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Witness: Todd Mooney  
Type of Exhibit: Rebuttal Testimony  
Sponsoring Party: The Empire District  
Electric Company  
Case No.: ER-2021-0312  
Date Testimony Prepared: December 2021

**Before the Public Service Commission  
of the State of Missouri**

**Rebuttal Testimony**

**of**

**Todd Mooney**

**on behalf of**

**The Empire District Electric Company**

**December 2021**



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THE EMPIRE DISTRICT ELECTRIC COMPANY  
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. ER-2021-0312

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REBUTTAL TESTIMONY OF TODD MOONEY  
THE EMPIRE DISTRICT ELECTRIC COMPANY  
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. ER-2021-0312

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Todd Mooney. My business address is 354 Davis Road, Oakville, ON L6J  
4 2X1.

5 **Q. Are you the same Todd Mooney who provided Direct Testimony in this matter on  
6 behalf of The Empire District Electric Company (“Empire” or the “Company”)?**

7 A. Yes.

8 **Q. What is the purpose of your Rebuttal Testimony in this proceeding before the  
9 Missouri Public Service Commission (“Commission”)?**

10 A. The purpose of my Rebuttal Testimony is to respond to Direct Testimony filed by the  
11 Office of the Public Counsel (“OPC”) as it relates to: “concerns” raised therein  
12 regarding Empire’s Customer Savings Plan; the Market Price Protection Mechanism;  
13 rate-making treatment of certain items such as “PAYGO”; the issue of “Test Power”;  
14 and, Empire’s capital structure. Specifically, my testimony will respond to issues  
15 raised by Dr. Geoff Marke, Mr. John S. Riley, Ms. Lena M. Mantle and Mr. David  
16 Murray.

17 **II. EMPIRE’S CUSTOMER SAVINGS PLAN**

18 **Q. OPC witness Dr. Geoff Marke states in his direct testimony that many of the  
19 OPC’s “concerns” raised in the customer savings plan case (Case No. EO-2018-  
20 0092) and the certificate of convenience and necessity case (Case No. EA-2019-**

1           **0010) related to Empire’s wind projects “have been realized.”<sup>1</sup> Do you agree with**  
2           **his assessment?**

3    A.    No, I do not. I disagree with Dr. Marke’s flagrant mischaracterization of Empire’s  
4           Wind Projects as “Ratepayer-backed Merchant Generation”<sup>2</sup>. Empire’s Wind Projects  
5           are an integral part of its diversified generation fleet that it uses to supply the electric  
6           needs of its customers in the most economical manner possible. The need for Empire’s  
7           Wind Projects as part of this generation fleet is not in question – it was confirmed when  
8           the Commission granted certificates of convenience and necessity in Case No. EA-  
9           2019-0010. Dr. Marke’s characterization is without basis and his discussion of  
10          speculative risk placed on customers (including reference to Case No. EA-2021-0021)  
11          is irrelevant. Dr. Marke’s other concerns regarding the Wind Projects are discussed in  
12          the Rebuttal Testimony of Empire witness Shaen Rooney.<sup>3</sup>

13   **Q.    Is there anything in Dr. Marke’s direct testimony with which you agree?**

14    A.    Yes. Dr. Marke acknowledges that his concerns “may very well have no impact on  
15           rates in this case.” His concerns primarily involve potential future events and are not  
16           ripe for consideration in this case.

17   **III.    MARKET PRICE PROTECTION MECHANISM (“MPPM”)**

18   **Q.    OPC witness Lena M. Mantle describes the MPPM as having been a part of the**  
19           **Non-Unanimous Stipulation and Agreement in Commission Case No. EA-2019-**  
20           **0010. (Dir., p. 11). She further mentions that Empire’s certificates of convenience**

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<sup>1</sup> ER-2021-0312, Direct Testimony of Geoff Marke, p. 52, line 8.

<sup>2</sup> ER-2021-0312, Direct Testimony of Geoff Marke, p. 52, lines 1-2.

<sup>3</sup> ER-2021-0312, Rebuttal Testimony of Shaen Rooney, pp. 3-8.

