

Exhibit No.:

Issue(s):

Witness/Type of Exhibit:

Sponsoring Party:

Case No.:

NOL/ADIT Balances

Riley/Surrebuttal

Public Counsel

WR-2024-0104

SURREBUTTAL TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

**LIBERTY UTILITIES (MISSOURI WATER) CORP.
D/B/A LIBERTY UTILITIES'**

CASE NOS. WR-2024-0104

October 24, 2024

TABLE OF CONTENTS

Testimony	Page
NOL Exclusion from Rate Base	2
TCJA and ADIT Balances Included in Rate Base	5

SURREBUTTAL TESTIMONY
OF
JOHN S. RILEY
LIBERTY UTILITIES (Missouri Water)
D/B/A Liberty
CASE NO. WR-2024-0104

1 **Q. What is your name and business address?**

2 A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102.

3 **Q. Are you the same John S. Riley who prepared and filed rebuttal testimony in this case**
4 **on behalf of the Office of the Public Counsel?**

5 A. Yes.

6 **Q. What is the purpose of your surrebuttal?**

7 A. To point out to the Commission the lack of verifiable evidence to substantiate the net operating
8 loss (“NOL”) that both Staff and Company offer as a reduction to the excess accumulated
9 deferred income tax associated to the rate base. I also take issue with Staff’s inclusion of the
10 line-item “2017 Tax Act” amount of a negative \$39,104 as well as the underreporting of
11 accumulated deferred income tax (ADIT) that is included in its Rate Base Schedule in rebuttal
12 workpapers.

1 **NOL EXCLUSION FROM RATE BASE**

2 **Q. Could you summarize your position concerning the NOL that is included in rate base in**
3 **this case?**

4 A. Liberty Utilities Missouri Water was not a separate member of the Liberty affiliated group
5 until the 2022 consolidated income tax return. Any claim of an NOL that is specifically
6 identifiable to Missouri Water prior to the 2022 tax return, for purposes of adjusting rate base
7 is impossible.

8 **Q. Where was Missouri Water tax information prior to the 2022 tax return?**

9 A. It was co-mingled with other utility information within the Liberty Utilities (Sub) Corp.
10 (“Sub”) which is a subsidiary within the consolidated tax return of Liberty Utilities (America)
11 Co. & Subs. Confidential Schedule JSR-S-01.

12 **Q. What other utilities’ information was included in this Subgroup?**

13 A. It appears that one or more utilities in Arizona, Texas and Illinois were also combined with
14 the Missouri businesses revenues and expenses. I have included tax return depreciation pages
15 in the schedule to highlight the states that are included in the Sub information.

16 **Q. Could you differentiate and separate the taxable revenue and expenses for the Missouri**
17 **utilities?**

18 A. No.

1 **Q. The Company witness Mr. Michael McCuen explains in testimony that the NOL is**
2 **netted against the excess deferred tax liability. What amount of excess deferred income**
3 **tax (“EDIT”) does the Company include in its workpapers?**

4 A. Mr. McCuen’s testimony Schedule MM-2 (Schedule JSR-S-02) indicates that at year-end
5 2017, Missouri Water had a calculated balance of federal EDIT of \$304,527 of which
6 \$236,082 is protected and MO state EDIT of \$34,702.

7 **Q. Why did you specify the \$236,082 as protected?**

8 A. The Internal Revenue Service (“IRS”) dictates that protected EDIT, deferred tax which is
9 associated with plant-related deferrals, be amortized over the remaining life of the assets
10 whereas the unprotected \$68,445 can be returned to the ratepayer at a rate determined by the
11 Commission. The state EDIT can also be returned in a timeframe chosen by the Commission.

12 **Q. In the MM-2 Schedule, Mr. McCuen displays a line item at the bottom of the schedule**
13 **as “Net operating loss carryforward, gross item”. What can you determine from these**
14 **entries?**

15 A. Mr. McCuen included a line which proposes NOL balances for each column in the schedule.
16 These balances would be reductions to the ADIT balances calculated on the lines above this
17 NOL line.

18 **Q. Should the Commission accept this schedule as the calculated balances to include in or**
19 **offset rate base?**

20 A. No, not completely. These numbers are only a start. The ADIT balances are from year-end
21 2017. Line item NOL balances make no sense and cannot be verified because the Company
22 has no proof in its workpapers. Where does \$1,855,239 in total NOL come from if the

1 “losses” start in 2016?¹ There are also no more additional entries for ADIT created from 2018
2 through current true-up². The 2017 ADIT balances are very similar to Staff’s balances from
3 the 2018 case, but the Commission cannot rely on the NOL line items knowing that Missouri
4 Water tax information is comingled with at least three other utilities in the 2016 through 2021
5 consolidated tax returns. Mr. McCuen’s schedules are not evidence and Mr. McCuen does
6 not provide workpapers that validate these NOL numbers. The burden of proof in this case is
7 on the Company so the NOL should be excluded.

8 **Q. Please explain your reasoning.**

9 A. As I pointed to earlier in testimony, Missouri Water was included with some Arizona, Texas
10 and Illinois utilities when the tax information was recorded on the tax returns. As the
11 Commission has noted in past cases, an NOL is a tax return item. Until 2022, Missouri Water
12 was not separate on the tax return. Therefore, the proposed NOL is not verifiable up to the
13 2022 tax return. But even the NOL generated in 2022 and 2023 are amounts that should be
14 included to offset EDIT.

