

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,<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2022).

<sup>2</sup> *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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> 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

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<sup>3</sup> 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.

<sup>4</sup> Waiver Request at 3.

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

<sup>6</sup> *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.<sup>7</sup>

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."<sup>8</sup>

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,<sup>9</sup> 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.<sup>10</sup>

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

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

<sup>8</sup> *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.

<sup>9</sup> 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)).

<sup>10</sup> *Id.* at 6.

generation.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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

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<sup>11</sup> *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).

<sup>12</sup> *Id.* at 7, 10.

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> The Kansas Commission argues that, if the one-year notice requirement in GIP section 3.9.1(ii) bars Empire from replacing

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<sup>16</sup> *Id.* at 11.

<sup>17</sup> SPP Comments at 5.

<sup>18</sup> 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.<sup>19</sup> 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.

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<sup>19</sup> 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).

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