

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of The)
Empire District Electric Company d/b/a)
Liberty to Obtain a Certificate of)
Convenience and Necessity to Enhance)
System Resiliency)
)

Case No. EA-2023-0131

PUBLIC COUNSEL’S RESPONSE TO STAFF’S RECOMMENDATIONS

COMES NOW the Office of Public Counsel (Public Counsel) and for its response to Staff’s recommendations to grant Liberty certificates of convenience and necessity for two new 13.3 MW dual fuel combustion turbines at Riverton to replace the existing 16.3 MW Riverton Units 10 and 11 with conditions states that not only should the Commission impose Staff’s conditions, it should disclaim that it is deciding that Liberty’s decisions were prudent or any other ratemaking issue except Public Counsel’s following proposed condition (supported by the attached verified memorandum) that Liberty, not its retail customers, bear all of the costs Liberty that has incurred in repairing its 16.3 MW dual fuel Riverton Unit 10 combustion turbine to make it operational after it went offline February 8, 2021. The Commission should impose Public Counsel’s additional condition, because of the following:

- 1) Under the Southwest Power Pool’s tariff Liberty had up to one year to replace its Riverton Unit 10 without first repairing it;
- 2) Liberty repaired Riverton Unit 10 to fall within that the SPP’s generating unit replacement tariff provision so that it could replace Riverton Unit 10 with one of two new 13.3 MW dual fuel combustion turbines;
- 3) Liberty could have made the same weather resiliency upgrades to its existing Riverton Units 10 and 11 that it touts for its new smaller generating capacity combustion turbines;

- 4) The ***_____*** capabilities of the new combustion turbines will be no greater than those of Liberty's existing Riverton Units 10 and 11, except for the weather resiliency upgrades—upgrades which Liberty could make to its existing Riverton Units 10 and 11.

Wherefore, Public Counsel recommends that when granting Liberty certificates of convenience and necessity for two new 13.3 MW dual fuel combustion turbines at Riverton to replace the existing 16.3 MW Riverton Units 10 and 11 the Commission not only impose the Staff's conditions to the certificates, but also the condition that Liberty, not its retail customers, bear all of the costs Liberty that has incurred in repairing its 16.3 MW dual fuel Riverton Unit 10 combustion turbine to make it operational after it went offline February 8, 2021, and include disclaimers in its order that, except for those included in the conditions it imposes, it is not deciding that Liberty's decisions were prudent or any other ratemaking issue.

Respectfully,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

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Nathan.Williams@opc.mo.gov

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 18th day of March 2024.

/s/ Nathan Williams

MEMORANDUM

To: Missouri Public Service Commission Official Case File,

Case No. EA-2023-0131 In the Matter of the Application of The Empire District Electric Company d/b/a Liberty to Obtain a Certificate of Convenience and Necessity to Enhance System Resiliency

From: John Robinett, Utility Engineering Specialist, Missouri Office of the Public Counsel

Re: Response to Staff's Recommendation on Liberty's application for a Certificate of Convenience and Necessity

Date: 3/18/2024

Introduction

The Commission should order a condition on the granting of the CCN for the two new Riverton units likely to be named units 13 and 14 that rate payers will not be charged for the repair work for Riverton Unit 10. This CCN application is neither about improving reliability nor about increasing capacity. OPC and Staff both submitted data requests seeking information on lessons learned from Winter Storm Uri and Elliott and their effects on the design of the replacement generators. Attachment 1 are Staff data requests 0012 and 0016 and OPC data request 8533. It is important to note the discussion of insulated buildings and insulation on above grade fuel oil piping. These are things that could have been done for the current Riverton Units. Also discussed are the fuel type changes that are being considered that would be less susceptible to gelling in freezing conditions, If this were about improving reliability these two units requested would be placed at separate facilities to create regional, geographic diversity. However, this was not done as placing the generating units at any of Liberty's other facilities would have required two things to be done. The utility would have needed to file a new generation interconnection agreement study to place the unit at another Liberty generating location. Second, Liberty would have had to revise its restoration plan. This is not about increasing capacity either. Prior to the February 8th, 2021, fire in Riverton Unit 10, both units had a name plate capacity of ***

¹ OPC data request number 8524 and Liberty's Highly Confidential response is Attachment 2HC.

Procedural Background

On February 14, 2023, the Empire District Electric Company d/b/a Liberty filed an Application for a Certificate of Convenience and Necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage two combustion turbine generators, each with a nominal net output of *** _____ *** to replace existing combustion turbine generators, Riverton Unit 10 and Riverton Unit 11. According to paragraph 28 of Liberty’s Second Amended Application for a Certificate of Convenience and Necessity “Riverton units 10 and 11 were purchased used and placed into service on the Company’s system in 1988. The original manufacture date of these units was the mid-1960s...”

