

Exhibit No.:
Issues: State Income Tax Flow-Through
Amortization
Witness: Mark L. Oligschlaeger
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: ER-2012-0345
Date Testimony Prepared: February 4, 2013

MISSOURI PUBLIC SERVICE COMMISSION

**REGULATORY REVIEW DIVISION
UTILITY SERVICES - AUDITING**

SURREBUTTAL TESTIMONY

OF

MARK L. OLIGSCHLAEGER

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2012-0345

*Jefferson City, Missouri
February 2013*

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1 **SURREBUTTAL TESTIMONY OF**

2 **MARK L. OLIGSCHLAEGER**

3 **THE EMPIRE DISTRICT ELECTRIC COMPANY**

4 **CASE NO. ER-2012-0345**

5
6 Q. Please state your name and business address.

7 A. Mark L. Oligschlaeger, P.O. Box 360, 200 Madison Street, Suite 440,
8 Jefferson City, MO 65102.

9 Q. What is your present position with the Missouri Public Service Commission
10 (“Commission”)?

11 A. I am the Manager of the Auditing Unit, Utility Services Department,
12 Regulatory Review Division.

13 Q. Have you previously submitted prefiled testimony in this proceeding?

14 A. Yes, I previously submitted rebuttal testimony on several issues in this
15 proceeding.

16 Q. What is the purpose of this surrebuttal testimony?

17 A. The purpose of this testimony is to respond on behalf of the Commission
18 Staff (“Staff”) to the rebuttal testimony of The Empire District Electric Company (“Empire”
19 or “Company”) witness Robert W. Sager at pages 9-10 concerning what Empire characterizes
20 as the “state income tax” issue.

21 **EXECUTIVE SUMMARY**

22 Q. Please summarize your surrebuttal testimony

23 A. Staff opposes any recovery in this case of an amortization designed to collect
24 currently in Empire’s rates amounts for state deferred taxes that were allegedly not included

1 in its cost of service in previous rate proceedings dating back many years. Staff's position on
2 this matter is based upon Empire's failure to provide evidence that the amounts of deferred
3 taxes provided by customers in prior rate cases were ever determined through a calculation
4 using only a federal stand alone income tax rate. Additionally, Staff also has concerns that
5 adoption of Empire's position on the state tax flow through issue would have retroactive
6 ratemaking implications.

7 **STATE TAX FLOW-THROUGH**

8 Q. What are "deferred taxes?"

9 A. "Deferred taxes" represent the income tax expenses paid by customers in rates
10 that are calculated based upon the impact of financial events currently includable in "book"
11 net income, but that is not includable in current "taxable income" as that amount is defined by
12 federal and state taxing authorities. Deferred taxes result from use of the so-called
13 "normalization" approach to recognition of tax timing differences in setting customer rates.
14 The usual ratemaking quantification of deferred taxes for ratemaking purposes is to calculate
15 the amount based upon a "composite" income tax rate, reflecting both the current federal and
16 state (Missouri) prescribed income tax rates.

17 Q. Please describe the deferred tax issue in this particular rate proceeding.

18 A. My understanding of this issue is that Empire is asserting that the
19 normalization treatment of tax timing differences provided to it by the Commission up to the
20 early 1990s allowed the Company to book deferred taxes calculated using only the stand
21 alone federal tax rate, and not the composite federal-state income tax rate usually used to
22 record deferred taxes resulting from normalization of tax timing differences. Therefore, when
23 Staff applies in this case the current composite federal-state tax for the purpose of calculating

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1 the amount of deferred taxes to return to customers as the tax timing differences that gave rise
2 to the deferred taxes “reverse,” Empire claims that use of the composite tax rate
3 overcompensates customers for the deferred taxes they previously provided in rates which it
4 claims were initially recorded using only the lower federal stand alone income tax rate.
5 Empire is proposing in this case to increase its cost of service through an amortization to
6 collect state deferred taxes that it did not record at the time of its previous rate proceedings, to
7 offset this alleged shortfall.

8 Q. Is Empire claiming that its prior customer rates were in fact set using a tax
9 normalization approach computed on a stand-alone federal income tax rate basis?

10 A. Yes. At page 10, line 16 of his rebuttal testimony, Mr. Sager states that
11 deferred taxes related to state income tax was not collected from ratepayers for the period
12 1969 to 1994.

13 Q. What evidence did Mr. Sager provide to support this contention?

14 A. None. My understanding is that Empire’s position on this matter is based upon
15 a claim that it was only authorized to book deferred taxes at a stand alone federal rate due to a
16 Commission directive received around 1969 or 1970.

17 Q. If, in fact, Empire was only authorized to book deferred taxes using a federal
18 rate only from 1969-1970 through 1994, does it necessarily follow that its rates were set based
19 upon a level of deferred tax expense calculated at a federal tax rate only?

