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Corp.
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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: GM-2012-____

DIRECT TESTIMONY

OF

PETER EICHLER

ON BEHALF OF

LIBERTY ENERGY (MIDSTATES) CORP.

*Oakville, Ontario, Canada
August 2011*

1 **Q. Please state your name and business address?**

2 A. My name is Peter Eichler. My business address is 2845 Bristol Circle, Oakville, Ontario
3 L6H 7H7.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by Liberty Utilities (Canada) Corp., which is the holding company for
6 Liberty Utilities Co. ("Liberty Utilities"), a Delaware corporation. I am employed as the
7 Director of Regulatory Strategy.

8 **Q. What are your principal responsibilities as Director of Regulatory Strategy?**

9 A. I have overall responsibility for regulatory strategy, including compliance filings and rate
10 cases, for Liberty Utilities. I am also responsible for maintaining regulatory outreach
11 programs in the jurisdictions in which the companies owned by Liberty Utilities operate,
12 including planning regular meetings with key regulatory personnel.

13 **Q. Please describe your professional and educational background?**

14 A. I have been employed by Liberty Utilities since September 2009. Prior to my
15 employment at Liberty Utilities, I was employed by Hydro One Networks Inc., Ontario's
16 largest distribution and transmission utility, and Powerstream Inc., a local distribution
17 company serving over 300,000 customers north of Toronto. My roles at these utilities
18 included corporate finance, ratemaking and regulatory affairs. I am a designated
19 accountant, having received the Certified Management Accountant designation in
20 Canada. In addition, I hold a Master of Business Administration degree from the
21 University of Windsor in Ontario, Canada, as well as a Bachelor of Commerce degree

1 with a specialization in finance from Ryerson University in Toronto, Canada. I also
2 completed the National Association of Regulatory Utility Commissioners' Utility School
3 in November, 2009.

4 **Q. Have you testified before the Missouri Public Service Commission ("Commission")**
5 **or other state public utility regulatory commissions?**

6 A. I have not testified before the Commission. However, I have testified previously before
7 the Arizona Corporation Commission on several occasions in rate cases, with a particular
8 focus on regulatory and finance issues. I also have provided written testimony before the
9 New Hampshire Public Utilities Commission in an acquisition proceeding, and I have
10 testified before a Texas judicial panel on utility valuation for a condemnation proceeding.

11 **Q. What are the purposes of your testimony?**

12 A. The purpose of my testimony is to discuss Liberty Utilities' overall philosophy with
13 regard to meeting its regulatory obligations and our plans to actively engage with our
14 customers and the communities we serve; discuss the rate impact of the transaction;
15 discuss Liberty Energy Midstates' capital structure; summarize the regulatory approvals
16 needed for the transaction; and provide an overview of Liberty Utilities' cost allocation
17 methodologies used to apportion costs.

18 **Q. Are you sponsoring any Schedules?**

19 A. Yes. I am sponsoring the following Schedule:

20 **Schedule 2.1 – Liberty Water Footprint Calculator**

21

1 Overview of Regulatory Philosophy

2 **Q. Please provide an overview of Liberty Utilities' regulatory philosophy?**

3 A. As Ian Robertson discusses more broadly in his testimony, our regulatory outreach
4 program is a key part of Algonquin Power & Utilities Corp.'s ("Algonquin") business
5 model – specifically the "Integrate" component of the approach described by Ian
6 Robertson and shown in his Schedule 1.1. The fundamental premise of the philosophy is
7 to actively maintain open lines of communications with regulators and other
8 stakeholders, ensure that Liberty Utilities is an outstanding member of the utility
9 community, and act as a partner in furthering the programs and policies of regulatory
10 bodies.

