

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at the Commission's office in Jefferson City on the 5th day of June, 2024.

In the Matter of the Application of The)	
Empire District Electric Company d/b/a)	
Liberty to Obtain a Certificate of)	<u>File No. EA-2023-0131</u>
Convenience and Necessity to Enhance)	
System Resiliency)	

**ORDER APPROVING STIPULATION AND AGREEMENT AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: June 5, 2024

Effective Date: June 15, 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) authorizing Liberty to construct, install, own, operate, maintain, and otherwise control and manage two combustion turbine generators, each with a nominal net output of 13.3 MW, to replace existing combustion turbine generators, Riverton Unit 10 and Riverton Unit 11, located in Riverton, Cherokee County, Kansas.

The Commission directed notice and established an intervention deadline. The Commission received no applications to intervene.

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 the Staff of the Commission (Staff) and other parties regarding the details of the proposed project. On

May 10, 2023, the Commission granted Liberty's motion and stayed the proceedings in this matter.

On October 13, 2023, Liberty filed an *Amended Application for a Certificate of Convenience and Necessity*. Following discussions with Staff, on January 22, 2024, Liberty filed its *Second Amended Application for a Certificate of Convenience and Necessity* (Second Amended Application).¹ In addition to its request for a CCN, the Second Amended Application requested a determination by the Commission that the decision to construct/operate the new assets is prudent, subject to the Commission's subsequent review of costs.²

At the direction of the Commission, Staff filed its recommendation on the Second Amended Application on March 8, 2024. Staff recommended the Commission grant Liberty's CCN request, subject to ten conditions. Staff recommended that the Commission not make a determination on decisional prudence.

On March 18, 2024, Liberty filed its *Response to Staff Recommendation* in which it which it objected to one of Staff's recommended conditions. In addition, Liberty requested a slight modification to another condition. Liberty had no objection to Staff's other recommended conditions.

On March 18, 2024, the Office of the Public Counsel (OPC) filed *Public Counsel's Response to Staff's Recommendations* in which it stated that it agreed with Staff's ten recommended conditions and recommended an additional, eleventh condition that Liberty bear all of the costs it incurred in repairing Riverton Unit 10 to make it operational after it

¹ On February 22, 2024, the Commission issued its *Order Granting Protective Order and Leave to File Second Amended Application*.

² See 20 CSR 4240-20.045(2)(C).

went offline February 8, 2021. On March 28, 2024, Liberty filed its *Response to OPC's Ratemaking Suggestion* opposing OPC's recommended condition.

On May 14, 2024, Liberty and Staff filed a *Stipulation and Agreement* (Agreement). Commission rules allow non-signatory parties seven days to object to a non-unanimous stipulation and agreement.³ If no party timely objects, the Commission may treat the agreement as unanimous.⁴ More than seven days have elapsed since the agreement was filed and no party objected. Thus, the Commission will treat the agreement as unanimous. The Agreement is attached to this order.

Under the terms of the Agreement, the signatories agree that the Commission should find that the *In re Tartan Energy Company*⁵ criteria have been satisfied and grant Liberty a CCN to replace Riverton Units 10 and 11, subject to ten conditions listed in the Agreement.

Further, under the terms of the Agreement, Liberty withdraws its request for the Commission to make a specific decisional prudence determination in this matter.

Liberty is an "electrical corporation" and a "public utility" as defined in Subsections 386.020(15) and (43), RSMo 2016. The Commission may grant an electric corporation a CCN to operate after determining that the operation is "necessary or convenient for the public service."⁶ The Commission articulated criteria (known as the

³ 20 CSR 4240-2.115(2)(B).

⁴ 20 CSR 4240-2.115(2)(C).

⁵ See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

⁶ Section 393.170.3, RSMo (Supp. 2023).

Tartan criteria) to be used when evaluating applications for utility certificates of convenience and necessity in *In Re Intercon Gas, Inc.*⁷

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

After reviewing the Second Amended Application and the Agreement, the Commission finds that the Agreement is a reasonable resolution of the issues contained therein and will approve it. The Second Amended Application supports a finding that the Tartan criteria have been satisfied, and no party opposes the granting of the CCN. Thus, the Commission will grant the CCN.

Given that there is no opposition to the granting of the CCN, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The *Stipulation and Agreement* filed on May 14, 2024, is approved, and the signatories shall comply with its terms. A copy of the *Stipulation and Agreement* is attached to this order.

2. Liberty is granted a certificate of convenience and necessity 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, subject to the conditions listed in the *Stipulation and Agreement*.

⁷ 30 Mo P.S.C. (N.S.) 554, 561 (1991).

3. Nothing in this order shall be considered a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on the properties.

4. The Commission reserves the right to consider the ratemaking treatment to be afforded the expenditures and properties herein involved, and the resulting cost of capital, in any later proceeding.

5. This order shall become effective on June 15, 2024.

6. This file shall close on June 16, 2024.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell". The signature is written in a cursive, flowing style.

Nancy Dippell
Secretary

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

Seyer, Regulatory Law Judge

**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) Case No. EA-2023-0131
to Enhance System Resiliency)

STIPULATION AND AGREEMENT

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty”) and the Staff of the Missouri Public Service Commission (“Staff”) (collectively, the “Signatories”),¹ by and through their respective counsel, and for their Stipulation and Agreement resolving all issues in this case (“Agreement”), respectfully state as follows to the Missouri Public Service Commission (“Commission”):

Background Information

1. On February 14, 2023, Liberty filed its Application for a Certificate of Convenience and Necessity (“CCN”) to Enhance System Resiliency, noting that the Riverton project to enhance the resiliency of the Company’s electric system may require a CCN pursuant to Commission Rules 20 CSR 4240-20.045(1) and 20.045(2)(A). Amended CCN Applications were thereafter filed by Liberty.