1           **and necessity were granted by the Commission, with conditions, including the**  
2           **MPPM. What is the status of the MPPM?**

3    A.     The Commission ruled on the MPPM in EA-2019-0010 stating that: “The market price  
4           protection mechanism, as described more fully in Appendix B to the Non-Unanimous  
5           Stipulation and Agreement . . . **shall be implemented**<sup>4</sup>. (emphasis added). Thus, it has  
6           already been decided by the Commission.

7    **Q.     What is the purpose of the MPPM, as described by the Commission?**

8    A.     The Commission stated that “[i]n general terms, that mechanism seeks to provide for  
9           the sharing of risk between customers and shareholders associated with the possibility  
10          of reduced market prices and wind production associated with the Wind Projects.”<sup>5</sup>.

11   **Q.     Do you believe that in its ordered form, it will serve that purpose?**

12   A.     Yes. The MPPM provides up to \$52.5 million of protection to customers from  
13          downside risk created by the Wind Projects during the first 10 years of the projects  
14          being placed into rates.

15   **Q.     When will the MPPM take effect?**

16   A.     The Commission ruled that “the mechanism shall go into effect on the first day of the  
17          month after the effective date of rates in which a wind project is first placed into rates  
18          and shall remain in effect for 10 years following the effective date for rates resulting  
19          from the first general rate case in which all wind projects are included in rates.” (Case  
20          No. EA-2019-0010, Report and Order, p. 59).

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<sup>4</sup> Case No. EA-2019-0010, Report and Order, p. 59.

<sup>5</sup> Case No. EA-2019-0010, Report and Order, p. 59.

1 **Q. Ms. Mantle proposes fundamental changes from the MPPM as ordered by the**  
2 **Commission in Case No. EA-2019-0010. Is it appropriate to significantly change**  
3 **the MPPM as Ms. Mantle proposes?**

4 A. No. While I take no position as to whether this is a prohibited collateral attack on a  
5 Commission order, it is the case that both the timing and the substance of Ms. Mantle's  
6 proposal is certainly inappropriate.

7 **Q. Why?**

8 A. First and foremost, the MPPM was approved by the Commission in a fully litigated  
9 case where each party presented their position. To now seek to unwind what the  
10 Commission previously approved is not appropriate. Further, the Wind Projects were  
11 acquired on January 27, 2021 and May 5, 2021. Empire has had less than one year of  
12 experience with these projects. Additionally, the ten years of the MPPM will only start  
13 with the conclusion of this case. We only know marginally more today than we did at  
14 the time the Commission ordered the MPPM in Case No. EA-2019-0010. Simply put,  
15 there is no reason to fundamentally change the way the wind revenue requirement is  
16 calculated, which is what Ms. Mantle asks the Commission to do.

17 **IV. RATE-MAKING TREATMENT OF CERTAIN ITEMS (PAYGO)**

18 **Q. OPC witness John S. Riley discusses a proposal for rate treatment of PAYGO.**  
19 **(Dir., p. 5-6). What is PAYGO?**

20 A. PAYGO, otherwise referred to as contingent contributions, represents additional  
21 contributions of cash by the tax equity partners to Empire Wind Holdings, LLC based  
22 on actual production in excess of a threshold. PAYGO contributions received by  
23 Empire Wind Holdings, LLC are distributed to Empire and hence reduce the cost of  
24 service to customers.

1 **Q. Mr. Riley suggests that Empire does not have a “between general rate case**  
2 **mechanism whereby it can flow the PAYGO benefit it receives to its customers.”**  
3 **(Dir., p. 5). Does Empire propose a mechanism by which PAYGO will impact**  
4 **rates to the benefit of its customers?**

5 A. Yes, as described in Company witness Aaron J. Doll’s direct testimony (page 16), the  
6 Company proposes that the “market revenue,” which includes PAYGO, be treated  
7 exactly as Empire treats the revenue from the rest of its generation assets; that is, to  
8 include it in the Company’s Fuel and Purchased Power Rate Adjustment Mechanism  
9 (Rider FAC). This is supported by the rules guiding Fuel and Purchased Power Rate  
10 Adjustment Mechanisms specifically, Rule 20 CSR 4240-20.090(M), which outlines  
11 that fuel-related revenues means those revenues related to the generation, sale, or  
12 purchase of energy or capacity.

