

Issue: Tax Equity, Asbury Accounting,
ADIT

Witness: Todd Mooney

Type of Exhibit: Surrebuttal Testimony

Sponsoring Party: The Empire District
Electric Company

Case No. EO-2018-0092

Date: March 13, 2018

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

Surrebuttal Testimony

Of

Todd Mooney

March 13, 2018



Liberty Utilities®

EMPIRE DISTRICT

Empire Exhibit No. 12 P
Date 5-02-18 Reporter XF
File No. EO-2018-0092

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OF
TODD MOONEY
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. EO-2018-0092

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SURREBUTTAL TESTIMONY
OF
TODD MOONEY
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. EO-2018-0092

1 I. **INTRODUCTION**

2 Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Todd Mooney and my business address is 354 Davis Road, Oakville,
4 Ontario, Canada L6J 2X1.

5

6 Q. **HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. Yes. I submitted Direct Testimony on October 31, 2017, on the subject of tax equity
9 financing for the Customer Savings Plan. My professional background and qualifications
10 are contained in that prior testimony.

11

12 Q. **WILL YOU ASSUME RESPONSIBILITY FOR ANY OTHER DIRECT**
13 **TESTIMONY THAT WAS FILED IN THIS MATTER?**

14 A. Yes. Empire witness Robert W. Sager also filed Direct Testimony. Mr. Sager is no
15 longer employed by Empire. Thus, I will be adopting his Direct Testimony along with
16 my own.

17

1 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

2 A. My testimony responds to portions of the rebuttal testimonies of Lena Mantle, John Riley
3 and Geoff Marke of the Office of the Public Counsel (“OPC”) and Greg R. Meyer on
4 behalf of the Midwest Energy Consumers Group (“MECG”).

5
6 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

7 A. OPC witnesses Mantle and Riley express the belief that a tax equity partner would be
8 guaranteed a return on its investment. I demonstrate that while there is a targeted return
9 for the tax equity partner, this return cannot be guaranteed due to IRS requirements and
10 that the targeted return is a necessary element of the tax equity arrangement that delivers
11 significant savings to Empire customers.

12
13 OPC witness Marke expresses concern that Empire has lost negotiating leverage with tax
14 equity partners as a result of the passage of the Tax Cuts and Jobs Act of 2017 (“TCJA”).
15 I demonstrate that there are tax equity partners that remain interested in participating in
16 this transaction and that Empire retains sufficient leverage to negotiate tax equity
17 participation consistent with the parameters set forth in my Direct Testimony.

18
19 MECG witness Meyer proposes that instead of having the tax equity partner monetize the
20 excess federal Production Tax Credits (“PTCs”), the additional PTCs generated above a
21 threshold level should be transferred to Empire for its own use, and that it would be
22 acceptable for the tax equity partner to remain in the wind project transaction for less
23 than 10 years. Since Empire does not have the tax appetite to take advantage of PTCs in

1 a timely manner, this approach would result in lost economic value to Empire's
2 customers.

3
4 Staff witness Oligschlaeger describes his understanding of the accounting treatment for
5 the retirement of Asbury and expresses that recognition of an impairment loss its
6 retirement would be "superfluous." I refute these arguments since both FERC guidelines
7 and Accounting Principles Generally Accepted in the United States ("US GAAP") would
8 require that an impairment loss be recorded. MCEG witness Meyer proposes that excess
9 deferred income taxes ("EDIT") relating to Asbury caused by the TJCA be used to
10 immediately reduce the regulatory asset for amortization and rate base. This approach
11 is not possible as it would constitute a violation of IRS normalization rules. Finally, OPC
12 witness Riley claims that Empire customers would forgo approximately \$9.2 million in
13 reduced revenue requirement from ADIT with the use of a tax equity structure. When a
14 complete analysis is performed, it becomes apparent that the participation of a tax equity
15 partner in this transaction will result in between \$4 and \$7 per MW hour savings for
16 Empire customers.

