

Exhibit No.: \_\_\_\_\_  
Issue: NOL in ADIT  
Witness: Michael McCuen  
Type of Exhibit: Surrebuttal Testimony  
Sponsoring Party: Liberty Utilities  
(Missouri Water) LLC d/b/a Liberty  
Case No.: WR-2024-0104  
Date Testimony Prepared: October 2024

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

**Surrebuttal Testimony**

**of**

**Michael McCuen**

**on behalf of**

**Liberty Utilities (Missouri Water) LLC d/b/a Liberty**

**October 24, 2024**



SURREBUTTAL TESTIMONY OF MICHAEL MCCUEN  
LIBERTY UTILITIES (MISSOURI WATER) LLC D/B/A LIBERTY  
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. WR-2024-0104

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

2 A. My name is Michael McCuen. My business address is 602 South Joplin Avenue, Joplin,  
3 Missouri, 64802.

4 **Q. Are you the same Michael McCuen, who provided direct and rebuttal testimony**  
5 **in this matter on behalf of Liberty Utilities (Missouri Water) LLC d/b/a Liberty**  
6 **(“Liberty” or the “Company”)?**

7 A. Yes.

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

10 A. The purpose of my surrebuttal testimony (“Surrebuttal Testimony”) is to address the  
11 statements made in the Rebuttal Testimony of John S. Riley on behalf of Office of the  
12 Public Counsel (“OPC”), regarding Missouri specific Net Operating Losses  
13 (“NOL(s)”) and Accumulated Deferred Income Taxes (“ADIT”).

14 **Q. What is OPC witness Riley’s recommendation regarding the Company’s NOL**  
15 **and associated ADIT?**

16 A. He suggests there should be no inclusion of a NOL within the balance of ADIT. This  
17 is based on his assertion that Missouri statutes do not recognize NOLs and, therefore,  
18 NOLs should not be included within the ADIT balance used to calculate the Company’s  
19 Cost of Service.

20 **Q. What is your response to this argument?**

1 A. Mr. Riley’s argument is a red herring. He asserts that Missouri statute does not  
2 recognize NOLs. He then argues that if an NOL is not recognized by Missouri, there  
3 should be no inclusion of an NOL within the ADIT balance. It is important to draw  
4 attention that his argument has nothing to do with the issue of whether the Company  
5 has an NOL (it does), whether the recorded NOL means that accelerated deductions  
6 claimed on the tax return were not realized and did not provide a source of capital (they  
7 were not) and whether that means it is appropriate for the NOL deferred tax asset  
8 (“DTA”) to offset the recorded Deferred Tax Liabilities (“DTL”) to arrive at the  
9 Company’s ADIT rate base component (it should).

10 **Q. Do you agree with Mr. Riley’s assertion that Missouri does not recognize NOLs?**

11 A. No, I do not agree. Missouri conforms to the Internal Revenue Code (“IRC”) on a  
12 rolling basis.<sup>1</sup> In other words, a rolling-conformity state automatically conforms to the  
13 current version of the IRC, unless otherwise provided by state law. The starting point  
14 for determining taxable income in Missouri is federal taxable income after net  
15 operating loss and special deductions.<sup>2</sup> Section 143.431, RSMo, requires that the  
16 Missouri NOL begins with the federal NOL, and then could potentially be altered by  
17 state modifications. Further, Missouri allows NOL carryforwards for 20 years<sup>3</sup>, thus  
18 directly contradicting OPC witness Riley’s assertion that NOL carryforwards are not  
19 recognized in Missouri.

20 **Q. OPC witness Riley states that ADIT “is merely a tax return item.”<sup>4</sup> Do you agree**  
21 **with Mr. Riley’s view of NOLs merely being a tax return item?**

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<sup>1</sup> § 143.091, RSMo.

<sup>2</sup> § 143.431, RSMo.

<sup>3</sup> § 143.421(2)(4), RSMo.

<sup>4</sup> Riley Rebuttal, page 3, line 13.

1 A. No. OPC witness Riley seems to have the concept of ADIT backwards. He asks us to  
2 “[r]emember that accumulated deferred income tax (“ADIT”) is the product of a current  
3 interest free loan from the ratepayer for the expectation of paying taxes in the future”.<sup>5</sup>  
4 This logic is flawed. I agree that the Company’s ADIT (DTAs and DTLs) is an interest  
5 free loan, however, it is an interest free loan from the US Treasury. And because, due  
6 to the NOL, the interest free Treasury loan has not been realized, either the ADIT itself  
7 must be reduced or, as the Company has done, the ADIT must be offset with a NOL  
8 DTA, thereby obtaining the same result.

9 **Q. Why is that?**

10 A. ADIT is the cumulative result of the differences in income recognition between tax  
11 laws (i.e., the IRS) and accounting methods (i.e., GAAP). Each year, deferred tax  
12 expense is recorded for these book-tax differences with ADIT as the “other side” of the  
13 deferred tax expense entry. ADIT is the collection of deferred income tax expense  
14 created each period. Importantly, for every dollar of ADIT, there is an equal and  
15 offsetting reduction in current income tax expense reflecting the positions claimed on  
16 the income tax return. In this manner, customer rates include both the deferred tax  
17 expense and the impact of the equal and offsetting reduction of current tax expense due  
18 to claiming accelerated deductions on the income tax return. In situations where  
19 deductions on the income tax return are in excess of tax return income a NOL occurs,  
20 when in a NOL position, there is no current tax liability, meaning the accelerated tax  
21 return deductions have not been realized and, therefore, no interest free loan is  
22 generated. The NOL is a timing difference that represents a future benefit (deduction)  
23 and is treated as a DTA. “The tax assets or liabilities related to temporary differences

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<sup>5</sup> Riley Rebuttal, page 3, line 11.

1 are accumulated in Missouri Water's liability accounts as ADIT".<sup>6</sup> It is inappropriate  
2 to reduce rate base for ADIT (an interest free loan from the US Treasury) when no such  
3 loan has been obtained. The ADIT recorded for the book-tax differences must be  
4 reduced for the unrealized interest free loan. The amount of the interest free loan is  
5 recorded as an ADIT DTA and offsets the DTLs and must be included in rate base.

6 **Q. Has the Commission addressed the issue of including a DTA recorded for a NOL**  
7 **as a rate base offset to the DTLs in previous proceedings?**

8 A. Yes. In File No. ER-2019-0374<sup>7</sup>, the Commission found:

9 Empire's use of accelerated tax depreciation reduced Empire's income  
10 tax expense to a negative number, which resulted in an NOL. The NOL  
11 offsets the ADIT liabilities. This is appropriate since the NOL did not  
12 reduce current income tax payments and did not provide the company  
13 with a no-cost source of capital... The Commission finds that Empire's  
14 booked accumulated deferred federal income tax should include a  
15 reduction for the NOL.

16 **Q. What is the Company's request related to the Missouri NOL?**

17 A. Consistent with the decision in Case No. ER-2019-0374, the Company requests that  
18 the Commission find that Liberty's Cost of Service ADIT balance include a reduction  
19 for the NOL DTA.

20 **Q. Does this conclude your surrebuttal testimony at this time?**

21 A. Yes.

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<sup>6</sup> Niemeier Direct, page 15, line 22.

<sup>7</sup> *In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area*, Report and Order, pp. 89-90 (Issued July 1, 2020).

**VERIFICATION**

I, Michael McCuen, under penalty of perjury, on this 24th day of October, 2024, declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Michael McCuen