

**EXECUTIVE SUMMARY
FOR THE REBUTTAL TESTIMONY OF
L. JAY WILLIAMS
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. ER-2006-0314**

FILED

NOV 13 2006

Missouri Public
Service Commission

Purpose:

Staff witness Traxler did not gross up the Staff's level of recommended regulatory amortization for income taxes. Amortization expense that would be used under the regulatory plan is not a tax deductible expense. The associated revenue would be taxable. In order to achieve the level of FFO that the regulatory plan intends, the amortization (additional cash needed to be generated) must be increased to reflect the additional income taxes due so that the revenues, less the additional current tax liability will provide the required cash flow level.

Empire Exhibit No. 401
Case No(s). 22-2006-0314
Date 10-16-06 Rptr XF

Exhibit No.

Issue: Gross-up for Income Taxes Related to
the Proposed Regulatory Plan Amortization

Witness: L. Jay Williams

Type of Exhibit: Rebuttal Testimony

Sponsoring Party: The Empire District
Electric Company

Case No. ER-2006-0314

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

Rebuttal Testimony

of

L. Jay Williams

September 2006

REBUTTAL TESTIMONY
OF
L. JAY WILLIAMS
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. ER-2006-0314

1 **INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. L. Jay Williams. My business address is 602 Joplin Street, Joplin, MO.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by The Empire District Electric Company ("Empire or Company")
6 as Manager of Tax Planning.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND WORK**
8 **BACKGROUND.**

9 A. I graduated from Missouri Southern State University with a BS in Business
10 Administration with an emphasis in accounting in 1975. I hold certificate number
11 8047 from the Missouri State Board of Accountancy. Prior to joining Empire in
12 1983, I spent 6 years in public accounting primarily in the income tax field.
13 Except for a short period in Empire's Internal Auditing Department, I have spent
14 my entire tenure in the tax area of the Company. My tax experience at the
15 Company includes the responsibility for tax compliance in the areas of property,
16 sales/use, corporate franchise and income taxes.

17 **Q. HAVE YOU FILED TESTIMONY PREVIOUSLY BEFORE THE**
18 **MISSOURI PUBLIC SERVICE COMMISSION ("COMMISSION")?**

19 A. Yes.

1 **Q. PLEASE BRIEFLY SUMMARIZE YOUR REBUTTAL TESTIMONY.**

2 A. My testimony concerns the positions taken by the Missouri Public Service
3 Commission Staff ("Staff") on regulatory plan amortization and its taxability in
4 the Kansas City Power & Light Company rate case. The Staff questions the
5 need to gross-up regulatory amortization for income taxes. It is imperative that
6 the regulatory amortization be grossed-up for income taxes if the Funds from
7 Operations ("FFO") created by the additional amortization are to accomplish the
8 intended objective of meeting rating agency requirements.

9 **Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF STEVE M.**
10 **TRAXLER OF THE COMMISSION STAFF CONCERNING**
11 **REGULATORY PLAN AMORTIZATION?**

12 A. Yes.

13 **Q. DO YOU AGREE WITH THE STAFF'S POSITION THAT THE**
14 **REGULATORY AMORIZATION DOES NOT NEED TO BE GROSSED**
15 **UP FOR INCOME TAXES?**

16 A. No.

17 **Q. WHY?**

18 A. The regulatory amortization that is to be used under the regulatory plan is not a
19 tax deductible expense. The associated increase in revenue that comes with the
20 amortization would be considered taxable income by the IRS and, accordingly,
21 current taxes paid will increase. Unless the revenue impact of the amortization is
22 increased to reflect the associated increase in income taxes paid, the regulatory
23 amortization will fail to provide the required FFO.

1 **Q. CAN YOU SUMMARIZE THE POSITION OF THE STAFF ON THE**
2 **ISSUE?**

3 A. The Staff contends that there is a methodology that when used will make the
4 gross-up unnecessary.

5 **Q. IS THERE ANY BASIS FOR THE STAFF'S POSITION CONCERNING**
6 **THE TAXABILITY OF THE REVENUES AND THE DEDUCTIBILITY**
7 **OF THE AMORTIZATION EXPENSE?**

8 A. No. The revenues are clearly taxable and the amortization is clearly non-
9 deductible. Internal Revenue Code ("IRC") Section 61 defines the taxability and
10 the MACRS depreciation rules of the IRC Section 168 dictates the amount of tax
11 depreciation that is currently deductible.

12 **Q. ARE YOU AWARE OF ANY PRECEDENT FOR THE STAFF TO**
13 **CONSIDER ESTIMATED PLANT ACTIVITY IN FUTURE YEARS TO**
14 **OFFSET THE NEED FOR THE INCOME TAX GROSS-UP IN THE**
15 **CURRENT TEST YEAR?**

16 A. No. It is my understanding that it has been the practice of the Commission to
17 disallow the use of future year plant additions in ratemaking. This has also been
18 the past Commission practice with deferred income taxes.

19 **Q. PLEASE SUMMARIZE YOUR POSITION ON THE NEED TO GROSS-UP**
20 **REGULATORY AMORTIZATION FOR INCOME TAXES RELATED TO**
21 **THE PROPOSED REGULATORY PLAN AMORTIZATION?**

22 A. The proposed regulatory plan amortization must be grossed-up to reflect
23 additional income taxes. Failure to do so will likely result in the FFO for Kansas

L. JAY WILLIAMS
REBUTTAL TESTIMONY

1 City Power and Light falling short of the prescribed level to maintain its

2 investment grade rating.

3 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

4 **A.** Yes, it does.

AFFIDAVIT OF L. JAY WILLIAMS

STATE OF MISSOURI)
) ss
COUNTY OF JASPER)

On the 8th day of September, 2006, before me appeared L. Jay Williams, to me personally known, who, being by me first duly sworn, states that he is the Manager of Tax Planning of The Empire District Electric Company and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.

L. Jay Williams
L. Jay Williams

Subscribed and sworn to before me this 8th day of September, 2006

Samantha D. Sill
Notary Public

My commission expires may 21, 2008

