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Liberty – Exhibit 6P
Todd Mooney
Surrebuttal Testimony
File No. ER-2021-0312

Exhibit No.: _____
Issues: Capital Structure, Purchase Price Reductions, MPPM
Witness: Todd Mooney
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: The Empire District Electric Company
Case No.: ER-2021-0312
Date Testimony Prepared: January 2022

Before the Public Service Commission of the State of Missouri

Surrebuttal Testimony

of

Todd Mooney

on behalf of

The Empire District Electric Company

January 2022

Liberty™

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SURREBUTTAL TESTIMONY OF TODD MOONEY
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I. INTRODUCTION

Q. Please state your name and business address.

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

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

A. Yes, though I would note that as of January 10, 2022, I am now employed by Enlighten, Inc. as its Chief Financial Officer, but will continue to provide support to Empire in this case.

Q. What is the purpose of your Surrebuttal Testimony in this proceeding before the Missouri Public Service Commission ("Commission")?

A. The purpose of my surrebuttal testimony is to respond to rebuttal testimony filed by the Office of the Public Counsel ("OPC") as it relates to comments and recommendations regarding capital structure, reductions in the purchase price of the wind projects, and the Market Price Protection Mechanism. Specifically, my testimony will respond to issues raised by OPC witnesses David Murray, John S. Riley, John A. Robinett, and Lena M. Mantle.

II. CAPITAL STRUCTURE

A. EMPIRE'S JUNE 30, 2021, UPDATED CAPITAL STRUCTURE SHOULD BE USED TO SET RATES IN THIS CASE

Q. At page 11, line 13, through page 12, line 25, of his rebuttal testimony, Mr. Murray discusses whether Empire updated its review of the capital structures of Empire, Liberty Utilities Co. ("LUCo"), and Algonquin Power & Utilities Corp. ("APUC") to the 12-month ended June 30, 2021, update period, and whether, based upon that analysis, Empire's June 30, 2021, capital structure remains the most economical and should be used to set rates in this case. What capital structure should be used to set rates in this case?

A. Empire's June 30, 2021, updated capital structure should be used to set rates in this case. As indicated by Mr. Murray in his rebuttal testimony, in response to Staff Data Request No. 0258 (**Surrebuttal Schedule TM-1**), I indicated that I used the same methodology that I used in my direct testimony, as recommended by Mr. Murray and approved by this Commission in Empire's last rate case, to update the capital structures of Empire, LUCo and APUC for the 12-month ended June 30, 2021, update period.

Q. What did your analysis show?

A. That analysis showed that Empire's capital structure remains the most economical, as determined by this Commission in the last rate case (lowest equity ratio among the three companies). It is important to note, as I did in my rebuttal testimony, that although Empire disagreed with Mr. Murray's methodology in establishing the capital structure in Empire's last rate case, in order to avoid any controversy regarding that issue in the present case, it agreed to use that methodology since it was so recently approved by the Commission.

Q. What is the result of your update?

A. The update results in a slight increase in Empire's equity ratio from the March 31, 2021, *pro forma* equity ratio of 52.44% to the June 30, 2021, actual booked equity ratio of 52.79%. Empire is using the June 30, 2021, updated capital structure (52.79% equity/47.21% debt) in calculating its updated revenue requirement.

B. MR. MURRAY'S ADJUSTMENTS TO LUCO'S JUNE 30, 2021, CAPITAL STRUCTURE

Q. At page 13, lines 9-19, of his Rebuttal Testimony, Mr. Murray stated that he does not agree with LUCO's June 30, 2021, capital structure calculation because it did not include any short-term debt and it included tax equity supporting the wind projects. How do you respond to Mr. Murray's testimony?