11 **Q. How does Liberty maintain open lines of communication with regulators and other**
12 **stakeholders?**

13 A. In addition to a general ongoing effort to keep regulators in each jurisdiction where we do
14 business informed on matters of interest to them, we schedule regular meetings to
15 provide updates on our operations, and elicit feedback on our performance. In those
16 jurisdictions where ex parte rules permit, we include the commissioners themselves in
17 this process. We have found that conducting meetings on a semi-annual or even quarterly
18 basis helps to ensure that regulators have an opportunity to learn more about the issues
19 that we encounter in operating our business and delivering service to our customers,
20 share feedback from our customers, learn more about issues that are important to the
21 regulatory commissions, and respond quickly to matters of concern. These meetings also
22 provide an opportunity to keep regulators apprised of changes in service or business

1 processes that we are considering implementing. In particular, the meetings provide an
2 excellent opportunity for commissions' consumer affairs divisions to let us know how we
3 are doing and enable us to further evaluate where we can make changes that benefit our
4 customers. We very much want to encourage an open dialogue and an atmosphere of
5 accessibility and responsiveness in our relationship with our customers and the regulators
6 who oversee our operations. We plan to implement a similar process in Missouri from the
7 outset to clearly signal our desire to place customer service and regulatory relations at the
8 top of our list of priorities.

9 **Q. With utilities in different jurisdictions, how is Liberty Utilities able to interact with**
10 **regulators and other stakeholders on a regular basis and in a meaningful way?**

11 A. Liberty Utilities believes in operating the utilities it owns with significant focus on local
12 operations. Regulatory Affairs are no different. As in other areas, we have organized
13 Regulatory Affairs along jurisdictional lines, with authority and control vested at the
14 regional level. Thus, we establish and maintain regulatory relationships directly through
15 our team at the regional level. We believe that the people who are best positioned to
16 respond quickly to any questions and to provide the latest, most meaningful information
17 and updates should be the ones who coordinate, oversee and conduct those meetings and,
18 most important, they should be responsible for follow up on action items coming out of
19 the meetings we have with Commission Staff. Because these are people who are running
20 the utility and are familiar with the needs of local customers and the concerns of the
21 regulators in their region, the meetings can focus on the most important issues at any
22 given time and result in meaningful dialogue and prompt follow up on matters that have
23 been identified for further action.

1 We believe these meetings will be of particular value early on in our relationship with the
2 Commission and other stakeholders because an ownership change can provide an
3 opportunity for customers and others to voice their desire for changes to existing
4 operating practices and for us to accommodate those changes. In particular, Liberty
5 Energy Midstates can and will adapt its practices to meet local needs.

6 **Q. Can you give an example of where Liberty Utilities has used feedback it received**
7 **from regulatory stakeholders to improve its service offering?**

8 A. One example is the recent implementation of a “Footprint Calculator” that was developed
9 by Liberty Water Co. (“Liberty Water”) in response to input received from regulators and
10 legislators in a number of our jurisdictions who expressed a desire for utilities to focus on
11 providing better customer information materials regarding conservation. In response to
12 those concerns, we developed this tool to assist customers in estimating their water
13 footprint, so they can compare their water usage to that of the community, state, or
14 country, and enable them to change their consumption patterns. Today, that footprint
15 calculator is front and center on Liberty Water’s website at www.libertywater.com
16 **(Schedule 2.1)**. Programs such as the water footprint calculator clearly demonstrate
17 Liberty Utilities’ commitment to sustainability and our willingness to respond directly to
18 concerns raised by state regulatory commissions and legislators.

19 **Q. You indicated that Liberty Energy Midstates will maintain contact with**
20 **stakeholders beyond the Commission. What do you mean by that?**

21 A. We seek to communicate and stay in contact with our customers and the community in a
22 number of ways. One hallmark of our approach to providing service is to have customer

1 calls answered within the service area where possible and to maintain customer walk-in
2 centers in a number of locations. Second, we conduct regular customer satisfaction
3 surveys to track the effectiveness of our efforts to meet customers' expectations and
4 needs. We also conduct programs designed to integrate our employees more directly into
5 the community. For example, Liberty Utilities has a program called Liberty Days that is
6 designed to teach our customers about utility programs and conservation efforts. In
7 addition, we encourage volunteerism among our employees at local events that our
8 customers are likely to attend. In 2010, we participated in thirty-one such community
9 events, and the employees of our local utilities volunteered many hours of support for
10 these events. In addition to giving back to the community, we also use these events as
11 opportunities to speak with our customers, often distributing materials on conservation
12 and other customer service related information.

13 **Q. Can you give us some examples of the types of events you participate in?**

14 A. Yes. In the past year, Liberty Utilities personnel have participated in school based
15 fundraisers and community holiday events for Christmas and Halloween, our employees
16 have acted as "bell ringers" for the salvation army, and we held our own "Open House"
17 events so our customers could visit our offices, learn about their utility company and the
18 services available to them, and ask us questions about our operations.

