

Exhibit No.:
Issue(s): Revenue, ADIT,
Prepaid Pension Asset,
and Income Tax
Expense Lag
Witness: Angela Niemeier
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: WR-2024-0104
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MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL & BUSINESS ANALYSIS DIVISION

AUDITING DEPARTMENT

SURREBUTTAL TESTIMONY

OF

ANGELA NIEMEIER

LIBERTY UTILITIES (Missouri Water), LLC,

d/b/a Liberty

CASE NO. WR-2024-0104

Jefferson City, Missouri
October 2024

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ANGELA NIEMEIER
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1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **ANGELA NIEMEIER**

4 **LIBERTY UTILITIES (Missouri Water), LLC,**

5 **d/b/a Liberty**

6 **CASE NO. WR-2024-0104**

7 Q. Please state your name and business address.

8 A. My name is Angela Niemeier, 200 Madison Street, P.O. Box 360, Jefferson City,
9 MO 65102.

10 Q. By whom are you employed?

11 A. I am a Lead Senior Utility Regulatory Auditor employed by the Missouri Public
12 Service Commission (“Commission”).

13 Q. Are you the same Angela Niemeier who filed direct testimony on
14 August 20, 2024 and rebuttal testimony on September 27, 2024?

15 A. Yes.

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

17 A. The purpose of my testimony is to correct revenues and Accumulated Deferred
18 Income Taxes. I will also respond to Liberty Utilities (Missouri Water), LLC d/b/a Liberty
19 (“Liberty Water”) witnesses, James A. Fallert, Cindy S. Wilson, and Timothy S. Lyons,
20 concerning the prepaid pension asset and the income tax expense lag.

21 **REVENUE**

22 Q. Did Staff make a change to revenues?

1 A. Yes. In discussion with Liberty Water representatives, Staff learned that there
2 was a portion of the commodity usage not included in Staff's calculation. Staff reviewed
3 calculations and discovered an error in formulas to the systems that included usage with their
4 fixed rate, specifically Bolivar water, Bolivar sewer, Lakeland Heights water, Oakbrier water,
5 and Whispering Hills water. Staff has made the corrections, which increases total revenues
6 from \$8,388,899 in rebuttal to \$9,239,807 for surrebuttal. Due to the size of the systems,
7 Bolivar systems will have the greatest impact on the revenue requirement.

8 **ACCUMULATED DEFERRED INCOME TAXES ("ADIT")**

9 Q. While comparing Liberty Water's revenue requirement to Staff's, did Staff find
10 an error?

11 A. Yes. Staff's calculations for all systems for the 2017 Tax Cuts & Jobs Act and
12 Accumulated Deferred Income Taxes ("ADIT") resulted in a negative number for direct filing.
13 In Staff's revenue requirement calculation model, these are subtracted in the rate base section.
14 A negative number minus a negative number, results in a positive number. The effect was a
15 positive, instead of the intended negative. For this reason, Staff reversed the entry for ADIT
16 and 2017 Tax Cuts & Jobs Act in rate base in all revenue requirement calculation models, which
17 then results in the intended entry.

18 **PREPAID PENSION ASSET**

19 Q. In previous rate cases did the Commission allow prepaid pension assets without
20 a pension tracker?

21 A. Yes, in Case No. ER-2002-424 a prepaid pension asset was included in rate base.
22 The parties agreed that the Prepaid Pension Asset resulted from the use of Financial Accounting

1 Standards (“FAS”) 87 in determining pension costs for ratemaking purposes. In the following
2 cases, Case No. ER-2004-0570, the pension tracker was first established for Empire District
3 Electric Company and in Case No. ER-2006-0315, Other Post-Employment Benefits (“OPEB”)
4 trackers were agreed upon and approved by the Commission. In all of the above cases, FAS 87
5 and FAS 106 were already being used for ratemaking purposes.

6 Q. What do accounts FAS 87 and FAS 106 measure?

7 A. These accounts measure the increase or decrease each year. FAS 87 measures
8 pensions and FAS 106 measures OPEBs. For example, if the FAS 106 expense during the
9 period is more than the expense built into rates for the period, the Company will establish a
10 regulatory asset.

11 Q. Were pensions and/or OPEBs included in the prior rate case, Case No.
12 WR-2018-0170?

13 A. No.

14 Q. When Liberty Water began recording costs to pension expense for Liberty
15 Water, did they record it using FAS 87 or FAS 106?

16 A. Not that Staff is aware of.

17 Q. Does Liberty’s other subsidiaries record FAS 87 or FAS 106?

18 A. Yes.

19 Q. How did Liberty Water record pension expense?

20 A. Liberty Water recorded pension expense in the Federal Energy Regulatory
21 Commission (“FERC”) account 926.

22 Q. Did Staff have difficulty identifying pension costs recorded by Liberty Water in
23 FERC account 926?

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1 A. Yes. Items in FERC account 926 were not labeled well enough to separate
2 pensions and OPEBs from other group benefits by individual systems. This is discussed in my
3 direct testimony, page 6, line 18.

4 Q. Do Liberty Water and Staff agree on treatment of prepaid pension asset?

5 A. No. In rebuttal testimony, Liberty Water witnesses, Mr. Fallert, page 2, line 9,
6 and Ms. Wilson, page 8, line 1, both point out that Liberty Water believes prepaid pension
7 assets recorded to date should be included in rate base. In Mr. Fallert's testimony he states:

8 The prepaid pension asset is the cumulative difference between the
9 amount of contributions the Company has made to the pension trusts and
10 cumulative net periodic benefit cost. In an ongoing plan, the net periodic
11 benefit cost is the amount of funds provided by customers through rates.
12 The prepaid pension asset is the amount of funding by the Company in
13 excess of the amount provided through rates and is therefore
14 appropriately included in rate base.

15 Q. What is Staff's position concerning prepaid pension assets?

16 A. Staff's position is that the initiation of the tracker sets the starting point for
17 prepaid pension asset. At this point, the Commission has not approved Liberty Water's use of
18 a pension tracker. Once the Commission approves the Pension and OPEB tracker, the assets
19 will be included in rate base. Staff cannot include prepaid pension assets until the Commission
20 approves the use of tracker.

21 Q. In Mr. Fallert's testimony mentioned above, he uses the words "in excess of the
22 amount provided through rates." How does Staff respond?

23 A. For Liberty Water, pensions and OPEBs expense is new to this case. Liberty
24 Water has pensions and OPEBs expense in their other subsidiaries, but not Liberty Water.
25 While Liberty Water took it upon themselves to put money towards pensions and OPEBs
26 expense, there are no costs specifically for pensions and OPEBs included in Liberty Water's

1 last rate case (Case No. WR-2018-0170). Therefore, there is no excess of the amounts provided
2 through rates as described by Mr. Fallert because the costs that Liberty Water included in its
3 recommendation wasn't included in rates for pensions and OPEBs expense in previous
4 rate cases.

5 Q. Is there precedence for this treatment for pensions and OPEBs prepaid
6 pension asset?

7 A. Yes. Staff reviewed Case No. GR-2014-0152, when the pensions and OPEBs
8 issue was initiated in Liberty Utilities (Midstates Natural Gas) Corp. In the accounting
9 schedules, prepaid pension asset is not included in rate base. Further, in the Partial Stipulation
10 And Agreement As To Certain Issues in Case No. GR-2014-0152 filed on August 12, 2014,
11 part B, states that, "Beginning with the effective date of rates in this case, Liberty Utilities shall
12 be authorized to record as a regulatory asset/liability, as appropriate, the difference between the
13 pension expense used in setting rates..." This is the treatment that Liberty Water received then
14 and Staff recommends that it is the treatment that it should receive now. The prepaid pension
15 asset should be included in rate base only after the pensions and OPEBs tracker has been
16 approved by the Commission.

17 Q. Did Staff include similar proposed language that is consistent with previous
18 pension and OPEBs stipulations.?

19 A. Yes. Staff included proposed language in Schedule AN-d2 attached to Staff
20 witness Angela Niemeier direct testimony.

21 Q. What does Mr. Fallert use as justification for Liberty Water's proposed
22 treatment of prepaid pension assets?

23 A. Mr. Fallert uses his experience from Laclede Gas Company in the 1990's.

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1 Q. Please describe what Staff found when researching Laclede Gas
2 Company (“Laclede”).

3 A. What Mr. Fallert states is correct, to a point. The case he cited, Case No.
4 GR-99-315, did include prepaid pension asset. However, the Commission had already
5 approved to include pensions and OPEBs expenses in prior Laclede cases. Laclede’s pensions
6 and OPEBs tracker was ordered after the pensions and OPEBs expense had already been in
7 place for a number of years.

8 Q. What did Staff discover, when researching further back?

9 A. In an earlier rate case, Case No. GR-94-220, Staff discovered language from the
10 Stipulation and Agreement filed August 1, 1994.

11 8. The Parties agree that Laclede should be granted accounting
12 authorization to defer and book to Account 186 for inclusion in the rates
13 established in Laclede’s next general rate case proceeding the difference,
14 net of any applicable tax effects, between the cumulative contributions
15 made by Laclede to its external OPEB funding mechanisms during the
16 deferral period from September 1, 1994 to the effective date of rates
17 established in Laclede’s next general rate case proceeding and the
18 cumulative annualized allowance...

