

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of The Empire District)
Electric Company's Request for Authority)
to File Tariffs Increasing Rates for Electric) Case No. ER-2019-0374
Service Provided to Customers in its)
Missouri Service Area)

INITIAL POSTHEARING BRIEF

OF

**THE EMPIRE DISTRICT ELECTRIC
SERP RECIPIENTS**

David L. Woodsmall
Woodsmall Law Office
308 E. High Street, Suite 204
Jefferson City, MO 65101
Phone: 573-636-6006
Fax: 573-636-6007
david.woodsmall@woodsmalllaw.com

ATTORNEY FOR THE EMPIRE
DISTRICT ELECTRIC SERP
RECIPIENTS

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COMES NOW the Empire District Electric SERP Recipients (“EDES”), pursuant to the Commission’s April 28, 2020 *Order Further Modifying the Procedural Schedule*, and provides its Initial Brief in this matter. In this Brief, EDES provides its discussion on the limited issue of the ratemaking treatment for SERP benefits. Specifically, Issue 45(a): Should Empire be required to externally fund, through a Rabbi Trust, its SERP benefits obligation?

In a Stipulation in Case No. EM-2016-0213, Empire agreed to the following:

Empire will, within one year after the Transaction closes, cause to be performed an actuarial analysis with the intention of determining whether a SERP funded via a Rabbi trust according to the SERP plan is less expensive to ratepayers than benefits paid from Empire’s general funds for the life of the plan (the “Study”). The current SERP recipients shall be included in the development of all assumptions and allowed review and analysis of the Study. If the Study concludes the annual costs and expenses of funds contributed by Empire using a Rabbi trust (including contributions to the trust) to provide benefits are essentially the same or less than the costs and expenses to ratepayers of providing the alternative of SERP benefits from Empire’s general funds, Empire will discuss the results of the Study with Staff and OPC, and to the extent neither party oppose the rate recovery of the Rabbi trust in place of the SERP funded from general funds, Empire will fund a Rabbi trust according to the plan.¹

As reflected in the direct testimony of William Gipson, the required actuarial study indicates that funding a Rabbi trust would be “essentially the same or less than the

¹ *Stipulation and Agreement as to EDES*, Case No. EM-2016-0213, filed August 23, 2016, approved September 7, 2016, at pages 1-2.

costs and expenses to ratepayers” of continuing to pay SERP benefits out of general funds.² As such, Empire should be required to externally fund a Rabbi trust for SERP benefits.

The funding of a rabbi trust is consistent with other benefits for Empire retirees. Specifically, Empire currently maintains an external fund for pensions as well as other post-employment benefits.³ Furthermore, like a pension plan, an external fund for SERP benefits may also benefit ratepayers in that it allows for an opportunity for these funds to be invested, thus lowering the future amount to be recovered from ratepayers. Finally, the creation of an external fund has the added benefit of promoting intergenerational equity. As Mr. Gipson points out

Immediately following the merger the SERP plan was terminated. As such the SERP benefits are related to compensation for former Empire officers. These are costs associated with service received by customers in the past. The notion of intergenerational equity dictates that customers that receive the benefit of service should be the ones to pay the costs of that service. It is inequitable for certain customers to receive the benefit of utility service, but then expect later generations to pay for the cost of that service. In this case, customers in previous years have received the benefit of service, but since they did not pay the SERP benefits under the pay-as-you-go approach, they did not pay their full cost of service. Instead, the cost of the SERP benefits are pushed off to later generations of Empire customers. The pre-funded method of accounting for SERP benefits would help to correct this inequity by bring the cost of service much closer in time to the time at which the electric service was received.⁴

Recognizing that the creation of a Rabbi trust for SERP benefits is justified under the actuarial analysis and consistent with the stipulation from Case No. EM-2016-0213, the Commission should require Empire to externally fund a Rabbi trust. That said, however, EDESR supports the provision set forth in the Non-Unanimous Stipulation and

² Exhibit 650, Gipson Direct on behalf of EDESR, page 5.

³ *Id.* at page 6.

⁴ *Id.* at pages 7-8.

Agreement which calls for a meeting between EDESR, Staff, OPC and Empire to discuss the findings of the actuarial report and the ratemaking associated with externally funding SERP benefits.

EDESR and the Company shall discuss with Staff and OPC, in or prior to July of 2020, the possibility of external funding (Rabbi Trust) of SERP benefits. If an agreement is reached between EDESR, the Company, Staff, and OPC in which: (1) EDESR, Staff, and OPC agree that, using reasonable assumptions, the annual costs and expenses of funds contributed by Empire using a Rabbi trust (including contributions to the trust) to provide benefits are essentially the same or less than the costs and expenses to customers of providing the alternate of SERP benefits from Empire's general funds and (2) none of these parties (EDESR, Staff, OPC) oppose the rate recovery of the Rabbi trust consistent with the Willis Towers Watson SERP funding analysis dated July 17, 2019 (but with currently approved weighted average cost of capital) in place of the SERP funded from general funds and will support said rate recovery in future cases, Empire will fund SERP benefits via a Rabbi trust within 30 days of execution of the written agreement.⁵

On April 16, 2020, Public Counsel filed its Objection to the Non-Unanimous Stipulation. That said, however, Public Counsel indicated that it did not object to provision 29 - the EDESR provision.

The Office of the Public Counsel does not object to only the following terms of the Global Stipulation and Agreement: The changes to Empire's FAC set out in subparagraphs c., d., .f., and g. of paragraph 6; paragraph 7; paragraph 9. (Including all of subparagraphs a. to k.); paragraphs 10 to 23; and **paragraphs 27 to 29**, all of which are set out following.

EDESR believes that provision 29 of the Non-Unanimous Stipulation is a reasonable resolution of this issue in that it largely pushes back the meeting for the discussion of the external funding of the SERP benefits. Given this, EDESR urges the Commission to approve this provision.

⁵ *Global Stipulation and Agreement*, filed April 15, 2020, provision 29.

Respectfully submitted,

/s/ David L. Woodsmall

David L. Woodsmall, MBE #40747

308 E. High Street, Suite 204

Jefferson City, Missouri 65101

(573) 797-0005

david.woodsmall@woodsmalllaw.com

ATTORNEY FOR THE EMPIRE
DISTRICT ELECTRIC SERP
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: May 6, 2020