides: “All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission. And in all investigations, inquiries or hearings the commission or commissioner shall not be bound by the technical rules of evidence.”

9. In its report and order in Case No. ER-2024-0312 where the Commission determined new Liberty electric rates, the Commission recognized the effect of Commission rule 20 CSR 4240-2.150(1) saying, “The final reply briefs were filed on March 8, 2022, and the case was deemed submitted for the Commission’s decision on that date,” citing to Commission rule 20 CSR 4240-2.150(1) in a footnote.⁵

10. Here final reply briefs were filed on December 23, 2025, and by operation of Commission rule 20 CSR 4240-2.150(1) this case was “deemed submitted for the Commission’s decision on that date.”

⁴ Tr. 13:78.

⁵ *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, Report and Order issued April 6, 2022, 32 MO. P.S.C. 3d 240, 246.*

11. The general rule regarding agencies being bound by rules that they promulgate is stated in [State ex rel. Stewart v. Civil Serv. Comm'n, 120 S.W.3d 279, 287 \(Mo. Ct. App. 2003\)](#), as follows:

Rules duly promulgated pursuant to properly delegated authority have the force and effect of law and are binding on the agency adopting them. [Martin-Erb v. Mo. Com'n on Human Rights, 77 S.W.3d 600, 607 \(Mo. banc 2002\)](#); [Missouri Nat. Educ. v. Missouri State Bd., 695 S.W.2d 894, 897 \(Mo. banc 1985\)](#); [Page Western Inc. v. Community Fire Protection, 636 S.W.2d 65, 68 \(Mo. banc 1982\)](#). Thus, a court can compel an agency to follow procedures set out in agency regulations. [Martin-Erb, 77 S.W.3d at 607](#).

"Once an agency exercises its discretion and creates the procedural rules under which it desires to have its actions judged, the agency denies itself the right to violate those rules." [Martin-Erb, 77 S.W.3d at 608 n.6](#). "Administrative agencies, just as the general public, are bound by the terms of rules promulgated by them." [Kabir v. Dept. of Social Services, 782 S.W.2d 706, 708 \(Mo. App. 1989\)](#) (quoting [Berry v. Moorman Mfg. Co., 675 S.W.2d 131, 134 \(Mo. App. 1984\)](#)). [See also](#) 1 AM. JUR. 2D Administrative Law Section 237 (1994); KENNETH CULP DAVIS & RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE Section 6.5 (3rd ed. 1994). Administrative agencies must follow their rules that regulate procedure governing substantial rights of individuals. [United States v. Caceres, 440 U.S. 741, 752 59 L. Ed. 2d 733, 99 S. Ct., 1465, 1471 n.14\(1979\)](#); [Morton v. Ruiz, 415 U.S. 199, 235, 94 S. Ct. 1055, 1074, 39 L. Ed. 2d 270 \(1974\)](#). Civil service commission rules governing eligibility for promotion are binding on the commission that promulgated them. [Application of O'Brien, 255 A.D. 385, 7 N.Y.S.2d 596, 598 \(N.Y. App. Div. 1938\)](#), [aff'd, 280 N.Y. 697, 21 N.E.2d 202 \(N.Y. 1939\)](#). Thus, the power conferred on the Commission by the Charter to consider and determine matters involved in the administration of its rules does not permit the Commission to violate its rules.

However, after stating the foregoing general rule, in dicta, the Missouri Supreme Court in [Mo. Nat'l Educ. Asso. v. Mo. State Bd. of Mediation, 695 S.W.2d 894, 897 \(Mo. 1985\)](#), said, "Nevertheless, the failure of an agency to comply with its own rules may invalidate its actions only when prejudice results. [See, e.g., Port of Jacksonville Maritime Ad Hoc Committee, Inc. v. Hayes, 485 F. Supp. 741 \(M.D. Fla. 1980\)](#) [aff'd, 620 F.2d 567 \(5th Cir. 1980\)](#); [FTC v. Foucha, 356 F. Supp. 21 \(N.D. Ala. 1973\)](#)." Leaning on that dicta in [Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 13-14 \(Mo. 2008\)](#), the Missouri Supreme Court held that it need not

review the three standards of resource, process, and performance the state Department of Elementary and Secondary Education (DESE) was by state rule to evaluate where the board of education of the City of St. Louis failed to state prejudice from DESE's failure.

