

Exhibit No. 40

Empire District Electric Company – Exhibit 40
Testimony of Michael McCuen
Surrebuttal
File No. ER-2024-0261

Exhibit No.: _____
Issue(s): Taxes
Witness: Michael McCuen
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: The Empire District
Electric Company d/b/a Liberty
Case No.: ER-2024-0261
Date Testimony Prepared: September 2025

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

Surrebuttal Testimony

of

Michael McCuen

on behalf of

The Empire District Electric Company d/b/a Liberty

September 17, 2025



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FOR THE SURREBUTTAL TESTIMONY OF MICHAEL MCCUEN
THE EMPIRE DISTRICT ELECTRIC COMPANY D/B/A LIBERTY
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
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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 and rebuttal testimony**
6 **in this matter on behalf of The Empire District Electric Company d/b/a Liberty**
7 **(“Liberty” or the “Company”)?**

8 A. Yes.

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

11 A. I will be addressing tax related statements made by rebuttal witness John S. Riley on
12 behalf of the Office of Public Counsel.

13 **II. SECURITIZED INCOME TAXES**

14 **Q. Has the Commission ruled on securitization and the tax impacts within it?**

15 A. Yes. The Commission issued its Order Nunc Pro Tunc on November 29, 2023, in Case
16 Nos. EO-2022-0040 and EO-2022-0193, which was the final order regarding
17 securitization. Going forward in my testimony I will refer to the order from those
18 dockets as the “Securitization Order.” The Commission’s Order addressed all
19 securitization related items, including income taxes.

20 **Q. What is Mr. Riley’s criticism of the treatment of income taxes under the**
21 **Securitization Order?**

1 A. Mr. Riley states at page 5 of his rebuttal testimony: “Judging from the Amended Report
2 and Order Findings of Facts associated with question **H) Should Liberty’s recovery**
3 **reflect a disallowance for income tax deductions for Winter Storm Uri costs?** it
4 appears to me that the Commission confused facts and incorrectly applied the
5 securitization law.”

6 **Q. Do you agree with Mr. Riley’s assertion that the Commission confused facts and**
7 **incorrectly applied the securitization law?**

8 A. No, I do not agree. The securitization proceeding involved extensive analysis and
9 debate among parties, which included a thorough review of the relevant facts,
10 Missouri’s newly enacted securitization statute, and multiple examples and
11 interpretations. The regulatory process was deliberate and aimed at achieving a legally
12 sound and accurate conclusion. Mr. Riley’s criticism, raised nearly two years after the
13 Commission issued its Securitization Order, is both inaccurate and untimely.

14 **Q. What does the Securitization Order dictate for the treatment of Accumulated**
15 **Deferred Income Taxes (“ADIT”)?**

16 A. The Securitization Order distinguishes between two sources of ADIT: 1) ADIT
17 associated with “energy transition costs,” which pertain to the retirement of the Asbury
18 facility and 2) ADIT related to “qualified extraordinary costs,” specifically those
19 incurred during Storm Uri. ADIT tied to the Asbury-related energy transition costs
20 was included in the Company’s securitization filing, consistent with the scope of the
21 securitization statute. In contrast, ADIT associated with Storm Uri remains within the
22 general rate case framework and was not included in the securitization proceeding.

23 **Q. How did the ADIT for Asbury flow into the securitization filing?**

1 A. Section 393.1700(3)(m), RSMo., required that the net tax benefit of ADIT would
2 reduce the securitized utility tariff bonds and be excluded from future general rate
3 cases. The Staff calculated amount was approved by the Commission and that amount
4 reduced the overall bond proceeds that the Company received.¹

5 **Q. What happens to the ADIT associated with Storm Uri?**

6 A. Under Generally Accepted Accounting Principles (“GAAP”), the ADIT related to the
7 Storm Uri regulatory asset is transferred from the Company to Empire District Bondco,
8 LLC. As the regulatory asset is amortized into taxable income over time, the associated
9 ADIT balance is correspondingly adjusted. This ADIT is classified as a deferred tax
10 liability (“DTL”) and is included in the Company’s overall ADIT balance for
11 ratemaking purposes as a “tax-only” item. It is not supported by a ledger balance on
12 the Company’s books, but its inclusion in the cost of service calculation is appropriate
13 regulatory treatment. Importantly, the Storm Uri ADIT has the effect of reducing rate
14 base. In this case, the reduction is approximately \$49 million,² which directly benefits
15 customers by lowering the revenue requirement.