On May 9, 2023, Liberty filed a Motion for Stay of Proceedings to allow Liberty time to address additional developments regarding the generation interconnection process with the Southwest Power Pool and to provide additional information to Staff and other parties regarding the details of the proposed project. Liberty proposed to provide monthly status reports during the pendency of the stay. Liberty also requests that the Commission relieve Staff of its current obligation to file a recommendation or joint procedural schedule during the pendency of the stay. Liberty filed Status reports on June 15, July 13, August 15, and September 15, 2023.

On October 13, 2023, Liberty filed its Amended Application for a Certificate of Convenience and Necessity and requested the Stay be lifted. On March 8, 2024, Staff filed its recommendation related to Liberty’s application for a CCN.

Delay in Action Regarding Riverton Unit 10

Per the Staff report filed with its recommendation, Riverton Unit 10 went offline February 8, 2021, due to forced outage. Based on Liberty’s responses to several Staff data requests, the fire was caused by a leaking labyrinth oil seal that caused lube oil to saturate the insulation around the bearing. The heat from the unit eventually caused the oil to ignite. Attachment 3 are the data requests from Staff and Liberty’s responses that detail the event and initial findings and reporting of the fire to the Public Service Commission. Following this forced outage, Liberty received several estimates regarding the cost to repair Riverton Unit 10. According to one data response received by OPC, a company named “Ethos” was contacted regarding repairs and that company delivered a quote on May 13, 2021. According to a separate data request response 8530², an estimated cost of \$750,000 to repair Riverton Unit 10 was provided by Ed Easson (a retired Riverton Plant Manager) on October 28, 2021.

² OPC data request 8530 is Attachment 4

At the same time the Liberty decisions regarding Riverton Unit 10 were being made, additional concerns regarding Riverton Unit 11 arose. *** _____

Imprudence of Liberty Decision Making

⁴ OPC data request number 8527 and 8535 is Attachment 6.

in the Company's decision making and ratepayer should not be charged for the costs caused by this inaction. The Commission should not forget that rate payers have been paying depreciation expense, return on the investment, and operations and maintenance expense on Riverton Unit 10 for the thirty-five months it was on forced outage.

Conclusion

The Commission should order a condition on the granting of the CCN for the two new Riverton units that ratepayers will not be charged for the repair work to restore Riverton unit 10 to service. Liberty's inaction created a self-inflicted detriment and created this path dependent solution to replace generating plants that were near the end of their useful life. Further, this CCN application is neither about improving reliability nor about increasing capacity. This CCN was the quickest and least work required to replace units. If this CCN were about increasing reliability these two units that are the subject of this CCN request would be placed at separate facilities to create regional, geographic diversity. However, this was not done as placing the generating units at any of Liberty's other facilities would have required two things to be done. Liberty would have needed to file a new generation interconnection study to place a unit at another Liberty generating location. Second, Liberty would have had to revise its *** _____ *** This CCN is not about increasing capacity either. Prior to the February 8th, 2021, fire in Riverton Unit 10, both units had a name plate capacity of *** _____

_____ *** It is for the reasons above that I request the Commission grant the CCN for the new Riverton units but condition it that ratepayers will not be charged for the repair work to return Riverton Unit 10 to service.

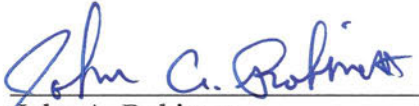
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

AFFIDAVIT OF JOHN A. ROBINETT

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

COMES NOW JOHN A. ROBINETT and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Memorandum* and that the same is true and correct according to his best knowledge and belief.

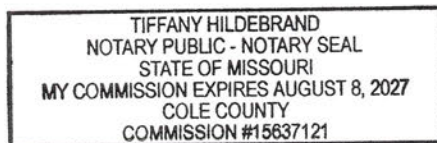
Further the Affiant sayeth not.

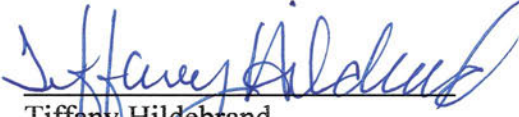


John A. Robinett
Utility Engineering Specialist

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 13th day of March, 2024.





Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Missouri Public Service Commission Data Request - 0012

Data Request Received: 2023-03-03

Response Date: 2023-03-20

Request No. 0012

Witness/Respondent: Shaen Rooney

Submitted by: Shawn Lange, Shawn.Lange@psc.mo.gov

REQUEST:

Please explain the current plans for the RICE generator(s) operations in cold weather. Does the Company expect to tune the RICE generator(s) for cold weather?

RESPONSE:

The generators proposed to be installed are driven by combustion turbines, not reciprocating internal combustion engines (RICE). The main consideration for enabling cold weather operations for these units currently is selection of the site design criteria. For the combustion turbines themselves, Liberty is evaluating the cost to lower the minimum design temperature from -5 degrees F to -13.6 degrees F. Liberty is also evaluating changing the specific liquid fuel used in event of natural gas scarcity to a liquid fuel with a lower propensity to gel at low temperatures. Liberty does expect the construction permit for these units to explicitly allow tuning activities as necessary, and Liberty will perform tuning as needed to operate effectively according to seasonal ambient temperature variations.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Missouri Public Service Commission Data Request - 0016

Data Request Received: 2023-03-03

Request No. 0016

Submitted by: Shawn Lange, Shawn.Lange@psc.mo.gov

Response Date: 2023-03-20

Witness/Respondent: Shaen Rooney

REQUEST:

Please explain what lessons learned from Winter Storm Uri will guide decisions about winter operations, additional equipment anticipated for winter operations, fuel supply for these proposed generating assets. Please explain how those lessons will guide decisions. For example, it is anticipated that the Company will purchase additional equipment for cold weather operations?

RESPONSE:

There are three broad categories of factors that can influence the cold weather performance of thermal generation units – equipment, fuel, and practices. Winter Storm Uri revealed areas to improve, and two of those areas (equipment and fuel) are within the scope of the proposed project. The Company has specified that the minimum design temperature be no greater than -13.6 degrees Fahrenheit. This is the 99.6% heating dry bulb temperature for the Joplin area as presented in the 2021 ASHRAE American Society of Heating, Refrigerating and Air-Conditioning Engineers Handbook. The design specification will determine the need for additional equipment. With respect to fuel, Liberty will implement improvements to make sure that liquid fuels do not gel and are delivered to generating units at or above the required temperature for ignition. Options under consideration include switching from fuel oil to a liquid fuel (kerosene or Jet A, for example) that performs better in cold weather or installing heat trace and insulation on above grade fuel oil piping.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Office Public Counsel Data Request - 8533

Data Request Received: 2023-12-04

Request No. 8533

Submitted by: John Robinett, John.Robinett@opc.mo.gov

Response Date: 2023-12-22

Witness/Respondent: Brian Berkstresser

REQUEST:

Please provide a detailed list of lessons learned from Winter Storms Uri and Elliot with descriptions of how those lessons learned have been included in the design and selection of equipment for the Riverton CCN request.

RESPONSE:

Specification Design Conditions:

Liberty has specified that the generating equipment and the balance of plant equipment be designed to operate reliably at extreme low temperatures based on the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Handbook Extreme Annual Design Conditions for the Joplin 24 N, MO weather station.

Freeze Protection:

The Riverton Power Plant experienced transmitter freezing due to the extreme cold temperatures during Uri. To reduce the likelihood of transmitter freezing, the new units will be installed in an insulated metal building that will be designed to the specification above.

Fuel Oil:

The Riverton Power Plant currently uses #2 diesel fuel as its liquid fuel. Unit 11 was unable to light on #2 diesel during Winter Storm Uri. The new units will operate on Jet A fuel. Jet A has a lower gel point, allowing it to continue to flow at lower temperatures than #2 diesel and improving starting reliability at low temperatures relative to #2 diesel.

Kansas Department of Health and Environment (KDHE) Air Permit:

At the time of Winter Storm Uri, the KDHE air permit for Riverton Units 10 & 11 did not allow combustion tuning while operating on fuel oil. Liberty has requested that the air permit for the new units allow for combustion tuning while operating on fuel oil to aid in cold weather reliability.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Missouri Public Service Commission Data Request - 0050

Data Request Received: 2023-12-21

Response Date: 2024-01-10

Request No. 0050

Witness/Respondent: Brian Berkstresser

Submitted by: Michael Rush, michael.rush@psc.mo.gov

REQUEST:

Has a root cause analysis of the "fire in the insulation around the turbine exhaust bearing" been completed? If so, please provide the results of that root cause analysis. If not, please explain how the fire risk due to the root cause of the fire is to be mitigated in the future.

RESPONSE:

The fire was caused by a leaking labyrinth oil seal that caused lube oil to saturate the insulation around the bearing. The heat from the unit eventually caused the oil to ignite.

Upon inspection of the oil seal, it was discovered that some of the drain ports between the labyrinths were plugged up and not allowing oil to drain out properly. This caused the oil to leak into the insulation instead of back to the lube oil tank. These ports have been cleaned and the lube oil system has been flushed to prevent this from happening again.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Missouri Public Service Commission Data Request - 0018

Data Request Received: 2023-03-03

Request No. 0018

Submitted by: Shawn Lange, Shawn.Lange@psc.mo.gov

Response Date: 2023-03-21

Witness/Respondent: Brian Mushimba

REQUEST:

20 CSR 4240-3.190 (3)(A) Details of any accident or event at a power plant involving serious physical injury or death or property damage in excess of two hundred thousand dollars (\$200,000). A detailed investigative report of the accident or event shall be submitted within ninety (90) days, or if the investigation will take longer than ninety (90) days, a draft of the plan for the investigation shall be submitted within ninety (90) days; Please provide the timeline and an explanation of what happened with regard to the fire at Riverton 10. Please provide any Company report/memo or other document describing and documenting what happened. Please provide all reports/memos or other documents describing and illustrating all damage that was incurred by the fire and shutdown of the unit.