A. I would note that even with the adjustments suggested by Mr. Murray to LUCo's capital structure, which Empire does not agree with for the reasons included in this answer, LUCo's equity ratio in its June 30, 2021, capital structure (53.92% as shown on page 13, lines 17-19 of Mr. Murray's rebuttal testimony) is still higher than Empire's 52.79% equity ratio, and therefore under the methodology recommended by Murray and approved by the Commission in Empire's last rate case, Empire's capital structure should be used to set rates. However, I do not agree with Mr. Murray that short-term debt should be included in LUCo's capital structure for purposes of setting rates for Empire. Mr. Murray suggested in his rebuttal testimony in a number of places (page 10 line 23 through page 11, line 8; page 20, lines 1-14) that short-term debt related to construction work in progress ("CWIP") and Storm Uri balances should not be in the

Empire permanent capital structure because it is the vehicle to finance balance sheet working capital differences. Empire did not include any short-term debt in the capital structures because it was fully offset by CWIP and Storm Uri balances. Yet, Mr. Murray totally disregarded the CWIP and Storm Uri balances on LUCo's consolidated financial information provided to him in response to OPC Data Request Nos. Supplement to 3007, 3052, and 3053 (**Surrebuttal Schedule TM-2**). The CWIP and Storm Uri balances or deferrals reflected in LUCo's consolidated financial information offset LUCo's short-term debt and therefore no short-term debt should be included in LUCo's capital structure (*See* Surrebuttal Schedule TM-2, DR 3007).

Q. Are there any other matters from Mr. Murray's rebuttal testimony to which you would like to respond?

A. I also do not agree with Mr. Murray's adjustment to LUCo's capital structure that excludes tax equity supporting the wind projects from LUCo's equity ratio. This is inconsistent with the way Mr. Murray treated tax equity in APUC's capital structure in his direct testimony and in the 2019 rate case. Mr. Murray conveniently does not address APUC, nor make any capital structure calculations at all in his rebuttal testimony, except to say that he is doing so "because no witness is currently proposing APUC's capital structure be directly or indirectly used to set Empire's ROR." However, Empire did include APUC in its updated capital structure analysis based on the methodology recommended by Mr. Murray and approved by the Commission in Empire's last rate case. If Mr. Murray had included APUC in his rebuttal testimony, then in order to be consistent with his calculation in his direct testimony and in the 2019 rate case he would have included tax equity in the APUC capital structure. Of course, if he had included the APUC calculation it would have highlighted his inconsistent treatment of removing the tax equity from LUCo's equity calculation in LUCo's capital structure in this case.

C. MR. MURRAY NEVER STATED HOW HE ARRIVED AT THE LOWER END OF THE RANGE IN HIS EQUITY RECOMMENDATION, AND HIS UPPER RANGE IS BASED UPON AN INCORRECT INTERPRETATION OF THE MERGER STIPULATIONS

Q. Do you have any general comments about Mr. Murray's common equity recommendation range of 47.5%-49% and his recommendation of 48.25% that he sets forth at page 5 of his rebuttal testimony?

A. Yes. As I explained in my rebuttal testimony at pages 10-12, Mr. Murray failed to follow the methodology he just used in Empire's 2019 rate case that was approved by the Commission. Instead of using capital structures for Empire, LUCo, and APUC as of the end of the test year and update period, Mr. Murray used an average of the five quarters prior to and including the end of the test year. Instead of applying merger stipulation 5 to compare capital structures of APUC, LUCo and Empire, Mr. Murray completely ignored Empire's capital structure in his direct testimony and completely ignored APUC's capital structure in his rebuttal testimony. He also changed the methodology that he used in the last rate case to calculate APUC's capital structure in his direct testimony.

The methodology recommended by Mr. Murray in the last rate case and approved by the Commission provides a straightforward result. The methodology used by Mr. Murray in this case does not. I have already explained in my rebuttal testimony at pages 15-17 why Mr. Murray's methodology is contrary to the merger stipulations and that there is no "49% cap" in those merger stipulations. Just as troubling though is that Mr. Murray never states how he arrived at the low end of his range of his common equity recommendation. If it is based on the average of LUCo's common equity for the five quarters between September 30, 2019, and June 30, 2021, then Mr. Murray's calculations are incorrect because he erroneously included all short-term debt without any reduction for CWIP and Storm Uri balances, as I previously mentioned. He also removed all tax equity from the LUCo common equity calculation even though he previously allowed such tax equity in common equity for APUC in the 2019 rate case.