19 **Q. Does Liberty Energy Midstates plan to be that active in Missouri?**

20 A. Absolutely. As I mentioned before, we believe these types of activities are key to the
21 "integrate" portion of the business plan described by Ian Robertson in his direct
22 testimony. To further support this key function, our organization will be structured so

1 that a key member of our leadership team (specifically, the Government, Regulatory &
2 Community Affairs function) for Liberty Energy Midstates will have responsibility for
3 community support and relations in Missouri.

4 **Q. Please provide more detail about the responsibility of the senior leader in charge of**
5 **Government, Regulatory & Community Affairs.**

6 A. The role will be based in the Midstates Utilities service territory and will report directly
7 to the president. Our plan is to make this position one that will be a key part of our Senior
8 Management Team for Liberty Energy Midstates. The role will be responsible for
9 maintaining ongoing interactions with local officials and the business community to
10 ensure we are meeting customer expectations and to work closely with all functions
11 across our organization to ensure that we respond promptly to any concerns that are
12 raised and to facilitate our support for important state policies.

13 **Q. What about responsibility for regulatory filings?**

14 A. Regulatory filings will be primarily supported by the operational area that is related to the
15 information included in the particular filing, with oversight from the Government,
16 Regulatory & Community Affairs group. Liberty Utilities has traditionally ensured
17 ongoing compliance with required regulatory filings by maintaining databases of those
18 filings that include information such as the type of filings, regulatory jurisdiction, filing
19 date, resource requirements, information requirements, etc. This way, the operational
20 group to which a particular filing relates can provide the most relevant information
21 required, while the Government, Regulatory and Community Affairs group can provide

1 oversight and ensure that all filings conform to applicable requirements and are submitted
2 with required deadlines.

3 **Q. Will Liberty Energy Midstates be subject to all applicable laws, regulations, rules,**
4 **decisions and policies governing the regulation of Missouri public utilities?**

5 A. Yes. Upon the closing of the proposed transaction, Liberty Energy Midstates will
6 become subject to all applicable laws, regulations, rules, decisions and policies governing
7 the regulation of Missouri public utilities. There is nothing contained in this transaction
8 that would diminish or otherwise adversely affect the ability of the Commission and
9 Missouri law to regulate Liberty Energy Midstates in Missouri. Liberty Energy
10 Midstates is hopeful that its local focus will allow it to maintain excellent and close
11 relations with the Commission.

12 Capital Structure

13 **Q. Will Liberty Energy Midstates have the ability to raise necessary capital on**
14 **reasonable terms or to maintain a reasonable capital structure?**

15 A. Yes. Liberty Energy Midstates plans to use a reasonable and prudent capital structure
16 with a 45/55 debt/equity ratio. This is consistent with previous Commission decisions and
17 industry norms. Liberty Energy Midstates will be able to access the capital markets on its
18 own or through its corporate structure – as a publicly listed corporation, Liberty Energy
19 Midstates' parent Algonquin is readily able to access the capital markets on reasonable
20 terms. By maintaining a strong balance sheet for Liberty Energy Midstates, as is our
21 plan, we should be able to ensure that its ability to access the capital markets is not
22 impaired. Moreover, given Algonquin's strong balance sheet and excellent credit rating,

1 we have sufficient and ready access to equity and debt capital when needed and can use
2 that access to meet the on-going capital requirements of Liberty Energy Midstates.

3 We recently completed the credit rating process for our California utility and obtained a
4 BBB (flat) investment grade credit rating. We intend to maintain investment grade status
5 to insure ready access to capital on reasonable terms. The fifty-five percent (55%) equity
6 component of Liberty Energy Midstates' initial capital structure underscores Algonquin's
7 strong commitment to ensure ready access to the capital markets.

