

Exhibit No.:
Issue(s):
Witness/Type of Exhibit:
Sponsoring Party:
Case No.:

Income Tax in CWC
Riley/Rebuttal
Public Counsel
GR-2021-0320

REBUTTAL TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

**THE EMPIRE DISTRICT GAS COMPANY
D/B/A LIBERTY**

FILE NO. GR-2021-0320

March 17, 2022

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

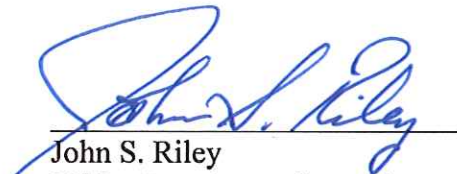
In the Matter of The Empire District)
Gas Company's d/b/a Liberty Request)
to File Tariffs to Change its Rates for)
Natural Gas Service) Case No. GR-2021-0320

AFFIDAVIT OF JOHN S. RILEY

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:

1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 10th day of March 2022.



TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #15637121



Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2023.

**REBUTTAL TESTIMONY
OF
JOHN S. RILEY
THE EMPIRE DISTRICT GAS COMPANY
d/b/a LIBERTY (“EMPIRE GAS”)
CASE NO. GR-2021-0320**

1 **Q. What is your name and what is your business address?**

2 A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102.

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

4 A. I am employed by the Missouri Office of the Public Counsel (“OPC”) as a Utility Regulatory
5 Supervisor.

6 **Q. What is your educational background?**

7 A. I earned a B.S. in Business Administration with a major in Accounting from Missouri State
8 University.

9 **Q. What is your professional work experience?**

10 A. I was employed by the OPC from 1987 to 1990 as a Public Utility Accountant. In this capacity
11 I participated in rate cases and other regulatory proceedings before the Public Service
12 Commission (“Commission”). From 1994 to 2000 I was employed as an auditor with the
13 Missouri Department of Revenue. I was employed as an Accounting Specialist with the
14 Office of the State Court Administrator until 2013. In 2013, I accepted a position as the Court
15 Administrator for the 19th Judicial Circuit until April, 2016 when I joined the OPC. I was
16 promoted to my current position in October 2021. I have also prepared income tax returns, at
17 a local accounting firm, for individuals and small business from 2014 through 2017.

18 **Q. Are you a Certified Public Accountant (“CPA”) licensed in the State of Missouri?**

19 A. Yes. As a CPA, I am required to continue my professional training by attending Missouri
20 State Board of Accountancy qualified educational seminars and classes. The State Board of

1 Accountancy requires that I spend a minimum of 40 hours a year in training that continues
2 my education in the field of accountancy. I am also a member of the Institute of Internal
3 Auditors (“IIA”) which provides its members with seminars and literature that assist CPAs
4 with their annual educational requirements.

5 **Q. Have you previously testified before the Missouri Public Service Commission?**

6 A. Yes I have. A listing of my Case filings is attached as JSR-R-1.

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

8 A. To point out Staff’s error in the Cash Working Capital calculations for federal and state
9 income taxes.

10 **INCOME TAX CALCULATIONS WITHIN CWC**

11 **Q. What is Cash Working Capital?**

12 A. Staff often defines it as follows:

13 Cash Working Capital (CWC) is a rate base component that represents a
14 measurement of the amount of funds, on average, required for the
15 **payment** of a utility’s day-to-day expenses, as well as an identification of
16 whether a utility’s customers or its shareholders are responsible for
17 providing these funds in the aggregate. (Emphasis Added).

18 In a CWC calculation, both a revenue lag and an expense lag are measured. The “lag” is the
19 amount of time that it takes revenues to come in from the customer or the time it takes for the
20 utility to pay out an expense. In Staff’s CWC schedule 08, the revenue lag is 32.99 days and
21 the expense lag is 39.38 days.

