

**Exhibit No:**  
**Issue(s):** Supplemental  
Executive Retirement  
Plan (SERP) Benefits  
**Witness:** William L. Gipson  
**Sponsoring Party:** The Empire District  
Electric SERP Retirees  
**Type of Exhibit:** Direct Testimony  
**File No.:** ER-2019-0374  
**Date Testimony Prepared:** January 15, 2020

**MISSOURI PUBLIC SERVICE COMMISSION**

**FILE NO. ER-2019-0374**

**DIRECT TESTIMONY OF**

**WILLIAM L. GIPSON**

**ON BEHALF OF**

**THE EMPIRE DISTRICT ELECTRIC SERP RETIREES**

**JANUARY 15, 2020**





1       **Q.     HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS OR ANY OTHER**  
2       **REGULATORY BODY?**

3       A.     Yes, I have presented testimony before the Missouri Public Service Commission  
4       ("Commission"); the Kansas Corporation Commission, the Oklahoma Corporation  
5       Commission, and the Arkansas Public Service Commission.

6       **Q.     WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

7       A.     The purpose of my testimony is to provide EDESR's position regarding the  
8       ratemaking treatment SERP benefits. Much like pensions and Other  
9       Postemployment Benefits ("OPEBs"), I recommend that Empire be required to  
10      externally fund its SERP benefits through a Rabbi trust. This recommendation is  
11      consistent with the stipulation provision from Case No. EM-2016-0213.

12      **Q.     HOW MANY PEOPLE WILL BE AFFECTED BY THE EDESR RECOMMENDATION?**

13      A.     There are 13 former / current officers of Empire that will receive SERP benefits.

14      **Q.     WHAT ARE SERP BENEFITS?**

15      A.     A SERP is an employer-sponsored, non-qualified deferred compensation plan. It  
16      allows employers to select key employees which are provided with supplemental  
17      retirement benefits in addition to benefits from a qualified plan such as a pension,  
18      profit-sharing or 401(k) plan. The plan is financed with contributions from the  
19      employer only and are in addition to any other contributions to other company  
20      qualified plans.

21

1       **Q.    ARE SERP PLANS A COMMON BENEFIT AMONG MISSOURI INVESTOR-OWNED**  
2       **UTILITIES?**

3       A.    Yes, SERP benefits are a common form of compensation for utility officers. It is my  
4       understanding that Ameren, Great Plains Energy and Spire Missouri all have SERP  
5       plans in place.

6       **Q.    HOW ARE SERP BENEFITS TYPICALLY TREATED FOR RATEMAKING PURPOSES?**

7       A.    Historically, the amount of SERP benefits paid by Empire during the test year period  
8       are included in rates. This is typically referred to as pay-as-you-go ratemaking.

9       **Q.    YOU PREVIOUSLY REFERENCED A STIPULATION PROVISION FROM CASE NO. EM-**  
10       **2016-0213. PLEASE DISCUSS THAT DOCKET.**

11       A.    On February 9, 2016, Empire announced an agreement by which it would be  
12       acquired by Algonquin Power & Utilities Corp. (“Algonquin”). Specifically, Empire  
13       would be acquired by Liberty Utilities (Central) Company which is owned by Liberty  
14       Utilities Company which is an indirect wholly-owned subsidiary of Algonquin. On  
15       March 16, 2016, Empire and various other Algonquin companies (the “Merger  
16       Applicants”) sought Commission approval for the transaction in Case No. EM-2016-  
17       0213. From July 19, 2016 through August 26, 2019, the Merger Applicants executed  
18       a series of stipulations with the various parties to the merger docket. Relevant to  
19       the issue discussed in this testimony, Empire executed a stipulation with EDESR on  
20       August 23, 2016 (“EDESR Merger Stipulation”).

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1       **Q.       WHAT DOES THE EDESR MERGER STIPULATION PROVIDE?**

2       A.       In general terms, the EDESR Merger Stipulation provides for a study to be conducted  
3               to determine whether it is neutral or possibly cheaper to customers for Empire to  
4               utilize a pre-funded plan method for ratemaking for SERP benefits. If so, then the  
5               stipulation requires Empire to meet with Staff and OPC and, absent their objection,  
6               to externally fund a Rabbi trust for SERP benefits.

7               More specifically, the EDESR Merger Stipulation contains one substantive provision.

8                       Empire will, within one year after the Transaction closes, cause to be  
9                       performed an actuarial analysis with the intention of determining  
10                      whether a SERP funded via a Rabbi trust according to the SERP plan is less  
11                      expensive to ratepayers than benefits paid from Empire’s general funds  
12                      for the life of the plan (the “Study”). The current SERP recipients shall be  
13                      included in the development of all assumptions and allowed review and  
14                      analysis of the Study. If the Study concludes the annual costs and  
15                      expenses of funds contributed by Empire using a Rabbi trust (including  
16                      contributions to the trust) to provide benefits are essentially the same or  
17                      less than the costs and expenses to ratepayers of providing the  
18                      alternative of SERP benefits from Empire’s general funds, Empire will  
19                      discuss the results of the Study with Staff and OPC, and to the extent  
20                      neither party oppose the rate recovery of the Rabbi trust in place of the  
21                      SERP funded from general funds, Empire will fund a Rabbi trust according  
22                      to the plan. Any trust documents shall be subject to review by the SERP  
23                      recipients’ counsel.