RESPONSE:

A fire was discovered around the exhaust bearing on 2-8-21 at approximately 22:30. Plant personnel initiated a shutdown and shut off bearing oil prior to the rotor coming to a stop to prevent the fire from spreading further. The bearing fire protection system dumped. Additionally, plant personnel used handheld fire extinguishers to extinguish the fire. Please see the attachment labeled "[Unit 10 Bearing Fire Description May21.pdf](#)" for additional information. The unit was later studied as part of the triennial IRP.

There are no reports within the meaning of the rule cited within this DR request, as the Company did not view this as a reportable "accident or event."

Unit 10 Bearing fire description:

On Feb. 8th 2021, I received a call around 2230 to inform me of a high temperature indicated on Unit 10 inlet bearing and a fire in the insulation below it. The operators were looking for guidance on how to proceed. I instructed plant personnel to call the fire department, continue attempting to extinguish the fire with portable fire extinguishers, and shut off oil supply to remove the fuel source. Plant personnel were able to extinguish the flame and did not see it restart, but there was a lot of smoke and heat built up in the area below the bearing due to the fire. Insulation was removed as is customary to ensure the fire wouldn't restart. The fire department stayed on-site until we were certain there would be no reignition and then were released.

Numerous discussions were had about repair, Ethos was contacted and a quote was delivered on May 13, 2021.

John Shipley



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Missouri Public Service Commission Data Request - 0021

Data Request Received: 2023-03-09

Request No. 0021

Submitted by: Keith Foster, keith.foster@psc.mo.gov

Response Date: 2023-03-21

Witness/Respondent: Brian Mushimba

REQUEST:

Paragraph 11 of Empire Electric's Application states "On February 8, 2021, Riverton Unit 10 went offline as a result of a fire in the insulation around the turbine exhaust bearing. In order to minimize the fire damage, the lube oil system was shut down prior to the rotor coming to a stop, further damaging the unit." On June 2, 2021, in Case No. ER-2021-0312, Staff submitted Data Request No. 0011 which asked Empire Electric to "1) Please identify the events and quantify the cost associated with each event that occurred since January 1, 2019, to current that the Company considered abnormal or not representative of continuing operations, and quantifying the projected dollar impact of each." In its response Empire Electric stated that it only considered Winter Storm Uri, which also occurred in February 2021, as falling into that category. Please explain, in detail, why Empire Electric did not consider the fire that shut down Riverton 10 to be an event considered to be abnormal or not representative of continuing operations.

RESPONSE:

The insulation fire on Riverton Unit 10 around the turbine exhaust bearing that happened on February 8th, 2021, took that unit offline and triggered internal investigations into the cause of the fire and possible repair plans. It is standard industry practice and an operational expectation in this occurrence that bearing lube oil be shut off to stop the flow of further fuel to the fire to contain and be able to put out the fire. Thus, this was not considered an abnormal occurrence and not applicable to the DR issued on June 2, 2021 in Case No ER-2021-0312.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Missouri Public Service Commission Data Request - 0022

Data Request Received: 2023-03-09

Request No. 0022

Submitted by: Keith Foster, keith.foster@psc.mo.gov

Response Date: 2023-03-21

Witness/Respondent: Charlotte Emery

REQUEST:

Please identify the date Empire Electric notified the Missouri Public Service Commission of the February 8, 2021, fire at Riverton 10. Please identify, by name(s), who was notified and provide copies of any and all forms of communication in which the notification was relayed and confirmed.

RESPONSE:

Notification was provided in the Company's Monthly Outage Report submitted as part of the 20 CSR 4240-3.190 filing, noting the fire and the unit outage. Each month, the Company served the filing to the following: staffcounsel@psc.mo.gov, opc@opc.mo.gov, lena.mantle@opc.mo.gov, John.Riley@opc.mo.gov. Below are the tracking numbers assigned to each EFIS submission.