16 **Q. Do you agree with Mr. Riley that the Company received an undeserved bonus of**
17 **\$49 million?**

18 A. No, I do not agree. The \$49 million Storm Uri-related ADIT is a DTL that is included
19 in the Company’s overall ADIT balance and serves to reduce rate base. This reduction
20 directly benefits customers by reflecting the value of the interest-free loan provided by
21 the IRS through deferred tax treatment. It is important to clarify that the Company did
22 not receive a tax deduction for the \$49 million itself. Rather, the tax deduction was

¹ EO-2022-0040/EO-2022-0193 Report and Order, p. 54.

² Balance is from OPC witness Riley’s rebuttal testimony, p. 3. The Company’s balance as of true-up direct calculation for March 31, 2025 is 46 million.

1 taken for the actual cash expenditures incurred during Storm Uri. The \$49 million
2 represents the tax effect of that accelerated deduction – a timing difference – not a
3 windfall or bonus to the Company.

4 **Q. Do you agree with Mr. Riley’s assertion that the Company is treating the ADIT**
5 **associated with Asbury incorrectly?**

6 A. No, I do not agree. The Company has complied fully with both the Commission’s
7 Securitization Order and the Missouri Securitization Statute (Section 393.1700,
8 RSMo.). Mr. Riley overlooks a key point: the securitized utility bond proceeds were
9 initially reduced by the net tax benefit associated with the Asbury-related ADIT. This
10 adjustment ensured that customers received the value of the deferred tax benefit
11 upfront. Furthermore, Mr. Riley appears to misunderstand the tax implications of the
12 timing differences. The reversal of the ADIT balances related to both Asbury and
13 Storm Uri results in taxable income to the Company. These reversals are not windfalls
14 – they reflect the proper recognition of deferred tax liabilities under applicable
15 accounting and tax standards.

16 **Q. Mr. Riley identifies a reconciliation process intended to account for any potential**
17 **tax benefits that could reduce the actual securitized utility tariff costs. Has the**
18 **Company identified any such costs?**

19 A. No, the Company has not identified any such tax benefits. The amortization schedules
20 for both Storm Uri and Asbury regulatory assets within the Empire Bondco, LLC are
21 highly predictable and have not resulted in any variances that would trigger a
22 reconciliation or adjustment for tax-related savings. Moreover, Mr. Riley’s citation of
23 the securitization statute and related Commission findings appears to be paraphrased
24 inaccurately. The statute and the Commission’s Securitization Order clearly outline

1 that the total amount of the securitized assets becomes taxable over the 13-year
2 amortization period. This treatment was fully disclosed in the Company's securitization
3 proceeding and accepted by the Commission. There is no mechanism or expectation
4 within the approved framework for additional tax benefits to emerge that would require
5 reconciliation.

6 **III. CONCLUSION**

7 **Q. What is the Company's request related to Mr. Riley's rebuttal testimony?**

8 A. The Company respectfully requests that the Commission disregard Mr. Riley's
9 testimony related to tax matters. His assertions are based on misinterpretations of the
10 applicable statutes, regulatory orders, and accounting principles, and do not reflect the
11 accurate treatment of tax-related items as presented in the Company's case.

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

13 A. Yes.

VERIFICATION

I, Michael McCuen, under penalty of perjury, on this 17th day of September, 2025,
declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Michael McCuen