24  
25       **Q.       WAS THE REFERENCED STUDY CONDUCTED?**

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27       A.       Yes, while there were some problems in the timeliness of its completion as  
28               well as including the SERP recipients in the development of the underlying  
29               assumptions, the Study was ultimately completed.

30  
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1       **Q.     WHAT DID THE STUDY CONCLUDE?**

2       A.     EDESR asserts that the Study concludes that the benefits of funding a Rabbi trust are  
3           “essentially the same or less than the costs and expenses to ratepayers of providing  
4           the alternative of SERP benefits from Empire’s general funds.” Given this, EDESR  
5           believes that Empire should be required to meet with Staff and OPC and, absent  
6           their objection, Empire should be required to create and fund a Rabbi trust for these  
7           SERP benefits.

8       **Q.     WHAT IS A RABBI TRUST?**

9       A.     As discussed on Financial Web, “a rabbi trust is a type of trust that is used in order to  
10          provide benefits to employees on behalf of a company. This type of trust is referred  
11          to as a rabbi trust because it was initially used for the first time by a rabbi and his  
12          congregation. This type of trust is commonly used with the executives of a company  
13          in order to provide them with additional benefits on top of the normal benefits  
14          package.”

15          “The trust is set up as an irrevocable trust arrangement. This means that once the  
16          employer sets up the trust and puts assets into it, they cannot go back and get the  
17          assets in the future. They cannot change anything about the trust once it is set up.  
18          The beneficiaries of the trust are the only ones that can access the funds or change  
19          any of the terms.”

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1       **Q.       WHAT IS THE BENEFIT OF A RABBI TRUST?**

2       A.       As further discussed on Financial Web, the primary benefit of a rabbi trust is security  
3       to the recipients. “This type of trust really provides two types of security for the  
4       employees involved. They are protected against the company changing its mind and  
5       they are protected against a change to the plan if another company takes over.  
6       Even if a hostile takeover occurs, the funds in a rabbi trust will remain untouched.”

7       **Q.       DOES EMPIRE EXTERNALLY FUND OTHER EMPLOYEE BENEFITS?**

8       A.       Yes. While I am not an attorney, it is my understanding that the Employee  
9       Retirement Income Security Act (“ERISA”) of 1974 requires private sector employers,  
10      like Empire, to create a fund for the provision of certain retirement benefits  
11      including pension benefits.

12      In addition, Empire and other Missouri regulated public utilities are required, under  
13      Section 386.315, to create an “independent external funding mechanism” for the  
14      disbursement of OPEBs.

15      **Q.       DOES EDESR BELIEVE THAT AN ANALOGY SHOULD BE DRAWN BETWEEN THE LEGAL  
16      REQUIREMENT TO EXTERNALLY FUND PENSIONS AND OPEBS AND THE  
17      TREATMENT FOR SERP BENEFITS?**

18      A.       Yes. While I am not an attorney and not aware of any legal or regulatory  
19      requirement dictating the appropriate treatment for SERP benefits, I certainly  
20      believe that the same logic should be applied to all retirement benefits. Specifically,  
21      just as Empire is required to externally fund pensions and OPEBs, it should also



1 externally fund SERP benefits so long as it is not detrimental to customers to create  
2 such a fund.

3 **Q. HOW DOES THE PRE-FUNDING OF SERP BENEFITS PROVIDE FOR A BENEFIT TO**  
4 **CUSTOMERS?**

5 A. Just as with pension benefits, the amount of SERP benefits paid into a fund can be  
6 invested. The growth in the pre-funded amount over time can reduce the amount  
7 that customers would otherwise pay under a pay-as-you-go approach.

8 **Q. WHAT IS EDESR'S POSITION REGARDING THE TREATMENT OF EMPIRE SERP**  
9 **BENEFITS?**

10 A. EDESR believes that the study required by the EDESR Merger Stipulation  
11 demonstrates that the establishment of a rabbi trust for SERP benefits would be  
12 essentially neutral to Empire customers. Given this, EDESR asserts that, much like it  
13 does for pensions and OPEBs, Empire should be required to fund a rabbi trust for its  
14 SERP benefits.

15 **Q. ARE THERE OTHER REASONS THAT EMPIRE SHOULD UTILIZE PRE-FUNDED METHOD**  
16 **FOR ACCOUNTING FOR SERP BENEFITS?**

17 A. Yes. Immediately following the merger the SERP plan was terminated. As such the  
18 SERP benefits are related to compensation for former Empire officers. These are  
19 costs associated with service received by customers in the past. The notion of  
20 intergenerational equity dictates that customers that receive the benefit of service  
21 should be the ones to pay the costs of that service. It is inequitable for certain

1 customers to receive the benefit of utility service, but then expect later generations  
2 to pay for the cost of that service. In this case, customers in previous years have  
3 received the benefit of service, but since they did not pay the SERP benefits under  
4 the pay-as-you-go approach, they did not pay their full cost of service. Instead, the  
5 cost of the SERP benefits are pushed off to later generations of Empire customers.  
6 The pre-funded method of accounting for SERP benefits would help to correct this  
7 inequity by bring the cost of service much closer in time to the time at which the  
8 electric service was received.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes.