

Exhibit No. 167

Staff – Exhibit 167
Testimony of Brodrick Niemeier
Surrebuttal/True-Up Direct
File No. ER-2024-0261

Exhibit:
Issue(s): Riverton 10 Prudence
Ozark Beach Prudence
Witness: Brodrick Niemeier
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal / True-Up
Direct Testimony
Case No.: ER-2024-0261
Date Testimony Prepared: September 17, 2025

MISSOURI PUBLIC SERVICE COMMISSION

INDUSTRY ANALYSIS DIVISION

ENGINEERING ANALYSIS DEPARTMENT

SURREBUTTAL / TRUE-UP DIRECT TESTIMONY

OF

BRODRICK NIEMEIER

**THE EMPIRE DISTRICT ELECTRIC COMPANY,
d/b/a Liberty**

CASE NO. ER-2024-0261

*Jefferson City, Missouri
September 2025*

**** Denotes Confidential Information ****

***** Denotes Highly Confidential Information *****

1
2
3
4
5
6
7
8
9

TABLE OF CONTENTS OF
SURREBUTTAL / TRUE-UP DIRECT TESTIMONY OF
BRODRICK NIEMEIER
THE EMPIRE DISTRICT ELECTRIC COMPANY,
d/b/a Liberty
CASE NO. ER-2024-0261

Inclusion of Riverton 101

Riverton 10 Repair Prudence4

Ozark Beach.....8

1 **SURREBUTTAL / TRUE-UP DIRECT TESTIMONY**

2 **OF**

3 **BRODRICK NIEMEIER**

4 **THE EMPIRE DISTRICT ELECTRIC COMPANY,**
5 **d/b/a Liberty**

6 **CASE NO. ER-2024-0261**

7 Q. Please state your name and business address.

8 A. My name is Brodrick Niemeier and my business address is Missouri Public
9 Service Commission, P.O. Box 360, Jefferson City, Missouri 65102.

10 Q. Are you the same Brodrick Niemeier that previously filed direct testimony in
11 this case?

12 A. Yes, I am.

13 Q. What is the purpose of your surrebuttal testimony?

14 A. The purpose of my surrebuttal testimony is to respond to OPC¹ witness
15 John A. Robinett and Empire² witness Brian Berkstresser concerning the inclusion of
16 Riverton 10's repair cost in this rate case. I also respond to OPC witness Geoff Marke
17 concerning the crane extension project at Ozark Beach.

18 **INCLUSION OF RIVERTON 10**

19 Q. How did OPC witness John A. Robinett arrive at his determination that
20 Riverton 10's repair cost are included in this case?

¹ Office of the Public Counsel ("OPC").

² The Empire District Electric Company, d/b/a Liberty ("Empire").

1 A. Mr. Robinett based his determination off of a Data Request (DR) response
2 from Empire. Within this response, Empire stated ** [REDACTED]

3 [REDACTED]
4 [REDACTED]. **³

5 Q. Is Mr. Robinett correct in his determination?

6 A. Yes, and Staff has issued follow-up data requests on the subject. Those data
7 requests confirmed that the repair cost for Riverton 10 is included in rate base within this case.⁴

8 Q. Why did Staff initially determine that Riverton 10 repair costs were not included
9 in rate base within this rate case?

10 A. The Stipulation and Agreement to case EA-2023-0131 states:⁵

11 In the initial rate case in which Liberty proposes inclusion of the costs of
12 repair/replacement of Riverton Unit 10 and/or Unit 11, Liberty shall
13 provide testimony on the decision process followed during the
14 repair/replacement of Riverton Units 10 and 11 as well as any changes
15 in policy resulting from that process.

16 Staff, noticing that the required Riverton 10 repair discussion was not included
17 within any Empire witness's direct testimony, reached out to Empire where Staff
18 received written confirmation from Empire that Riverton 10 repairs were not included within
19 this case. This confirmation was in the form of an email, which is included as Confidential
20 Schedule BN-s1. Empire later explained to Staff that the confirmation made in the email was
21 a misstatement but Empire did not inform Staff that this information was incorrect until after
22 Staff discussed Mr. Robinett's rebuttal testimony in a meeting on August 27, 2025.

³ Confidential Empire Response to OPC DR No. 8507, attached as Confidential Schedule BN-s2.

