

**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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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 some time following the forced outage of Riverton Unit 10 and receipt of the cost estimates to repair the unit, Liberty made the decision that it would be more cost effective to replace rather than repair the unit. The Southwest Power Pool has a tariff provision which allows utilities to replace existing generating units with new ones and avoid its new generation interconnection process if the request is made within one year from when the old generating unit no longer is in service. The Company’s response to OPC data requests show that this is something that the decision makers at Liberty should have known. Despite this, Liberty failed to make an application for replacement in that time frame and instead filed an untimely application for replacement of Riverton unit 10 on January 23, 2023, 11 months after the deadline to file had run. Acknowledging its error Liberty concurrently filed a request for a variance from the SPP tariff with the Federal Energy Regulatory Commission (“FERC”) in Docket No. ER23-928-000, but this request for a variance was denied on March 23, 2023.³

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

_____ ***

As a result of these developments, a meeting was held at Liberty on September 5, 2023, (*** _____
_____ ***) to make a decision about the path forward for Riverton Unit 10. It was at this time that the decision was made to repair the unit.⁴ According to the 20 CSR 4240 3.190 data Liberty submitted for January 2024, its Riverton Unit 10 ran for the first time on January 16, 2024, since it went offline prior to Winter Storm Uri on February 8, 2021.

Imprudence of Liberty Decision Making

It was imprudent for Liberty to have waited to file for its replacement of Riverton Unit 10 with the Southwest Power Pool (“SPP”) until after the year deadline granted by SPP tariffs. Liberty responses to OPC data requests clearly show that Liberty’s personnel were voting members of the specific working groups and policy committees, and voted in support of the generator replacement process which passed. See Liberty’s responses to OPC data requests 0008, 0010, and 0013 in Attachment 7. If Liberty had made the decision to replace Riverton units 10 and 11 with the two new units which are the subject of this CCN request within the one-year deadline, the Company would not have needed to repair Riverton Unit 10. Instead, the Company waited 31 months (February 8, 2021 to September 5, 2023), which includes the issues that has made Riverton Unit 11 more costly to repair than Unit 10, to make the necessary decision. This was unnecessary delay

³ FERC Order denying Waiver Request is Attachment 5.

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.

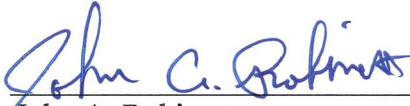
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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.

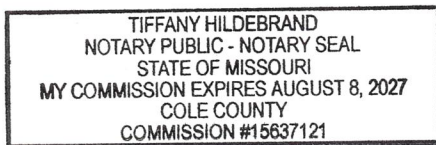
Further the Affiant sayeth not.

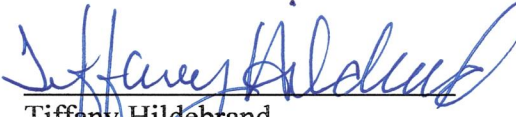


John A. Robinett
Utility Engineering Specialist

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.