III. PURCHASE PRICE REDUCTIONS

Q. Please explain the purpose of the "Tax Benefit Adjustment Amount" as outlined in Section 2.3(d) of the Purchase and Sale Agreements?

A. The purpose of the Tax Benefit Adjustment Amount was to compensate Empire for the lost economic value resulting from Empire's closing of the purchase transaction for the Wind Projects at a later date than the projects started earning PTCs or operating profits. This lost economic value consists of two items: (1) the Net Present Value ("NPV") of lost operating profits (i.e. revenues less operating expenses) over the 30 year useful life of the Wind Projects; and (2) the NPV of lost Production Tax Credits ("PTCs") over the 10 year PTC eligibility period. The lost economic value of these two items is offset by a third factor: (3) the **increase** to the economic value of the projects to Empire caused by the later timing of Empire's cash outlay to make the investments in the Wind Projects (all else being equal, an investment made at a later point in time increases the NPV of that investment). The Tax Benefit Adjustment Amount was the mechanism that Empire negotiated with the third-party sellers of the Wind Projects (Tenaska Missouri Matrix Wind Holdings, LLC ("Tenaska") for North Fork Ridge and Kings

Point[1], and Apex Neosho Ridge Wind Member, LLC ("Apex") for Neosho Ridge) to account for all three factors. Its formula of 75%[2] multiplied by $24.00 multiplied by actual energy production before closing of the Purchase Sale Agreements ("PSAs") was intended to approximate the impact of all three factors.

Q. Mr. Riley suggests that if the "price adjustment" is not based on the entire amount of the generated PTCs, then LUCo has made a profit on a transaction with a subsidiary. Do you agree with this assessment?

A. No, I do not. As described in the previous response, the formula for the Tax Benefit Adjustment (including the factor of 75% used therein) was intended to approximate the impact of all three factors: the lost economic value due to the period for which (1) operating profits and (2) PTCs are generated prior to Empire's ownership, offset by (3) the increased economic value due to a delay in Empire's ownership. The factor of 75% does not therefore imply that there is a 25% profit margin being earned by the Sellers of the projects, and it does not imply that Empire has not received a reduced purchase price reflecting the full loss in economic value. See **Schedule TM-R-1,** which compares: (A) the NPV of all cash flows to/from Empire Wind Holdings, LLC ("EWH"), the holding company for the Wind Projects) for the duration of the projects' 30 year life based on the actual timing of the operation of the projects and the closing of the PSAs; to (B) the NPV of all cash flows to/from Empire Wind Holdings for the duration of the projects' 30 year life based on a hypothetical scenario where Empire purchased the facilities on the date they started generating PTCs. **Schedule TM-R-1**

[1] As described in the Direct Testimony of Todd Mooney on pages 15-16, the Purchase Sale Agreements for North Fork Ridge and Kings Point were negotiated and executed with Tenaska before Tenaska terminated its involvement in 2020.
[2] The factor of 75% is increased to 90% for production occurring after March 1, 2021.

clearly demonstrates that Empire benefited from the functioning of the Tax Benefit Adjustment, increasing the NPV of WPH's investment by approximately $24 million.

Q. Mr. Riley recommends that any "revenues generated while LUCo is the general contractor should be treated as a reduction in the cost of the project and should be reflected in the price paid by Empire." Do you agree with Mr. Riley's recommendation?

A. I agree with the first part of Mr. Riley's recommendation as it applies to revenues generated prior to the start of operations of North Fork Ridge and Kings Point. That is, revenues generated while the North Fork Ridge and Kings Point Wind Projects were owned by LUCo prior to closing of the PSAs and prior to the start of operations should be treated as a reduction to the cost of the project to LUCo. This is, in fact, how LUCo accounted for these revenues prior to closing of the PSAs. This reduction to cost was included in the calculation of the loss that LUCo earned on the sale of the two projects to Empire.