⁴ Empire Response to Staff DR Nos. 0341.1 and 0460, attached as Schedule BN-s3.

⁵ Paragraph 4(j) of the Stipulation and Agreement in the docket of Case No. EA-2023-0131, attached as Confidential Schedule BN-s4.

1 Q. Did Empire comply with the Commission Order to provide testimony on its
2 decision making process concerning the repair and replacement of Riverton 10 and 11?

3 A. No. Empire did not file direct testimony concerning its decision-making process
4 around Riverton 10 repairs when it did include Riverton 10's repair cost within this case.
5 Only after OPC pointed out the missing testimony did Empire provide a discussion on the topic
6 in its rebuttal testimony, but this discussion did not provide any new explanation, reasoning, or
7 changes in policy, only quoting Empire's Response to OPC's Ratemaking Suggestion from
8 the Certificate of Convenience and Necessity ("CCN") case.⁶ The rebuttal testimony from
9 Empire does not comply with the Stipulation and Agreement ordered by the Commission in
10 EA-2023-0131. Mr. Berkstresser appears to acknowledge this in his rebuttal testimony stating:

11 The Company acknowledges that testimony 'on the decision process
12 followed during the repair/replacement of Riverton Units 10 and 11 as
13 well as any changes in policy resulting from that process' was not
14 included in the initial filing of this rate case. The Company intends to
15 include that testimony in the rate case where it first seeks cost recovery
16 related to the replacement units. [Empire] apologies for the
17 misunderstanding if the intent of the stipulation provision was for the
18 testimony to be included in this case.⁷

19 Q. Was the intent of the stipulation for Empire to file the discussion on its decision
20 process within this case?

21 A. Because the cost of repairs are in Empire's requested revenue requirement, yes.
22 The intent of the stipulation was for Empire to include the discussion when it sought recovery
23 of Riverton 10 and 11's repair and/or replacement. Had Empire not included the cost to repair
24 Riverton 10 in this case, it would not be required to provide the discussion in this case.

⁶ The quotation is from the filing titled Liberty's Response to OPC's Ratemaking Suggestion in case EA-2023-0131.

⁷ From Brian Berkstresser's rebuttal testimony, page 6, lines 17 through 23.

1 However, Empire included these costs, either intentionally or unintentionally, and the
2 discussion is now required but has not been provided.

3 **RIVERTON 10 REPAIR PRUDENCE**

4 Q. Can you explain what led to the decision to repair Riverton 10?

5 A. Yes. On February 8, 2021, ** [REDACTED]
6 [REDACTED]. **^{8,9} In February 2022, Riverton reached one year in outage without Empire
7 filing a replacement request with the Southwest Power Pool ("SPP"). SPP's Open Access
8 Tariff, section 3.9.1 requires a request of generating facility replacement to be submitted up
9 to one year after the unit is determined to be in forced outage. In April 2022, Empire filed
10 its IRP.¹⁰ The timing of this IRP filing was used as justification for Empire failing to file the
11 replacement request with SPP within the required year. In January 2023, Empire filed a request
12 to replace Riverton 10 with SPP, and then filed an application for a CCN to replace Riverton 10
13 with the Commission in February 2023. The Federal Energy Regulatory Commission
14 ("FERC")¹¹ denied Empire's request for a waiver from the year requirement to request
15 replacement of Riverton 10 in March 2023. Empire discovered blade migration issues
16 during a borescope inspection of Riverton 11 in April 2023, and ** [REDACTED]
17 [REDACTED]. ** Notably, this is after FERC had denied the request to
18 replace Riverton 10. Empire requested a rehearing on the waiver from FERC, which was

⁸ Empire's amended CCN Application, Paragraph 30 in case EA-2023-0131.

⁹ This and several other portions of testimony in this filing are labeled as highly confidential due to discussing a topic for which Empire received a protective order in case EA-2023-0131.

¹⁰ Empire's Integrated Resource Plan (IRP) was filed within case EO-2021-0331.

¹¹ FERC has regulatory oversight over SPP, causing Empire's request for waiver from SPP rules to need FERC approval.

1 denied in July. SPP called on Riverton 11 to run in August, after which another borescope
2 inspection revealed further blade migration, placing the unit in outage. *** [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED] *** Riverton 10 returned to service in January 2024, almost three years
6 after the outage began with Riverton 11 remaining in outage to present.¹²

7 Q. What is Staff's recommendation concerning the Riverton 10 repairs?

8 A. Staff recommends a disallowance of the entire cost to repair Riverton 10, an
9 amount of approximately ** [REDACTED]. **¹³

10 Q. Does Staff agree with Empire witness Brian Berkstresser that Empire "...made a
11 prudent decision to repair Riverton Unit 10 based on the appropriate balance between cost,
12 safety, and reliability?"¹⁴

13 A. No. Staff does not agree with Mr. Berkstresser. Empire knew, through a
14 borescope inspection on April 5, 2023,¹⁵ that Riverton 11 showed significant issues with blade
15 migration. Empire conducted a second borescope inspection on August 14, 2023.¹⁶ It should
16 be a priority for Empire to have *** [REDACTED]

17 [REDACTED]
18 [REDACTED]

¹² Pages 12-15 of Staff's Recommendation Report filed in case EA-2023-0131, are attached as Highly Confidential Schedule BN-s5.

¹³ ** [REDACTED] **

¹⁴ Page 2, lines 27 and 28 of Empire witness Brian Berkstresser's rebuttal testimony.

¹⁵ Paragraph 6 of Liberty's Response to OPC ratemaking suggestion in case EA-2023-0131.

¹⁶ Page A1 of Brian Berkstresser's confidential rebuttal workpaper titled "2023 Riverton 17A1626-4 BI Engineering Review Addendum." This workpaper's designation is confidential for reasons other than the date of the borescope inspection, though it was initially misfiled as public.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] *** Empire should have begun repairing either Riverton 10 or 11
4 in April, but instead they put Riverton 11 ** [REDACTED]. ** Had Empire
5 started its repair of Riverton 10 in April 2023, it likely would have re-entered service around
6 the time Riverton 11 entered outage in August 2023, preventing Empire from not having
7 *** [REDACTED] *** for five months. Had Empire repaired Riverton 11 in April, it might
8 have been less expensive, and potentially faster than Riverton 10 repairs. Empire cannot use
9 the justification that it was planning to replace the units in the future when it is necessary to
10 have *** [REDACTED]. ***

11 Q. Would it have been reasonable for Empire to keep Riverton 11 ** [REDACTED]
12 [REDACTED] ** until it and Riverton 10 were replaced?

13 A. No. Riverton 13 and 14 are planned to be in service by July 2026.¹⁷ This would
14 have left Riverton 11 in a damaged state for over three years. While Empire did determine in
15 April 2023, that Riverton 11 could operate if needed to, Riverton 11 would most likely be called
16 upon several times in that time period. Empire was concerned that continued operation would
17 further damage Riverton 11, otherwise Empire would not have placed the unit ** [REDACTED]
18 [REDACTED]. ** It would not have been reasonable to rely on Riverton 11 not needing repairs
19 for over three years.

20 Q. Was Empire in communication with SPP about bypassing the interconnection
21 queue when it was forced to repair Riverton 10 in August 2023?

¹⁷ Paragraphs 51 and 53 of Empire's Application within case EA-2023-0131.

1 A. Yes. One of SPP's requirements to replace a unit in outage without going
2 through the interconnection queue is to file a request for the replacement within a year of the
3 outage starting. Riverton 10 entered outage on February 8, 2021, and Empire did not file for
4 replacement until January of 2023, almost two years after the outage began. Empire claimed
5 that the delay was due to its IRP being filed at an inconvenient time. The IRP however, was
6 filed more than a year after Riverton 10 entered outage, meaning the year window for Empire
7 had already ended.¹⁸ Further, SPP allows companies to modify the filing where they request to
8 replace a unit up until the request is approved.¹⁹ Empire sought a waiver from the year time
9 limit, which FERC denied, both in a hearing, and in a request for rehearing. While SPP and
10 Empire were in communication about alternative methods to replace Riverton 10 without going
11 through the interconnection queue²⁰ in August of 2023, FERC had already denied Empire on
12 the possibility twice. This forced Empire to repair Riverton 10 before the unit could be
13 replaced, an unnecessary cost if Empire had not filed the request for replacement late.

14 Q. Please summarize why the Commission should adopt Staff's recommendation
15 of disallowing the entire cost to repair Riverton 10.