17
18 **II. TAX EQUITY FINANCING**

19
20 **Q. BOTH OPC WITNESSES MANTLE AND RILEY EXPRESS THE BELIEF THAT**
21 **A TAX EQUITY PARTNER WOULD BE GUARANTEED A RETURN ON ITS**
22 **INVESTMENT IN THE WIND PROJECTS AND TAKE ISSUE WITH THIS**

1 **PERCEIVED FACT. (MANTLE REB., P. 4, line 1; RILEY REB., P. 2, line 12)**

2 **WHAT IS YOUR RESPONSE TO THEIR CONCERN?**

3 A. Their perception is incorrect. While the tax equity partnership is structured in a way that
4 plans for the tax equity partner to earn a targeted return, this return is not guaranteed. In
5 fact, the return cannot be guaranteed: the tax equity partner must bear risks and enjoy
6 rewards commensurate with an equity holder, as detailed in IRS Revenue Procedure
7 2007-65¹ (which outlines the criteria that must be in place for a tax equity structure to be
8 respected by the IRS). As an equity partner, by definition, they take more risk than
9 would a lender in a traditional utility financing arrangement.

10
11 **Q. IS THE TARGETED RETURN STILL IMPORTANT TO THE TRANSACTION?**

12 A. Absolutely. The ability to structure the partnership with the tax equity partner earning a
13 targeted return on its investment is fundamental to the tax equity partner's willingness to
14 participate in the transaction. While Ms. Mantle may be critical of that position, it is the
15 reality of the circumstance. I believe that the more relevant inquiry is whether the
16 participation of a tax equity partner in Empire's acquisition of the wind projects brings
17 benefits to Empire's customers. As I indicated in my Direct Testimony, participation of a
18 tax equity partner in this transaction will result in between \$4 and \$7 per MW hour
19 savings for Empire customers. (Mooney Dir., p. 8, line 11). No witness has disputed
20 these potential savings.

21

¹ Rev. Proc. 2007-65, 2007-2 C.B. 967

1 Q. CAN THE COMMISSION AND PARTIES BE CERTAIN THAT THESE
2 SAVINGS FROM TAX EQUITY PARTICIPATION WOULD BE DELIVERED?

3 A. Yes. That is because Empire is willing to commit to enter into only those tax equity
4 transactions that meet the criteria identified in the table on page 13 of my Direct
5 Testimony.

6

7 Q. ON PAGE 20 OF HIS REBUTTAL TESTIMONY, OPC WITNESS MARKE²
8 EXPRESSES CONCERN THAT EMPIRE HAS LOST NEGOTIATING
9 LEVERAGE WITH TAX EQUITY PARTNERS AS A RESULT OF THE
10 PASSAGE OF THE TAX CUTS AND JOBS ACT OF 2017. DO YOU AGREE?

11 A. No, I do not. As indicated in my Direct Testimony, Algonquin Power & Utilities Corp.
12 has existing relationships with tax equity partners that it can leverage for this transaction.
13 Since the passage of the TCJA, we have reached out to these tax equity partners to
14 understand whether their participation in transactions such as those proposed in the
15 Customer Savings Plan would be limited by the TCJA. Attached to my testimony as
16 Confidential SUR Attachment TM-1C are letters from JP Morgan, Wells Fargo, and
17 MUFG Union Bank, which indicate these entities' strong interest in participating as a tax
18 equity partner in the Customer Savings Plan. Similarly, on January 30, 2018, Bank of
19 America Merrill Lynch issued an industry overview titled "Understanding Wind
20 Development Returns" which also expresses confidence in the availability of tax equity
21 partnerships post tax reform:

22 **Appetite for new tax equity (TE) deals continues**
23 Indeed, we not only see project economics largely intact but also highlight continued

² OPC witness Riley makes the same claim on page 7 of his rebuttal testimony.

1 appetite for tax equity. Earlier this week, NextEra Energy (NEE) announced the close of
2 four tax equity transactions totaling ~\$1bn in proceeds, post tax reform. Moreover, it is
3 not just NEE that is experiencing high demand for its TE products; we are seeing general
4 optimistic industry outlook on tax equity availability across both solar and wind.
5

6 Based on these communications, I believe that not only are there tax equity partners that
7 remain interested in participating in this transaction, but that Empire retains sufficient
8 leverage to negotiate tax equity participation consistent with the parameters set forth on
9 page 13 of my Direct Testimony.
10

11 **Q. ARE THERE OTHER INDICATIONS OF THE CONTINUED VIABILITY OF**
12 **THE TAX EQUITY MARKET?**

13 **A.** Yes. There continue to be reports indicating that the tax equity financing market is still
14 active with several companies successfully raising capital³. Furthermore, on February 20,
15 2018, J.P. Morgan and Bank of America Merrill Lynch expressed the belief that the tax
16 equity market (which provided approximately \$10 billion in financing in 2017) would
17 experience the same or greater deal volume in 2018, with yields (tax equity's targeted
18 return) to stabilize after declining in 2017⁴.
19

