

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 10, 2002**

CASE NO: EE-2002-120

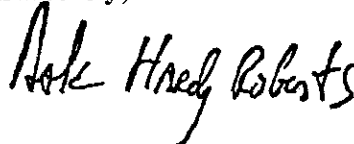
Office of the Public Counsel
P.O. Box 7800
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Gary W. Duffy
Brydon, Swearengen & England, P.C.
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Jefferson City, MO 65102-0456

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office in
Jefferson City on the 10th day
of January, 2002.

In the Matter of the Application of The Empire District)	
Electric Company for Permission to Transfer its Centurion)	
Software to a Subsidiary Corporation Pursuant to Certain)	<u>Case No. EE-2002-120</u>
Conditions and for a Variance from 4 CSR 240-20.015)	
for the Transaction)	

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

Syllabus: This order approves the Unanimous Stipulation and Agreement reached between the parties, approves the proposed transfer of assets consisting of a software program in development, and grants Empire a variance from the affiliate transaction rule, 4 CSR 240-20.015.

On August 23, 2001, The Empire District Electric Company filed its application with the Missouri Public Service Commission requesting an order approving a proposed transfer of assets to an affiliated company and requesting the Commission grant a variance of Sections (2), (3), (4), and (5) of the affiliate transaction rule.¹ Empire seeks the Commission's approval for the proposed transfer of a developmental version of a computer software program for a customer information and billing software program called Centurion.

¹ Commission Rule 4 CSR 240-20.015, effective February 29, 2000.

The Centurion software was developed, installed and modified by Empire employees as an effort to deal with the worldwide concerns over expected computer failures or malfunctions on January 1, 2000. The software is not marketable in its current form but represents a great value to Empire and its customers when the capitalized cost is compared to market alternatives for similar computer programs. Empire proposes to transfer the developmental version of Centurion software to an unregulated subsidiary affiliate of Empire's that will invest substantial additional time and capital to minimize future operating risks by completing the software program described, as a "work-in-progress." In exchange, certain considerations will be given to Empire, including use of the Centurion software. In consideration for the transfer of the Centurion computer software program to the unregulated subsidiary affiliate of Empire, Empire will receive continued use of the Centurion system, a completed and documented version of the Centurion software, along with a software license, at no cost to Empire, and an annual software maintenance agreement for the first 12 years at no cost to Empire. Transfer of the Centurion software program to the unregulated subsidiary affiliate of Empire will permit Empire to avoid expenses in the amount of \$2 million for future development and maintenance costs of the Centurion software program. A perpetual license will be provided to Empire at no cost to Empire, other than the consideration already given by the transfer of the software program.

On November 30, 2001, a Unanimous Stipulation and Agreement was filed by Empire, Staff, and the Office of the Public Counsel. The parties recommend that the Commission issue an order that approves the proposed transfer of the Centurion software under the conditions as set forth in the Agreement. The parties agreed that the proposed "Contribution of Technology and Software Licensing and Maintenance Agreement" should

be modified in the following respects: 1) the explanation of the materials and services associated with the license is expanded; 2) the term of the licensing and maintenance contract is increased from seven years to 12 years; and 3) a new section is added to address contractual obligations of the subsidiary regarding access to records pursuant to the discovery process of the Commission.

In addition to the changes embodied in Appendix A-1, the parties agreed that paragraph 11 of Empire's original application would be modified to read:

For purposes of future Missouri rate cases, Empire will guarantee that its retail customers will be held harmless from a ratemaking standpoint if the transfer of the Centurion intellectual property to the subsidiary as described herein, or the operation of the subsidiary, results in a higher revenue requirement for Empire in a future rate case than if the transfer had not occurred. Empire reserves the right to present evidence and arguments in any situation where it is alleged that there is a higher revenue requirement as a result of the transfer or operation of the subsidiary.

