

**Exhibit No.:**

**Issue(s):** Deferred Tax Balance in Rate Base/  
Securitization Income Tax Charges

**Witness/Type of Exhibit:** Riley/Rebuttal

**Sponsoring Party:** Public Counsel

**Case No.:** ER-2024-0261

## **REBUTTAL TESTIMONY**

**OF**

**JOHN S. RILEY**

Submitted on Behalf of the Office of the Public Counsel

**THE EMPIRE DISTRICT ELECTRIC COMPANY  
D/B/A LIBERTY**

FILE NO. ER-2024-0261

August 18, 2025

**REBUTTAL TESTIMONY**  
**OF**  
**JOHN S. RILEY**  
**THE EMPIRE DISTRICT ELECTRIC COMPANY**  
**D/B/A LIBERTY**  
**CASE NO. ER-2024-0261**

**Q. What are your name and business address?**

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

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

A. Yes.

**Q. What is the purpose of your rebuttal testimony?**

A. I am responding to Staff and Company witnesses' accumulated deferred income tax (ADIT) adjustments to Empire's rate base. Some of the adjustments were incorrectly calculated and others were shifted to Bondco, LLC at an amount that does not coincide with the amounts included in the records of Bondco. Specifically, I will be making adjustments to Empire's rate base for the Asbury portion of the \$71 million of ADIT in Bondco financial records, and an \$80 million adjustment in Asbury tax that Staff labeled as being deferred to Bondco.

**Q. Would you please describe Bondco?**

A. Empire formed Bondco as a special purpose entity solely to administer the collection and subsequent payment of all expenses, interest and bond principal associated with the Storm Uri/Asbury securitization bonds which Empire's retail customers are servicing.

1 **Q. Is it appropriate to include the revenues Empire collects through its February 2021**  
2 **Storm and Asbury Costs charges to satisfy these securitization costs with Empire’s**  
3 **general retail sales revenues to calculate Empire’s revenue requirement?**

4 A. It is my understanding that the books and records of Bondco, LLC remain separate from the  
5 general rate case review because the securitization charge funds are dedicated to bond  
6 repayment.

7 **Q. Would you briefly describe the deferred tax liability in question?**

8 A. As the term implies, a deferred tax is where a tax amount is recognized differently in time by  
9 a taxing authority and a ratemaking authority. Quintessentially, it occurs when a taxing  
10 authority recognizes accelerated depreciation, but the ratemaking authority recognizes  
11 straight-line depreciation because the taxpaying utility cannot elect accelerated depreciation  
12 when paying taxes if the ratemaking authority uses anything shorter than straight-line  
13 depreciation for determining the tax liability for ratemaking—a “normalization violation.” By  
14 this “poison pill,” the benefit of accelerated depreciation relative to straight-line depreciation  
15 accrues to the company, not to its customers. The taxing authorities allowed Empire to reduce  
16 its taxable revenues—tax benefits—by a group of fuel and purchase power costs, as well as  
17 Asbury abandonment reductions and a Missouri deferred securitization amount. But rather  
18 than flowing these tax benefits to Empire’s retail customers through rates, the Commission  
19 created the tax deferral. By doing so the Commission postponed passing these tax benefits to  
20 Empire’s retail customers and Empire recorded a tax liability to reflect this tax deferment.

21 **Q. What amount of this deferred tax is recorded on the books of Bondco?**

22 A. \$71,400,098. I’ve included the answer to OPC data request 1315 as Schedule JSR-R-01.

**Q. How does this \$71,400,098 Bondco balance affect ratepayers?**

A. Both Staff and Company have included a deferred tax liability, in this rate case, for the tax advantages of the winter storm Uri. Company has included \$49,507,898 as a reduction to rate base. Staff has a slightly larger amount of \$51,448,584. Staff workpapers indicate that there was a remeasurement of the account balance.

**Q. What about the deferred tax associated with Asbury?**

A. I could not track down any reduction for Asbury deferred tax in Staff's ADIT workpapers. The Commission decided in Case No. EO-2020-0040 that the tax benefit that I sought to incorporate would neither be included nor reduce the Asbury balance to be securitized. The Commission pointed out that a regulatory asset would be established for the net book value of Asbury and this balance would have deferred taxes associated to it.<sup>1</sup>

**Q. Was a regulatory asset established?**

A. Yes. The Commission quoted in its Order section 393.1700.2(3)(c), RSMo:

..... The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from rate base in future general rate cases and the net tax benefits relating to amounts that will be recovered through the issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that could otherwise be issued.<sup>2</sup>

The Commission rejected my request to include these tax benefits as an offset to reduce the amount securitized, and as the above statute reads, all amounts associated with Asbury are removed from rate base. A regulatory asset of \$100,212,465 was transferred to Bondco and

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<sup>1</sup> Case No. EO-2022-0040, Amended Report and Order, para.142.