13 **Q. Mr. Riley suggests that the Commission in this case “should include an amount**  
14 **for PAYGO when determining Empire’s revenue requirement, then track the**  
15 **actual PAYGO against that estimate.” (Dir., p. 6). Do you agree with his**  
16 **proposal?**

17 A. I do not reject Mr. Riley’s proposal, necessarily, but I also do not believe it is required.

18 **Q. Why not?**

19 A. Mr. Riley’s premise is incorrect. Empire does have a mechanism whereby it can flow  
20 the PAYGO benefit to customers. PAYGO is directly related to generation levels and  
21 is variable in nature. Therefore, it can be included in the Company’s FAC where  
22 customers can receive this additional revenue in between general rate cases. That said,  
23 as discussed in Mr. Doll’s rebuttal testimony, the Company is open to discussing the

1 possibility of a tracker mechanism for the wind-related costs and revenues, including  
2 PAYGO.

3 **V. TEST POWER**

4 **Q. On pages 3-4 of his Rebuttal Testimony, OPC witness John S. Riley discusses**  
5 **treatment of “test power” and alleges that test power should be an offset to the**  
6 **investment in the facility. How does Mr. Riley define “test power”?**

7 A. Mr. Riley suggests that “test power” consists of “net revenues generated prior to the  
8 plant being included into rates.”

9 **Q. Does Mr. Riley cite any prior cases for his definition?**

10 A. Yes. In his footnote 3, he indicates that he is citing to *In the Matter of Kansas City*  
11 *Power & Light Company*, Report & Order, Case No. ER-81-42 and ER-80-48, 1981  
12 Mo. PSC LEXIS 29 (June 17, 1981).

13 **Q. Does the *Kansas City Power & Light Company* case support Mr. Riley’s definition?**

14 A. No, it does not. The *Kansas City Power & Light Company* case defines “test power”  
15 as follows:

16 Test power is energy generated by Iatan **prior to commercial operation of the unit**,  
17 which power was distributed to the electrical systems of the partners of the Iatan plant  
18 in proportion to their ownership percentages.

19 *Id.* at 1981 Mo. PSC LEXIS 29, 79 (emphasis added).

20 **Q. Does that definition reference the point a plant is “included into rates”?**

21 A. No, it does not. It refers only to the power generated “prior to commercial operation  
22 of the unit.”



1 **Q. Did Empire construct the Wind Projects in a similar to manner to KCPL's**  
2 **construction of Iatan, as discussed in the *Kansas City Power & Light Company***  
3 **case?**

4 A. No. The Wind Projects were not constructed by Empire. Empire did not close on these  
5 transactions until Empire, along with its tax equity partners acquired the holding  
6 company for the North Fork Ridge Wind Project on January 27, 2021, the holding  
7 company for the Neosho Ridge Wind Project on May 5, 2021, and the holding company  
8 for the Kings Point Wind Project on May 5, 2021.

9 **Q. When was “commercial operation” achieved?**

10 A. Prior to the closing dates. Thus, Mr. Riley's premise as to test power is not applicable  
11 to this situation as Empire had no ownership interest in the Wind Projects or the  
12 relevant power during the relevant period.

13 **Q. Having said that, has Empire, and its customers, received any benefit for economic**  
14 **value associated with the period prior to Empire's ownership?**

15 A. Yes. The purchase agreements associated with the Wind Projects call for a reduction  
16 of the purchase price of the Wind Projects based on that economic value and, therefore,  
17 reduced the purchase price and, ultimately, the rate base associated with the Wind  
18 Projects.

19 **VI. CAPITAL STRUCTURE**

20 **Q. Does the Company take issue with OPC witness Murray's recommended capital**  
21 **structure consisting of 47.5% common equity and 52.5% long-term debt?**

22 A. Yes. There are a number of problems with Mr. Murray's recommended capital  
23 structure. First, he failed to follow the methodology that he just used in Empire's last  
24 rate case, Case No. ER-2019-0374, to determine the Company's capital structure that

1 was approved by and was included in the results of the Commission’s Order in that  
2 case (“2019 Rate Case”). Second, his recommended capital structure did not take into  
3 account any of the financing relating to Empire’s acquisition of the Wind Projects,  
4 which is the main driver in this rate case. Third, there are a number of other  
5 inconsistencies in Mr. Murray’s testimony. Fourth and finally, he misinterpreted the  
6 capital structure and financing conditions contained in merger stipulations 4 and 5 from  
7 the Commission’s Merger Order in Case No. EM-2016-0213 relating to the  
8 Liberty/Empire merger (“Merger Order”).