In the Agreement Empire also agrees that it will ensure that the Centurion software system, after the transfer, will be capable of producing reports containing the data described in Appendix A-2 to the Agreement. Empire guarantees that its retail customers will be held harmless if the transfer of the Centurion intellectual property to the subsidiary, or the operation of the subsidiary, results in a higher revenue requirement for Empire.

In its suggestions filed in support of the Agreement, Staff stated

In order to approve the transfer of the computer software program as recommended by the parties, it will be necessary for the Commission to grant a variance to Empire from the provisions of Sections (2), (3), (4), and (5) of Commission Rule 4 CSR 240-20.015 for so long as the Centurion system is used by Empire.

Commission Rule 4 CSR 240-20.015(1)(B) defines an affiliate transaction as

any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of an electrical corporation. An affiliate transaction for the purpose of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754 by the General Assembly of Missouri.

Commission Rule 4 CSR 240-20.015(2)(D) prohibits a regulated electrical corporation from *participating in any affiliated transactions which are not in compliance with this rule, except* where a variance is granted by the Commission. In its application, Empire seeks approval of transfer of a computer software program to an unregulated affiliate company and also seeks a variance from the provisions of Sections (2), (3), (4), and (5) of Commission Rule 4 CSR 240-20.015, with regard to the transfer of the Centurion software program for so long as the Centurion software system is used by Empire under the terms of the agreement with its affiliate. Empire has complied with Commission Rule 4 CSR 240-20.015(10)(A)1 and 4 CSR 240-2.060(11). Further, the Commission determines that the proposed transaction, including the variance, will benefit consumers and is therefore in the public interest. The Commission will approve the variance.

The Commission concludes that the transfer of the Centurion software program from Empire to an unregulated subsidiary affiliated company, which has yet to be formed, in exchange for the consideration given and agreed to by the parties in this Agreement, is fair and reasonable. The transfer of the Centurion software program is in the public interest because it relieves Empire of further costs associated with completion of the software program while at the same time providing Empire with use and access to the software program it originally developed.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on November 30, 2001, is approved.
2. That the proposed transfer of the Centurion software pursuant to the modified contract contained in Appendix A-1 to the Unanimous Stipulation and Agreement filed on November 30, 2001, or a document substantially similar thereto, subject to the conditions contained in paragraphs 4.B and 4.C of the Unanimous Stipulation and Agreement, is approved.
3. That the Commission's approval of the proposed transaction by The Empire District Electric Company is specifically conditioned upon the parties' Unanimous Stipulation and Agreement, a copy of which is attached hereto as Attachment 1.
4. That the request for a variance from Sections (2), (3), (4), and (5) of Commission Rule 4 CSR 240-20.015 is granted with regard to the subject matter of the Centurion software transaction as described in the Unanimous Stipulation and Agreement filed on November 30, 2001, for so long as the Centurion system is used by The Empire District Electric Company under the terms of the agreement with its affiliate.
5. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties and transactions herein involved.
6. That the Commission reserves the right to consider any ratemaking treatment to be afforded the properties and transactions herein involved in a later proceeding.
7. That this order shall become effective on January 20, 2002.

8. That this case may be closed on January 21, 2002.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Murray, Lumpe and Forbis, CC., concur
Gaw, C., dissents
Simmons, Ch., absent

Mills, Deputy Chief Regulatory Law Judge

FILED
NOV 30 2001
Missouri Public
Service Commission

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

In the matter of the Application of The Empire)
District Electric Company for Permission to)
Transfer its Centurion Software to a Subsidiary)
Corporation Pursuant to Certain Conditions and)
for a Variance from 4 CSR 240-20.015 for the)
Transaction.)

Case No. EE-2002-120

UNANIMOUS STIPULATION AND AGREEMENT

COME NOW The Empire District Electric Company ("Empire" or "Company"), the Staff of the Missouri Public Service Commission ("Staff"), and the Office of the Public Counsel ("Public Counsel"), hereinafter to be known as "the Parties," and for their Unanimous Stipulation and Agreement ("Agreement"), respectfully state as follows:

1. On August 23, 2001, Empire filed an application with the Missouri Public Service Commission ("Commission") requesting an order approving a proposed transfer of certain assets, generally comprised of a development version of a customer information and billing software program called "Centurion" to an affiliated company which has yet to be formed. The application also requested that the Commission grant Empire a variance from Sections (2), (3), (4) and (5) of the affiliate transaction rule, 4 CSR 240-20.015.