2. The Staff of the Commission filed a Recommendation requesting that the Commission “grant Liberty a CCN for the two combustion turbine generators subject to Staff’s recommended conditions.” In Liberty’s filing made March 18, 2024, Liberty consented to Staff Conditions 1-3 and 6-9, requested that Condition 4 be stricken in its entirety, requested that Condition 5 be modified with regard to the type of fuel to be used for testing, and noted a slight clarification on Condition 10.

¹ The Office of the Public Counsel (“OPC”) is a party to the case and has authorized the Signatories to represent that OPC does not oppose this Stipulation.

3. OPC filed a response to Staff's Recommendation, requesting that the Commission make a ratemaking determination in this CCN docket and order "that Liberty, not its retail customers, bear all of the costs that Liberty 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." Liberty filed its opposition to OPC's request on March 28, 2024.

CNN and Conditions

4. The Signatories agree the Commission should find that the *In re Tartan Energy Company* criteria have been satisfied and grant a CCN to Liberty, pursuant to RSMo. §393.170 and Commission Rule 20 CSR 4240-20.045, to replace Riverton Units 10 and 11, subject to the following conditions.

- a. Liberty shall finalize necessary agreements with the Kansas Department of Health and Environment to not only tune both replacement units on all available operational fuels at the expected temperature extremes but also be able to operationally test both replacement units on multiple fuel types as needed to maintain operational effectiveness. Liberty shall provide Staff annual reports until necessary agreements are in place. These annual reports shall be submitted through EFIS as non-case filings, with reference to this docket.
- b. Liberty shall provide Staff annual reports for a period of three years, from the effective date of the CCN, on the winterization actions that have been taken and the anticipated effects of those actions. These shall be submitted through EFIS as non-case filings, with reference to this docket.
- c. Liberty shall provide Staff annual reports for a period of three years, from the effective date of the CCN, on agreements/negotiations that occur with natural

gas and fuel oil suppliers to ensure that the gas supply to the restoration unit is prioritized appropriately. These shall be submitted through EFIS as non-case filings, with reference to this docket.

d. ** [REDACTED]

[REDACTED] ** These shall be submitted through EFIS as non-case filings, with reference to this docket.

e. Liberty shall file in this docket updated Restoration Plans within 60 days of the units' In-Service date.

f. Liberty shall file in this docket as-built construction drawings within 60 days of the units' In-Service date.

g. Liberty shall file in this docket its updated winter readiness plan within 60 days of the units' In-Service date.

h. Liberty shall amend its CCN application if the project and/or the transmission line extends to property that is currently not included in the Riverton Power Plant boundaries.

i. Liberty shall provide the Replacement Impact Study, Reliability Assessment Study and Interconnection Facilities Study to the extent such studies are required under the generator replacement interconnection process or are otherwise prepared for Riverton Units 10 and 11. These shall be submitted through EFIS as non-case filings, with reference to this docket.

j. In the initial rate case in which Liberty proposes inclusion of the costs of repair/replacement of Riverton Unit 10 and/or Unit 11, Liberty shall provide

testimony on the decision process followed during the repair/replacement of Riverton Units 10 and 11 as well as any changes in policy resulting from that process.

5. Liberty withdraws its request for the Commission to make a specific decisional prudence determination in this docket.

6. The Signatories are not requesting any ratemaking determinations at this time.

7. Upon issuance of an order approving this Agreement and granting the CCN, the Signatories request that this docket be closed.

General Provisions

8. This Agreement is being entered into solely for the purpose of settling the issues in this case explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories to this Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any cost of service methodology or determination, depreciation principle or method, method of cost determination or cost allocation or revenue-related methodology.

9. This Agreement is a negotiated settlement. Except as specified herein, the Signatories to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement, or in any way condition its approval of same.

10. This Agreement has resulted from extensive negotiations among the Signatories, and the terms hereof are interdependent. If the Commission has questions for the Signatories' witnesses or Signatories, the Signatories will make available, at any on-the-record session, their

witnesses (if any) and attorneys on the issues resolved by this Stipulation, so long as all Signatories have had adequate notice of that session. The Signatories agree to cooperate in presenting this Stipulation to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation.

11. If the Commission does not approve this Agreement unconditionally and without modification, then this Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof.

12. If approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

13. If the Commission does not approve this Agreement without condition or modification, and notwithstanding the provision herein that it shall become void, (a) neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and (b) the Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

14. If the Commission accepts the specific terms of this Agreement without condition or modification, only as to the settled issues in these cases explicitly set forth above, the Signatories each waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial review pursuant to §386.510. This waiver applies only to a Commission order approving this Agreement without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Agreement.

15. This Agreement embodies the entirety of the agreements between the Signatories in this case on the issues addressed herein, and may be modified by the Signatories only by a written amendment executed by all of the Signatories.

WHEREFORE, the Signatories respectfully submit this Stipulation and Agreement and request the Commission issue an Order approving the same and granting the Company a certificate of convenience and necessity to enhance the resiliency of its electric system by replacing Riverton Units 10 and 11.

Respectfully submitted,

Counsel for Liberty:

/s/ Diana C. Carter

Diana C. Carter MBE #50527

The Empire District Electric Company d/b/a Liberty

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 14th day of May, 2024, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

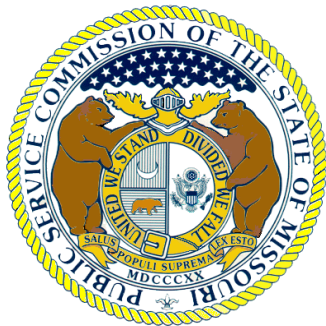
/s/ Diana C. Carter

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 5th day of June 2024.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

June 5, 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.