

Exhibit No.:

Issue(s):

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Sponsoring Party:

Case No.:

Resource Portfolio/
Transition Plan

Marke/Surrebuttal

Public Counsel

EM-2016-0213

SURREBUTTAL TESTIMONY

OF

GEOFF MARKE

Submitted on Behalf of the Office of the Public Counsel

**THE EMPIRE DISTRICT ELECTRIC COMPANY, LIBERTY UTILITIES
(CENTRAL) CO. AND LIBERTY SUB CORP.**

CASE NO. EM-2016-0213

August 5, 2016

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SURREBUTTAL TESTIMONY

OF

GEOFF MARKE

**EMPIRE DISTRICT ELECTRIC COMPANY (ELECTRIC)
EMPIRE DISTRICT GAS COMPANY, THE-INVESTOR (GAS)
LIBERTY UTILITIES (CENTRAL) CO. INVESTOR (ELECTRIC)
LIBERTY SUB CORP. INVESTOR (ELECTRIC)
CASE NO. EM-2016-0213**

1 **I. INTRODUCTION**

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

3 A. Dr. Geoffrey Marke, Economist, Office of the Public Counsel (“OPC” or “Public Counsel”),
4 P.O. Box 2230, Jefferson City, Missouri 65102.

5 **Q. Are you the same Dr. Marke that filed rebuttal testimony in EM-2016-0213?**

6 A. Yes.

7 **Q. What is the purpose of your surrebuttal testimony?**

8 A. The purpose of this testimony is to respond to the rebuttal testimony of:

- 9 • The Missouri Division of Energy (“DE”) witness Martin R. Hyman concerning
10 Empire’s:
11 ▪ Resource Portfolio

12 This testimony will also be updating the Commission on the Applicants’ response to OPC’s
13 data requests regarding the transition plan meetings to identify synergistic benefits between
14 the Companies.

15 **Q. Please state OPC’s position.**

16 A. In addition to the issues raised in this surrebuttal, OPC maintains its position from rebuttal
17 testimony and continues to recommend that the Commission reject the application because
18 the proposed acquisition would result in a detriment to ratepayers.

1 **II. RESOURCE PORTFOLIO**

2 **Q. Please state DE’s position within the context of the merger.**

3 A. DE entered into a Stipulation and Agreement (“S&A”) with the Applicants to support the
4 merger under certain agreed upon conditions including future consideration of third-party
5 studies related to combined heat and power (“CHP”), microgrid deployment, and community
6 solar programs as well as consideration of future energy efficiency adoption. DE’s
7 endorsement is found in the rebuttal testimony of DE witness Hyman, which states in
8 pertinent part:

9 DE views this application as an opportunity for the Applicants to increase
10 their commitments to energy efficiency and renewable energy, solidifying
11 the case so that there will be no detriment to the public interest resulting
12 from this merger.¹

13 **Q. Have the Applicants made any tangible commitments to increase energy efficiency or**
14 **renewable energy in its proposed Application or in DE’s S&A?**

15 A. No.

16 **Q. Then what are the agreed-upon conditions?**

17 A. The Applicants are only agreeing to *consider* reviewing independent studies related to CHP,
18 microgrid deployment and community solar. The Applicants would also only be agreeing to
19 *consider* filing a Missouri Energy Efficiency Investment Act (“MEEIA”) portfolio *if* it was
20 recognized as the preferred plan in future integrated resource plans (“IRPs”).

21 **Q. Does the S&A mean that there will be no detriment to the public interest?**

22 A. No. There is nothing in the S&A binding beyond mere “considerations,” all of which could
23 happen through the normal regulatory process under Empire’s current make-up. It is unclear

¹ EM-2016-0213 Rebuttal Testimony of Martin R. Hyman, p. 4, 7-9.

1 how the Applicants’ agreement to “consider” reviewing a report does anything to ensure
2 there is no detriment to the public interest.

3 **Q. Does DE present evidence that the Applicants are better equipped to enable energy**
4 **efficiency and renewable energy deployment than Empire as a stand-alone entity?**