<sup>2</sup> Amended Report and Order, page 64, conclusion of law.

1 a deferred tax liability of \$23,775,067 have been calculated and included in the \$71 million  
2 balance.

3 **Q. Was the deferred tax associated with this regulatory asset included in Staff's ADIT**  
4 **balances?**

5 A. It doesn't appear that Staff recognized a deferred tax liability for Asbury. I found two entries  
6 concerning Asbury that reduce the ADIT balance instead of increasing it. I found an account  
7 254 (other regulatory liabilities) entry described as Asbury Retire-Reg Liab- MO with a  
8 reduction to ADIT for \$17,238,347. If it is properly recorded as a liability, then the effect  
9 should be an addition to deferred income tax, not a reduction. I have sent data requests to  
10 Staff asking for clarification. I also noted a "tax only" entry of \$80,660,863. At first glance,  
11 this would appear to be a cancelling entry for the remaining balance of the Asbury asset. This  
12 does not appear to be a deferred tax amount. I have sent data request to Staff for an  
13 explanation.

14 **Q. What adjustments are you proposing in this rebuttal testimony?**

15 A. Depending on the explanations from Staff, I request that the ongoing balance of ADIT  
16 included in the Staff's rate base be adjusted by the Deferred tax recorded on the Bondco  
17 financial records for the Asbury retirement (\$23,775,067). I also request the reversal of the  
18 \$17,238,347 Staff has included as an Asbury Retirement of a Regulatory Liability and  
19 removal of the \$80,660,863 from the "tax only" line items.

1 **Q. Why do you think the Commission included the whole amount instead of the tax reduced**  
2 **amount when in Case No. EO-2022-0040 the Commission rejected your argument to**  
3 **reduce the securitization amount by the tax reduction of both the Uri costs and the**  
4 **abandonment reduction for early retirement of Asbury?**

5 A. Judging from the Amended Report and Order Findings of Facts associated with question **H)**  
6 **Should Liberty's recovery reflect a disallowance for income tax deductions for Winter**  
7 **Storm Uri costs?** it appears to me that the Commission confused facts and incorrectly applied  
8 the securitization law:

9 H) Should Liberty's recovery reflect a disallowance for income tax  
10 deductions for Winter Storm Uri costs?

11 Findings of Fact

12 52. Public Counsel asserts that Liberty expects to claim a Missouri  
13 jurisdictional tax deduction of \$204,500,939 on the 2021 consolidated income  
14 tax return, resulting in a tax savings due to the Winter Storm Uri loss of  
15 \$48,753,024. Public Counsel would gross that amount up to \$64,012,720 and  
16 add carrying charges to bring the total reduction to \$68,346,382. Public  
17 Counsel argues this tax benefit should be recognized as a reduction in the  
18 amount of securitization.

19 53. **Public Counsel incorrectly asserts that the proceeds Liberty will**  
20 **receive from the securitization bonds are not taxable,** (Emphasis added.)  
21 so the company will be compensated, yet still enjoy a tax break for the loss. In  
22 fact, the charges that will be used to pay the bonds is taxed as income to the  
23 utility. Public Counsel's witness acknowledged that fact in his testimony at  
24 the hearing.

25 54. The tax treatment of Winter Storm Uri losses may create a tax timing  
26 issue that will result in an adjustment of Accumulate Deferred Income Tax  
27 (ADIT) as an offset to Liberty's rate base. Customers do not receive the  
28 recorded amount of the ADIT liability, instead, they benefit because ADIT  
29 liability reduces rate base and customers are charged a lower revenue  
30 requirement reflecting the lower cost of capital.

31 In the Commission's Conclusion of Law, it was pointed out:

1 X. Public Counsel's witness also cites Section 393.1700.1(8), RSMo,  
2 which includes various taxes within the definition of "Financing Costs."  
3 Again, the costs in question are qualified extraordinary costs, not financing  
4 costs. (Footnotes deleted)

5 In paragraph 53, the Commission writes as if it found a "gotcha" moment; however, there was  
6 no argument among the parties to that case that bond proceeds are not taxed and that the  
7 revenues collected to repay the bonds are taxed. The whole point of my argument on this  
8 issue apparently was misunderstood. Without the income tax reduction to the securitized  
9 amount, the Company would be reimbursed for the entire amount, \$208+ million and receive  
10 the tax deduction of \$49 million as well. I don't believe the Commission intended to provide  
11 the Company with this undeserved bonus.