15 **Q. Why would an NOL from 2022 and 2023, where Missouri Water is a separate affiliate**
16 **on the consolidated tax return, not be considered for offsetting EDIT?**

17 A. The IRS has explained that the portion of the NOL that is associated with accelerated
18 depreciation must be considered when calculating ADIT. As can be seen in the answer to
19 data request 1300 included as Schedule JSR-S-03, the accelerated depreciation is less than the

¹ The first recorded loss in workpapers was for \$544,276 in 2016 and \$1,053,202 in 2017. The number doesn’t add up.

² The Company does fill in the 2018-2023 blanks with the answer to Staff data request 0214 which I discuss later in testimony.

1 financial depreciation. In short, there is no portion of the NOL associated to accelerated
2 depreciation.

3 **Q. If you eliminate the NOLC (Net Operating Loss Carryforward) from the ADIT**
4 **computations, what would the balance of ADIT and EDIT be for this case?**

5 A. Company answer to Staff data request 0214 indicates that as of the end of 2023, there was a
6 calculated ADIT balance of \$1,785,246 prior to an NOL deduction. (Schedule JSR-S-04) The
7 EDIT or tax reform portion was separated on Mr. McCuen's MM-2 schedule and was
8 \$304,527. Separating the ADIT balance from the tax reform year end 2017 would create an
9 ongoing ADIT balance of \$1,480,719 and a \$304,527 for EDIT (tax reform).

10 **Q. Could you summarize your argument for disallowing the NOL in calculating the EDIT**
11 **balance in the rate base?**

12 A. There is no separate, identifiable NOL that can be attributed to Missouri Water prior to 2022.
13 As we see from the 2022 return and 2023 information, there is no portion of the NOL, in those
14 years, that is attributable to accelerated depreciation. There is no NOL that is mandated by
15 IRS normalization rules that has to be included in the calculation of rate base for this rate case.
16 The ADIT and EDIT balances for rate base consideration should be \$1,480,719 and \$304,527,
17 respectively.

18 **TCJA AND ADIT BALANCES INCLUDED IN RATE BASE**

19 **Q. Can you explain what the "2017 Tax Act" balance of a negative \$39,104 represents?**

20 A. No, I can't. Missouri Water's last rate case was a small rate case procedure filed just prior to
21 the TCJA enactment³. Staff calculated ADIT for the water company of \$760,752 and the

³ WR-2018-0170 was originally filed 12/15/2017

1 sewer company was \$229,981⁴. Separating these numbers to reflect the 2017 TCJA tax rate
2 change into current ADIT and excess ADIT (EDIT) produced a positive number. I'm not
3 quite sure why Staff has inserted a negative number (which in the EMS run calculation of rate
4 base this is an addition to the rate base balance not a reduction) when EDIT would be a
5 subtraction from rate base.

6 **Q. What does Company witness McCuen indicate the balance of EDIT is?**

7 A. His direct testimony Schedule MM-2 indicates that the starting point of excess deferred tax is
8 a positive \$304,527.

9 **Q. Does Staff workpapers substantiate the negative \$39,104?**

10 A. No. I have not found a reference in the provided workpapers to a 2017 Tax Act calculation.

11 **Q. Staff witness Ms. Angela Niemeier refers to “the EADIT balances net of an appropriate**
12 **NOL balance ... be returned to customers using the remaining life of those assets at the**
13 **time the tax rate change went into effect.”⁵ Would you consider that this balance is net**
14 **of an NOL balance?**

15 A. I have refuted the inclusion of an NOL balance earlier in this testimony but if Staff were to
16 have netted the EDIT balance against a larger NOL balance, the ending sum could not be
17 recorded as a negative number. It could only go to zero.

⁴ Staff EMS run as 11/30/2017

⁵ WR-2024-0104, Niemeier direct Page 21, lines 1-3

1 **Q. Have you requested additional information from Staff concerning the “2017 Tax Act”**
2 **line item.**

3 A. Yes. I have sent a data request asking for an explanation and calculations to substantiate the
4 negative number. If the answer is provided after my testimony is submitted, then I will
5 evaluate and adjust my argument when the final reconciliation is developed for the evidentiary
6 hearing.

7 **Q. Staff includes a negative \$727 on the Rate Base Schedule for Accumulated Deferred**
8 **Income Taxes. Do you believe this to be an accurate balance?**

9 A. No. As I have indicated earlier, Staff calculations in the WR-2018-0170 case produced an
10 ADIT balance for water of \$760,752 and \$229,981 for sewer. The Staff’s current Income
11 Statement schedule for this case lists \$96,687 in deferred taxes alone. Where did these
12 balances go?

13 **Q. Could you summarize your position on Staff’s negative balances?**

14 A. Yes. The first point to make is that neither ADIT or EDIT (tax reform) can have a negative
15 balance. They can only go to zero. But that is a hypothetical scenario because this water and
16 sewer company has an ADIT balance of \$1,480,719 and an EDIT balance of \$304,527.

17 **Q. Does this conclude your surrebuttal testimony?**

18 A. Yes.

**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) Case No. WR-2024-0104
and Wastewater Service Provided in its Missouri)
Service Areas)

AFFIDAVIT OF JOHN S. RILEY

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:


1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 23rd day of October 2024.

TIFFANY HILDEBRAND
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES AUGUST 8, 2027
COLE COUNTY
COMMISSION #15637121



Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.