

Exhibit No.
Issue: Deferred Income Tax Adjustment
Witness: L. Jay Williams
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Empire District Electric
Case No. ER-2010-0130
Date Testimony Prepared: April 2010

Before the Missouri Public Service Commission

Surrebuttal Testimony

of

L. Jay Williams

April 2010



SURREBUTTAL TESTIMONY
OF
L. JAY WILLIAMS
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. ER-2010-0130

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. ARE YOU THE SAME L. JAY WILLIAMS THAT PROVIDED TESTIMONY**
5 **PREVIOUSLY IN THIS CASE ON BEHALF OF THE EMPIRE DISTRICT**
6 **ELECTRIC COMPANY (“EMPIRE” OR “COMPANY”)?**

7 A. Yes.

8 **Q. PLEASE BRIEFLY SUMMARIZE YOUR SURREBUTTAL TESTIMONY.**

9 A. The purpose of my surrebuttal testimony is to address the rebuttal testimony of Staff witness
10 Paul R. Harrison concerning the proposed amortization of deferred tax expense related to state
11 income tax flow-through prior to 1994, as proposed in the Company’s originally filed
12 Accounting Schedules in this case.

13 **Q. IS EMPIRE SEEKING RECOVERY OF THIS TAX EXPENSE IN THIS CASE?**

14 A. Yes.

15 **Q. DOES MR. HARRISON DISCUSS THIS ISSUE IN HIS REBUTTAL?**

1 A. Yes. Staff witness Harrison says in his testimony that the state deduction for income taxes
2 prior to 1994 was “applicable and authorized by the Commission” for each of Empire’s rate
3 cases prior to 1994.

4 **Q. DO YOU KNOW WHAT THAT MEANS?**

5 A. No. I do not.

6 **Q. WHAT CAN YOU TELL US ABOUT THE SETTLEMENT OF THOSE RATE CASES**
7 **PRIOR TO 1994 TO WHICH MR. HARRISON REFERS?**

8 A. With regard to those settlements, no rates or methodologies were established or authorized
9 that would require the Company to deviate from its established methods.

10 **Q. WHY IS THAT IMPORTANT?**

11 A. In 1956, the Company was ordered by the Commission to use normalization accounting for
12 federal tax benefits related to accelerated depreciation. Under the order, the deferred tax
13 accounts were to include in their titles “Deferred Federal Income Taxes”. This means that
14 although the federal tax benefits were to be normalized, state tax benefits continued to be
15 flowed-through to customers. This order has been attached as Schedule LJW-1.

16 **Q. WHY IS THE 1956 ORDER IMPORTANT IN THIS CASE?**

17 A. The 1969 federal tax act that required the normalization of tax benefits only required the
18 normalization of “federal” income tax. To retain the ability for a regulated utility to use faster
19 methods of tax depreciation, deferred taxes had to be provided at least at the federal rate. It
20 was up to the states to individually determine if the state rate would also be normalized.

1 Missouri had continually been a flow-through state, which means the state income tax benefit
2 was flowed through to ratepayers.

3 **Q. MR. HARRISON HAS SUGGESTED THAT ALLOWING THIS RECOVERY NOW**
4 **WOULD BE EQUIVALENT OF HAVING RATEPAYERS PAY FOR SHORTFALLS**
5 **FROM PREVIOUS RATE CASES AND COULD CONSTITUTE PROHIBITED**
6 **RETROACTIVE RATEMAKING. DO YOU AGREE?**

7 A. Not at all. The flow-through of tax benefits to customers was undertaken knowing that at
8 some point the utility would need to be made whole. The benefits received by customers in
9 early years would some day have to be returned to the utility.

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

11 A. Yes, it does.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission of Missouri at its office in Jefferson City held on June 20, 1956.

In the matter of the application of)
The Empire District Electric Company)
for an order specifying the account-)
ing procedures to be followed with)
respect to accelerated depreciation)
pursuant to the provisions of Section)
167 of the Internal Revenue Code of)
1954.)

Case No. 13,376

O R D E R

The Empire District Electric Company, hereinafter sometimes referred to as the "Company," on April 26, 1956, filed with this Commission a verified application in the above entitled cause wherein the Company prayed for entry of an order by the Commission authorizing and permitting the Company to follow certain accounting procedures with respect to any of the properties of the Company which it may elect to make the subject of accelerated depreciation under Section 167 of the Internal Revenue Code of 1954, in the manner specified in such application, for 1955 and subsequent years.

The Company is a corporation organized and existing under the laws of the State of Kansas, and has heretofore qualified to do and is doing business as a public utility in the States of Missouri, Arkansas and Oklahoma.