12 Paragraph 54 of the report and order, which is a quote from Ms. Charlotte Emery's surrebuttal  
13 testimony in that case, points out that the ratepayer can benefit from ADIT reducing rate base.  
14 Unfortunately, no one mentioned my point that there was no accounting or IRS mandate to  
15 create this ADIT balance. ADIT is never as beneficial to ratepayers as immediately flowing  
16 through tax benefits. Because of the Commission decision not to reduce the securitization  
17 amount by the tax deduction, retail customers not only have to repay \$49 million that never  
18 should have been included, but they also have to pay the generated tax that follows it until the  
19 bonds are retired. Roughly, another \$15,496,923 in additional taxes. The total cost to retail  
20 customers will be \$65,004,821 for not reducing the securitization amount for the Uri tax  
21 deductions. The same goes for the Asbury abandonment deduction. In my testimony from  
22 the prior case, I cited \$16.5 million in tax savings for Asbury. That is an amount Empire's  
23 retail customers should never have to pay. To add salt to the wound, retail customers must  
24 fund an additional \$5,164,817 in gross-upped taxes. Retail customers are being left holding  
25 the bag for over \$86 million in unnecessary funding.

26 It appears the Commission did not understand that the additional income tax payments are  
27 additional financing costs.

**Q. What about the ADIT balances savings to Empire's retail customers?**

A. Working with ADIT balances of \$51,488,584 and the \$23,775,067 transferred to Bondco for Asbury, **Empire's retail customers** will receive a total revenue requirement reduction of \$48,422,379. See Schedule JSR-R-02.

**Q. Are you saying that Empire's retail customers will pay \$38 million more than the revenue requirement reduction?**

A. That is correct. As I stated earlier, this wasn't a mandated procedure. This was not special treatment of ADIT because there was no reason for the Commission to create this deferred tax. The reductions should have been recognized and adjusted upfront.

**Q. Since the bonds are issued, what can the Commission do now about these deferred taxes issues?**

A. I'm proposing that Liberty be required to pay the income tax generated from the collection of the securitized utility tariff costs. The ratepayer should be responsible for principal and interest and the other prudently incurred finance charges less any income tax.

**Q. How can the Commission do that?**

A. The Commission quotes the following statutory language in the Conclusions of Law section of its Case No. EO-2022-0040 Amended Report and Order:

Z. Section 393.1700.2(3)(c)k, RSMo. requires that this order provide for a reconciliation process that would require Liberty to account for any potential tax benefits that may lower its actual



1 securitized utility tariff costs associated with Winter Storm Uri  
2 through a future rate case.<sup>3</sup>

3 This *is* the future rate case.

4 **Q. Would you explain your justification that this statutory language allows the Commission**  
5 **to give the relief that you suggest?**

6 A. When Evergy requested securitization for storm Uri costs<sup>4</sup>, I made the same argument that  
7 the tax deduction should reduce the bond amount. Evergy witness Ms. Mellisa Hardesty  
8 stated that the Company would pay the income taxes due to the deferred taxes created from  
9 keeping the tax deduction.<sup>5</sup> Staff witness Ms. Kimberly Bolin took the stand in the hearing  
10 and concurred with Ms. Hardesty.<sup>6</sup>

11 That's not the case with Liberty. Liberty got its cake and ate it too. It collected the deduction,  
12 tossed a deferred tax on the books and collects income tax amounts from the ratepayer. The  
13 tax deduction is built into the bond amount so nothing can be done on that end. All I'm asking  
14 for is the same treatment that Ms. Hardesty explained in the Evergy Securitization case. The  
15 tax is built into the original securitization amount and Evergy would be responsible for the  
16 income tax. Liberty was provided the same arrangement, but it is allowed to double dip on  
17 the income taxes. It is time Liberty be responsible for the income tax due since it collected it  
18 in advance just like Evergy.

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<sup>3</sup> Amended Report & Order, page 35.

<sup>4</sup> EF-2022-0155.

<sup>5</sup> EF-2022-0155, transcript volume 2, p. 231-238. JSR-R-03

<sup>6</sup> EF-2022-0155, transcript volume 3, p. 331-341. JSR-R-04

1     **Q.     Does this conclude your rebuttal testimony?**

2     A.     Yes, it does.

In the Matter of the Request of The )  
 Empire District Electric Company d/b/a )  
 Liberty for Authority to File Tariffs ) Case No. ER-2024-0261  
 Increasing Rates for Electric Service )  
 Provided to Customers in Its Missouri )  
 Service Area )


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

1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.

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

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.