

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

In the Matter of the Tenth Prudence)
Review of Costs Subject to the)
Commission-Approved Fuel) Case No. EO-2023-0087
Adjustment Clause of the Empire)
District Electric Company d/b/a Liberty)
)

MOTION FOR REHEARING AND RECONSIDERATION

COMES NOW the Office of the Public Counsel ("OPC") pursuant to §386.500 RSMo, and for this motion to rehear and reconsider the Commission's September 14, 2023 *Order Approving Staff's Prudence Review Report*, states:

Motion Summary

The OPC requests the Commission rehear and reconsider its decision not to investigate nor understand the causes of the Neosho Ridge Wind Farm transformer failures, and any harmful impacts on the Missouri citizens of Barry, Barton, Cedar, Dade, Dallas, Greene, Hickory, Jasper, Lawrence, McDonald, Newton, Polk, St. Clair, Stone and Taney Counties. The Commission's decision inexplicably fails to fulfill the Commission's obligation to conduct a prudence review of The Empire District Electric Company d/b/a Liberty's ("Liberty") fuel adjustment clause, at the potential expense of 154,306 Missouri households and 28,361 Missouri businesses that rely on Liberty for their electricity. Unless the Commission grants rehearing and reconsideration, the Commission's decision violates § 386.266.5(4) RSMo, and is otherwise unreasonable in that it is arbitrary, capricious, and constitutes an abuse of the Commission's discretion.

The Decision is Missing Determinative Information and Analysis

As it stands, the information that Staff has provided does not conclusively support a finding that Liberty's transformer failures did not result from imprudence. The facts presented to date show:

(1) Transformers failed before customers began to pay for the large 300 MW Neosho Ridge investment:

(2) Neosho Ridge was completely offline for months and continues to be less than 100% available eighteen months later, yet customers continued to pay costs for the wind farm as if it was a used and useful asset,

(3) Liberty's third-party root cause analysis identified errors in the manufacturing, the installation, and operation/maintenance of the transformers by Liberty.

The Staff states, "**Due to the voluminous information, Staff has not been able to review the entire Root Cause Analysis.**"¹ After providing a brief summary of the provisions of the Root Cause Analysis that Staff was able to review before filing its Response, the Staff concludes, "**Therefore, it is still not very clear to Staff what the exact root cause was.**"²

Given the Staff's stated inability to thoroughly review the Root Cause Analysis, the Commission does not have the analysis or information required to draw any conclusion on the transformer failures. The Staff, itself, admits that it did not have the time to properly review and analyze comprehensive documents Liberty provided regarding these asset failures. Therefore, the OPC requests that

¹ EO-2023-0087, Staff Response to Order Directing Staff to Reply to Public Counsel's Response, Staff Memorandum, p. 3, June 30, 2023.

² *Id.*

the Commission reconsider its finding and order the Staff to conduct a thorough review of the third-party findings.

OPC Requests the Commission Not Foreclose Review of Customer Impacts that Occurred During this Review Period

If the Commission does choose to close this prudency review case, the OPC requests that it not bar parties from bringing future imprudence actions against Liberty regarding this outage. This should include prudence adjustments for lost revenues and incurred costs due to possible imprudence that occurred in the review period of this case. This is consistent with the Staff's memo filed on June 30, 2023, which states in part:

Based on all the information Staff knew prior to when Staff's prudence review was filed in February 2023, and the additional information provided by Liberty (Empire) since, Staff's opinion based on what it has reviewed so far is that currently Staff has nothing on which to base an allegation of imprudence by Liberty (Empire) for the Neosho Ridge Wind facility outage. Going forward, as more insurance proceeds will be received and included in the FAC, and if any costs are incurred because of this outage, both outside of the current review period, Staff will continue to monitor the costs and/or revenues for purposes of the FAC. Also, if there is any further information received or that comes out from the review of the Root Cause Analysis and its attachments, Staff reserves the right to make prudence adjustments in future FAC proceedings and reserves the right to review any and all costs associated with the outage as appropriate in future proceedings.³

Here, the Staff suggests it still has the ability to consider imprudence in subsequent reviews. However, to make certain that the Staff, the Commission, and the OPC have the ability to thoroughly complete that analysis, the OPC requests that the Commission explicitly state that parties may review potential

imprudence during this review period, in a subsequent review period, due to the delay in the completion of the root cause analysis. This order would grant Staff and the OPC more time to better understand the root cause of the transformer failures and offer remedies for any harmful impacts.

Regarding lost revenues and costs incurred due to the outage, Staff reported that Liberty “stated that insurance was covering the expected Southwest Power Pool (“SPP”) revenues from this project as well as the cost of the rental transformer through April of 2023.”⁴ However, a prudence determination requires a more detailed assessment of revenues and impacts of Liberty’s actions with an analysis of actual data. Company statements, in and of themselves, are not enough. Thus, the Commission should order the Staff to conduct a complete analysis of the revenues lost, the reimbursements received by Liberty, and the accounting treatment of these revenues. This analysis should include an analysis of the prudence of Liberty’s insurance policy impacts on FAC revenues, and the imprudence of any agreements with outside entities that absolves those entities from any liability that results from their negligence.

Conclusion

Any complete analysis of the transformer outages’ cause, and customer impacts, cannot be known until a thorough prudence review is conducted. A full review must look at all possible forms of manufacturing, installation, and operation imprudence, all of which should not result in Liberty’s customers bearing financial impacts. In addition, a thorough prudence review requires an

³ *Id.*, pp. 3-4.

⁴ *Id.*, p. 2.

estimate of the impact on revenues Liberty did not receive. Finally, such a review requires an investigation into whether Liberty's insurance payments covered the expected revenues, and if these payments were passed on to Liberty's customers.

Hopefully, a thorough review would conclude that no imprudence occurred and Liberty's customers did not suffer financial harm due to the failure of the transformers. However, as stated in its memo, Staff did not conduct a comprehensive review of the outage and it needed more time to complete an analysis sufficient to reach any conclusions on customer impacts of Liberty's decisional prudence related to Neosho Ridge. Because Staff was unable to do a thorough review, the Commission is unable to conclusively determine whether there was imprudence, and whether that imprudence resulted in harm to Liberty's customers.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rehear and reconsider this matter as addressed herein.

Respectfully submitted,

/s/ Marc Poston

Marc Poston (Mo Bar #45722)
Missouri Office of Public Counsel
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5318
(573) 751-5562 FAX
marc.poston@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 13th day of October 2023.

/s/ Marc Poston
