

**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 Adjustment Clause of The) Case No. EO-2023-0087
Empire District Electric Company d/b/a Liberty)

**LIBERTY’S RESPONSE TO OPC’S
MOTION FOR REHEARING AND RECONSIDERATION**

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), and for its Response to the Motion for Rehearing and Reconsideration of the Office of Public Counsel (“OPC”), Liberty respectfully states as follows:

1. As a matter of law and fact, the Commission should deny OPC’s Motion. Pursuant to RSMo. §386.500, the Commission may grant rehearing “if in its judgment sufficient reason therefor be made to appear.” As explained in more detail below: the Staff of the Commission (“Staff”) conducted a thorough prudence review, “consistent with how it has performed the previous nine prudence reviews for Liberty (Empire)’s FAC, as well as prudence reviews Staff has conducted for the FACs of the other regulated IOUs in Missouri that have a Commission-approved FAC;”¹ there is no evidence of imprudence on the party of Liberty or harm to Liberty’s customers – or serious doubt as to the prudence of an expenditure; and OPC has presented no law in support of its argument that the FAC prudence review should continue. With its Motion for Rehearing and Reconsideration, OPC has presented no new information or arguments and has failed to provide a sufficient reason for the Commission to grant rehearing or reconsideration of the *Order Approving Staff’s Prudence Review Report* issued September 14, 2023 (the “Order”).

¹ Staff’s Response to Order Directing Staff to Reply to Public Counsel’s Response, filed June 30, 2023.

2. This docket was opened on September 1, 2022, to consider the tenth fuel adjustment clause (“FAC”) review of Liberty’s fuel costs for the period of March 1, 2021, through August 31, 2022. Commission Rule 20 CSR 4240-20.090(11) and RSMo. §386.266.5(4) require Staff to conduct prudence reviews of an electric utility’s FAC no less frequently than every 18 months.

3. The review period at issue included an outage at Liberty’s Neosho Ridge wind farm in March of 2022 (although the wind farm was not included in Liberty’s rate base at the time of the occurrence). On March 28, 2022, Liberty filed incident report No. I202200111 regarding the Neosho Ridge outage and served notice of the same on Staff and OPC.

4. Between September 21, 2022, and February 27, 2023, Liberty responded to 94 Data Requests (“DRs”) in this FAC prudence review docket, 92 from Staff and 2 from OPC. Following the submission of the Staff Report herein, Liberty responded to an additional 43 DRs from OPC. Liberty also met with Staff and OPC to provide additional information regarding the outage, its cause, and Liberty’s mitigation and restoration efforts. Upon completion of a lengthy and comprehensive investigation by multiple experts located around the world, Liberty also provided Staff and OPC with a technical “root cause analysis” report. This report concludes that the root cause of the transformer failures (which caused the outage) was not within Liberty’s control.

5. On February 28, 2023, Staff filed its Report, stating that Staff found no incidence or evidence of imprudence by Liberty. In its prudence review, Staff analyzed items affecting Liberty’s total fuel costs, purchased power costs, net emission costs, transmission costs, off-system sales revenues, and interest for the subject accumulation periods of Liberty’s FAC.

6. No timely requests for hearing were submitted, but on March 20, 2023, OPC filed a “Response.” OPC requested the Commission “direct its Staff to amend its Report to address the Neosho Ridge outage and its impacts on customers.” On June 9, 2023, the Commission directed

Staff to “file an update to its Tenth Prudence Review Report of costs related to the FAC of Liberty that addresses the March 2022 Neosho Ridge wind farm outage and its impact on Liberty customers” or “file a reply to Public Counsel’s Response indicating that an updated prudence review report is unnecessary, citing the reasons for its position.”

7. As directed, on June 30, 2023, Staff submitted its Response to Order Directing Staff to Reply to Public Counsel’s Response. Therein, Staff stated that “(t)o have OPC seek to have the Commission direct Staff to amend its FAC Prudence Report and address certain issues of OPC’s choosing, and presumably reach an outcome to OPC’s liking, is simply untenable given the number of disputes that arise between OPC and Staff.” Staff further stated that:

Contrary to OPC, Staff reviewed the Neosho Ridge outage as part of its review. The fact that this outage is not specifically mentioned in the Report does not mean otherwise. Staff conducted this prudence review consistent with how it has performed the previous nine prudence reviews for Liberty (Empire)’s FAC, as well as prudence reviews Staff has conducted for the FACs of the other regulated IOUs in Missouri that have a Commission-approved FAC.

8. As explained in the memorandum attached to Staff’s Response to Order, although Liberty’s retained external experts had not yet completed their root cause analysis, “Staff reviewed the outage at the Neosho Ridge Wind facility caused when two Main Power Transformers (“MPT”) went down late March 2022 as an unplanned forced outage.” Memo, p. 2. Staff further explained:

These MPTs are under warranty and warranty claims were submitted for each failure. Staff saw no issue with this outage as Staff was aware the units were sent back to the manufacture (WEG) in Mexico for warranty repair and review in May 2022. A business interruption insurance claim was filed in April 2022. On July 12, 2022 Empire installed a rented temporary transformer.