I do not agree with the second part of Mr. Riley's recommendation, that such revenues should be reflected in the purchase price paid by Empire. As explained above, the purchase price paid by Empire should be adjusted to reflect the **lost economic value** to Empire of operations prior to closing of the PSAs (i.e. lost economic value rather than revenues). This is what the Tax Benefit Adjustment of the PSAs accomplished.

IV. PARTICIPATION OF LIBERTY UTILITIES CO. IN THE WIND PROJECTS

Q. Mr. Robinett concludes that LUCo had less experience than Tenaska for constructing wind farms at the time it stepped into Tenaska's role. Is this a fair assessment?

A. No. Mr. Robinett's statement is accurate as it applies to the holding company LUCo, but only when viewed in isolation. LUCo is a subsidiary of APUC, "a global leader in renewable energy through its portfolio of long-term contracted wind, solar, and hydroelectric generating facilities representing approximately 1.5 GW of installed capacity and more than 1.4 GW of incremental renewable energy capacity under construction."[3] LUCo was able to utilize APUC's extensive experience as it stepped into Tenaska's role.

Q. Do you agree with Mr. Robinett's assertion that Empire's customers should not be responsible for Tenaska's exit fees?

A. No. The exit fees were negotiated between Empire and Tenaska (a third party) at the time the original Purchase Sale Agreements ("PSAs") for the Kings Point and North Fork Ridge Wind Projects were executed on October 11, 2018. This was before any involvement of LUCo in the transactions was contemplated. The exit fees were payable under the PSA (Section 10.1(d)(v)) in the event of a termination of the PSA due to a material delay in achieving the Development Milestones for which Empire was responsible. As Empire's responsibility, such costs form part of the overall cost to Empire of the Wind Projects no different than any other cost and should not be viewed in isolation.. In reality, however, the point is moot.

[3] APUC Quarterly Report, Q3, 2020, page 2.

Q. Why is the point moot?

A. The purchase price that Empire paid for the Kings Point and North Fork Ridge Wind Projects **did not change** due to the exit fees paid to Tenaska by LUCo. Hence, Empire's customers are not bearing this cost.

V. MARKET PRICE PROTECTION MECHANISM

Q. On pages 35 of her Rebuttal Testimony, OPC witness Ms. M. Mantle suggestions that several inputs have changed in calculating the MPPM and, therefore, the MPPM may not provide the intended protections. Do you agree with this conclusion?

A. No, I do not. Ms. Mantle is correct when she states that total capital investments and other assumptions differ from those provided in Case No. EA-2019-0010. Changes to certain inputs, however, cannot be viewed in isolation. While the total capital investment has increased, there have been offsetting factors, including an increase to production and an increase to Paygo payments received from the Tax Equity Partners by Empire. Viewing this holistically, the estimated levelized cost of energy ("LCOE") as submitted under Case No. EA-2019-0010 was $23.80 MW/h. Under current estimates, the estimated LCOE is $24.38[4] MW/h, representing an approximate 2% increase. Given this, I believe that there have been no significant changes to the MPPM and that it will operate as intended. Hence, there is no basis to set aside or change what the Commission ordered in Case No. EA-2019-0010.

Q. Ms. Mantle suggests that the responses received to her data requests on the MPPM from the signatories to the *Non-Unanimous Stipulation and Agreement* are

[4] Empire's response to data request no. 0256.

not clear, and therefore, could result in moving more risk from shareholders to customers than what the Commission intended[5]. Do you agree with this statement?

A. No, I do not. The mechanics and material assumptions were agreed upon with the parties at the time the *Non-Unanimous Stipulation and Agreement* was signed. See Appendix B to the *Non-Unanimous Stipulation and Agreement* which provides 15 pages of explanation for the operation of the MPPM.

Q. Why were RECs and the value of PTCs included in the MPPM?

A. At the time the *Non-Unanimous Stipulation and Agreement* was signed, the value of RECs was immaterial and therefore not explicitly identified. However, the value of RECs has significantly increased since 2019. Given that Empire is proposing to return the value of RECs to customers, and that they are now expected to represent significant value, it is appropriate to include them in the calculation of the MPPM. Similarly, the value of 1% of the PTCs that are allocated to Empire was not considered material and therefore was not explicitly identified in the MPPM. However, consistent with the proposed treatment of RECs, PTCs earned by Empire should be included in the calculation of the MPPM.