Mar 2021 – BEGR-2021-1768

Apr 2021 – BEGR-2021-1907

May 2021 – BEGR-2021-1980

Jun 2021 – BEGR-2022-0045

Jul 2021 – BEGR-2022-0089

Aug 2021 – BEGR-2022-0124

Sep 2021 – BEGR-2022-0174

Oct 2021 – BEGR-2022-0227

Nov 2021 – BEGR-2022-0258

Dec 2021 – BEGR-2022-0344

Jan 2022 – BEGR-2022-0455

Feb 2022 – BEGR-2022-1142

Mar 2022 – BEGR-2022-1733

Apr 2022 – BEGR-2022-1862

May 2022 – BEGR-2022-1953

Jun 2022 – BEGR-2023-0068
Jul 2022 – BEGR-2023-0145
Aug 2022 – BEGR-2023-0187
Sep 2022 – BEGR-2023-0245
Oct 2022 – BEGR-2023-0315
Nov 2022 – BEGR-2023-0375
Dec 2022 – BEGR-2023-0464
Jan 2023 – BEGR-2023-0606



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Missouri Public Service Commission Data Request - 0023

Data Request Received: 2023-03-09

Request No. 0023

Submitted by: Keith Foster, keith.foster@psc.mo.gov

Response Date: 2023-03-21

Witness/Respondent: Brian Mushimba

REQUEST:

Did Empire Electric request and/or compute estimated costs to have the damaged Riverton 10 parts manufactured? If so, please provide a copy of those estimates including any supporting documentation supplied by the manufacturers.

RESPONSE:

Plant personnel used their best engineering judgement to estimate that the total cost for repair would be \$750,000. This is based on years of engineering experience with combustion turbines and the repair costs for similar types of damage.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Missouri Public Service Commission Data Request - 0024

Data Request Received: 2023-03-09

Response Date: 2023-03-21

Request No. 0024

Witness/Respondent: Brian Mushimba

Submitted by: Keith Foster, keith.foster@psc.mo.gov

REQUEST:

1) Did Empire Electric submit any claims to its insurer(s) to recover any losses associated with the Riverton 10 fire? If so, please provide complete copies of the submitted claim(s). 2) Did Empire Electric receive any payments from its insurer(s) for the losses associated with the Riverton 10 fire? If so, please provide copies of the payments and identify to what general ledger accounts the proceeds were recorded. 3) Please provide complete copies of all correspondence (including any attachments) between Empire and its insurer(s) regarding the Riverton 10 fire claim(s).

RESPONSE:

- 1) No.
- 2) No.
- 3) None.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Office Public Counsel Data Request - 8530

Data Request Received: 2023-12-04

Response Date: 2023-12-22

Request No. 8530

Witness/Respondent: Brian Berkstresser

Submitted by: John Robinett, John.Robinett@opc.mo.gov

REQUEST:

In response to Staff data request 0023 Liberty estimates \$750,000 to repair Riverton unit 10, when was this estimate created, and who created it?

RESPONSE:

This estimate was created by Ed Easson (retired Riverton Plant Manager), with completion of the estimating on or about 10-28-2021.

182 FERC ¶ 61,210
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

The Empire District Electric Company

Docket No. ER23-928-000

ORDER DENYING WAIVER REQUEST

(Issued March 29, 2023)

1. On January 23, 2023, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ The Empire District Electric Company (Empire) submitted a request for waiver of section 3.9.1(ii) in Attachment V (Generator Interconnection Procedures (GIP)) of Southwest Power Pool Inc.'s (SPP) Open Access Transmission Tariff (Tariff) to allow Empire to replace an existing generating facility using SPP's generator replacement process. As discussed below, we deny Empire's waiver request.

I. Background

2. On June 30, 2020, the Commission accepted SPP's proposed Tariff revisions in Attachment V to create procedures for a generator replacement process.² Under this process, an interconnection customer seeking to replace its existing generating facility may submit an interconnection request up to the total megawatt (MW) quantity of its existing interconnection service associated with the facility to be replaced. GIP section 3.9.1(ii) provides, in relevant part, that:

The request for Generating Facility Replacement must be submitted to the Transmission Provider by the Interconnection Customer for its Existing Generating Facility at least one year prior to the date that the Existing Generating

¹ 18 C.F.R. § 385.207(a)(5) (2022).

² *Sw. Power Pool, Inc.*, 171 FERC ¶ 61,270 (2020).

Facility will cease operation or up to one year after a unit is determined to be in forced outage.³

3. Empire states that it is a vertically integrated electric utility and transmission-owning member of SPP that provides electric service to approximately 180,000 customers in southwest Missouri, southeast Kansas, northeast Oklahoma, and northwest Arkansas. Empire further states that it is a public utility company regulated by the Missouri Public Service Commission (Missouri Commission), the Kansas Corporation Commission (Kansas Commission), the Oklahoma Corporation Commission, the Arkansas Public Service Commission, and this Commission.⁴

4. Empire states that it owns, operates, and maintains the Riverton Power Plant (Riverton), an approximately 300 MW (nameplate) gas-fired electric generating facility located in Riverton, Kansas. Empire explains that Riverton is composed of three units: (1) Riverton Unit 10, a 16.3 MW simple cycle natural gas facility placed in service in December 1988; (2) Riverton Unit 11, a 16.3 MW simple cycle natural gas facility placed in service in December 1988; and (3) Riverton Unit 12, a 267.6 MW combined cycle natural gas facility placed in service in May 2007. Empire explains that the original manufacture date of Riverton Units 10 and 11 was in the mid-1960s, making them well past their original life expectancy. Empire states that it has market-based rate authority and provides service under cost-based rate schedules on file with the Commission.⁵