2. The Commission issued an Order and Notice on September 13, 2001, directing any interested party wishing to intervene to file its application no later than October 15, 2001. No one sought intervention.

3. During the week of November 1, 2001, the Parties met for the purpose of clarifying, narrowing, and exploring settlement possibilities for the issues raised in the

case. As a result of those discussions and subsequent negotiations, the Parties have reached an agreement ("this Agreement") which disposes of all issues presented by the case. The terms and conditions of this agreement are set forth below:

Transfer of Centurion

4. The Parties agree that the Commission should issue a Report and Order approving the application as filed, with the following changes or conditions:

A. The "Contribution of Technology and Software Licensing and Maintenance Agreement" attached to the originally-filed Application as Appendix A shall be modified in three respects. First, the explanation of the materials and services associated with the license is expanded in Section 3.2.1. Second, the term of the Software Maintenance Agreement described in Section 3.3.1 is to be changed from seven (7) years to twelve (12) years. Third, a new section 3.4 is added which addresses contractual obligations of the subsidiary regarding access to records pursuant to the discovery process of the Commission. The Parties agree that the "Contribution of Technology and Software Licensing and Maintenance Agreement" attached to this Stipulation and Agreement as Appendix A-1 contains these agreed-upon provisions.

B. The guarantee which Empire made in paragraph 11 of its Application in this case is modified to read as follows: "For purposes of future Missouri rate cases, Empire will guarantee that its retail customers will be held harmless from a ratemaking standpoint if the transfer of the Centurion intellectual property to the subsidiary as described herein, or the operation of the subsidiary, results in a higher revenue requirement for Empire in a future rate case than if the transfer had not

occurred. Empire reserves the right to present evidence and arguments in any situation where it is alleged that there is a higher revenue requirement as a result of the transfer or operation of the subsidiary.”

C. Empire agrees that it will ensure that the Centurion system, after the transfer, will be capable of producing reports containing the data described on **Appendix A-2** to this Stipulation and Agreement.

5. The Parties note that the perpetual license agreement for Empire is to be provided at no cost to Empire, as provided in Section 3.2.1 as shown in **Appendix A-1**.

6. In summary then, the Parties agree that the Commission should issue a Report and Order in this case which approves the proposed transfer of the Centurion software pursuant to the modified contract contained in **Appendix A-1** to this Agreement, or a document substantially similar thereto, subject to the conditions contained in paragraphs 4 B. and C. of this Agreement, and that grants a variance to Empire from the provisions of sections (2), (3), (4), and (5) of 4 CSR 240-20.015, with regard to the subject matter of the Centurion transaction described herein, for so long as the Centurion system is used by Empire under the terms of the agreement with its affiliate.

General Provisions Relating to this Stipulation and Agreement

7. The agreements in this Stipulation and Agreement are the result of extensive negotiations among the Parties and are interdependent; however, the agreements expressed herein are limited solely to the issues described herein.

8. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Parties waive their respective rights, pursuant to §536.080 RSMo

2000, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 2000; their respective rights to seek rehearing pursuant to §386.500 RSMo 2000; and their respective rights to seek judicial review pursuant to §386.510 RSMo 2000. Nothing in this provision is designed to prevent any Party from presenting oral testimony in support of this Agreement at any hearing or presentation scheduled by the Commission to consider this Agreement. The Parties agree to cooperate with each other in presenting for approval to the Commission this Agreement, and will take no action, direct or indirect, in opposition to the request for approval of this Agreement.

9. The Staff shall file suggestions or a memorandum in support of this Agreement, and the other Parties shall have the right to file responsive suggestions or prepared testimony.

