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Electric Company d/b/a Liberty
Case No.: ER-2024-0261
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**Before the Public Service Commission
of the State of Missouri**

Rebuttal Testimony

of

Michael McCuen

on behalf of

The Empire District Electric Company d/b/a Liberty

August 18, 2025



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FOR THE REBUTTAL TESTIMONY OF MICHAEL MCCUEN
THE EMPIRE DISTRICT ELECTRIC COMPANY D/B/A LIBERTY
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. ER-2024-0261

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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 Avenue, Joplin,
4 Missouri 64802.

5 **Q. Are you the same Michael McCuen who provided direct testimony in this matter
6 on behalf of The Empire District Electric Company d/b/a Liberty (“Liberty” or
7 the “Company”)?**

8 A. Yes.

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

11 A. The purpose of my rebuttal testimony is to address recommendations made by Matthew
12 R. Young on behalf of the Commission Staff (“Staff”) regarding the Company’s Excess
13 Accumulated Deferred Income Tax (“EADIT”), Accumulated Deferred Income Tax
14 (“ADIT”) balance, and Staff’s tax expense calculation. I also address the
15 recommendations made by John S. Riley on behalf of the Office of Public Counsel
16 (“OPC”) regarding deferred tax assets in rate base.

17 **II. RESPONSE TO STAFF WITNESS YOUNG**

18 **Q. What is Staff witness Young’s recommendation regarding the Company’s
19 unprotected EADIT?**

20 A. Mr. Young identifies that the unprotected EADIT has been over-amortized as of
21 September 30, 2024, and is included in the amortization tracker recommended by Staff

1 witness Nathan Bailey. Staff witness Young also recommends that the EADIT tracker
2 be stopped because it is more certain and routine at this point in time.

3 **Q. Do you have any concerns with removing the tracker mechanism for unprotected**
4 **EADIT?**

5 A. No, provided that the EADIT tracker “stub period” is handled consistently with the
6 approach used for similar tracker authorizations — allowing the Company to bring
7 forward the balance accumulated in the EADIT tracker between March 31, 2025, and
8 the effective date of the new rates established in this proceeding. That balance would
9 then be included in rate base in the Company’s next rate case.

10 **Q. Please explain further.**

11 A. In response to Staff data request 0275, the Company provided a schedule showing the
12 regulatory asset created by the tracker mechanism for unprotected EADIT. The
13 response shows that the Company is over-refunding customers approximately
14 \$800,000 per month. With a true-up period of March 31, 2025, and if new rates do not
15 take effect until early 2026, the Company will have several million dollars of additional
16 balance accumulating in the regulatory asset. This additional accumulation is
17 significant to the Company and therefore this stub period accumulation should continue
18 to be subject to the tracker mechanism.

19 **Q. What is Staff witness Young’s recommendation regarding the Company’s**
20 **protected EADIT?**

21 A. Mr. Young recommends that the protected tracker be stopped because it is more certain
22 and routine at this point in time. Mr. Young recommends a normalized amount of
23 EADIT Average Rate Assumption Method (“ARAM”) amortization and the
24 discontinuation of Liberty’s EADIT amortization tracker.

1 **Q. Do you agree with the recommendation by Staff witness Young regarding the**
2 **protected EADIT tracker?**

3 A. Yes, but for a different reason. The IRS has issued numerous Private Letter Rulings
4 (“PLRs”) specific to the normalization requirements around how utilities treat true-ups
5 within their EADIT calculations. The IRS has ruled that the Consistency Rule in IRC
6 §168(i)(9)(B)(i) precludes taxpayers from adjusting one aspect of ratemaking under the
7 normalization rules without the others. See PLR 202142002. The Consistency Rule
8 requires that the reserve for ADIT, tax expense, and book depreciation expense must
9 be consistent. This PLR extends that concept to protected EADIT to find that a public
10 utility cannot adjust its amortization of protected EADIT using the ARAM without
11 making similar adjustments to its ADIT, book depreciation, and tax expense.

12 Currently, the Company’s tracker for protected EADIT does not take into
13 account adjustments to ADIT, book depreciation, and tax expense. Therefore, the
14 tracker is inconsistent and creates a potential normalization violation under the PLR.
15 From this standpoint, I agree with Mr. Young that the protected EADIT tracker should
16 be discontinued.