20 **Q. ON PAGE 20 OF HIS REBUTTAL TESTIMONY, OPC WITNESS MARKE**
21 **SPECULATES THAT EMPIRE MAY NOT GET AS FAVORABLE TAX EQUITY**
22 **FINANCING TERMS AS ONCE THOUGHT, DO YOU AGREE?**

³ <https://www.genewsroom.com/press-releases/quinbrook-closes-268-million-tax-equity-and-construction-financing-build-200-mw-wind>

⁴ Cost of Capital 2018 Outlook Conference Call and Webcast, February 20, 2018, Norton Rose Fulbright, http://www.nortonrosefulbright.com/knowledge/publications/163399/cost-of-capital-2018-outlook?utm_source=vuture&utm_medium=email&utm_campaign=20180220%20project%20finance%20newswire%20-%20feb%202018_10%20march%202018

1 A. No, as I described above, we have letters in hand from tax equity providers that indicate
2 interest in the Empire wind projects and I believe that interest will translate to a
3 competitive process to ensure good pricing for customers. That said, even if the terms
4 are somewhat less favorable than anticipated, Empire has calculated that the impact
5 would not be material, for every 50 basis point change in the tax equity yield, the impact
6 on LCOE would be only \$0.30 to \$0.40 per MWh.

7
8 **Q. ON PAGE 9 OF HIS REBUTTAL TESTIMONY, MECG WITNESS MEYER**
9 **SUGGESTS THAT TAX EQUITY PARTNERS WILL HAVE A LOWER**
10 **AMOUNT OF INCOME TAX EXPOSURE AND AS A RESULT WILL NOT BE**
11 **AS WILLING TO INVEST AS MUCH INTO THE WIND PROJECT. DO YOU**
12 **AGREE WITH HIS CONCLUSION?**

13 A. No, I do not. As I discuss above, I believe that tax equity partners will be very interested
14 in investing in this project, and I do not anticipate that we will not be successful in those
15 negotiations. The only impacts to tax equity that I foresee from the passage of the Tax
16 Cuts and Jobs Act of 2017, are as follows:

- 17 • all else being equal, a lower tax rate reduces the tax equity partner's capital
18 contribution percentage (since the tax losses of the wind project caused by
19 MACRS create fewer tax savings for the tax equity partner with a lower tax rate),
20 and;
- 21 • all else being equal, a lower tax rate reduces the amount of cash distributions that
22 the wind project needs to make to the tax equity partner.

1 Empire witness McMahon explains in his Surrebuttal Testimony that even when taking
2 into account the impact of the tax reform legislation, the Customer Savings Plan still
3 produces significant savings to customers.
4

5 **Q. MECG WITNESS MEYER PROPOSES ON PAGE 28-29 OF HIS REBUTTAL**
6 **TESTIMONY THAT INSTEAD OF HAVING THE TAX EQUITY PARTNER**
7 **MONETIZE THE EXCESS PTCs, THE ADDITIONAL PTCs GENERATED**
8 **ABOVE A THRESHOLD LEVEL SHOULD BE TRANSFERRED TO EMPIRE**
9 **FOR ITS OWN USE. DO YOU AGREE?**

10 A. No. As I indicated in my Direct Testimony, Empire does not have the tax appetite to take
11 advantage of federal PTCs in a timely manner. As a result, if Empire were to construct
12 renewable generation that would otherwise qualify for the PTCs, there would be lost
13 economic value to Empire's customers given the inability to use the value of the PTCs.
14 The way to bring that value to Empire's customers is to finance the project in conjunction
15 with a tax equity partner, who can take advantage of the PTCs and at the same time
16 reduce the overall cost of the project to Empire's customers.
17

18 **Q. DO YOU AGREE WITH MR. MEYER THAT IT WOULD BE ACCEPTABLE**
19 **FOR THE TAX EQUITY PARTNER TO REMAIN IN THE WIND PROJECT**
20 **TRANSACTION FOR LESS THAN 10 YEARS?**

21 A. No. As described above, if this were to happen, Empire would not be able to take
22 advantage of the PTCs earned in the remainder of the 10 year period in a timely manner.
23 As a result, there would be lost economic value to Empire's customers.