10. The Staff shall have the right to provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

11. By entering into this Agreement, none of the Parties shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, or any method

of cost determination or cost allocation, and none of the Parties shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as expressly specified herein. If the Commission does not approve this Agreement, this Agreement shall immediately become null and void and none of the Parties shall be bound by the terms hereof.


WHEREFORE, the Parties respectfully request that the Commission issue an order approving this Stipulation and Agreement.

Respectfully submitted,


DANA K. JOYCE
General Counsel


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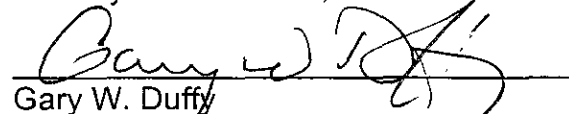
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Attorneys for The Empire District
Electric Company

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record this 30th day of November, 2001.


Gary W. Duffy

APPENDIX A-1

CONTRIBUTION OF TECHNOLOGY AND SOFTWARE LICENSING AND MAINTENANCE AGREEMENT

This Contribution of Technology and Software Licensing and Maintenance Agreement (the "**Agreement**") is made by and among THE EMPIRE DISTRICT ELECTRIC COMPANY ("**Parent**") a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri, and NEWCO ("**Company**"), a [STATE] corporation, with its principal office and place of business at [ADDRESS]. This Agreement shall be effective as of the ____ day of ____, 2001 (the "**Effective Date**").

WHEREAS, Company will initially be organized as an unregulated wholly-owned subsidiary of Parent; and

WHEREAS, Parent has developed a beta version of proprietary customer information system software, which requires further development and documentation prior to commercialization, hereinafter referred to as "**Centurion**"; and

WHEREAS, Parent intends to contribute such software, the related goodwill and all other associated rights, including all copyrights, patent rights and trademarks, and all rights to enhanced, modified and updated versions and derivative works related thereto, to Company; and

WHEREAS, Parent wishes to retain access to the source code to Centurion, receive the completed and documented version of Centurion, and enter into software license and maintenance agreements with Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

TRANSFER

1.1 Transfer of Centurion. In exchange for the consideration to be provided to Parent as set forth in Article III of this Agreement, Parent hereby contributes, assigns and transfers all of its right, title and interest in Centurion to Company. In addition, Parent hereby contributes, assigns and transfers to Company all of its right, title and interest to all copyrights, patents and trademarks in, together with all knowledge, know how, trade secrets and all other intellectual property of Parent for use with or otherwise relating to, Centurion and Centurion applications,

products and services, and all goodwill associated with any of the foregoing (collectively referred to as the "**Intellectual Property**"). The conveyance of Centurion shall include, but is not limited to, the Centurion software in source code and object code versions, and all documentation of Centurion and of the development of Centurion.

1.2 **Delivery.** Centurion source code, object code and documentation shall be delivered to Company upon the execution of this Agreement. Parent agrees that it shall from time to time, but without further consideration, execute and deliver such instruments or documents and take such other action which Company may reasonably request in order to more effectively carry out this Agreement and to vest in Company all rights and title to Centurion and the Intellectual Property.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Parent represents, warrants and covenants as follows:

2.1 **Title and Infringement.** Parent is the sole owner of all right, title and interest in and to Centurion and the Intellectual Property. Parent has good and marketable title to Centurion, and has all necessary rights to enter into this Agreement without violating any other agreement or commitment of any sort. Parent does not have any outstanding agreements or understandings, written or oral, concerning Centurion. Centurion will not be subject to any lien, encumbrance, mortgage or security interest of any kind at the time Parent conveys Centurion to Company. Centurion and the Intellectual Property do not infringe any trademark, patent, copyright, trade secret, or other similar rights of any third party. Parent agrees to indemnify and hold Company, its affiliates and licensees harmless against any action, suit, expense (including reasonable attorneys' fees), claim, loss, liability or damage arising from or connected with any breach of the foregoing representations or warranties, provided that Company provides Parent with prompt written notice (by certified mail) of such breach and provides all necessary and required information and reasonable assistance. Parent shall not be responsible for any settlement accepted without Parent's consent. Parent will have no obligation under this section 2.1 if such claim or action arises from changes made to Centurion or the Intellectual Property by Company.