16 A. Empire should have filed a request to replace Riverton 10 before the year mark,
17 as that would have made the repair of Riverton 10 unnecessary when it came to replacing the
18 unit. Empire should have begun repairs on Riverton 10 in April 2023 instead of August 2023
19 so that it would not be without a necessary *** [REDACTED]
20 [REDACTED]. *** If Empire did not want to repair Riverton 10

¹⁸ Staff also notes that Empire did deviate from its IRP when it submitted the CCN in which it sought approval to replace Riverton 10 and 11.

¹⁹ SPP Open Access Tariff Section 3.9.1.1.

²⁰ Brian Berkstresser rebuttal testimony, page 2, lines 30-34 and page 3, lines 1-4.

1 in April, it should have begun repairs on Riverton 11 in April 2023, when issues with the unit
2 were first noticed. Empire also failed to comply with the Commission order approving the
3 Stipulation and Agreement in EA-2023-0131 by including costs to repair Riverton 10 in this
4 case while not including the required discussion of Empire's decision-making process about
5 the topic. Staff does not agree with Empire witness Brian Berkstressor that Empire was prudent
6 in its repair of Riverton 10.

7 **OZARK BEACH**

8 Q. What is the crane extension project at Ozark Beach?

9 A. The crane extension project extended a crane on the downstream side of the dam
10 so that materials and equipment could be brought in via access road. Before the project,
11 equipment would have to be loaded onto a barge upstream of the dam, and then floated down
12 and unloaded by the crane. The crane extension removed the need for a barge to be used, which
13 Empire claims was a safety hazard at the site. Empire's initial project cost estimate was
14 \$10,760.88 but this was changed to \$2,909,999.96,²¹ an increase of approximately 3,000%

15 Q. What does OPC witness Geoff Marke recommend concerning the project?

16 A. Geoff Marke recommends a disallowance of \$2,900,000. He explains the
17 recommendation by stating, "First, this is exactly why a cost-benefit analysis for investments
18 over \$1 million was agreed to in Case No. ER-2021-0312. Second, I fail to see how this project
19 is PISA²² eligible (not grid modernization) and why the 3000% cost overrun is prudent."²³

20 Q. Does Staff agree with Geoff Mark's assessment?

²¹ Empire Response to Staff DR No. 335.

²² Plant in Service Accounting (PISA).

²³ OPC witness Geoff Marke's rebuttal testimony, Page 18, lines 4 and 5.

1 A. No. While Staff agrees that the initial estimate for the project's cost is extremely
2 low,²⁴ Staff discussed Empire's efforts to improve its project planning and budgeting process
3 in Claire Eubanks' direct testimony.²⁵ Staff disagrees with Dr. Marke's assessment that the
4 project was ineligible for PISA. Section 393.1400.2 states: "'Qualifying electric plant', all
5 rate-base additions, except rate-base additions for new coal-fired generating units, new nuclear
6 generating units, or rate-base additions that increase revenues by allowing service to new
7 customer premises;" Ozark Beach is not a new coal or nuclear power plant, and it does not
8 allow service to new customer premises, therefore this project does qualify for PISA under
9 Section 393.1400, even if it is not a grid modernization project. Finally, Staff does not agree
10 that a 3,000% cost overrun is inherently imprudent. Prudency does not solely compare initial
11 cost estimates with the final cost, it also considers whether or not the decisions concerning the
12 project were reasonable. While Empire should have realized the initial cost estimate for the
13 project was extremely low, that does not mean that the project as a whole was imprudent.
14 Empire claims that the project reduced safety risks, and Staff agrees. Loading/unloading
15 equipment is dangerous, especially when it is done onto/off a barge that can move during the
16 process. Reducing the number of times equipment must be unloaded does decrease safety risks.

17 Q. Does Staff find the crane extension project at Ozark Beach imprudent?

18 A. No. Staff does not have any reason to find the project imprudent at this time.

19 Q. Does this conclude your surrebuttal testimony?

20 A. Yes it does.

²⁴ Page 2, lines 13 and 14 of Staff witness Brodrick Niemeier's direct testimony.

²⁵ Page 6, lines 1 through 13 of Staff witness Claire M. Eubanks' direct testimony.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Request of The Empire)
District Electric Company d/b/a Liberty for)
Authority to File Tariffs Increasing Rates)
for Electric Service Provided to Customers)
in Its Missouri Service Area)

Case No. ER-2024-0261

AFFIDAVIT OF BRODRICK NIEMEIER

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

COMES NOW BRODRICK NIEMEIER and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Surrebuttal / True-Up Direct Testimony of Brodrick Niemeier*; and that the same is true and correct according to his best knowledge and belief.