1 **III. ASBURY PLANT REGULATORY ASSET AND COST RECOVERY**

2
3 **Q. ON PAGE 4 OF HIS REBUTTAL TESTIMONY, STAFF WITNESS**
4 **OLIGSCHLAEGER DESCRIBES HIS UNDERSTANDING OF THE**
5 **ACCOUNTING TREATMENT FOR THE RETIREMENT OF ASBURY.**
6 **FURTHERMORE, ON PAGE 6 AND 7 OF HIS REBUTTAL TESTIMONY, MR.**
7 **OLIGSCHLAEGER EXPRESSES THAT RECOGNITION OF AN IMPAIRMENT**
8 **LOSS ON THE RETIREMENT OF ASBURY WOULD BE “SUPERFLUOUS.”**
9 **DO YOU AGREE THAT THIS DESCRIPTION IS ACCURATE AND**
10 **COMPLETE?**

11 **A.** No. While Mr. Oligschlaeger recounts a portion of Empire witness Robert Sager’s Direct
12 Testimony, it is important to clarify that the accounting treatment described therein is
13 only applicable in the event that a regulatory asset for the unrecovered costs of Asbury is
14 approved and included in rate base. If this were not the case, both FERC guidelines and
15 Accounting Principles Generally Accepted in the United States (“US GAAP”) would
16 require that an impairment loss be recorded. See responses to Missouri Staff data
17 requests 0039 and 0040 for further details, which are included as **SUR Attachment TM-**
18 **2 and SUR Attachment TM-3.**

19
20 **Q. ON PAGE 23 OF HIS REBUTTAL TESTIMONY, MECG WITNESS MEYER**
21 **PROPOSES THAT EXCESS DEFERRED INCOME TAXES (“EDIT”)**
22 **RELATING TO ASBURY CAUSED BY THE TAX CUTS AND JOBS ACT BE**
23 **USED TO IMMEDIATELY REDUCE THE REGULATORY ASSET FOR**

1 **AMORTIZATION AND RATE BASE. DO YOU AGREE WITH THIS**
2 **PROPOSED TREATMENT?**

3 A. No. Immediately reducing the regulatory asset by the EDIT relating to Asbury would
4 constitute a normalization violation. This situation was addressed in the Tax Reform Act
5 of 1986 in IRC regulation §1.168(i)-3 in 2008. For EDIT associated with property that
6 ceased to be public utility property (which is what is proposed for the Asbury plant), the
7 IRS regulations permit the flowing back of the EDIT over the remaining life of the asset
8 as if such property had not ceased to be public utility property. Prior to the issuance of
9 this regulation, IRS Private Letter Rulings 200004038 and 200016020 (and other similar
10 rulings) concluded that a violation of the normalization rules would occur if there was a
11 return of any EDIT to customers in the case of property which ceased to be public utility
12 property. I anticipate that the same rules will apply for the TCJA.

13
14 **IV. ACCUMULATED DEFERRED INCOME TAXES (“ADIT”)**

15
16 **Q. ON PAGE 6 OF HIS REBUTTAL TESTIMONY, OPC WITNESS RILEY**
17 **CLAIMS THAT EMPIRE CUSTOMERS WOULD FORGO APPROXIMATELY**
18 **\$9.2 MILLION IN REDUCED REVENUE REQUIREMENT FROM ADIT WITH**
19 **THE USE OF A TAX EQUITY STRUCTURE. IS THAT THE CASE?**

20 A. Not at all. OPC witness Riley’s analysis is incomplete in that it focuses only on one
21 element of the multiple impacts a tax equity structure has on the revenue requirement.
22 OPC witness Riley calculates that the ADIT impact of a tax equity structure increases
23 rate base by \$122.5 million, but fails to mention that a tax equity structure also reduces

1 the amount of the investment that Empire would include in rate base by approximately
2 \$800 million, a significant savings to customers.

3

4 When analyzing the impact to customers, it is important to look at the whole picture. As
5 I indicated earlier, when considering the whole picture, participation of a tax equity
6 partner in this transaction will result in between \$4 and \$7 per MW hour savings for
7 Empire customers (Mooney Dir., p. 8, line 11).

8

9 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

10 **A. Yes.**

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**The Empire District Electric Company
Missouri Public Service Commission
Case No. EO-2018-0092
Response to Staff's Twelfth Set of Data Requests**

Response provided by: Robert W. Sager
Title: Vice President of Finance and Administration
Company Response Number: STAFF 12-39
Date of Response: February 15, 2018

Question:

Re Sager Direct Attachment RWS-1, does Mr. Sager agree that the journal entry labelled "Asset Retirement" on this attachment demonstrates that application of normal plant retirement accounting would effectively result in any unrecovered balance of the Asbury asset at the time of its retirement being included in Empire's rate base subsequent to that retirement (absent other regulatory action)? If Mr. Sager disagrees, please explain why.