2.2 **Authority Relative to this Agreement.** This Agreement is a legal, valid and binding obligation of Parent. The execution and delivery of this Agreement by Parent and the performance of and compliance by Parent with the terms and conditions of this Agreement will not result in the imposition of any lien or other encumbrance on Centurion or the Intellectual Property, and will not conflict with or result in a breach by Parent of any of the terms, conditions or provisions of any order, injunction, judgment, decree, statute, rule or regulation applicable to Parent, Centurion, or any note, indenture or other agreement, contract, license or instrument by which Centurion or the Intellectual Property may be bound or affected. No consent or approval by any Person (as defined hereafter in section 3.2.2) other than that which may be required by public utility regulatory commissions having jurisdiction over the Company (the

"Commissions"), is required in connection with the execution, delivery or performance of this Agreement by Parent.

Company represents, warrants and covenants as follows:

2.3 Indemnification. Company shall indemnify and hold Parent and its affiliates harmless against any action, suit, expense (including reasonable attorneys' fees), claim, loss, liability or damage based on claims arising out of: (i) the sale, licensing, marketing, or maintenance of Centurion following the Effective Date; and (ii) claims, arising from changes made to Centurion or the Intellectual Property by Company, that Centurion infringes any trademark, patent, copyright, trade secret, or other similar rights of any third party. Company shall not be responsible for any settlement accepted without Company's consent.

2.4 Authority Relative to this Agreement. This Agreement is a legal, valid and binding obligation of Company. The execution and delivery of this Agreement by Company and the performance of and compliance by Company with the terms and conditions of this Agreement will not conflict with or result in a breach by Company of any of the terms, conditions or provisions of any order, injunction judgment, decree, statute, rule or regulation applicable to Company. No consent or approval by any Person or public authority, other than the Commissions, is required in connection with the execution, delivery or performance of this Agreement by Company.

ARTICLE III

CONSIDERATION

In consideration of the conveyance of Centurion and the Intellectual Property to Company and the covenants, representations and warranties of Parent as set forth in Article II of this Agreement, Company hereby agrees as follows:

3.1 Equity Interest in Company. Simultaneously with the execution of this Agreement, Company hereby agrees to issue to Parent, or Parent's designated affiliate, [] shares of common stock of Company, representing one hundred percent (100%) of the issued and outstanding stock of Company as of the Effective Date. Parent acknowledges and agrees that such equity interest in Company will be diluted following the execution of this Agreement as equity capital is solicited by Company to fund the completion and documentation of Centurion, and for other business purposes.

3.2 Perpetual License Agreement.

3.2.1 Grant of Perpetual License. Simultaneously with the execution of this Agreement, Company hereby grants Parent a perpetual, irrevocable, non-exclusive, non-transferable, royalty-free right and license to use Centurion, any Centurion source code, and associated documentation, solely for Parent's use in managing the records of its customers. Company shall provide Parent with all future versions of Centurion source code within a

reasonable time following the completion of each new version. Company shall also provide Parent with a completed and fully documented executable version of Centurion at no cost to Parent. The scope of the license granted herein shall also entitle Parent to all associated training, and documentation which provides the software programming logic for the installation, operation and maintenance of the program.