1 **Q. With the recent decision in Case No. GR-2021-0108 concerning the length of the expense**
2 **lag for unpaid income taxes, why would Staff not include a 365-day expense lag for the**
3 **calculation of income taxes to be included as an offset to rate base?**

4 A. I do not know for sure, but the rationale for a 365-day expense lag in the above mentioned
5 case was due to no tax being submitted with the tax returns. There could be some confusion
6 due to Liberty Utilities (America) LUCo being required to submit income tax payments with
7 past tax returns. Staff applied the IRS mandated quarterly payment time frame when
8 calculating its test year CWC tax amounts.

9 **Q. Do income tax payments of any kind trigger the quarterly payment lag that Staff has**
10 **historically applied in Empire Gas income tax CWC calculations?**

11 A. No, it should not. The American based parent company of Empire Gas, Liberty Utilities
12 (America) a.k.a. LUCo, is not the ultimate owner of Empire Gas¹. The foreign ownership by
13 Algonquin is the source of the mandated tax payments². Empire Gas does not have a stand-
14 alone tax liability to cause Staff to apply the IRS-required quarterly payment expense lag.

15 **Q. What has Staff included in its original accounting schedules for the income tax amounts**
16 **and expense lag that it applied in its CWC calculations?**

17 A. Currently, Staff has included \$521,247 in federal income tax and \$92,563 for Missouri state
18 income tax in its determination of Empire Gas's cost-of-service. The CWC revenue lag is
19 32.99 days. The expense lag is 39.38 days, which is consistent with the quarterly payment
20 lag in-line with the requirement set out by the IRS. This creates a negative net lag factor

¹ Empire Gas is not a separate subsidiary on LUCo's tax return. Empire Gas is included in Empire Electric financials within the tax returns.

² The BEAT provision of the TCJA tax legislation which requires foreign owners of U.S. corporations to pay a minimum tax is the reason why LUCo pays approximately \$3 million in federal taxes each year. Please refer to HC Schedule JSR-R-02pg 3, line 3 and JSR-R-03, direct testimony pg. 6-9, both from ER-2021-0312.

1 which translates to a small decrease in CWC requirement of \$9,125 for federal income tax
2 and a negative \$1,621 for Missouri state income tax.

TAX OFFSET FROM RATE BASE

\$ 521,247	32.99	39.38	-6.39	-.017507	-\$9,125
\$ 92,563	32.99	39.38	-6.39	-.017507	-\$1,621

3 **Q. Are you taking issue with any of Staff's income tax calculations?**

4 A. No. The income tax calculations themselves are initiated on accounting schedule 11 and the
5 summary of the income taxes on line 43 and 44 are transferred to the CWC accounting
6 schedule 08, line 32 and 33. The only adjustment that I expect will be made is when the
7 Commission makes its final determinations and the Staff will recalculate these income tax
8 totals. That will adjust the final income tax requirement and CWC requirement.

9 **Q. What is your calculation of the CWC income tax requirement using Staff's current tax**
10 **amounts?**

11 A. Using the \$521,247 for federal income tax and \$92,563 for state and applying the adjusted
12 factor³ of -.909616, the reduction in rate base due to these tax offsets is a total of \$558,332.
13 Staff had included a negative \$10,746, a \$547,586 difference.

³ $(32.99 - 365)/365 = -.909616$

Rebuttal Testimony of
John S. Riley
Case No. GR-2021-0320

TAX OFFSET FROM RATE BASE

\$	521,247	32.99	365	-332.01	-0.909616	(474,135)
\$	92,563	32.99	365	-332.01	-0.909616	(84,197)
						\$(558,332)

1 **Q. Could you summarize this issue of income tax adjustments within the CWC**
2 **calculations?**

3 A. Yes, the whole basis of the 365 day adjustment to income tax lags is due to the fact that
4 income tax is a necessary expense and has a cash working capital calculation in the revenue
5 requirement, yet does not get paid out to the taxing authorities. The entire year adjustment
6 (365 days) reflects this money coming in but never being paid out within the test year.

7 **Q. Does this conclude your rebuttal testimony?**

8 A. Yes.