17 **Q. Do you agree with the calculations by Staff witness Young regarding the**
18 **Company’s unprotected EADIT?**

19 A. No. First, I believe Mr. Young is using draft schedules that ultimately changed with
20 the final order in the securitization case. Second, I believe there is a disconnect between
21 the amount Mr. Young identifies as the unprotected balance effective 5/31/2022
22 (\$5,981,997) and the amount Mr. Young has in his amortization schedule (\$9,557,882).
23 Because of this difference, the monthly amortization calculated by Staff of \$498,500

1 is not correct. The tax amortization should be \$616,638 with a corresponding gross-
2 up.

3 **Q. Has Staff witness Young addressed all the issues around the protected EADIT**
4 **ARAM amounts in rates?**

5 A. No. I identified an issue in my direct testimony with Cost of Removal describing the
6 IRS's issuance of multiple PLRs on normalization requirements and ARAM. To avoid
7 normalization issues, the Company proposed that the ARAM amortization for
8 protected EADIT be based on the life-only rate rather than the total depreciation rate.
9 Utilizing this life-only rate will ensure the Company complies with the revised IRS
10 guidance.

11 **Q. Is there another method the Company could use other than the ARAM?**

12 A. Yes. IRS Revenue Procedure 2020-39, Section 4.01, provides that under Section
13 1300a(d)(1) of the Tax Cut and Jobs Act ("TCJA"), taxpayers must use ARAM to
14 calculate the reversal of protected EADIT if the taxpayer's regulatory books are based
15 upon the vintage account data necessary to use ARAM. However, if the taxpayer's
16 regulatory books are not based upon the vintage account data that is necessary for
17 ARAM, use of the alternative Reverse South Georgia Method or "RSGM" is allowed.
18 Under RSGM, the protected EADIT amounts are returned to customers on a straight-
19 line basis over the estimated useful lives of the Property Plant & Equipment ("PP&E")
20 used to determine book depreciation. Section 4.02 provides that the determination of
21 whether a taxpayer's regulatory books contain sufficient vintage account data necessary
22 to use ARAM is determined based on all the facts and circumstances. There is diversity
23 in practice, and using RSGM as an alternative method (instead of ARAM) is not
24 uncommon. RSGM is a method whereby a taxpayer computes the protected EADIT on

1 all public utility property included in the plant account on the basis of the weighted
2 average life or composite rate used to compute depreciation for regulatory purposes
3 and reduces the protected EADIT ratably over the remaining regulatory life of the
4 property.

5 **Q. Can the Company change from ARAM to RSGM?**

6 A. Yes. Liberty could adopt RSGM, an acceptable alternative method for reversing
7 protected EADIT, instead of using ARAM. In this manner method, life and Cost of
8 Removal book-tax differences existing in protected EADIT would all be reversed over
9 book lives. This would also provide a more normalized amount as Staff witness Young
10 intends. It also assures that our customers will receive 100% of the protected EADIT
11 that they are due.

12 **Q. Do you agree with the calculations by Staff witness Young regarding the**
13 **Company's protected EADIT?**

14 A. No. I believe Mr. Young is using draft schedules that ultimately changed with the final
15 order in the securitization case. This will impact the amount shown for rate recovery.
16 When the schedules are updated to reflect the amount that has been returned to
17 customers, I expect that no adjustment will be required.

18 **Q. Do you agree with Staff witness Young's position regarding the Company's**
19 **Accumulated Deferred Income Taxes?**

20 A. No. Staff included a total company balance rather than a Missouri jurisdictional
21 balance. Additionally, Staff included all ADIT ledger account balances for recovery.
22 Alternatively, the Company reviews the detail of its ADIT ledger account balances and
23 determines which ADIT balances to include for recovery based on the associated FERC
24 book account the ADIT is related to.