8 **Q. Please describe what issuances of debt and equity Liberty Energy Midstates is**
9 **requesting approval under Sections 393.190 and 393.200 RSMo?**

10 A. We estimate based on the purchase price of approximately \$124 million that Liberty
11 Energy Midstates will issue a minimum of \$68 million of its common stock to its parent,
12 Liberty Energy in respect to its initial equity capitalization. Based on the purchase price,
13 Liberty Energy Midstates estimates that it would borrow a minimum of approximately
14 \$56 million in long term debt in respect of its initial debt capitalization. This debt will
15 likely be in the form of privately placed secured notes. In addition, Liberty Energy
16 Midstates will likely maintain a revolving short-term credit facility for working capital
17 requirements as part of its operations.

18 The initial capitalization requirements that I have just described may change based on the
19 purchase price adjustments set forth in the Purchase Agreement. While amount of equity
20 and debt issued may change, Liberty Energy Midstates would not expect to materially
21 change from its proposed initial capitalization debt to equity ratio of 45/55. The strong
22 equity component demonstrates Algonquin's commitment to ensuring Liberty Energy

1 Midstates' ready access to the capital markets and underscores its substantial investment
2 in the Midstates Utilities.

3 The terms of the secured long term notes will also vary depending on market conditions
4 in effect at the time of issuance. It is likely that Liberty Energy Midstates will issue
5 multiple series of notes with different maturity dates and interest rates ranging from
6 fifteen to thirty years. The notes may be secured by a pledge of all of Liberty Energy
7 Midstates' assets. We will keep the Commission informed regarding the amount of
8 Liberty Energy Midstates' expected equity capitalization and the amount and terms of its
9 expected debt issuance.

10 **Q. Why is Liberty Energy Midstates unable to provide the exact amount of the**
11 **issuances at this time?**

12 A. Liberty Energy Midstates believes that allowing it flexibility to adapt its borrowings to
13 market conditions in place nearer in time to the closing will improve its ability to obtain
14 the most reasonable terms for the debt. Therefore we respectfully request that the
15 Commission allow Liberty Energy Midstates the authority to issue the debt in amounts up
16 to those to be requested in later filings or testimony on terms consistent with those
17 indicated to the Commission herein and in later filings or testimony. Of course, we would
18 ensure that the debt comply with any conditions set forth by the Commission in such an
19 approval.

20 **Q. Please describe any fees owed under Section 386.300.2 RSMo?**

21 A. Liberty Energy Midstates will pay fees as required under Section 386.300.2 which states
22 as follows:

1 For certificate authorizing an issue of bonds, notes or other evidences of
2 indebtedness, the commission shall charge one dollar for each thousand
3 dollars of the face value of the authorized issue, or fraction thereof, up to
4 one million dollars, and fifty cents for each one thousand dollars over one
5 million dollars and up to ten million dollars, and twenty-five cents for
6 each one thousand dollars over ten million dollars, with a minimum fee in
7 any case of twenty-five dollars; provided, that no fee shall be charged
8 when such issue is made for the purpose of guaranteeing, taking over,
9 refunding, discharging or retiring any bond, note or other evidence of
10 indebtedness up to the amount of the issue guaranteed, taken over,
11 refunded, discharged or retired.

12 Rate Filings

13 **Q. Does Liberty Energy Midstates plan to include an acquisition premium as part of**
14 **the rate base or charge transaction costs to ratepayers.**

15 A. No. Liberty Energy Midstates is not seeking any determination to include an acquisition
16 premium as part of the rate base, and does not intend to charge the transaction costs
17 incurred in the acquisition to its customers. However, under any circumstances it is
18 reasonable to assume that a rate case would be filed in Missouri at some point in the near
19 future, since the last rate case was filed in 2009. See Re Atmos Energy Corporation,
20 Case No. GR-2010-0192 (filed December, 2009). If Liberty Energy Midstates files for
21 an increase in rates, however, it would not be an increase resulting from this transaction.

1 **Q. Will the proposed asset purchase result in any adverse rate impacts on retail**
2 **customers?**

3 A. No. The proposed transaction will not result in any adverse rate impacts on retail
4 customers. As stated above, Liberty Energy Midstates does not believe that any rate
5 increases will occur as a result of this transaction. Liberty Energy Midstates is not aware
6 of any reason why it would cost Liberty Energy Midstates more to operate the Atmos
7 properties than its current cost structure indicates.

