

Exhibit No: _____
Issue: Rate Base Deferred Tax
Witness: L. Jay Williams
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Sponsoring Party: Empire District
Case No: ER-2004-0570
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**Before the Public Service Commission
Of the State of Missouri**

Rebuttal Testimony

Of

L. Jay Williams

November 2004

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OF
L. JAY WILLIAMS
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

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REBUTTAL TESTIMONY
OF
L. JAY WILLIAMS
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. ER-2004-0570

1 **INTRODUCTION**

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

3 A. L. Jay Williams. My business address is 602 Joplin Street, Joplin, MO.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by The Empire District Electric Company as Senior Tax Planning
6 Manager

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND WORK**
8 **BACKGROUND.**

9 A. I graduated from Missouri Southern State University with a BS in Business
10 Administration (emphasis in accounting) in 1975. I hold certificate number 8047
11 from the Missouri State Board of Accountancy. Prior to joining The Empire
12 District Electric Company in 1983, I spent 6 years in public accounting primarily
13 in the income tax field. Except for a short period in Empire's Internal Auditing
14 Department, I have spent my entire tenure in the tax area of the Company. My
15 Tax experience at the Company includes the responsibility for tax compliance in
16 the areas of property, sales/use, corporate franchise and income taxes.

1 **Q. HAVE YOU FILED TESTIMONY PREVIOUSLY BEFORE THE**
2 **COMMISSION?**

3 A. No.

4 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

5 A. The purpose of this testimony is to rebut the Direct Testimony of John P. Cassidy
6 concerning the rate base effect of deferred taxes both as to the Alternative
7 Minimum Tax and Postretirement Benefits Other than Pensions.

8 **Q. PLEASE EXPLAIN THE SCOPE AND ISSUES CONCERNING STAFF'S**
9 **POSITION.**

10 A. The Staff's rate base adjustment for deferred taxes included items not in our
11 original filing, but omitted the deferred tax assets for the Alternative Minimum
12 Tax in the amount of \$1,600,000 and Post Retirement Benefits Other than
13 Pensions of \$3,547,898. The omission of these deferred tax assets which increase
14 rate base will be detrimental to the Company's annual earnings of approximately
15 \$500,000.

16 **DEFERRED TAXES – "AMT"**

17 **Q. PLEASE EXPLAIN THE PURPOSE OF THE ALTERNATIVE MINIMUM**
18 **TAX DEFERRED TAX ASSET?**

19 A. The Alternative Minimum Tax ("AMT") provides companies with a current
20 federal tax liability where the ordinary tax liability is less than the AMT liability.
21 The AMT is recoverable against ordinary tax in future years. It represents the
22 amount of tax liability deferred that was not actually used to decrease current
23 federal tax payments. The gross amount of deferred tax liabilities created from

1 accelerated tax depreciation in excess of straight line book depreciation was
2 credited to the deferred tax liabilities used by the Staff to reduce rate base.

3 **Q. WAS THE “AMT” DEFERRED TAX ASSET INCLUDED IN THE**
4 **COMPANY’S COMPUTATION OF RATE BASE IN THE ORIGINAL**
5 **FILING?**

6 A. No. The Company’s filings have historically taken the position that only the
7 liberalized depreciation component of deferred tax should be taken into
8 consideration in determining rate base. All other components of deferred tax are
9 excluded, i.e. Deferred Compensation and Asbury Unit 1 Five Year Maintenance.

10 **Q. DID STAFF INCLUDE OTHER COMPONENTS OF DEFERRED TAX?**

11 A. Yes. Staff selectively included components of deferred tax in the rate base
12 calculation, such as Contributions in Aid of Construction, Interest Capitalized,
13 and Licensed Software. However, the AMT, which would offset some of these
14 components, was not one of the included items.

15 **Q. DOES EMPIRE AGREE WITH STAFF’S METHODOLOGY?**

16 A. No. To include only selected deferred taxes and omit an item of deferred tax that
17 reflects a component of actual net tax savings would be inconsistent at best.
18 Deferred tax liabilities, such as accelerated depreciation deferred tax, were
19 recorded in gross as if the full current tax benefit was received. The AMT
20 deferred tax reflects the amount of that benefit not actually used to reduce current
21 tax liability. Omitting the AMT component results in an understatement of rate
22 base.

23 **POSTRETIREMENT BENEFITS OTHER THAN PENSIONS**

1 **Q. PLEASE EXPLAIN THE PURPOSE OF THE POSTRETIREMENT**
2 **BENEFITS OTHER THAN PENSIONS (PBOP-FAS106) DEFERRED TAX**
3 **ASSET.**

4 A. The Company has historically funded each of its Voluntary Employee Benefit
5 Association (“VEBA”) trusts for the required actuarial amounts for health care
6 benefits. For the current tax calculation, the amounts funded to the collective
7 bargaining VEBA are fully deductible but the amounts funded to the non-
8 collective bargaining VEBA are only partially deductible. The amount funded in
9 total to the VEBA’s over the amount deductible for current tax create a timing
10 difference for which a deferred tax asset has been recorded on the books.

11 **Q. WHY DID THE COMPANY FUND BOTH VEBA’S WHEN NOT ALL OF**
12 **THE FUNDING WAS DEDUCTIBLE?**

13 A. The Company was allowed in a previous rate case to recover from ratepayers
14 amounts that were funded to both VEBA’s. It is the Company’s belief that both
15 the non-union and the collective bargaining unit VEBA should be funded at the
16 appropriate level for each. The Company feels that it is not in the best interest of
17 the non-union employees to over fund amounts to the collective bargaining unit
18 VEBA and under fund amounts to non-union employees VEBA.

19 **Q. HOW DID THE STAFF TREAT THE PBOP-FAS 106 DEFERRED TAX**
20 **ASSET IN THIS CASE?**

21 A. The deferred tax asset created from funded amounts that were not currently
22 deductible for tax purposes was not included as a component of rate base by Staff.

1 **Q. DID STAFF CORRECTLY APPLY THE PBOP-FAS 106 DEFERRED TAX**
2 **ASSET IN THE CASE?**

3 A. No. This deferred tax asset should be added to rate base because the Company
4 incurred current income tax liability.

5 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

6 A. Yes.