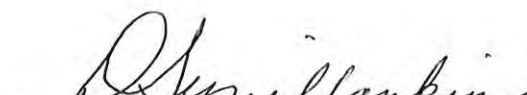
Further the Affiant sayeth not.


BRODRICK NIEMEIER

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 8th day of September 2025.




Notary Public

Case No. ER-2024-0261

SCHEDULE BN-s1

HAS BEEN DEEMED

CONFIDENTIAL

IN ITS ENTIRETY

Case No. ER-2024-0261

SCHEDULE BN-s2

HAS BEEN DEEMED

CONFIDENTIAL

IN ITS ENTIRETY



The Empire District Electric Company d/b/a Liberty

Case No. ER-2024-0261

Missouri Public Service Commission Data Request - 0341.1

Data Request Received: 2025-08-11

Response Date: 2025-09-04

Request No. 0341.1

Witness/Respondent: Brian Berkstresser

Submitted by: Brodrick Niemeier, Brodrick.Niemeier@psc.mo.gov

REQUEST:

Please explain the following relating to Riverton 10 repairs made since February, 2021:

- a) Has Empire included any of the cost to repair Riverton 10 since February, 2021 within rate base in this rate case? If so, how much of the cost is included? Please include any supporting documentation.
- b) Does Empire plan to discuss Riverton 10 repairs within True-up? If so, is this to add Riverton 10 repair costs to rate base during this case?

RESPONSE:

- a) Yes. Refer to attachment "[Riverton 10 Addt Support.xlsx](#)" that shows repairs that have been included within the Company's revenue requirement in this case. The balance of approximately \$1.2M (Total Company) shown in the attachment is the additions to the plant netted against the retirement. This is the impact on the rate base in the current case.
- b) The Company discussed the Riverton 10 repairs in Company witness Brian Berkstresser's rebuttal testimony. The balance of \$1.7M referenced in Mr. Berkstresser's testimony is the result of the additions to the plant plus the cost of removal. See the table below that shows addition and cost of removal balances. If needed, the Company will discuss in further detail in true-up testimony.

Cost Repository - All Details

CR_ALL_DETAILS_VIEW

Account	Account Description	Project	Project Description	Quantity	Amount
107000	Cwip-Electric/Gas	4008514	I/R Unit 11 LO coolers	6.00	\$108,326.31
107000	Cwip-Electric/Gas	4009846	I&R Unit 10 Lubricating Oil	8,093.00	\$134,434.99
107000	Cwip-Electric/Gas	4009848	Replace Unit 10 Insulation	94,405.00	\$101,187.52
107000	Cwip-Electric/Gas	4009862	I&R Babbitt - Unit 10 Bearing	1,690,337.00	\$927,114.39
107000	Cwip-Electric/Gas	4009979	I&R Unit 10 Diaphragm seals	1,499,350.00	\$240,561.20
107000 Total				3,292,191.00	\$1,511,624.41
108200	Rwip Electric Plant	4008514	I/R Unit 11 LO coolers	0.00	\$433.88
108200	Rwip Electric Plant	4009848	Replace Unit 10 Insulation	68,385.00	\$24,333.29
108200	Rwip Electric Plant	4009862	I&R Babbitt - Unit 10 Bearing	335,867.00	\$20,551.51
108200	Rwip Electric Plant	4009979	I&R Unit 10 Diaphragm seals	301,150.00	\$180,062.80
108200 Total				705,402.00	\$225,381.48
				3,997,593.00	\$1,737,005.89



The Empire District Electric Company d/b/a Liberty

Case No. ER-2024-0261

Missouri Public Service Commission Data Request - 0460

Data Request Received: 2025-08-11

Response Date: 2025-08-29

Request No. 0460

Witness/Respondent: Brian Berkstresser

Submitted by: Brodrick Niemeier, Brodrick.Niemeier@psc.mo.gov

REQUEST:

a) Please explain whether or not the following sentence from Empire's response to OPC data request 8507 means that Empire has included the cost to repair Riverton 10 within rate base for this case? "The entire repair cost was capitalized under projects 4008514, 4009846, 4009848, 4009862, and 4009979 and was recorded in functional plant account 343."