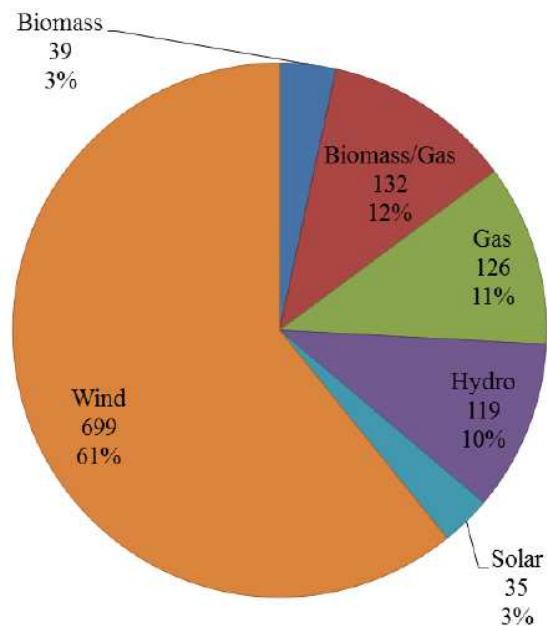
5 A. Mr. Hyman offers no evidence that the Applicants are in a better position to enable energy
6 efficiency adoption than Empire. However, he does invite comparisons between Empire’s
7 current generation portfolio and Liberty’s North American generation assets (largely based in
8 Canada) as reprinted here in Table 1 and Figure 1 below:

9 Table 1: Empire’s 2015 generation portfolio

Type	Capacity (MW)	Percent of Total
Owned Coal	434	25.67%
Coal (Purchased)	50	2.96%
Natural Gas	936	55.35%
Hydroelectric	16	0.95%
Wind (Purchased)	255	15.08%
Total	1,691	100.00%

10

11 Figure 1: Liberty’s North American generation portfolio



12

1 The inference is, because Liberty’s North American assets are less fossil-fuel dependent,
2 Empire will likely be less fossil-fuel dependent in the future as well. This sentiment is
3 reaffirmed by Mr. Hyman in the following Q & A:

4 Q. What does DE recommend based on these observations?

5 A. DE agrees with Mr. Pasieka and Mr. Krygier that the Applicants appear
6 well-positioned to use Algonquin’s renewable energy resource development
7 expertise to the benefit of EDE. To solidify these benefits, DE supports a
8 commitment by the Applicants **to consider** the development of renewable
9 energy resources for EDE in Missouri. (emphasis added)²

10 **Q. Does OPC agree with this observation?**

11 A. No. This observation is grossly misleading and entirely speculative at best. Mr.
12 Hyman offers no definition of “renewable energy resource development expertise,”
13 assumes renewable energy is a “benefit” to ratepayers, and makes no attempt to
14 address the regulatory, market, and resource-constrained realities in which Empire
15 currently operates. In short, Mr. Hyman’s proclamation is without context. For
16 example, approval of the merger would not change the fact Empire has just added an
17 additional 100MW in capacity in its Riverton 12 combined cycle unit. Moreover,
18 according to Empire’s recently filed triennial IRP, there will be no need for a
19 MEEIA³ and no need for future capacity until 2029 as reprinted in Figure 2:

² EM-2016-0213 Rebuttal Testimony of Martin R. Hyman p. 11, 3-6.

³ EO-2016-0223 The Empire District Electric Company Triennial Compliance Filing. Volume 7 Resource Acquisition Strategy Selection 7-8: “Empire’s decision makers have selected Plan 5 as the Preferred Plan. Plan 5 contains no Missouri DSM portfolio and supply-side resources are not added until the latter part of the study period.”

1 Figure 2: Empire’s Twenty-Year Preferred Supply-Side Additions⁴

Year	Common to All IRP Plans (Applies to Preferred Plan)	Plan 5 (Preferred Plan)
2016	By Mid-2016, Riverton 12 begins combined cycle operation (100 MW addition to the Empire system)	
2017		
2018		
2019		
2020		
2021		
2022		
2023	Energy Center Unit 1 assumed to retire for IRP purposes (82 MW loss)	
2024		
2025		
2026	Energy Center Unit 2 assumed to retire for IRP purposes (82 MW loss)	
2027		
2028	Meridian Way 105 MW Wind PPA expires (19 MW loss)	
2029		100 MW Combined Cycle, 100 MW Wind Resource
2030	Elk River 150 Wind PPA expires after 5-year extension (17 MW loss)	
2031		150 MW Wind Resource
2032		
2033	Riverton Units 10 and 11 assumed to retire for IRP purposes (33 MW loss)	
2034		
2035	Asbury Unit 1 assumed to retire for IRP purposes (194 MW loss)	200 MW Combined Cycle

2

3 Even if Empire needed to build additional capacity (which they do not), there is no

4 guarantee that renewable capacity would be the preferred generation, the prudent

5 choice, or the least cost option. It is OPC’s position ratepayers should not have to

6 pay for any additional capacity in the near future. This is especially true considering

7 ratepayers have experienced a compounded increase in rates of 62.23% over the past

8 ten years as shown in Table 2.

⁴ EO-2016-0223. The Empire District Electric Company Triennial Compliance Filing. Volume 7 Resource Acquisition Strategy Selection 7-9.