8 **Q. Will the proposed asset purchase result in any savings and if so how will those**
9 **savings be allocated?**

10 A. Just as Liberty Energy Midstates does not anticipate any cost increases resulting from the
11 transaction, we also do not anticipate any savings resulting from the transaction. We are
12 not aware of any reason why it would be more or less costly for us to operate the
13 Midstates Utilities than its current cost structure indicates. We have, however, highlighted
14 operational benefits that we deem likely to result from the proposed transaction, which
15 are further discussed in the Direct Testimony of David Pasioka.

16 **Q. Will Liberty Energy Midstates file tariffs in accordance with Section 393.140.11**
17 **RSMo.?**

18 A. Liberty Energy Midstates requests the Commission approval to continue providing all
19 services currently provided by Atmos at the same rates, and in accordance with the rules,
20 regulations and terms and conditions of service that are currently in place for the Atmos
21 service area, and to adopt the tariffs of Atmos setting forth such the rates, rules,
22 regulations and terms and conditions of service, immediately upon the closing of the

1 Purchase Agreement. Rather than Liberty Energy Midstates' replicating the tariffs of
2 Atmos and identifying them as tariffs of Liberty Energy Midstates, applicants request the
3 Commission waive the re-filing of the tariffs, and consent to the instantaneous transfer of
4 their identity as Liberty Energy Midstates' tariffs, at the moment the transaction is
5 effective. Liberty Energy Midstates is aware of the Commission previously allowing
6 tariffs to be adopted without a new filing of tariffs in *Re: Joint Application of Atmos*
7 *Energy Corporation and Arkansas Western Gas Company, d/b/a Associated Natural Gas*
8 *Company*, Case No. GM-2000-312. As was the case in Case No. GM-2000-312, it would
9 be more efficient from an administrative sense to allow Liberty Energy Midstates to
10 adopt the current tariffs of Atmos, rather than re-filing identical tariffs with the exception
11 of the name. Since the tariffs will be identical except for the change in name, Liberty
12 Energy Midstates requests that the Commission exercise its authority under Section
13 393.140.11 to waive the 30-day notice requirement for the filing of tariffs to assist with
14 an orderly post-acquisition transition.

15 Other Regulatory Approvals

16 **Q. Is Liberty Energy Midstates requesting the approval of any transfer of Certificates**
17 **of Public Convenience and Necessity?**

18 A. Yes. Atmos holds numerous Certificates issued pursuant to Section 393.170 RSMo.
19 Upon closing of the Transaction, Atmos will no longer provide public utility service in
20 Missouri. Liberty Energy Midstates will continue all of the natural gas distribution
21 service in the area presently served by Atmos, without interruption. Liberty Energy
22 Midstates has the managerial, technical, and financial qualifications to provide reliable

1 and efficient natural gas service in Atmos' existing service area. Subject to Commission
2 approval, Atmos plans to transfer all of the Certificates of Public Convenience and
3 Necessity ("Certificates") it holds in Missouri to Liberty Energy Midstates pursuant to
4 Section 393.170. We request that the Commission, upon finding that the conditions exist
5 for approval of the Transaction pursuant to Section 393.190, also authorize the transfer to
6 Liberty Energy Midstates of all of the Certificates granted to Atmos or its predecessors
7 pursuant to Section 393.170, or in the alternative, grant Liberty Energy Midstates new
8 Certificates to serve the same areas now served by Atmos.

9 **Q. Please describe why Liberty Energy Midstates is requesting a waiver of its**
10 **obligation to keep books and records in Missouri?**

11 A. Liberty Energy Midstates is requesting approval under 4 CSR 240-10.010 to maintain its
12 books and records outside of Missouri. Digital copies of all books and records will be
13 available in Missouri and at the Commission's request hard copies will be made available
14 in Missouri as well. However, certain original source paper documents may be more
15 efficiently maintained in other locations. To the extent the Commission requires these
16 original source documents that will be kept outside Missouri, Liberty Energy Midstates
17 acknowledges that it will be liable for, and upon proper invoice from the Commission
18 will promptly reimburse for reasonable costs and expenses associated with the audit or
19 inspection of any books, accounts, papers, records and memoranda kept outside of the
20 State, all as required by 4 CSR 240-10.010(3)(F).