3.2.2 Restrictions on Use. Parent shall not use Centurion for the benefit of any third parties other than customers of Parent, or permit any use of Centurion by any third parties. Parent agrees that Centurion shall be used only by Parent's employees and only in the United States. Parent shall not transfer, sell, assign, or sublicense Centurion to any "**Person**" (defined as any natural person, corporation, partnership, association, sole proprietorship, trust, joint venture, limited liability company, general partnership, limited partnership, trust association or other business entity, or any municipality, political subdivision, cooperative organization, or governmental agency or unit). Parent shall not disclose Centurion or any part of Centurion code or documentation to any other Person. Parent may not copy Centurion, except that Parent may make one (1) copy of Centurion in executable form (but not the user documentation) for backup or archival purposes. Parent may not remove any Company or product identification, copyright, trademark, patent or other notices or proprietary restrictions from Centurion or the backup copy.

3.2.3 Confidentiality. Parent acknowledges that all versions and forms of Centurion, including the original and future versions of Centurion source code, are confidential, proprietary information of Company that Parent will retain or, after the Effective Date, receive in confidence. Parent will not at any time in any manner or form disclose, provide or otherwise make available, in whole or in part, Centurion or the original or future versions of Centurion source code, to any third parties except for Parent's employees and consultants who are bound by appropriate non-disclosure agreements, and except as required by law. Information about Centurion will not be considered confidential if the information: (a) is publicly available (through no wrongful act of Parent) at the time of disclosure; (b) is independently developed by Parent; or (c) is disclosed to Parent by a third party with written approval of Company.

3.3 Software Maintenance Agreement.

3.3.1 Services. Company shall, for a period of twelve (12) years from the Effective Date, at no cost to Parent, provide Parent with not less than the most favorable maintenance and support services for Centurion that Company provides to other users of Centurion. During such twelve-year period, any customization of Centurion or other special services provided to Parent by Company will be provided to Parent at cost. Following such twelve year period, Company will charge Parent for software maintenance, customization and other special services, but no more than the lowest price paid for such services on a per customer basis by any other comparable user of Centurion. Company may require Parent to execute a standard Company agreement for maintenance. Parent understands that the services described in this paragraph may not be available on a regular basis until Company begins marketing Centurion. Until that time, Company will assist Parent with Centurion issues on a case-by-case basis, for no fee.

3.3.2 Warranties. Company warrants that all services and maintenance provided

pursuant to this Agreement will be performed in a professional manner. Parent agrees that it shall provide Company, in a timely manner, with any and all information that Company requires to perform services and maintenance pursuant to this Agreement, and Company may rely on the accuracy and completeness of such information.

3.4 Access to Records. Company shall, to the extent permitted by applicable law and pursuant to established discovery procedures of the Missouri and Arkansas Public Service Commissions, make available its strategic or business plans, corporate minutes, financial statements, and books and records, created and maintained by Company in the normal course of its business, for review, inspection and audit in conjunction with the Commission's jurisdiction over the operations and rates of Parent. Company shall indemnify and hold Parent and its affiliates harmless against any actions, suit, expense (including reasonable attorneys' fees), claim, loss, liability or damage based on claims arising out of Company's breach of this obligation. This section 3.4 shall continue in effect only as long as Parent owns 10 percent or more of the voting securities of Company and Parent has regulated electrical operations within the states of Missouri and Arkansas, which creates the need for access to such records.

ARTICLE IV

OTHER PROVISIONS

4.1 Confidentiality. Company acknowledges and agrees that all of Parent's customer-specific information is confidential. Company shall ensure that all of Parent's customer-specific information that comes into possession of Company by reason of work performed under this Agreement will be used solely for maintenance of Centurion and will remain confidential, unless it is required by law to be disclosed. Company agrees to use the same standard of care, and will bind its employees, agents and representatives to such standard, to prevent disclosure of such confidential information as Parent uses to protect its own confidential information. Upon the request of Parent, any and all customer-specific information in the possession of Company obtained as a result of work performed under this Agreement shall be returned to Parent or destroyed. Information received by Company under this Agreement will not be considered confidential if the information: (a) is publicly available (through no wrongful act of Company) at the time of disclosure; (b) is independently developed by Company; or (c) is disclosed to Company by a third party with written approval of Parent.