9 (i) **Methodology**

10 **Q. Please explain the methodology that Mr. Murray used in the 2019 Rate Case to**  
11 **determine Empire’s capital structure?**

12 A. In the 2019 Rate Case, Mr. Murray provided capital structures for APUC, LUCO and  
13 Empire as of March 31, 2019 (the end of the test year) and September 30, 2019 (the  
14 end of the update period). In that analysis, he used the companies’ capital structures as  
15 presented in financial statements to which he then made adjustments as follows:

- 16 1. For LUCO, he imputed LUCO’s off balance sheet debt guarantees to  
17 Liberty Utilities Finance GP1 (“GP1”)<sup>6</sup> as additional debt to LUCO, while  
18 also subtracting the same guarantees from LUCO’s common equity. The  
19 resulting lower common equity ratio was in his opinion the most  
20 “economical” amongst Empire, LUCO and APUC and, based upon merger  
21 stipulation 5 in the Merger Order, recommended the Commission use

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<sup>6</sup> GP1 is the financing vehicle for APUC’s regulated utility business in the United States.

1 LUCO's capital structure with a lower adjusted equity ratio than Empire to  
2 set rates for Empire.

3 2. For APUC, Mr. Murray used total equity as per APUC's financial  
4 statements with two adjustments. First, he adjusted long-term debt and  
5 preferred stock to give 50% common equity credit to preferred stock and to  
6 the long-term hybrid loans/subordinated unsecured notes. Second, he  
7 included in APUC's total capitalization calculation the redeemable non-  
8 controlling interests (which represents tax equity funding for certain of  
9 APUC's solar facilities). Mr. Murray did not make other adjustments to  
10 APUC's equity as presented in its U.S. GAAP financial statements.  
11 Notably, he included the non-redeemable non-controlling interests in his  
12 common equity calculation, consistent with US GAAP treatment for APUC  
13 and its subsidiaries. These adjustments increased APUC's common equity  
14 ratio.

15 The Commission accepted Mr. Murray's recommendation and methodology in the  
16 2019 Rate Case.

17 **Q. What methodology did Empire use in the present rate case to determine the**  
18 **appropriate capital structure?**

19 A. Even though Empire disagreed with Mr. Murray's methodology and recommendation  
20 as it related to LUCO, Empire used it to first determine the pro forma capital structures  
21 for Empire, LUCO and APUC, after reflecting the pro forma adjustments for the Wind  
22 Project financing. Empire then used the most "economical" capital structure of the  
23 three, which was Empire's 52.44% equity and 47.56% long-term debt, to propose rates  
24 in the current rate case. In other words, even though Empire did not agree with Mr.

1 Murray's methodology in determining the utility's capital structure, for purposes of  
2 this current rate case and to avoid any controversy with respect to the capital structure  
3 issue, Empire used the methodology proposed by Mr. Murray and approved by the  
4 Commission less than 18 months ago to determine its capital structure proposal in this  
5 case.

6 **Q. Please explain how Mr. Murray failed to follow the methodology he just used in**  
7 **the 2019 Rate Case to determine Empire's capital structure for the present rate**  
8 **case?**

9 A. Apparently, Mr. Murray did not like the results from using his methodology and  
10 decided to significantly change his approach in three ways.

11 **1. Dates for Capital Structure:** Instead of following the approach used in the  
12 2019 Rate Case of using capital structures for Empire, LUCO and APUC as of  
13 the end of the test-year (March 31, 2019) and update period (September 30,  
14 2019), in the present rate case, Mr. Murray used an average of the five quarters  
15 prior to and including the end of the test year.

16 **2. Companies considered:** In the 2019 Rate Case, Mr. Murray applied merger  
17 stipulation 5 in the Merger Order and reviewed the updated September 30, 2019  
18 capital structures (including his adjustments) for all three entities, Empire,  
19 LUCO and APUC. However, in the current case, he completely ignores  
20 Empire's capital structure ratios and states that his rationale for doing so is that  
21 Empire relies on affiliates for all of its financing functions. However, the level

1 on which Empire relies on affiliates for financing has not changed from the last  
2 rate case and is not a reasonable basis to support a change to his methodology

3 **3. Adjustments:** Mr. Murray changed the methodology that was used in the 2019  
4 Rate Case to determine APUC's capital structure. As mentioned earlier, in the  
5 2019 Rate Case, Mr. Murray adjusted APUC's long-term debt and preferred  
6 stock to give 50% common equity credit to the long-term hybrid  
7 loans/subordinated unsecured notes and preferred stock, which increased  
8 APUC's common equity. Mr. Murray also included the non-redeemable non-  
9 controlling interests in his calculations of common equity and the redeemable  
10 non-controlling interests in total capitalization as a separate source. In the  
11 current case, Empire followed Mr. Murray's Commission approved  
12 methodology in determining APUC's capital structure. However, Mr. Murray's  
13 current recommendation makes an additional 50% adjustment for the  
14 redeemable non-controlling interests without explanation. Mr. Murray also for  
15 some reason excluded the redeemable non-controlling interest solar project tax  
16 equity entirely from capitalization under his current methodology. Similar to  
17 what he did in the 2019 Rate Case, he made no adjustments to the non-  
18 redeemable non-controlling tax equity in the common equity accounts.

19 **Q. What rationale did Mr. Murray provide for making these changes to the**  
20 **methodology?**

21 **A** Mr. Murray did not provide any rationale other than activity and complexity. He  
22 indicated that he needed to reevaluate the methodology because of APUC's increased

1 financing activity, citing increased “holding company debt and hybrid financing  
2 activity”<sup>7</sup> and “complex corporate financing structures”<sup>8</sup>.

3 **Q. Why do you believe that Mr. Murray changed the methodology that he used?**

4 A. In my opinion, the abrupt and arbitrary change to methodology appears to be results  
5 driven, i.e. chosen to result in the lowest equity ratio for Empire. I believe that Mr.  
6 Murray did this solely on the basis that he did not like the results and outcome based  
7 upon his own methodology as approved by the Commission in the 2019 Rate Case.  
8 Each one of the changes in methodology described above has the effect of reducing  
9 Empire’s equity ratio.

10 **Q. Does Mr. Murray contend in his Direct Testimony that Empire’s filed capital  
11 structure testimony and exhibits did not specifically follow his methodology that  
12 was accepted by the Commission in Empire’s last rate case?**

13 A. No, he does not. In addition, in his response to Empire Data Request 16, Mr. Murray  
14 indicated that Empire did follow the methodology that he used to determine Empire’s  
15 capital structure in the 2019 Rate Case. Mr. Murray’s response to Data Request 16 is  
16 attached to my rebuttal testimony as **Rebuttal Schedule TM-1**. He then goes on to say  
17 in his response to that data request that he disagrees with Empire’s conclusion and  
18 capital structure recommendation even though Empire followed the methodology that  
19 Mr. Murray used in the 2019 Rate Case. Once again, Mr. Murray has confirmed very  
20 clearly that his recommendation on the common equity ratio in this case is not a result

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<sup>7</sup> ER-2021-0312, Direct Testimony of David Murray, p. 7, lines 11-12.

<sup>8</sup> ER-2021-0312, Direct Testimony of David Murray, p. 7, lines 18.

1 of following his 2019 methodology approved by the Commission, but rather what  
2 results in the lowest ratio not justified by the facts.