21

1 **Q. Please discuss the process Algonquin and Liberty Utilities uses for cost allocation**
2 **purposes?**

3 A. Algonquin and its subsidiaries operate as part of a shared services model under which
4 certain services provided at the corporate level, either by Algonquin itself or by Liberty
5 Utilities, are charged to Algonquin affiliates based on either a direct charge or a defined
6 cost allocation methodology. The majority of costs are based on direct charges because
7 they reflect labor costs for particular service. Direct charges for labor are based on time
8 sheets that are kept for all management employees to reflect the specific entity for which
9 they are performing services at any given time and the project they are working on. By
10 utilizing direct charges whenever feasible, the shared services model has a significant
11 level of transparency (and simplicity) that enables regulators to readily determine the
12 costs attributable to parent level or affiliate services and whether those costs are
13 appropriate.

14 **Q. Can you provide a high level overview of what costs will be allocated?**

15 A. Yes. The cost allocations can be categorized into three distinct areas:

- 16 • Central Office Costs – These costs relate to the strategic management, access to
17 capital, and internal controls provided by Algonquin to all of its subsidiaries,
18 including Liberty Energy Midstates. These allocations are non-labor based.
- 19 • Liberty Utilities costs – These costs relate to the administration of the utilities
20 group using a shared services model. Allocated costs include labor for services
21 such as accounting and information technology services.

- Liberty Energy Midstates: Examples of shared resources for which allocations may be used include human resources, finance, regulatory affairs and environmental, health, safety, and security.

Q. What costs are allocated, rather than being directly charged, and how is that cost allocation determined?

A. Algonquin and its affiliates have a cost allocation manual that sets forth a cost allocation methodology to be used by all Algonquin entities, based largely on the guidelines established by the National Association of Regulatory Utility Commissioners. Under the methodology set forth in the manual, allocated costs generally fit into four major categories: (1) Strategic Management; (2) Capital Access; (3) Financial Controls; and (4) Administrative. Strategic Management includes costs related to professional services (e.g., general legal costs). Capital Access includes items such as fees to be listed on the Toronto Stock Exchange, shareholder communications expense, and other expenses associated with Algonquin's being a publicly traded company and other costs associated with accessing the capital markets. Financial Controls includes costs related to tax services, tax planning, parent level audits, and Algonquin's Board of Directors. Administrative encompasses costs such as rent, depreciation expense for office equipment, and other office costs.

Q. For those costs that are allocated, rather than directly charged, how does Algonquin determine the portion to allocate to each of its subsidiaries?

A. Algonquin's cost allocation methodology is based on several factors – EBITDA, revenues, plant in service, employees, square footage, and expenses. Where one of these

1 factors is the principal cost driver, it is used exclusively to allocate costs among
2 Algonquin's subsidiaries – Algonquin Power Co., Liberty Water, and Liberty Energy.
3 Where a single cost driver cannot be identified, four factors EBITDA, revenues, plant in
4 service, and expenses are averaged to determine the proper cost allocation. Costs that are
5 allocated to Liberty Water or Liberty Energy are then further allocated to their respective
6 subsidiaries based on a mix of four factors including plant in service, customer count,
7 labor costs, and other expenses. In addition, there are certain costs for services performed
8 by Liberty Utilities, rather than Algonquin, that must be charged to the appropriate
9 entities.

10 **Q. How are costs for services that are performed by Liberty Utilities charged?**

11 A. Those costs mostly relate to labor, which generally can be directly charged. Certain of the
12 services benefit Algonquin itself, and therefore they are directly charged to Algonquin.
13 However, the majority of the costs and related services benefit Liberty Water and Liberty
14 Energy and their subsidiaries. These costs are directly charged either to Liberty Water or
15 Liberty Energy, as appropriate, and in turn, are allocated to each operating company
16 based on a weighted average of four different factors – rate base, total customers, non-
17 labor expenses, and labor. Where costs cannot be attributed either to Liberty Water or
18 Liberty Energy, they are divided using the four factor methodology described above. Also
19 non-labor costs are allocated using a four factor methodology.

20 **Q. How will the cost allocation methodology work for Liberty Energy Midstates?**

1 A. Liberty Energy Midstates will use the same allocation principles as all of our other
2 utilities, which means direct charging as much as possible, and using the cost allocation
3 drivers discussed in the cost allocation manual.

4 **Q. Does that conclude your testimony?**

5 A. Yes.

6