Q. Ms. Mantle concludes that "Empire's expected costs and revenues over the first ten years of the wind project has swung by $170 million[6]". Is this accurate?

A. Not necessarily. First, it should be clarified that any change is not a difference between costs and revenues but the sum of the annual wind values ("AWV") over the Guarantee

[5] ER-2021-0312, Rebuttal Testimony of Lena M. Mantle, p. 35, line 24 – p. 36, line 2.

[6] ER-2021-0312, Rebuttal Testimony of Lena M. Mantle, p. 38, lines 1-3.

Period. Second, as qualified in Empire's response to data request 8075, the estimates provided were for illustrative purposes and do not reflect the outcome expected by Empire. Therefore, it is not necessarily indicative that Empire expects there to be a $25 million liability balance at the end of the Guarantee Period.

Q. Ms. Mantle suggests that customers bear all the risk in the first ten years. Do you agree with this statement?

A. No, I do not. As outlined in the *Non-Unanimous Stipulation and Agreement, for the first ten years Empire shareholders bear half the risk up to $52.5 million while customers bear the other half. If the balance* exceeds a liability position of $52.5 million, such excess would be subject to a future rate case and its outcome determined by the Commission. Therefore, both customers and Empire shareholders share risk during the ten year timeframe of the MPPM.

Q. On pages 39-40 of her Rebuttal Testimony, Ms. Mantle describes the MPPM allocation of risk to be unfair. Do you agree with this assessment?

A. No, I do not. The *Non-Unanimous Stipulation and Agreement* and its terms were negotiated, in good faith, among the agreeing parties and ultimately approved by the Commission. Additionally, Ms. Mantle makes several arguments as to why she believes the allocation of risk to be unfair which are inaccurate. First, as discussed in my Surrebuttal Testimony in Case No. EA-2019-0010, the hedge has no impact on customers. Second, as discussed in Aaron Doll's Rebuttal Testimony, the duration of time in which negative pricing occurs is not significant. In addition, production during periods of negative prices still provide economic value as the generation of PTCs will contribute to paying the tax equity partner earlier (analogous to paying off a loan faster, which reduces the amount of interest expense).

Q. Ms. Mantle states that "For assuming all this risk, customers get a promise that they will get up to $26.25 million in ten years, if the revenues from the wind projects are less than the costs of those wind projects over those ten years."[7] Is this statement accurate?

A. No, this is not accurate. First, if the cumulative annual wind value after the Guarantee Period has a liability balance greater than $52.5 million, the future treatment of this balance will be decided by the Commission. Second, it is very unlikely that the liability balance after the Guarantee Period will reach $52.5 million, and it is possible that a debit balance exists after such a time.

Q. Ms. Mantle provides an example of how Empire calculates the MPPM. Is this correct?

A. No. To be clear, for purposes of calculating the MPPM, the wind revenue requirement is compared to revenues plus the PPA replacement values.

Q. How is the rate base component of the revenue requirement in the MPPM treated?

A The rate base component is updated when new rates go into effect.

Q. Ms. Mantle suggests that the hedge payments should not flow through the FAC. Do you agree?

A. Not necessarily. It is important that there is a matching of the hedge settlements paid by/received by the Wind Projects with the equal and opposite hedge settlements received by/paid by Empire to ensure there is no impact from the hedge. Empire

[7] ER-2021-0312, Rebuttal Testimony of Lena M. Mantle, p. 39, lines 2-4.

recommends that cash receipts are included in the FAC and any cash payments to the hedge should also be included. If payments are explicitly excluded, then any receipts need to also be excluded.

Q. Does this conclude your Surrebuttal Testimony?

A. Yes.

VERIFICATION

I, Todd Mooney, under penalty of perjury, on this 20th day of January, 2022, declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Todd Mooney