5. Empire states that on February 8, 2021, Riverton Unit 10 went offline because of a fire in the insulation around the turbine exhaust bearing.⁶ Empire states that, because of the age of Riverton Unit 10, replacement parts would likely be unavailable and need to be manufactured. Empire explains that, given the cost associated with the fabrication of vintage custom parts for a relatively small, over 30-year-old, generating facility, Empire elected to analyze whether replacing both Riverton Unit 10 and Riverton Unit 11 with

³ SPP Tariff, attach. V, § 3 (16.0.0), § 3.9.1(ii). Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the Tariff.

⁴ Waiver Request at 3.

⁵ *Id.* (citing *The Empire Dist. Elec. Co.*, 116 FERC ¶ 61,150 (2006), *order denying reh'g*, 123 FERC ¶ 61,084 (2008)).

⁶ *Id.* at 5.

new generating facilities would be a more efficient and reliable option as part of its state-mandated Integrated Resource Planning (IRP) process.⁷

6. Empire states that it began its IRP process on April 1, 2021, with an Application for Variances, and officially filed the plan with the Missouri Commission on April 1, 2022. Empire states that it received the Missouri Commission staff report on August 29, 2022, and the Missouri Office of Public Counsel report on September 8, 2022. Empire explains that the 2022 IRP concluded that Empire's customers would be better served by replacing Riverton Unit 10 with a new reciprocating internal combustion engine or other similar technology at the same location. Empire states however that, by the time the IRP process was completed, it was unable to comply with the Tariff's requirement that Empire file a generating facility replacement request "up to one year after a unit is determined to be in forced outage."⁸

7. Empire states that, without a waiver of GIP section 3.9.1(ii), Empire may not be able to replace Riverton Unit 10 in the near future. Empire states that, meanwhile, it will need to meet the increasing demands on its existing generation resources brought on by progressively more extreme weather events (such as Winter Storm Uri) and corresponding increases in SPP's planning reserve margin,⁹ as well as resource accreditation impacts relating to SPP's recently approved performance-based accreditation process. Empire asserts that it seeks to relieve some of the pressure on its existing generating resources by interconnecting a new generating facility at the same site as Riverton Unit 10 (and Riverton Unit 11) using SPP's generator replacement process, which Empire argues would allow a replacement much sooner than would otherwise be possible.¹⁰

8. Empire states that the interstate electric transmission system is becoming increasingly stressed due to a combination of extreme weather events and aging baseload

⁷ *Id.* Empire states that no waiver is necessary for Riverton Unit 11 because it is still in operation. *Id.* at 2 n.5.

⁸ *Id.* at 5 (citing SPP Tariff, attach. V, § 3.9.1(ii)). Empire states that it submitted a generating facility replacement request for Riverton Units 10 and 11 to SPP contemporaneously with the filing of its waiver request. *Id.* at 2.

⁹ Empire states that the SPP Board recently voted to increase the planning reserve margin for the summer of 2023. *Id.* at 1 n.2 (citing SPP Board of Directors and Members Committee Meeting (July 26, 2022)).

¹⁰ *Id.* at 6.

generation.¹¹ Empire explains that SPP's generator replacement process will allow it to replace Riverton Units 10 and 11 by no later than 2025 and quickly bring online approximately 30 MWs of capacity to help Empire serve its customers and meet its resource adequacy obligations. Empire argues that the quick replacement of Riverton Unit 10 is only possible with a waiver of GIP section 3.9.1(ii).

II. Waiver Request

9. Empire requests waiver of GIP section 3.9.1(ii) to allow Empire to replace Riverton Unit 10 under SPP's generator replacement process.¹² Empire argues that its request satisfies the Commission's criteria for granting waiver.

10. First, Empire argues that it acted in good faith because the 2022 IRP process prevented it from submitting a generating facility replacement request sooner.¹³ Empire explains that it did not want to determine the retirement of Riverton Unit 10 before completing its 2022 IRP process in April 2022. Empire argues that the IRP process was necessary to ensure that the retirement of Riverton Unit 10 was the best solution for its customers.

11. Second, Empire contends that its waiver request is limited in scope because it would apply only to the replacement of Riverton Unit 10.¹⁴

12. Third, Empire asserts that waiver is needed to address the concrete problem of resource adequacy in the face of aging baseload generation and increasingly extreme weather events.¹⁵ Empire states that SPP's recent increase to its planning reserve margin and recently approved performance-based accreditation framework are examples of the need for more reliable generation to come online faster. Empire states that, although it will eventually be able to replace Riverton Unit 10 through SPP's normal generator interconnection process, it will not be able to replace it as soon as it would by using the generator replacement process (by 2025 at the latest). In addition, Empire asserts that, because Riverton Unit 11 remains eligible for the generator replacement process, denying

¹¹ *Id.* at 7 (citing *Technical Conference to Discuss the Resource Adequacy Developments in the Western Interconnection*, Docket No. AD21-14, Transcript Day 1 7:17-20).

