

Exhibit No.: _____
Issues: Excess ADIT
Witness: Michael McCuen
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Sponsoring Party: Liberty Utilities
(Midstates Natural Gas) Corp. d/b/a Liberty
Case No.: GR-2024-0106
Date Testimony Prepared: September 2024

**Before the Public Service Commission
of the State of Missouri**

Surrebuttal Testimony

of

Michael McCuen

on behalf of

Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty

September 19, 2024



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FOR THE SURREBUTTAL TESTIMONY OF MICHAEL MCCUEN
LIBERTY UTILITIES (MIDSTATES NATURAL GAS) CORP. D/B/A LIBERTY
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
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1 I. **INTRODUCTION**

2 Q. **Please state your name and business address.**

3 A. My name is Michael McCuen. My business address is 602 South Joplin Ave., Joplin,
4 MO 64801.

5 Q. **Are you the same Michael McCuen who provided direct and rebuttal testimony
6 in this matter on behalf of Liberty Utilities (Midstates Natural Gas) Corp.
7 (“Liberty” or the “Company”)?**

8 A. Yes.

9 Q. **What is the purpose of your surrebuttal testimony in this proceeding before the
10 Missouri Public Service Commission (“Commission”)?**

11 A. The purpose of my surrebuttal testimony is to emphasize the critical importance of two
12 items that were identified in my rebuttal testimony. My rebuttal testimony addressed
13 recommendations by Lisa Ferguson on behalf of the Missouri Public Service
14 Commission Staff (“Staff”) regarding the Company’s Excess Accumulated Deferred
15 Income Tax (“EADIT”).

16 Q. **Is there any change to your positions from rebuttal testimony?**

17 A. No. The positions remain the same.

1 **Q. What are the two items of critical importance that you identified in your rebuttal**
2 **testimony?**

3 A. First, the method for determining how much of the Company's Net Operating Loss
4 Carryforward ("NOLC") should be used to offset the EADIT balance to avoid a
5 normalization violation. Second, Staff's recommendation to create stub period EADIT
6 should be rejected.

7 **II. NOLC OFFSET TO EADIT**

8 **Q. What is the appropriate amount of NOLC that should be used to offset EADIT?**

9 A. The concern is that using the Staff recommendation would create a normalization
10 violation. Staff has not specifically stated their proposed method, however based on
11 their supporting workpapers, they appear to be using a pro-rata type method. As
12 detailed in my rebuttal testimony, the Internal Revenue Service ("IRS") has issued
13 numerous Private Letter Rulings ("PLR") specifically dealing with this issue. The IRS
14 has stated that the "with or without method" is specifically designed to ensure that the
15 portion of NOLC attributable to accelerated depreciation is correctly taken into account
16 by maximizing the amount of the NOLC attributable to accelerated depreciation.

17 **Q. How would a normalization violation impact the Company?**

18 A. If the Company fails to normalize its accelerated deductions when required to pursuant
19 to the Internal Revenue Code, it may result in the loss of the income tax deductions or
20 recapture of tax credits. A normalization violation with respect to accelerated
21 depreciation may result in the loss of the right to claim the tax deduction on assets in
22 service as of the date of the violation, as well as for future additions. This would apply
23 to all property, plant and equipment, not just those that cause the violation.

24 **Q. What is the Company asking for related to EADIT?**

1 A. The Company requests that the with or without method be used to calculate the portion
2 of NOLC that is attributable to accelerated tax depreciation. If the Commission orders
3 the method proposed by Staff be utilized, the Company requests to be able to seek a
4 PLR to avoid any possible normalization violations from the Internal Revenue Service
5 along with recovery of associated costs.

6 **III. STUB-PERIOD EADIT**

7 **Q. What is the concern with the Staff's recommendation to create stub period**
8 **EADIT?**

9 A. As detailed in my rebuttal testimony, there are numerous issues with Staff's
10 recommendation. First, this appears to be a revenue issue and not a tax issue. Second,
11 there is no such concept as a stub period EADIT. Third, the calculation provided by
12 Staff would create a normalization violation with regard to the federal portion.