3 (ii) **Wind Project Financing**

4 **Q. Are there any other flaws that you are aware of in Mr. Murray's analysis?**

5 A. Yes. Mr. Murray did not account for Empire's financing of its Wind Projects in his  
6 recommended capital structure in his direct testimony. One of the main drivers of this  
7 rate case is to place Empire's investment in its Wind Projects in the utility's base rates.  
8 It is therefore critical that the financing of the Wind Projects be reflected in the capital  
9 structure used by the Commission to set rates in this rate case. Empire incorporated the  
10 financing of the Wind Projects in the capital structures of Empire, LUCO and APUC.  
11 Mr. Murray did not. While Empire assumes that Mr. Murray will account for said  
12 financing in his rebuttal testimony, he had all the relevant information and could have  
13 included such in his direct testimony. To the extent Mr. Murray accounts for the  
14 financing of the Wind Projects in his rebuttal testimony, he should not be allowed to  
15 selectively pick and choose what should and should not be included as common equity.

16 (iii) **Other Inconsistencies**

17 **Q. Are there misleading statements by Mr. Murray in his Direct Testimony?**

18 A. Yes. Mr. Murray states that in presentations to fixed income investors, APUC indicates  
19 that it targets a long-term debt to total capital ratio in the range of 50% to 55% (45-  
20 50% equity ratio) for its Regulated Utility Services Group and a long-term debt ratio  
21 of 40%-50% (50% to 60% equity ratio) for its Renewable Energy Group. His cite for  
22 this statement is a Liberty Utilities Fixed Income Presentation and Liberty Power Co.  
23 Fixed Income Update Presentation both from September 2017, which are over 4 years  
24 old. He also provided a September 2020 Liberty Utilities Fixed Income Presentation as

1 alleged support of his broad conclusion statement above. Upon review of this  
2 September 2020 Presentation, there is a sole line reference in the entire presentation  
3 that Liberty Utilities is committed to BBB investment grade credit metrics. The sub-  
4 bullet to that statement is target debt to capital < 55%, which is simply one of the many  
5 rating agency guidelines used to determine credit ratings. This sole statement is hardly  
6 evidence supporting his broad conclusion statement above on APUC capital structure  
7 policy.

8 **Q. Any final statements on Mr. Murray’s Direct Testimony statements versus his**  
9 **responses to Data Requests in this case?**

10 A. Yes. He makes a statement that APUC has been more active in issuing additional  
11 holding company securities than at the time of the last case, that these security issuances  
12 are not guaranteed by LUCO, but that to the extent liquidity is being maintained by  
13 APUC rather than at LUCO or Empire, “this disrupts the original intent of certain  
14 Uniform System of Account (USOA) principles”<sup>9</sup>. He later makes an additional  
15 statement that “APUC’s increased use of holding company debt causes him concern as  
16 to the potential manipulation of LUCO’s capital structure”<sup>10</sup>. In Response to Data  
17 Request 12 and Data Request 13 in this case, which asked him to provide factual  
18 evidence, citations, documentation and explanations of these outrageous/speculative  
19 statements, Mr. Murray responded that “other than discovering that APUC is issuing  
20 more short-term debt now than at the time of the 2019 rate case, he has yet to discover  
21 a specific example of a current financing transaction from APUC to LUCO that

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<sup>9</sup> ER-2021-0312, Direct Testimony of David Murray, p. 5, lines 11-12.

<sup>10</sup> ER-2021-0312, Direct Testimony of David Murray, p. 7, lines 13-14.



1 demonstrates an inappropriate charge of long-term capital costs for AFUDC based on  
2 FERC USOA's prescribed formula applied to Empire's per books balance sheet.  
3 Therefore, there is no factual evidence Mr. Murray can provide and, consequently his  
4 blanket sweeping innuendos are incorrect and very misleading. Copies of Mr.  
5 Murray's responses to Data Request 12 and 13 are attached to my rebuttal testimony  
6 as **Rebuttal Schedule TM-1**.

7 **Q. Is there anything unusual about APUC issuing more short-term debt or other**  
8 **securities since the 2019 Rate Case?**

9 A. No. APUC is a large and growing company both from a capital expenditure as well as  
10 acquisitions of additional utility and non-utility businesses. Quite simply, that is what  
11 APUC does. Hence, to finance this growth, additional securities would have to be  
12 issued.