1 Table 2: Empire Rate Case History 2007-2016

Case Number	Dollar Value	Percent Increase
ER-2006-0315	\$29,300,000	9.96%
ER-2008-0093	\$22,040,395	6.70%
ER-2010-0130	\$46,800,000	13.90%
ER-2011-0004	\$18,685,000	4.70%
ER-2012-0345	\$27,500,000	6.85%
ER-2014-0351	\$17,125,000	3.88%
ER-2016-0023	\$20,400,000	4.46%
Total Dollars	\$181,850,395	
Total Compounded Increase		62.23%

2
3 That 62.23% compounded increase in rates has resulted in Empire being the
4 “cleanest” investor-owned utility in Missouri. Mr. Hyman’s inference that Liberty
5 will somehow “green” Empire’s resource portfolio is without foundation and is
6 entirely context-dependent on Liberty owning clean generation—largely in Canada.
7 Based on the evidence to date, DE’s positive assertions are without merit and
8 seriously misleading. Agreeing to a Stipulation where the conditions rest on
9 *consideration* of future reports does not “solidify the case” that the merger will not
10 result in a detriment to the public interest.

11 **III. TRANSITION PLAN**

12 **Q. Please summarize OPC’s concerns regarding the transition plan stated in**
13 **rebuttal testimony?**

14 A. On May 16th, 2016 parties met in Jefferson City for a technical session in which a
15 PowerPoint slide deck was presented by the Applicants specifically informing stakeholders
16 on its transition plan to merge operations with its present affiliates into the newly created

1 Liberty Central. Of particular note was a slide stating that a meeting was planned for June 2-3
2 in which “teams” would be formed to develop a Transition Plan for their function with
3 guidance and support from the Project Management Office.

4 On May 20th, OPC submitted data requests 2019-2022 and then received the following
5 responses on June 13th. Those requests and responses are as follows:

6 **OPC DR-2019** Please provide any and all templates for each “team” as
7 referenced in the Missouri Technical Session slide deck
8 presented in Jefferson City, MO. on May 16, 2016, slide
9 #24 entitled Transition Governance Approach. Specifically,
10 within the second bullet point, which states:

11
12 *Each team develops a Transition Plan for their function*
13 *with guidance and support from the Project Management*
14 *Office (PMO)—templates will be provided.*

15 **Response:**

16 Transition teams are holding regular phone conferences to
17 discuss transition planning issues, but have not finalized
18 transition template documents. Once these are finalized
19 they will be produced.

20 -----
21 **OPC DR-2020**

In reference to OPC DR-2019 (stated above). Please
22 provide a copy of each and every “teams” specific
23 Transition Plan. Additionally,

- 24 a) Please include copies developed for each team listed on slide
25 27 entitled Transition Team Leads from the aforementioned
26 report. If said team has no report please provide a narrative
27 explanation as to why no report was produced.

28 **Response:**

29 See response to OPC – Marke – No. 2019. Once such
30 reports are completed, they will be produced.

31 -----
32 **OPC DR-2021**

In reference to OPC DR-2020 (stated above), if said plans
33 have not been completed yet. Please provide completed
34 copies following the June 2-3 Transition Team meets in
35 Joplin.

36 **Response:**

37 Please see the response to OPC-Marke—No. 2019.
38

1 **OPC DR-2022**

2 In reference to OPC DR-2021, please provide any and all
3 documents (including but not limited to: handouts, reports,
4 presentations) from the June 2-3 Transition Team meets in
5 Joplin.

6 **Response:**

7 The June 2-3 Transition Team meeting was rescheduled
8 due to scheduling conflicts. The Joint Applicants will
9 produce responsive documents once the meeting occurs.

10 On July 20th, OPC submitted rebuttal testimony to the Commission with the aforementioned
11 information as well as a statement confirming that no further documentation or confirmation
12 on the transition status or the identified synergistic benefits has been shared with OPC.

13 On August 4th, OPC sent a notice of deficiency to the Applicants regarding the nonresponsive
14 nature of the data requests.

15 It is now August 5th and eighty-two days have now passed since stakeholders were first made
16 aware that the Applicant's would be holding transition team meetings in which synergistic
17 benefits would be identified and documented. Additionally, it has now been sixteen days with
18 no response since rebuttal was filed and this issue was raised formally in this docket.
19 Currently, it is my understanding that a discovery conference was requested by OPC
20 attorneys and counsel for the Company have assured OPC this will be provided by the close
21 of business day on August 9th.

22 As stated in my rebuttal testimony, it is important to remember that prior to the application,
23 the parties had literally as long as they felt they needed to prepare their case. As it stands, it
24 is unclear how the application supports the assertion that the transfer of control would result
25 in a "seamless transition" not detrimental to the public interest, let alone provide any benefit.
26 The continued absence of any such evidence raises serious doubt as to the veracity of such a
27 pronouncement.

28 **Q. Does this conclude your testimony?**

A. Yes, it does.