

**Exhibit No.:** \_\_\_\_\_  
**Issue(s):** Current Deferred Income Tax  
**Witness/Type of Exhibit:** Riley/Rebuttal  
**Sponsoring Party:** Public Counsel  
**Case No.:** GR-2022-0179

**REBUTTAL TESTIMONY**

**OF**

**JOHN S. RILEY**

Submitted on Behalf of the Office of the Public Counsel

**SPIRE MISSOURI, INC.**

CASE NO. GR-2022-0179

October 7, 2022

**REBUTTAL TESTIMONY**  
**OF**  
**JOHN S RILEY**  
**SPIRE MISSOURI INC.**  
**CASE NO. GR-2022-0179**

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 19<sup>th</sup> Judicial Circuit until April, 2016 when I rejoined the OPC as a  
16 Public Utility Accountant III. I have also prepared income tax returns, at a local accounting  
17 firm, for individuals and small business from 2014 through 2017.

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

2 A. Yes. As a CPA, I am required to continue my professional training by attending Missouri  
3 State Board of Accountancy qualified educational seminars and classes. The State Board of  
4 Accountancy requires that I spend a minimum of 40 hours a year in training that continues  
5 my education in the field of accountancy. I am also a member of the Institute of Internal  
6 Auditors (“IIA”) which provides its members with seminars and literature that assist CPAs  
7 with their annual educational requirements.

8 **Q. Have you previously filed testimony before the Missouri Public Service Commission?**

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

10 **Q. What is the focus of your rebuttal testimony?**

11 A. Company witness Mr. Charles J. Kuper has suggested in direct testimony that the  
12 Commission’s decision in GR-2021-0108 concerning the income tax calculations within cash  
13 working capital (“CWC”) could possibly be an IRS Normalization Violation. As the facts  
14 were presented, the Commission made the correct decision, but Mr. Kuper has also presented  
15 another scenario. He has argued that the unpaid income taxes are in fact deferred taxes and  
16 therefore the Commission approved CWC calculations are duplicative and in violation of IRS  
17 rules and regulations. I will illustrate how Mr. Kuper’s argument should be taken a step  
18 further and the deferred taxes should be included in rate base just as accumulated deferred  
19 income taxes (“ADIT”) are included now.

20 **Q. What is the situation that Spire suggests is a violation?**

21 A. In Spire’s most recent general rate case, Case No. GR-2021-0108; the Commission correctly  
22 reasoned in its Report & Order, that by including the collection of income tax expense in rates  
23 despite Spire never paying those calculated taxes out to a government agency equates to a 365  
24 day expense lag. It also firmly identified that the calculation of income tax expense for the

1 cost of service is not effected by the CWC calculation that developed the 365 day expense  
2 lag. In other words, the Commission correctly determined there would be no normalization  
3 violation. The Company believes that additional details should be considered.

4 **Q. You mentioned “As the facts were presented, the Commission made the correct**  
5 **decision,...” Is there another way the Commission could view these circumstances?**

6 A. Yes, if the Commission were to accept Mr. Kuper’s testimony that “**Because the Company**  
7 **has utilized accelerated depreciation, it has reduced its current tax expense. This tax**  
8 **expense has been shifted to a deferred tax expense. As such, the Company will not pay**  
9 **current income taxes but will indeed have to pay these taxes in the future.”<sup>1</sup>, then the  
10 Commission should order an adjustment to ADIT and CWC.**

11 **Q. Please explain.**

12 A. Company witness Kuper argues that since the current income taxes are being collected from  
13 customers but are not being paid to a government agency, they are in a sense a deferred tax.  
14 He goes on to point out that these unpaid income taxes are reflected as a rate base offset within  
15 ADIT and therefore the customer is receiving a benefit twice. This, he concludes, results in a  
16 normalization violation:”

17 The recorded amount of accumulated deferred income taxes (ADIT), deducted  
18 from rate base as an assumed source of capital, already adjusts the revenue  
19 requirement for income taxes collected in rates that not currently paid to the  
20 IRS. Setting the lag to 365 days is duplicative to the ADIT rate base  
21 adjustment and may be considered by the IRS as a normalization violation if  
22 it is determined to circumvent those rules.<sup>2</sup>

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<sup>1</sup> Kuper Direct testimony, page 4, lines 9, 10 and 11.