b) Please provide descriptions, justifications, timelines, and all changelogs over \$1,000 for the following projects mentioned in Empire's response to OPC data request 8507: projects 4008514, 4009846, 4009848, 4009862, and 4009979

RESPONSE: **ATTACHMENTS ARE CONFIDENTIAL PURSUANT TO 20 CSR 4240-2.135(2)(A)4**

a) Yes, these costs are included in this case.

b) Project 4008514

Description: Unit 11 LO Coolers are leaking into containment. Attempts to stop gasket leakage have been unsuccessful after multiple methods and attempts. We are leaving the piping connections as is and are having the cores built only. Design will ensure the gasket surface will be flat and seal to our current end caps.

Justification: These coolers were replaced in 2016 and began leaking shortly after the warranty period was completed. Attempts to work with the original manufacturer to resolve the leaks were unsuccessful. After repeated attempts to seal the gasket surface, it was determined that the original manufacturer had a design flaw in the end plates which caused the end plate to bow when the tubes were seated into them. We found 2 manufacturers in the area that can take the original core, reverse engineer it and manufacture replacements with upgraded materials.

Timelines: Project Start Date: 10-1-2022

Project In-Service Date: 1-31-2024

Changelogs: None

Project 4009846

Description: Replacement requires cleaning and flushing lube oil lines and reservoir.

Justification: Group 1 oils, currently in Unit 10, are not compatible with Group 2 and group 1 oils are no longer manufactured per the oil vendor. Need to remove oil, clean reservoir and conduct a high velocity flush to prepare system for upgraded oil.

Timelines: Project Start Date: 8-1-2023

Project In-Service Date: 1-31-2024

Changelogs: None

Project 4009848

Description: All Temp to remove current pads and calcium silicate insulation on turbine, exhauster, and bearing tunnel. Once turbine work is complete, they will install new removable pads on everything. Thickness will match current.

Justification: Insulation needs removed to remove the casing of the unit. The existing insulation will be destroyed when removing due to the age and wear, so new insulation will need installed.

Timelines: Project Start Date: 7-21-2023

Project In-Service Date: 2-16-2024

Changelogs: See attachment "[Project 4009848 Changelog - CONFIDENTIAL.pdf](#)"

Project 4009862

Description: Re-pour Unit 10 compressor and turbine journal bearings with improved material to increase life expectancy. Added I&R Turbine Diaphragm seals to original scope.

Justification: Unit 10 journal bearings are damaged. We will re-pour them with an improved material to increase life expectancy.

Timelines: Project Start Date: 7-27-2023

Project In-Service Date: 3-31-2024

Changelogs: See attachment "Project 4009862 Changelog CONFIDENTIAL.pdf"

Project 4009979

Description: Upgrade Unit 10 seals to increase efficiency and life of unit.

Justification: Seals need to be replaced to increase efficiency of turbine.

Timelines: Project Start Date: 9-15-2023
 Project In-Service Date: 3/31/2024

Changelogs: None

**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. **

_____. ** 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

428 E. Capitol Ave., Suite 303

Jefferson City, Missouri 65101

Joplin Office Phone: (417) 626-5976

Cell Phone: (573) 289-1961

E-Mail: Diana.Carter@LibertyUtilities.com

Counsel for Staff:

/s/ Paul T. Graham #30416
Senior Staff Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Mo 65102-0360
(573) 522-8459
Paul.graham@psc.mo.gov

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

As part of a data request, Liberty has provided ***

32

*** Liberty is in compliance with this requirement.

Additionally, FERC Requirement EOP-006-2: System Restoration Coordination³³ requires that each restoration plan shall be reviewed within 13 calendar months of the last review. Based on a review of the recent dates included in the Liberty Restoration Plan revision history, Liberty is also compliant with this requirement.

History of the Repair or Replacement of ***

On February 8, 2021, ***

34

35

On April 1, 2021, Liberty filed a request for variances concerning the Integrated Resource Plan (IRP) process with the Missouri Public Service Commission ("Commission"), Case No. EO-2021-0331. Included in the IRP was the retirement of Riverton 10 and 11. The retirement was based on the age of the generating units and the necessity of ***. These two would be directly replaced with 30MW of new, more reliable dual-fuel units ***. The IRP was filed on April 1, 2022.