1 **Q. Were there any errors in the Company’s initial calculation of ADIT as of**
2 **September 2024?**

3 A. Yes. The Company’s initial calculation did not accurately reflect the net ADIT balances
4 associated with the Hypothetical Liquidation at Book Value (“HLBV”) methodology.
5 Specifically, the net basis difference related to the wind projects should align with the
6 regulatory ratemaking principles applicable to those projects, which generally exclude
7 the impact of HLBV on ADIT. Additionally, the Company omitted a portion of ADIT
8 related to its Missouri Storm Uri regulatory asset. After correcting these issues, the
9 Missouri jurisdictional pro forma ADIT balance is (\$357,489,267).

10 **Q. Do you have any concerns regarding Staff’s treatment of the “Alternative Fuels**
11 **Credit” in the income tax calculation?**

12 A. Yes. Liberty files Federal Form 4136, *Credit for Federal Tax Paid on Fuels*. This form
13 only reports the non-taxable use of kerosine used in aviation. Liberty pays federal
14 excise tax on its aviation fuel purchases, which are used for generation rather than
15 aviation purposes. Because the fuel is not used for its intended purpose, Liberty is
16 eligible to apply the excise tax paid as a credit against its federal tax liability. There is
17 no impact on the cost-of-service calculation, this credit is treated as cash or a
18 prepayment when Liberty is out of its net operating loss position. Mr. Young needs to
19 remove this credit of approximately \$615,000 from the income tax calculation.

20 **III. RESPONSE TO OPC WITNESS RILEY**

21 **Q. What is OPC witness Riley’s recommendation regarding some of the Company’s**
22 **deferred tax assets?**

23 A. Mr. Riley recommends that certain deferred tax assets be removed from rate base solely
24 on his assertion that they were not included in the last rate case.

1 **Q. Do you agree with Mr. Riley’s recommendation?**

2 A. No. Interestingly, Mr. Riley only looks at the deferred tax assets that increase rate base
3 and has not suggested any deferred tax liabilities be removed from rate base.

4 **Q. Please summarize each deferred tax item.**

5 A. Please see **Rebuttal Schedule MM-1**. This detailed schedule shows the underlying
6 balance sheet items that create each tax timing difference at a Total Company level,
7 including both deferred tax assets and liabilities. It also shows the tax account number
8 to which each item is recorded. This will help identify everything that has been rolled
9 into the Account 190124 deferred tax asset – misc.

10 **Q. Mr. Riley specifically identified a deferred tax asset FAS 109. What is included**
11 **in that account?**

12 A. The deferred tax associated with FAS 109 is where the gross-up calculations are
13 recorded. These are 100% offset with their corresponding regulatory balance. Both
14 the regulatory grossed up amount and the associated tax ADIT gross-up would offset
15 and have no net impact on rate base. Both sides are included in rate base and offset
16 each other. This would have been true for any general rate case.

17 **Q. Mr. Riley specifically identified the Company’s Net Operating Loss (“NOL”)**
18 **account as a deferred tax asset. What is included in that account?**

19 A. That account contains the Company’s NOL carry-forward balance and is a deferred tax
20 asset. A NOL is created when, in any year, a taxpayer reports more deductions than it
21 has taxable income. The TCJA lifted the 20-year limit on NOL carryforwards,
22 allowing for indefinite carryforward with some limitations on use. In the year in which
23 it is carried to, an NOL is treated like an additional deduction, reducing the taxable
24 income otherwise produced in that year. When an NOL must be carried forward, a

1 portion of the deductions claimed by the taxpayer in the year that the NOL is created
2 will not offset taxable income and not reduce the taxpayer's tax liability – thus, no cost-
3 free capital was received for the amount of NOL that did not reduce the tax liability.
4 In the current case, Liberty reflected the impact of its NOL carryforward for tax
5 purposes as an ADIT asset (deferred tax asset) of approximately \$26 million. This had
6 the effect of increasing rate base by that amount (by decreasing the overall ADIT
7 balance which reduced rate base). Liberty reduced its rate base by its net ADIT liability
8 balance (sum of deferred tax assets and deferred tax liabilities) as a result of timing
9 differences between deductions for tax purposes and financial statement purposes. The
10 net deferred tax liability is used to reduce rate base because it represents a source of
11 cost-free capital (a reduction in the amount of cash paid for tax purposes) that Liberty
12 has received as a consequence of claiming certain tax deductions. In a year that Liberty
13 generates an NOL for tax purposes that is carried forward, the NOL carryforward
14 reduces the amount of cost-free capital it received. Therefore, Liberty has reflected in
15 its rate base computation the actual impact its NOL has had on the amount of cost-free
16 capital it received.