19 Q. What is the significance of this language?

20 A. The significance is that they agreed to begin booking pensions and OPEBS in
21 one case and include the difference in the next rate case.

22 Q. What is the difference?

23 A. The “difference” is the prepaid pension asset. Defined as the difference between
24 the pension expense used in setting rates and the pension expense as recorded for financial
25 reporting purposes as determined in accordance with Generally Accepted Accounting
26 Principles pursuant to Accounting Standards Codification (ASC) 715 (previously FAS 87 and

1 FAS 88, or such standard as the FASB may issue to supersede, amend, or interpret the existing
2 standards), and such difference shall be recovered from or returned to customers in future rates.

3 Q. Has some of the language or FAS accounts changed over time?

4 A. Yes, but the principle is still the same. Staff believes that the prepaid pension
5 assets should be set in the next rate case.

6 **CASH WORKING CAPITAL (“CWC”) INCOME TAX EXPENSE LAG**

7 Q. Do Staff and Liberty Water agree on the Cash Working Capital (“CWC”) lead
8 days for income tax payments?

9 A. No. Liberty Water’s witness, Mr. Lyons’ rebuttal testimony, page 3, line 22,
10 states that they disagree with increasing the expense lead/lag days from 37 days to 365 days
11 because it does not reflect the Internal Revenue Service’s (“IRS”) payment schedule for income
12 taxes in accordance with IRS Publication 542.

13 Q. Please describe Mr. Lyons’ rationale for including the 37 days, instead of the
14 365 that Staff proposes.

15 A. In rebuttal testimony, page 4, line 2, Mr. Lyons states that the IRS Publication
16 states that estimated tax payments are due by the 15th day of the 4th, 6th, 9th, and 12th month
17 of the corporation’s tax year and that those dates were used in developing the Company’s
18 lead/lag days for income tax payments.

19 Q. Did Staff consider this before making its’ recommendation?

20 A. Yes. Staff reviewed data provided by Liberty Water. Specifically, in response
21 to Staff Data Request (DR) No. 0213, Staff asked for details concerning actual payments for
22 corporate and state income taxes. Liberty Water witness Michael McCuen responded that

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1 Liberty Water is in a net operating loss position and that it has not made any federal or state
2 income tax payments for years requested.

3 Q. Did Staff ask when the Net Operating Loss (“NOL”) would be exhausted?

4 A. Yes. In response to Staff DR No. 0220, Liberty Water witness, Mr. McCuen,
5 stated that as Liberty Water continues to show a book loss, it is difficult to determine.

6 Q. Please describe Staff’s position.

7 A. Liberty Water does not currently make income tax payments and they are not
8 able to provide when that might change. For that reason, Staff relied on a precedent established
9 by the Commission in its Amended Report and Order in Spire Missouri’s rate case, Case No.
10 GR-2021-0108, the Commission stated in its Report and Order that:

11 ...federal and state income tax expense is included in rates but the
12 Company is not likely to remit any federal or state income taxes because
13 of its net operating loss carryforward (NOLC)...this lack of income tax
14 payment should be reflected in the CWC expense lag. The fact that no
15 income tax payments have been made in the test year or true-up period
16 justifies the use of a 365-day expense lag. Therefore, the Commission
17 finds that the appropriate expense lag days for income taxes within the
18 CWC calculation is 365 days.

19 Q. What does CWC measure?

20 A. CWC measures the amount of cash necessary for a utility to operate while
21 providing a service to ratepayers. In this situation, with no tax payments, there is no cash outlay.
22 Therefore, Staff recommends using 365 days for the expense lag.

23 Q. Does this conclude your surrebuttal testimony?

24 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Request of Liberty Utilities)
(Missouri Water) LLC d/b/a Liberty for)
Authority to Implement a General Rate)
Increase for Water and Wastewater Service)
Provided in its Missouri Service Areas)

Case No. WR-2024-0104

AFFIDAVIT OF ANGELA NIEMEIER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW ANGELA NIEMEIER and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Surrebuttal Testimony of Angela Niemeier*; and that the same is true and correct according to her best knowledge and belief.

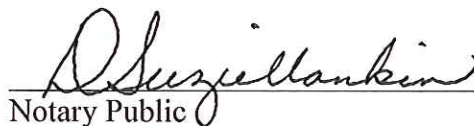
Further the Affiant sayeth not.


ANGELA NIEMEIER

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 23rd day of October 2024.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070


Notary Public