13 (iv) **Merger Stipulations 4 and 5**

14 **Q. What is the basis for your statement that Mr. Murray has misinterpreted merger**  
15 **stipulations 4 and 5 of the Merger Order in making his recommendation?**

16 A. Mr. Murray claimed in the 2019 Rate Case that pursuant to merger stipulations 4 and  
17 5 of the Merger Order the Commission could not approve a capital structure to set rates  
18 for Empire that contained an equity ratio greater than what was used by the  
19 Commission in the Empire rate case immediately prior to Liberty's acquisition of  
20 Empire in January of 2017, which was 49%. That interpretation is totally inconsistent  
21 with the language contained in stipulation 4 of the Merger Order. The language in  
22 stipulation 4 specifically allows for increases in the cost of capital provided that such  
23 were not the result of the transaction between Liberty and Empire. Any net increases  
24 in the cost of capital not associated with the transaction are allowed provided Empire

1 shows that such were the result of factors not associated with the transaction. In this  
2 case, Empire is using Empire's booked capital structure adjusted to account for its  
3 financing of the Wind Projects. Empire witness John Reed's testimony shows that the  
4 capital structure proposed by Empire in this case is similar to other peer electric utilities  
5 in his proxy group. The changes in Empire's capital structure were based upon market  
6 factors and not factors related to the merger transaction.

7 **Q. Did Empire follow the provisions of stipulation 5 of the Merger Order in making**  
8 **its recommendation relating to Empire's capital structure in the current rate**  
9 **case?**

10 A. Yes. In my direct testimony, I compared Empire's consolidated actual capital structure  
11 at September 30, 2020, pro formed for the Wind Project financings and common equity  
12 changes through March 31, 2021. Pursuant to stipulation 5, I then compared Empire's  
13 consolidated capital structure to its indirect parent LUCO's capital structure (adjusted  
14 per Mr. Murray's adjustments in the 2019 Rate Case) and its ultimate parent APUC's  
15 capital structure (again adjusted per Mr. Murray's adjustments in the 2019 Rate Case)  
16 after pro forming the same wind financing arrangements and any common equity  
17 changes to March 31, 2021. Per stipulation 5, the comparison was made in order to  
18 determine if Empire's capital structure was different from that of the entity or entities  
19 in which Empire relies for its financing needs (LUCO and APUC). Since Empire's  
20 consolidated capital structure was about the same as LUCO and more economical than  
21 APUC's capital structures, Empire's consolidated capital structure was used to  
22 determine rates in this rate case. While I used the methodology set forth in stipulation  
23 5 and the methodology recommended by Mr. Murray and approved by the Commission  
24 in the 2019 Rate Case, Mr. Murray did not do so in the testimony he filed. Instead of

1 determining whether Empire's consolidated capital structure was similar to LUCO or  
2 APUC's capital structure, Mr. Murray testified that such step was no longer necessary  
3 because Empire no longer does its own financing. However, the reliance on affiliates  
4 for financing has not changed, and yet the Commission followed stipulation 5 in  
5 including Empire's consolidated capital structure in the review. Mr. Murray is the one  
6 that has failed to comply with the language in stipulation 5.

7 **Q. Are there any other misleading statements relating to the Merger Order made by**  
8 **Mr. Murray in his Direct Testimony?**

9 A. Yes. Mr. Murray states that Merger Condition 4 from Case EM-2016-0213 requires  
10 that Empire's cost of capital shall not increase as a result of APUC acquiring Empire.  
11 He then states that the upper constraint on the allowed common equity ratio in the  
12 capital structure should be 49% based on Empire's request in its last rate case before it  
13 was acquired by APUC prior to Order EM-2016-0213. In Empire Data Request 19,  
14 Mr. Murray was specifically asked to provide the Commission Order stating that  
15 Empire's common equity ratio should not exceed 49%. His response was that the  
16 Commission's Order in Case EM-2016-0213 *did not identify a specific common equity*  
17 *ratio and therefore there is not a 49% upper limit* (emphasis added). A copy of Mr.  
18 Murray's response to Data Request 19 is attached to my rebuttal testimony as **Rebuttal**  
19 **Schedule TM-1.**

20 **Q. Does this conclude your Rebuttal Testimony at this time?**

21 A. Yes.

**VERIFICATION**

I, Todd Mooney, under penalty of perjury, on this 20th day of December, 2021, declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Todd Mooney