13 **Q. Have you seen the use of the phrase "stub period" in prior cases?**

14 A. Yes. The use of the phrase "stub period" was typically used when rates charged to
15 customers did not include the reduced tax rate from the Tax Cuts and Jobs Act
16 ("TCJA"). This stub period amount was calculated using a revenue requirement model
17 to ascertain the amount by which customer rates were based on utilizing a higher
18 income tax rate compared to the revenue requirement calculation based on the reduced
19 tax rate. Some Commissions established a regulatory liability for this difference in
20 revenue requirement calculations and ultimately returned this regulatory liability back
21 to customers over an agreed upon timeframe.

1 **Q. Has the Commission issued any Orders to the Company related to tax rate**
2 **changes?**

3 A. Yes. The Commission approved the Unanimous Stipulation and Agreement in Case
4 No. GR-2018-0013. This Agreement took into account the impacts of TCJA related to
5 the full impact of the rate reduction from 35% to 21%. The Agreement did not include
6 any allowance for the return of EADIT and determined the issue would be evaluated in
7 the Company's next rate case.

8 **Q. What is the Company's position for EADIT from the Missouri state tax**
9 **reduction?**

10 A. Besides the retroactive ratemaking nature of Staff's recommendation, any stub period
11 liability was known and measurable in the Company's last general rate case (GR-2018-
12 0013) and should have been but was not included in the Commission approved
13 settlement therein. Please see Company witness Emery's rebuttal testimony for
14 additional information.

15 **Q. Have you seen a stub period used for EADIT?**

16 A. No. As indicated above, a stub period has always been in reference to a revenue
17 requirement and not related to accumulated deferred income tax ("ADIT") or EADIT.
18 From an EADIT perspective, you only create EADIT from a remeasurement event that
19 takes place for one specific date.

20 **Q. Do you see any issues with the stub period EADIT calculations by Staff?**

21 A. Yes. The Company's ADIT should only be remeasured for a tax rate change on the
22 enactment date. There are no ADIT changes that would create a stub period
23 measurement date. In addition, the Staff's calculation is only using plant additions for
24 a period of time multiplied by the change in tax rate. This method has no relation to

1 how ADIT is calculated or how a tax rate change would impact ADIT.
2 Property ADIT is created by the timing difference between depreciating an asset for
3 book purposes and tax purposes. Using Staff's numbers, here is an example of what
4 ADIT and the TCJA rate reduction would produce:

Stub Period - Federal ADIT	
Additions	7,869,813
Book Life	29.64
Tax Life	20.00
Book Depreciation	265,513
Tax Depreciation	393,491
Timing Difference	(127,977)
Pre-TCJA @ 39.76	(50,884)
Post-TCJA @ 26.78	(34,272)
TCJA Impact	(16,611)

5
6 Staff testimony came up with a \$1,021,506 Stub Period EADIT amount. The
7 calculation is one sided, would create a normalization violation, and is incorrect.

8 **IV. CONCLUSION**

9 **Q. What is the Company's request related to both the federal and state EADIT?**

10 A. The Company requests that the with or without method be used to calculate the portion
11 of NOLC that is attributable to accelerated tax depreciation for both the 2017 TCJA
12 and the 2020 Missouri state tax rate change. If the Commission orders the method
13 proposed by Staff be utilized, the Company requests to be able to seek a PLR to avoid
14 any possible normalization violations from the Internal Revenue Service along with
15 recovery of associated costs. In addition, the Company requests that the stub period
16 EADIT calculation for both federal and state proposed by Staff be denied entirely.

- 1 Q. Does this conclude your surrebuttal testimony at this time?
- 2 A. Yes.

VERIFICATION

I, Michael McCuen, under penalty of perjury, on this 19th day of September, 2024,
declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Michael McCuen