The Commission on January 16, 1956, held a hearing on a joint record in Case No. 13,289, Case No. 13,290, Case No. 13,291, Case No. 13,292 and Case No. 13,294, in each of which an order was sought specifying the accounting procedures to be followed with respect to accelerated depreciation pursuant to the provisions of Section 167 of the Internal Revenue Code of 1954. In each of said cases the authority sought and granted and the accounting procedures proposed

were exactly the same as the authority herein sought and the accounting procedures herein proposed.

In view of the record made in the like cases hereinbefore referred to, the Commission deems it unnecessary in this order to discuss the possibilities of accelerated depreciation. The treatment in rate matters of the benefits to be derived from the use of accelerated depreciation is not before the Commission in this proceeding.

The Company will be authorized to follow the accounting procedures hereinafter ordered with respect to any of its properties which may be made the subject of accelerated depreciation for tax purposes for 1955 and subsequent years.

It is, therefore,

ORDERED: 1. That The Empire District Electric Company be and hereby is granted leave, for accounting purposes only and so far as not restricted by law, to follow the accounting procedures hereinafter set forth with respect to those portions of the costs of its depreciable plant, property, equipment and related facilities which it may elect to depreciate for Federal tax purposes in accordance with the declining balance, the sum of the years-digits, or other consistent methods producing results similar to the declining balance method, under and pursuant to the provisions of Section 167 of the Internal Revenue Code of 1954, and the resulting deferrals in Federal income taxes, to-wit:

- (a) To account on its books for that portion of its properties which are the subject of accelerated depreciation pursuant to its election under Section 167 of the Internal Revenue Code of 1954 in the same manner as its other properties, and to accrue depreciation therefor at rates consistent with its rates for like property not subject to accelerated depreciation.

- (b) During those years of the service life of any of its properties which are the subject of accelerated depreciation pursuant to its election under Section 167 of the Internal Revenue Code of 1954, in which a deferral of Federal taxes on income results from the use of the accelerated depreciation deduction in lieu of the deduction allowable under the tax depreciation method heretofore followed, to charge to an account entitled "Provision for Deferred Federal Income Taxes" (as a separate subaccount under Account 507-Taxes) and credit to an account entitled "Reserve for Deferred Federal Income Taxes" (as a separate subaccount under Account 258.2 - Miscellaneous Reserves), an amount or amounts in total for each year equal to such deferral of taxes. 1956
- (c) Commencing with the year in which its deduction of depreciation for Federal tax purposes with respect to any of its properties subject to accelerated depreciation is less than such deduction otherwise would have been if depreciation on such properties had been computed at rates consistent with its rates for like properties not subject to accelerated depreciation, and continuing until "Reserve for Deferred Federal Income Taxes" applicable to such properties is exhausted or such properties are retired from service, to charge to "Reserve for Deferred Federal Income Taxes" and to credit to an account entitled "Portion of Current Federal Income Taxes Deferred in Prior Years" (as a separate subaccount under Account 507-Taxes) an amount or amounts in total for each year equal to the increase in Federal taxes on

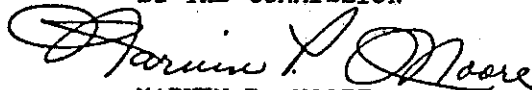
income resulting from such lower Federal tax depreciation deduction.

ORDERED: 2. That the accounting procedures provided for in "Ordered: 1" hereof are established for accounting purposes only, and the establishment of said accounting procedures shall not be, and shall not be deemed to be, controlling for rate-making purposes, security issue purposes, or any other purposes before this Commission.

ORDERED: 3. That the Commission retains jurisdiction of the matters herein contained and reserves the right to issue further orders as the circumstances may require.

ORDERED: 4. That this order shall become effective on June 30, 1956, and that the Secretary to the Commission shall serve a certified copy of this order upon each interested party of record.

BY THE COMMISSION


MARVIN P. MOORE,
SECRETARY

(SEAL)

Burton, Chr., Henson, McClintock
and McDonald, CC., Concur

AFFIDAVIT OF L. JAY WILLIAMS

STATE OF MISSOURI)
) ss
COUNTY OF JASPER)

On the 21 day of April, 2010, before me appeared L. Jay Williams, to me personally known, who, being by me first duly sworn, states that he is the Manager of Tax Planning of The Empire District Electric Company and acknowledges 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.



L. Jay Williams

Subscribed and sworn to before me this 21 day of April, 2010.



Notary Public

My commission expires
10-30-10

VICKI L. KRAMER-GIBSON
Notary Public - Notary Seal
STATE OF MISSOURI
Jasper County - Comm#06482169
My Commission Expires Oct. 30, 2010