17 **Q. Are there other reasons why the NOL deferred tax asset should be included in**
18 **rate base?**

19 A. Yes. Under §393.1700, RSMo., the Company securitized energy transition costs
20 (Asbury) and qualified extraordinary costs (Storm Uri). Under §393.1700.3(b)(m),
21 only the ADIT in connection with the retired or abandoned electric generating facility
22 would be included in the securitized financing order. The Commission issued an Order
23 in Case No. EO-2022-0193 on November 29, 2023, pertaining to the Company's
24 securitization filing. This Order points out that the Missouri securitization statute only

1 identifies a method for ADIT associated with energy transition costs to go into the
2 financing order. Therefore, all remaining Storm Uri ADIT stays in the Company's
3 general rate case. This includes both deferred tax assets and deferred tax liabilities.
4 Liberty's NOL is directly related to the impacts of Storm Uri, and the net between the
5 deferred tax liability and the NOL deferred tax asset represents the actual amount of
6 cost-free capital that Liberty received.

7 **Q. What is Mr. Riley's recommendation for the unprotected EADIT tracker?**

8 A. Mr. Riley is not really sure what should be done. He does not believe it should be added
9 to rate base and recommends an adjusted amortization should be included.

10 **Q. Do you agree with Mr. Riley's recommendation regarding the treatment of the**
11 **unprotected EADIT tracker?**

12 A. No, I do not. In Case No. ER-2021-0312, the Commission clearly distinguished
13 between two categories of EADIT: protected and unprotected. Protected EADIT is
14 subject to normalization rules and must be returned over a longer period, while
15 unprotected EADIT was assigned a three-year amortization period. The EADIT
16 balance includes both deferred tax assets and liabilities, which net to an overall
17 regulatory liability that reduces rate base – consistent with how ADIT is treated. Mr.
18 Riley's suggestion that the regulatory asset created by over-amortization should now
19 be excluded from rate base contradicts established regulatory treatment and
20 misrepresents the Commission's intent. Such a proposal is inconsistent with sound
21 ratemaking principles.

1 **Q. Do you agree with Mr. Riley’s recommendation around disposition/impairments?**

2 A. No. Any gain or loss resulting from a disposition or impairment is a timing item and
3 has already been properly considered in the ADIT amount, which is included as a
4 reduction to rate base. As such, these timing items do not impact the cost of service.

5 **Q. Do you agree with Mr. Riley’s recommendation around salvage proceeds?**

6 A. No. Mr. Riley’s suggestion that random and infrequent salvage proceeds for a revenue
7 adjustment is inconsistent with traditional ratemaking principles. Applying such an
8 approach could introduce volatility and unpredictability into each general rate case,
9 potentially leading to unintended consequences. The Company believes its current
10 treatment is appropriate and consistent with established regulatory practice.

11 **IV. REQUESTS**

12 **Q. What is Liberty’s request related to Staff witness Young’s recommendations?**

13 A. Liberty requests that the unprotected EADIT tracker mechanism remain in place until
14 rates are effective from this case. The over-amortized balance in the regulatory asset
15 account will then be resolved in the next general rate case. Liberty requests that the
16 protected EADIT tracker be discontinued and that the Commission order Liberty to
17 start using the RSGM instead of ARAM. Additionally, Liberty requests Mr. Young to
18 remove the “Alternative Fuels Credit” from Staff’s income tax calculation.

19 **Q. What is Liberty’s request related to OPC witness Riley’s recommendations?**

20 A. Liberty requests that OPC witness Riley’s recommendations be denied and that all
21 deferred tax assets be included in the net ADIT balance that reduces rate base; the
22 unprotected EADIT tracker be given back timely to Liberty and included in rate base;
23 the recommendation for dispositions and salvage both be denied.

1 V. **CONCLUSION**

2 Q. **Does this conclude your rebuttal testimony at this time?**

3 A. Yes.

VERIFICATION

I, Michael McCuen, under penalty of perjury, on this 18th day of August, 2025, declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Michael McCuen