<sup>2</sup> Page 3, lines 10-15

1 **Q. Could you comment on Mr. Kuper's assertion?**

2 A. I agree in part with the Company's position, but Mr. Kuper is clearly wrong in asserting that  
3 the current income tax expense *is* included in ADIT. As already stated, I argued in Spire's last  
4 rate case that unremitted current income taxes were in fact interest free money just like  
5 deferred taxes and should adjust rate base. However, as far as I could tell, current income  
6 taxes were never included in the Staff calculation of ADIT. Attached is Staff's answer to  
7 OPC data request 350 where Staff only includes ADIT developed from accelerated  
8 depreciation, not from unpaid income tax expense. (Schedule JSR-R-02).

9 Several financial presentations produced both by Staff and the Company indicate that current  
10 income tax is not included in ADIT. I would suggest that the attached 2018 Spire 10K, Note  
11 11 Income Tax be reviewed. (Schedule JSR-R-03). The document clearly delineates Current  
12 and Deferred income tax tabulations. As can be seen in the Deferred Tax section, there is no  
13 line item for the inclusion of current income taxes. As for Staff, the Commission can review  
14 the Income Statement and Income Tax schedules in any recent general rate case to see that  
15 Staff does not combine current and deferred income tax line items into Accumulated Deferred  
16 Income Tax totals. However, if the Commission does decide that unpaid income tax expense  
17 should be included in ADIT, then income tax expense should be excluded from the CWC  
18 calculations just as Mr. Kuper prescribes.

19 As far as I'm concerned, the Company is validating my argument from the last case. I stated  
20 that the income tax expense was a source of interest free money and that it should offset rate  
21 base. I couldn't convince the Commission of the idea that there is a new source of deferred  
22 tax because Staff couldn't concede that the nonpayment of funds earmarked as income tax  
23 expense is in fact a deferral. How else could you characterize an unpaid expense if it is  
24 expected to eventually be paid sometime in the future? The payment is deferred as Mr. Kuper  
25 has stated. These unpaid income tax expenses will eventually have to be paid so they should  
26 be recognized as an addition to ADIT.

1 So let's run with that logic. If unpaid current income tax should be included in ADIT and  
2 therefore an adjustment to rate base, then let us include all the unpaid current income taxes  
3 that the Company has enjoyed in ADIT. I'm talking about the *years* of current income taxes  
4 collected from ratepayers yet which the Companies have not paid to a taxing authority<sup>3</sup>.

5 **Q. What current income tax balance would be included?**

6 A. I went as far back as Laclede's GR-2013-0171 and Missouri Gas Energy ("MGE")'s GR-  
7 2014-0007 rate cases. I listed the last calculated state and federal tax provided by Staff  
8 accounting schedules in each case since 2012. (Schedule JSR-R-04) Spire and its previous  
9 companies, Laclede Inc. and Missouri Gas Energy ("MGE") have produced a tax loss in every  
10 year back through 2012.<sup>4</sup> Following Spire's assertion that unpaid taxes should be in ADIT,  
11 the balance for Spire East should include \$100,155,779 in additional interest free money and  
12 Spire West should include \$129,612,688.

13 **Q. Does the Company provide any documentation that could substantiate its claim that**  
14 **current income tax is deferred?**

15 A. Yes. Company's answer to OPC data request 1300 (Schedule JSR-R-05) would indicate that  
16 monthly current income tax expense is reclassified to deferred tax expense when it is clear  
17 that no taxes will be payable. As I pointed out earlier though, that current deferred tax doesn't  
18 appear in any line item in Staff Accounting Schedules or workpapers.

19 **Q. Could you summarize your position on the Company normalization violation claim?**

20 A. If the Commission accepts the Company argument that unpaid income tax expense is a  
21 deferred tax, which is why Mr. Kuper contends that the CWC for taxes should be set at zero,  
22 then the accumulated unpaid current taxes from past rate cases should be added to ADIT. I

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<sup>3</sup> I have reviewed Laclede/Spire federal income tax returns as well as the Company's published 10Ks since 2014 filings and the Corporation has not paid any federal income tax to the present.

<sup>4</sup> To be clear. Spire and its predecessor have losses every year. No NOL has been applied.

1 believe that the current income tax expense that is built into rates but isn't paid to the taxing  
2 authority are deferred taxes. Spire is one of the few companies that still has negative taxable  
3 income even after the changes made in the Tax Cuts and Jobs Act<sup>5</sup>. If the Company can prove  
4 that current unpaid income tax expense should be included in ADIT then we can calculate that  
5 balance at least back to 2012 and add it to the ADIT balance. If including the income tax  
6 expense in CWC is a normalization violation then the last two years of inclusion can be  
7 corrected and satisfy any IRS concerns.

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

9 A. Yes.

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<sup>5</sup> Recent general rate cases for Ameren, Evergy and MAWC have indicated positive taxable income calculations whereas Spire still reports taxable losses or NOL offsets.