20 A. No.

21 Q. Have you attempted to review the case files for several Empire rate filings in
22 the period of time in question for which Empire claims it only collected federal deferred
23 taxes?

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1 A. Yes, I reviewed several Empire rate filings from the 1980s and early 1990s.
2 My rebuttal testimony in this case provided an assessment of the Company's rate case
3 application in Case No. ER-90-138 as it pertains to this issue. Since the time of Staff's
4 rebuttal filings, I have also reviewed the case files for Empire's Rate Case Nos. ER-83-42 and
5 ER-81-209.

6 Q. Did your review of these case files provide definitive evidence of how deferred
7 taxes were calculated for purposes of inclusion in Empire's rates in those proceedings?

8 A. No. All of these cases were stipulated in whole or in part, and I was not able to
9 find any discussion in Commission orders, or in stipulations and agreements, concerning the
10 assumptions by which deferred taxes were calculated for inclusion in Empire's cost of
11 service. Apparently, any issues that might have existed in these cases regarding calculation of
12 deferred taxes were resolved in a "black box" manner.

13 Q. Did your review of these case files provide evidence of how Staff
14 recommended that deferred taxes be included in Empire's cost of service in these cases?

15 A. Yes. Based upon my review of the accounting schedules submitted by Staff in
16 each case, I conclude that the Staff recommended that deferred taxes be calculated at a rate
17 higher than the stand alone federal rate in each rate case. In other words, Staff gave
18 consideration of the state income tax rate in effect at that time in the income tax rate it
19 recommended be used for calculation of deferred taxes for rate purposes in those proceedings.

20 Q. Are you stating or implying that the Company's rates were set based upon
21 Staff's recommended income tax rates for purposes of calculating deferred taxes in those
22 proceedings?

1 A. No, since the rates used to defer taxes for rate purposes were apparently settled
2 matters in those cases. However, it is possible that Empire could argue by inference that, if
3 all parties to a proceeding had recommended use of a stand alone federal tax rate for purposes
4 of calculating deferred taxes during the period 1969 to 1994, it should be assumed that
5 Empire's rates were set on that basis. The materials I have reviewed indicate that assumption
6 is definitely not true as it relates to Staff's previous rate recommendations in the 1980s and
7 1990s, at the very least.

8 Q. If it cannot be demonstrated definitively how Empire's rates were set in past
9 rate proceedings regarding calculation of deferred taxes, what is the relevance of that to
10 Empires' current position on this issue?

11 A. Even absent concerns regarding possible "retroactive ratemaking," unless
12 Empire can provide definitive evidence that its prior rates were set for a period of time using
13 calculations of deferred tax expense on a federal stand alone basis, its request for recovery of
14 an amortization in the current case should be rejected as unsupported. As previously
15 discussed, Empire has not provided any such evidence.

16 Q. Does Staff have concerns that adoption of Empire's position on the state tax
17 flow through issue has retroactive ratemaking implications?

18 A. Yes, and those concerns are reinforced by Mr. Sager's rebuttal testimony. At
19 page 10, lines 16-17, Mr. Sager states, "Empire is now seeking collection of those state
20 taxes." It is evident that Empire's position on this issue is premised upon a belief that having
21 (allegedly) failed to collect state deferred taxes in prior rate proceedings, it should now
22 receive recovery of these taxes (associated with income calculations made in prior
23 proceedings dating back 30 years or more) in the current case.

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1 Q. Would you like at this time to make any corrections to your rebuttal testimony
2 previously filed in this proceeding?

3 A. Yes. At page 26, lines 1-2 of my rebuttal testimony, I stated that “In fact, to
4 my knowledge, all of Empires’ rate proceedings were resolved by stipulation and agreement
5 in the 1980s and early 1990s.” I have since determined that several issues were taken to
6 hearing in Empire’s Rate Case No. ER-83-42. However, none of those issues are pertinent to
7 the state tax flow through issue at issue in this case.

8 Q. Does this conclude your surrebuttal testimony?

9 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric)
Company of Joplin, Missouri Tariffs) Case No. ER-2012-0345
Increasing Rates for Electric Service Provided)
to Customers in the Missouri Service Area of)
the Company)

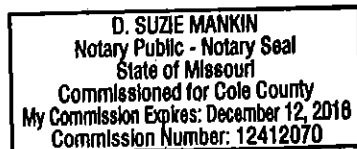
AFFIDAVIT OF MARK L. OLIGSCHLAEGER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Mark L. Oligschlaeger, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 6 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


Mark L. Oligschlaeger

Subscribed and sworn to before me this 4th day of February, 2013.




Notary Public