Response:

The retirement entry was presented under the assumption that the net value would ultimately be transferred to a regulatory asset. If this assumption is not true, when Asbury is retired a determination would need to be made as to whether Asbury assets constitute an "operating unit" in accordance with FERC guidelines. If the assets are considered an operating unit then the retirement would trigger "gain/loss" treatment. If it is not an operating unit, the retirement entry would be similar to the asset retirement entry shown in the exhibit and ultimately any net value would be included in rate base.

Responsible person(s): Robert W. Sager

**The Empire District Electric Company
Missouri Public Service Commission
Case No. EO-2018-0092
Response to Staff's Thirteenth Set of Data Requests**

Response provided by: Robert W. Sager
Title: Vice President of Finance and Administration
Company Response Number: STAFF 13-40
Date of Response: February 15, 2018

Question:

Re Sager Direct, page 5, lines 1 – 6: Please explain in more detail how failure of the Commission to approve regulatory asset treatment for Asbury following the plant's retirement would result in an "impairment loss" to Empire. In your response, specify the triggering event for any such impairment loss, the probable timing of recognition of that loss, what specific assets this charge would apply to, and the journal entries associated with booking the loss amount.

Response:

In advance of the retirement of the assets, Empire is required to assess whether impairment has occurred. An impairment loss occurs when the undiscounted future cash flows from an asset are less than the asset's carrying amount. If Asbury assets were retired and removed from rate base, Empire would no longer be receiving all cash flow related to the asset (triggering event). Accounting requirements would then conclude that the economic value of the assets has been lost and an impairment charge would be required. Empire would be required to recognize the loss as soon as it becomes probable that the asset will be disallowed from recovery in future rates (for example if Empire would receive an order indicating that the asset would no longer be considered in rate base). A loss would have to be recognized equivalent to the net value of the assets being retired less potential salvage (if any), less the net of the present value of other future cash flows (for example, recovery in rates of a return of and on Asbury provided to Empire after the asset is retired but prior to Empire's next Missouri general rate proceeding).

Subsequently, upon retirement of electric industry assets subject to FERC, one must first conclude whether the assets being evaluated are considered an "operating unit" under FERC guidelines. FERC prescribes that retirement of an operating unit triggers gain/loss treatment for financial purposes. I believe it is likely, although a complete analysis has not been done, that a considerable portion of the Asbury assets would meet the FERC guidelines of an operating unit. Under that scenario, the Asset Retirement entry shown in

RWS-1 would be modified and reflect the following (this entry assumes the entire amounts shown would be subject to the “operating unit” treatment, further analysis would need to be performed to determine which assets would specifically be included):

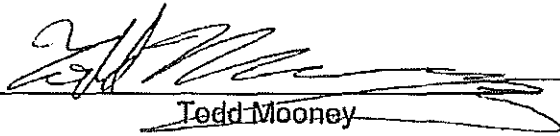
Asset Retirement:			
Plant in Service	101000		\$ (140,441,635.76)
Construction Completed, Not Classified	106100		\$ (151,318,961.37)
Loss on Disposition of Property	4212xx	\$ 229,866,746.77	
Accumulated Provision for Depreciation	108100	\$ 61,893,850.36	
		\$ 291,760,597.13	\$ (291,760,597.13) \$

Responsible person(s): Robert W. Sager

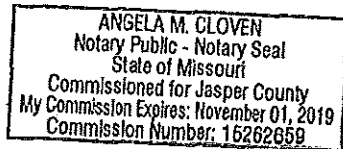
AFFIDAVIT OF TODD MOONEY

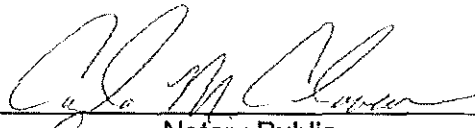
STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On the 12th day of March, 2018, before me appeared Todd Mooney, to me personally known, who, being by me first duly sworn, states that he is Vice President of Finance and Administration at Liberty Utilities (Canada) Corp, and acknowledged that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.


Todd Mooney

Subscribed and sworn to before me this 12th day of March, 2018




Notary Public

My commission expires: Nov 01, 2019