Staff also noted that it was their “understanding that there are no costs that Liberty (Empire) is aware of specific to this outage that has been included for recovery through the FAC for this current Review Period, and any repair costs that Liberty (Empire) would have to cover would be capital expense that would not be recovered through the FAC.” Memo, pp. 2-3.

9. On July 10, 2023, OPC filed a Reply to Staff's Response. OPC argued that "(w)ithout an understanding of the cause of the outage, it was impossible for the Staff to conclude that the outage and any customer rate impacts were not the result of imprudence."

10. On September 14, 2023, the Commission issued the *Order*. The Commission noted that, in evaluating Liberty's prudence, "Staff reviewed whether a reasonable person would find that both the information Liberty relied on, and the process Liberty employed when making the decision under review, were reasonable based on the circumstances at the time the decision was made, without the benefit of hindsight" and that, during its review, Staff found no evidence of imprudence by Liberty. The Commission thus held that it was "satisfied that Staff reviewed the Neosho Ridge outage and found nothing on which to base an allegation of imprudence."

11. On October 13, 2023, prior to the effective date of the *Order*, OPC filed its Motion for Rehearing and Reconsideration. OPC alleges that the *Order* violates RSMo. §386.266.5(4)² and is otherwise unreasonable. OPC claims: "the information that Staff has provided does not conclusively support a finding that Liberty's transformer failures did not result from imprudence." OPC argues in the Motion that "(h)opefully, 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."

12. Contrary to OPC's assertions, a thorough review did take place and did reveal no imprudence on the part of Liberty and no harm to Liberty's customers with regard to the FAC

² This statutory provision provides that an FAC must include a provision "for prudence reviews of the costs subject to the adjustment mechanism no less frequently an at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate."

periods under review. Staff did not state that it failed to conduct a comprehensive review and did not state that it needed more time to complete its analysis. To the contrary, Staff confirmed that it “reviewed the Neosho Ridge outage as part of its review” and “conducted this prudence review consistent with how it has performed the previous nine prudence reviews for Liberty (Empire)’s FAC, as well as prudence reviews Staff has conducted for the FACs of the other regulated IOUs in Missouri that have a Commission-approved FAC.”³ As further explained in the memorandum attached to Staff’s Response to Order:

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.

Memo, p. 4 (emphasis added).

13. As a result of a proper and customary review, Staff found no incidence or evidence of imprudence by Liberty with regard to the FAC review periods at issue. With no timely requests for hearing or other indication of a failure in Staff’s Report, the Commission properly issued its *Order Approving Staff’s Prudence Review Report*. Contrary to OPC’s assertion, neither Staff nor Liberty were required to affirmatively and conclusively prove in this proceeding the cause of the Neosho Ridge transformer failures.

³ Staff’s Response to Order Directing Staff to Reply to Public Counsel’s Response, filed June 30, 2023.

14. Under the Commission's prudence standard, a utility's costs are presumed to be prudently incurred. Only after a party presents a showing of inefficiency or improvidence and creates a serious doubt as to the prudence of an expenditure, does a utility then have the burden of demonstrating prudence. *See In Matter of Kansas City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757, 777-778 (Mo. Ct. App. 2016); *see also State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm'n of State of Mo.*, 954 S.W.2d 520, 528 (Mo. Ct. App. 1997). The mere existence of a forced outage simply cannot create a serious doubt as to a utility's prudence.

15. Additionally, Staff was obligated to review Liberty's total fuel costs, purchased power costs, net emission costs, transmission costs, off-system sales revenues, and interest for the subject accumulation periods of Liberty's FAC. There is no authority requiring Staff to look beyond these costs and revenues in an FAC prudence review. *See In re Union Elec. Co.*, 422 S.W.3d 358, 368 (Mo. Ct. App. 2013).

16. Staff conducted a proper and customary review of Liberty's fuel costs for the period of March 1, 2021, through August 31, 2022, including costs and revenues from that period related to the Neosho Ridge wind farm outage. There was no showing of inefficiency or improvidence creating a serious doubt as to prudence on the part of Liberty, and Staff found no incidence or evidence of imprudence by Liberty with regard to the FAC review periods at issue. As such, the Commission should deny OPC's Motion for Rehearing and Reconsideration regarding the Commission's *Order Approving Staff's Prudence Review Report*.

WHEREFORE, Liberty requests an order of the Commission denying OPC's Motion for Rehearing and Reconsideration and granting such further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 23rd day of October, 2023, and sent by electronic transmission to all counsel of record.

/s/ Diana C. Carter