¹² *Id.* at 7, 10.

¹³ *Id.* at 9.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 10-11.

the replacement of Riverton Unit 10 using the same process will likely result in inefficient and redundant processes for units at the same location.

13. Fourth, Empire contends that the waiver request will not have undesirable consequences or adversely affect third parties. Empire states that it is unaware of any interconnection customers in SPP's generator interconnection queue seeking to interconnect near the site of Riverton Unit 10.¹⁶ Empire asserts that waiver will have no effect on the network upgrade costs (if any) attributed to new generating facilities because Riverton Unit 10 is still included in SPP's base case modeling scenarios due to Riverton Unit 10 not yet being formally retired. Empire also asserts that waiver will not affect subsequent or ongoing interconnection studies due to Riverton Unit 10 being replaced on the same MW basis and Riverton Unit 10's attributed MW inclusion within the appropriate model sets.

III. Notice and Responsive Pleadings

14. Notice of Empire's filing was published in the *Federal Register*, 88 Fed. Reg 6718 (Feb. 1, 2023), with interventions and protests due on or before February 13, 2023. The Kansas Commission filed a notice of intervention and comments. SPP filed a timely motion to intervene and comments.

15. SPP states that it takes no position on Empire's waiver request but is supportive of a load responsible entity taking any steps necessary for it to meet the resource adequacy requirements, such as Empire requesting a generating facility replacement under the Tariff. SPP notes that, on October 25, 2022, the SPP Board of Directors approved a request to modify the planning reserve margin in the SPP Planning Criteria from 12% to 15% for the 2023 summer season.¹⁷ SPP states that it recognizes that some load responsible entities, including Empire, may have difficulty in acquiring capacity needed to meet the increase in the planning reserve margin and associated resource adequacy requirement prior to the 2023 summer season.

16. The Kansas Commission states that it supports Empire's waiver request, stating that waiver will ensure Empire's ability to meet its resource adequacy obligations and provide essential service to Kansas customers.¹⁸ The Kansas Commission argues that, if the one-year notice requirement in GIP section 3.9.1(ii) bars Empire from replacing

¹⁶ *Id.* at 11.

¹⁷ SPP Comments at 5.

¹⁸ Kansas Commission Comments at 1.

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Riverton Unit 10 using the generator replacement process, Empire's ability to meet increasing demands is threatened.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the Kansas Commission's notice of intervention and SPP's timely, unopposed motion to intervene serve to make them parties to this proceeding.

B. Substantive Matters

18. We find that Empire's request for waiver of the requirement in GIP section 3.9.1(ii) to submit a generating facility replacement request up to one year after an existing generating facility is determined to be in forced outage (i.e., by February 8, 2022) is retroactive in nature and is prohibited by the filed rate doctrine.¹⁹ Accordingly, we deny Empire's waiver request. Because we are denying Empire's waiver request on the basis that it is prohibited by the filed rate doctrine, we need not address whether Empire's request would otherwise satisfy the four criteria used by the Commission to evaluate waiver requests.

The Commission orders:

Empire's waiver request is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁹ See *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821 (D.C. Cir. 2021); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018).

Document Content(s)

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Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Office Public Counsel Data Request - 8527

Data Request Received: 2023-12-04

Response Date: 2023-12-22

Request No. 8527

Witness/Respondent: Aaron Doll

Submitted by: John Robinett, John.Robinett@opc.mo.gov

REQUEST:

When did Liberty first estimate the cost to repair Riverton Unit 10 after the bearing fire in February of 2021? And what was that estimate?

RESPONSE:

Certain minor components that were damaged as a result of the fire at Riverton 10 were either replaced shortly after the fire or were provided estimates to investigate for possible repair, but the first indicative estimate for repair of the unit for return to service is provided in response to OPC DR 8530 in this docket.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Office Public Counsel Data Request - 8535

Data Request Received: 2023-12-14

Response Date: 2023-12-27

Request No. 8535

Witness/Respondent: Tim Wilson

Submitted by: John Robinett, John.Robinett@opc.mo.gov

REQUEST:

Please provide the date and meeting notes from when the decision to repair Riverton unit 10 was made.

RESPONSE:

The meeting was held September 5, 2023, to make a decision about the path forward (outage, reliability only, retirement, etc.) for Riverton Unit 10. At that time, the decision was made to repair the unit. Notes of the meeting were not taken.