During the Missouri IRP process, Liberty was considering and ultimately decided that replacement of the then inoperable Riverton 10 was the preferable option. However, the Southwest Power Pool Tariff³⁶ under which Liberty operates has certain requirements for Generating Facility Replacement Requests (GFRR) for units under a forced outage contained within section 3.9.1, which are summarized as follows:

32 ***

33 <https://www.nerc.com/pa/Stand/ReliabilityStandards/EOP-006-2.pdf>.

34 The Empire District Electric Company, d/b/a Liberty Second amended CCN Application, Paragraph 30.

35 Ibid. 3, page 3.

36 [SPP Tariff - Generator Interconnection Procedures - Attachment V, Section 3.](#)

- (1) Like for like unit replacement as it relates to the interconnection point and voltage.
- (2) A replacement application for a generating asset that experienced a forced outage must be made within one year of the forced outage.
- (3) A new queue position shall be assigned for the asset (as if it were a new generation) if the replacement facility requires greater interconnection services than that of the existing unit.
- (4) If the replacement asset requires less interconnection services than that of the existing unit, interconnection service may be granted at the reduced rate.
- (5) The replacement request can be modified at any time before the evaluation process is completed.

Liberty filed an untimely application to SPP for the replacement of Riverton 10 on January 23, 2023. The filing satisfied most of the requirements except for the ‘within one year’ for units under a forced outage. Liberty concurrently filed a request for a variance to the SPP tariff with FERC as the replacement request not timely. Liberty claimed to have been unable to file in a timely manner due to the ongoing IRP process with the Commission. FERC denied the variance on March 29, 2023, and also denied the request for rehearing on July 12, 2023, which was subsequently filed. SPP intervened in the FERC docket but took no position on the merits of the variance but also stated that “SPP is very supportive of its Load Responsible Entities taking any steps necessary for it to meet the Resource Adequacy Requirements.”³⁷

To complicate matters further, on April 18, 2023, Riverton 11 was *** [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *** While the Liberty restoration plan does contemplate Liberty “contact[ing] neighboring entities for assistance in providing *** [REDACTED] ³⁸ [REDACTED]

[REDACTED] *** this is hardly an optimal situation should such a restoration effort be necessary - especially if the neighboring entities were engaged in their own restoration process.

³⁷ [SPP Intervention and Comments in ER23-928.pdf](#)

³⁸ Ibid. 3, page 14.

So, as of mid-July 2023, Liberty had been denied the SPP tariff variance by FERC twice, Riverton 10 was in a forced outage status, and Riverton 11 *** [REDACTED] *** Liberty proceeded to complete an estimate of the cost to repair both Riverton 10 and 11. Subsequently, it was determined that the cost of repairing Riverton 10 was less than that of repairing Riverton 11 and as such, on August 14, 2023, Liberty made the decision to repair Riverton 10. The decision to repair Riverton 10 accomplished several things once the repairs were completed on January 11, 2024³⁹ such as:

- (1) Riverton 10 can once again be relied upon as a capacity resource
*** [REDACTED] ***
- (2) The forced outage status of Riverton 10 would end resetting the SPP GFRR timeclock
- (3) The one-year SPP generator replacement requirement would be moot
- (4) A new SPP GFRR application can be timely filed under tariff section 3.9.1

While Staff agrees the decision to repair Riverton 10 was correct given the situation Liberty found itself in as of July 2023, it also believes that the situation was one of Liberty's own making, given the failure to follow the SPP GFRR for a unit in a forced outage status. While it can be argued that the ultimate result of the concurrently proceeding IRP process was uncertain as to the future of both Riverton 10 and 11, the SPP GFRR tariff 3.9.1.1 does contemplate such by stating that "the request for [a] Replacement Generating Facility can be modified any time before the evaluation process is complete."⁴⁰

Lessons from "Winter Storm Uri", February 2021

*** [REDACTED]

[REDACTED] 41 [REDACTED]

[REDACTED] 42 [REDACTED]

³⁹ Ibid. 5, page 8.

⁴⁰ Ibid. 7, page 39.

⁴¹ *** [REDACTED] ***

⁴² [FERC-NERC-Regional Entity Joint Feb 2021 Cold Weather Outages in Texas and the South-Central US Staff Report.](#)