12. Public Counsel recognizes that Commission rule 20 CSR 4240-2.015(1) provides, "A rule in this chapter may be waived by the commission for good cause." Neither of the Commission's December 23, 2025, state good cause or even refer to Commission rule 20 CSR 4240-2.015(1).

13. In a case where the Supreme Court held that the Public Service Commission erred by excluding evidence as "wholly irrelevant" without allowing an offer of proof in writing, [State ex rel. Praxair, Inc. v. Mo. PSC, 344 S.W.3d 178, 184 \(Mo. 2011\)](#), the Court said,

The PSC's authority and the procedures it follows are set out principally in chapter 386. [Section 386.410.1](#) states, "All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission." The PSC accordingly has adopted and prescribed numerous rules governing its operations, including [4 C.S.R. 240-2.130\(1\)](#), which states that "[i]n any hearing, these [PSC] rules supplement [section 536.070, RSMo](#)," governing offers of proof. [Section 536.070](#) is a portion of the Missouri Administrative Procedure Act, or MAPA. To the extent that there are matters not addressed by the PSC statutes and the administrative rules adopted by the PSC pursuant to [section 386.410](#), MAPA "operates to fill gaps not addressed within the PSC statutes." [State ex rel. A&G Commercial Trucking v. Public Serv. Comm'n, 168 S.W.3d 680, 682-83 \(Mo. App. 2005\)](#).

14. Public Counsel's powers and rights include the following:

- a) All powers necessary to represent and protect the interests of the public in proceedings before the public service commission. §386.710.1(2)&(4), RSMo;
- b) The right to be heard and to introduce evidence at the time fixed for any hearing before the commission by calling and examining witnesses (§386.420.1, RSMo), and to do so in contested cases by introducing exhibits, cross-examining opposing witnesses on any matter relevant to the issues even though that matter was not the

subject of the direct examination, impeaching any witness regardless of which party first called him or her to testify, and rebutting the evidence against him or her (§536.070(2), RSMo); and

- c) The right to present oral arguments or written briefs at or after the hearing in a contested case which shall be heard or read by each official of the agency who renders or joins in rendering the final decision (§536.080.1, RSMo).

15. For purposes of this case, by operation of Commission rule 20 CSR 4240-2.115(2)(D) both the *Non-Unanimous Global Stipulation and Agreement* and the *Supplemental Stipulation and Agreement* now are nothing more than positions of the signatory parties. It would prejudice Public Counsel if the Commission were to reopen the evidentiary record and admit those settlement agreements into the record as substantive evidence upon which it could rely for deciding the issues in this case as those agreements include matters beyond the listed issues, matters for which Public Counsel has the right to be heard and to introduce evidence, and to argue.

16. For the same reasons it would prejudice Public Counsel if the Commission were to hold the evidentiary hearing on the *Non-Unanimous Global Stipulation and Agreement* and the *Supplemental Stipulation and Agreement* it has scheduled for 9:00 AM, January 7, 2026.

Wherefore, for all the foregoing reasons, the Office of Public Counsel objects to the Commission admitting into evidence Exhibit 1000—the October 6, 2025, *Non-Unanimous Global Stipulation and Agreement*—and Exhibit 10001—the December 12, 2025, *Supplemental Stipulation and Agreement*, as it states it intends in its December 23, 2025, *Order Setting Time for Responses to the Admission of Commission Exhibits*, and the Office of Public Counsel objects to the Commission holding an evidentiary hearing regarding those exhibits as it has ordered in its

December 23, 2025, *Order Scheduling On-the-Record Proceeding* under 20 CSR 4240-2.110(3), for 9:00 AM on January 7, 2026, and moves that the Commission cancel said hearing.

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 31st day of December 2025.

/s/ Nathan Williams