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Office Public Counsel Data Request - 0008

Data Request Received: 2023-10-20

Response Date: 2023-11-09

Request No. 0008

Witness/Respondent: Shaen Rooney

Submitted by: Nathan Williams, Nathan.Williams@opc.mo.gov

REQUEST:

When did Liberty first become aware of the generator replacement process of section 3.9.1(ii) in Attachment V (Generator Interconnection Procedures (GIP)) of Southwest Power Pool Inc.'s (SPP) Open Access Transmission Tariff (Tariff)?

RESPONSE:

Liberty has been aware of Section 3.9.1(ii) in Attachment V of the Southwest Power Pool ("SPP") Open Access Transmission Tariff ("OATT") since its inception. As voting members of the Transmission Working Group ("TWG"), the Regional Tariff Working Group ("RTWG"), and the Market Operations Policy Committee ("MOPC"), Liberty supported Revision Request ("RR") 393 *Generator Replacement Process* through the working group process as detailed below:

Working Group	Revision Request	Voting Attendee	Date	Liberty Vote	Vote Results
Regional Tariff Working Group	393	Todd Tarter	12/19/2019	Support	Passed
Transmission Working Group	393	Nate Morris	12/18/2019	Support	Passed
Market Operations Policy Committee	393	Aaron Doll	1/14/2020	Support	Passed



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Office Public Counsel Data Request - 0010

Data Request Received: 2023-10-20

Response Date: 2023-12-01

Request No. 0010

Witness/Respondent: Shaen Rooney

Submitted by: Nathan Williams, Nathan.Williams@opc.mo.gov

REQUEST:

Please provide a copy of each and every correspondence, internal and external, by or with Liberty regarding Liberty replacing its Riverton Unit 10 after that unit went offline on February 8, 2021, including, but not limited to, such correspondence with the Southwest Power Pool Inc. (SPP). In particular, include each and every correspondence of when Liberty become aware of the generator replacement process of section 3.9.1(ii) in Attachment V (Generator Interconnection Procedures (GIP)) of Southwest Power Pool Inc.'s (SPP) Open Access Transmission Tariff (Tariff).

RESPONSE: **ATTACHMENTS CONFIDENTIAL PURSUANT TO 20 CSR 4240-2.135(2)(A)3-8**

The responsive correspondence, all designated confidential pursuant to 20 CSR 4240-2.135(2)(A)3-8, will be made available via the Company's designated ShareFile site. Please note, however, that Liberty was never unaware of Section 3.9.1(ii) in Attachment V of the Southwest Power Pool ("SPP") Open Access Transmission Tariff ("OATT"). As voting members of the Transmission Working Group, the Regional Tariff Working Group, and the Market Operations Policy Committee, Liberty supported Revision Request 393 *Generator Replacement Process* through the working group process as detailed below:

Working Group	Revision Request	Voting Attendee	Date	Liberty Vote	Vote Results
Regional Tariff Working Group	393	Todd Tarter	12/19/2019	Support	Passed
Transmission Working Group	393	Nate Morris	12/18/2019	Support	Passed
Market Operations Policy Committee	393	Aaron Doll	1/14/2020	Support	Passed



Liberty Utilities (The Empire District Electric Company)

Case No. EA-2023-0131

Office Public Counsel Data Request - 0013

Data Request Received: 2023-12-14

Response Date: 2023-12-27

Request No. 0013

Witness/Respondent: Aaron Doll

Submitted by: Nathan Williams, Nathan.Williams@opc.mo.gov

REQUEST:

In Liberty's response to Public Counsel's data request no. 8 it states:

Liberty has been aware of Section 3.9.1(ii) in Attachment V of the Southwest Power Pool ("SPP") Open Access Transmission Tariff ("OATT") since its inception. As voting members of the Transmission Working Group ("TWG"), the Regional Tariff Working Group ("RTWG"), and the Market Operations Policy Committee ("MOPC"), Liberty supported Revision Request ("RR") 393 Generator Replacement Process through the working group process as detailed below:

Working Group	Revision Request	Voting Attendee	Date	Liberty Vote	Votes Results
Regional Tariff Working Group	393	Todd Tarter	12/19/2019	Support	Passed
Transmission Working Group	393	Nate Morris	12/18/2019	Support	Passed
Market Operations Policy Committee	393	Aaron Doll	1/14/2020	Support	Passed

Why did not Liberty not notify SPP of its intention to replace its then black start designated December 1988 vintage 16.3 MW simple cycle natural gas Riverton Unit 10 within one year after that unit went offline on February 8, 2021, due to fire in the insulation around the turbine exhaust bearing of that unit?

RESPONSE:

The replacement determination regarding Riverton 10 was reached subsequent to the expiration of the one-year timeframe. The Company's Integrated Resource Plan ("IRP") was inflight during this period and no definite conclusion had been made until after the one-year timeframe had expired.