

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 22nd day of February, 2024.

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)

File No. EA-2023-0131

**ORDER GRANTING PROTECTIVE ORDER AND LEAVE TO FILE
SECOND AMENDED APPLICATION**

Issue Date: February 22, 2024

Effective Date: March 3, 2024

On February 14, 2023, The Empire District Electric Company d/b/a Liberty filed an application with the Commission seeking an order granting a Certificate of Convenience and Necessity (CCN) pursuant to Sections 393.140, 393.170.1 and 393.190.1, RSMo. The CCN would authorize Liberty to construct, install, own, operate, maintain, and otherwise control and manage two combustion turbine generators to replace existing combustion turbine generators Riverton Unit 10 and Riverton Unit 11.

On March 15, 2023, Liberty filed a *Motion for Protective Order* seeking an order designating as “Highly Confidential” under Commission Rule 20 CSR 4240-2.135(4) “certain material regarding proprietary market information, commodity prices, competitive strategies, and planned purchases, as well as accredited capacity ratings for discrete units and forward resource adequacy positions[.]” Liberty stated in its motion that “Confidential” designation may not adequately protect it from “creation of a competitive advantage over Liberty and non-party competitors[.]”

On March 22, 2023, the Office of the Public Counsel (OPC), filed a *Response in Opposition to Liberty's Motion for Protective Order* (Response). In its Response, OPC stated that Liberty's motion provides no explanation for why it views the confidential designation afforded by Commission Rule 20 CSR 4240-2.135(2) to be inadequate protection for the materials for which it seeks a protective order. Liberty did not respond to OPC's Response.

On May 10, 2023, at the request of Liberty, the Commission stayed the proceedings in this matter to allow Liberty time to address additional developments regarding the generation interconnection process with the Southwest Power Pool and to provide additional information to the Staff of the Commission (Staff) and other parties regarding the details of the proposed project.

On October 13, 2023, Liberty filed an *Amended Application for a Certificate of Convenience and Necessity* and requested that the stay of the proceedings be lifted. On December 4, 2023, the Commission directed Liberty to file a response as to whether it still sought a ruling on their *Motion for Protective Order*, given that no parties intervened, leaving Liberty, OPC, and Staff as the only parties in this matter.

On December 12, 2023, *Liberty's Response to Commission Order* was filed. In it, Liberty affirmed that it still sought a ruling on its motion, stating that, in addition to the materials for which it previously sought protection, it also seeks protection for "certain information and materials related to Black Start plans and processes" due to "heightened obligation under the Federal Power Act to protect Critical Energy Infrastructure Information." Without use of the Highly Confidential designation and labeling, Liberty

argues, “sensitive material could accidentally be improperly disclosed or misused in another setting.” No party responded to Liberty’s December 12th filing.

On January 19, 2024, Liberty filed a *Second Amended Application for a Certificate of Convenience and Necessity*. On January 23, 2024, Staff requested, and was granted, until March 8, 2024, to file its recommendation on the *Second Amended Application*.

Ten days have elapsed since the *Second Amended Application* was filed and no responses have been submitted. Therefore, pursuant to rule 4240 CSR 20-2.080(18), the Commission will grant leave for the *Second Amended Application* to be submitted.

The Commission finds that Liberty has adequately explained the need for a protective order for the materials cited and the harm that might result from disclosure of the information. That harm outweighs any harm caused by lack of disclosure with the extra layer of protection. The Commission will grant the motion.

THE COMMISSION ORDERS THAT:

1. Liberty is granted leave to file its *Second Amended Application for a Certificate of Convenience and Necessity*.
2. Liberty’s *Motion for Protective Order* is granted as to the following materials, which shall bear the designation “Highly Confidential” but otherwise follow the formatting delineated in Commission Rule 20 CSR 4240-2.135(10):
 - a. material regarding proprietary market information, commodity prices, competitive strategies, and planned purchases, as well as accredited capacity ratings for discrete units and forward resource adequacy positions; and
 - b. information and materials related to Black Start plans and processes.
3. Information designated by Liberty as “Highly Confidential” shall be disclosed only to attorneys of record for all parties, to state agency parties and their employees

covered by statutory confidentiality requirements, and to designated outside experts of any non-state agency party.

4. Except for attorneys of record for all parties, and employees of state agency employees covered by statutory confidentiality requirements, all persons authorized to access “Highly Confidential” information in this case shall complete a nondisclosure agreement.

5. No later than March 1, 2024, Liberty shall file a nondisclosure agreement form that complies with Commission Rule 20 CSR 4240-2.135(7).

6. This order shall be effective on March 3, 2024.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Hahn, Ch., Rupp, Coleman, Holsman
and Kolkmeier CC., concur.

Seyer, Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 22nd day of February 2024.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

February 22, 2024

File/Case No. EA-2023-0131

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.