4.2 Limitation of Liability. THE LIMITED EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. EACH PARTY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. OTHER THAN FOR CLAIMS THAT CENTURION OR THE INTELLECTUAL PROPERTY INFRINGE ON INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES SUSTAINED OR INCURRED IN CONNECTION WITH THE OTHER'S USE OF OR INABILITY TO USE CENTURION OR IN CONNECTION WITH THE SERVICES RENDERED BY COMPANY OR IN ANY MANNER ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT, TORT, STRICT LIABILITY OR

OTHERWISE, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN AND WHETHER OR NOT SUCH PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. Company is not responsible for any obsolescence of Centurion that may result from changes in Parent's requirements. Company assumes no responsibility for the use of, or for providing services relating to, outdated or uncorrected versions of Centurion. Company makes no representation or warranty that Centurion's functionality will at all times meet Parent's requirements.

4.2.1 Parent acknowledges its responsibility to (i) regularly back up data maintained on any computer using Centurion, and (ii) adequately test prior to deployment of each version of Centurion in a configuration which reasonably simulates Parent's customer information system environment.

4.2.2 COMPANY'S MAXIMUM LIABILITY FOR DAMAGES, IF ANY, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FAIR MARKET VALUE OF ONE YEAR OF MAINTENANCE AND SUPPORT SERVICES.

4.3 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

4.4 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their successors, which shall include any Person who succeeds to the business of Parent or Company whether by merger, acquisition of equity interests, operation of law, acquisition of all or substantially all assets, assignment or otherwise.

4.5 Arbitration of Claims/Remedies.

4.5.1 Resolution of Claims. Except as provided below in section 4.5.2, any claim or dispute arising from or relating to this Agreement shall be resolved as follows. In the event any claim is not resolved by an informal negotiation between the parties hereto, within thirty (30) days after the party against whom a claim is asserted receives written notice that a claim exists, the matter will be submitted to an informal, non-binding mediation, in Joplin, Missouri, consisting of one or more conferences between the parties in which a mediator will seek to guide the parties to a resolution of the claims. The parties will select a mutually acceptable neutral mediator. In the event the parties cannot agree on a mediator, each party shall select a mediator and the mediators selected by the parties shall select one mediator who shall conduct the mediation. The mediation process will continue until the earliest to occur of the following: (i) the mediators selected by both parties are unable to agree upon a mediator; (ii) the claims are resolved; (iii) the mediator makes a finding that there is no possibility of resolution through mediation; or (iv) ninety (90) days have elapsed since the claim was first scheduled for mediation.

If any claims remain after the mediation process, each party shall submit to binding arbitration in Joplin, Missouri by a single arbitrator pursuant to the then-current commercial arbitration rules of the American Arbitration Association and

judgment on the arbitration award may be entered in any court of competent jurisdiction. The parties to the dispute shall share equally the arbitrator's fees and any administrative fee, but shall otherwise bear their own expenses.

Any mediators or arbitrator (collectively the "**Impartial Parties**") shall be familiar with contracts of the type represented by this Agreement. The Impartial Parties shall limit discovery to those items that in the judgment of the Impartial Parties are essential to the determination of the matters in dispute. Except for any stenographer and the Impartial Parties, attendance at the mediation or arbitration shall be limited to the parties and their counsel and witnesses.

Except as necessary for purposes of an action to enforce, modify or vacate the arbitration award, all documents and other information submitted to the Impartial Parties, including any transcript of proceedings, and the mediator's or arbitrator's award, shall be confidential and shall not be disclosed to anyone other than the parties and their counsel and financial advisors.

4.5.2 Exceptions. Section 4.5.1 shall not apply to disputes arising from or relating to the provisions of section 3.2.2, section 3.2.3, and section 4.1 of this Agreement. Each party acknowledges that any breach of its obligations under section 3.2.2, 3.2.3, or 4.1 may give rise to irreparable injury to the other, inadequately compensable in damages. Accordingly, the injured party may seek and obtain injunctive relief against the breach or threatened breach, in addition to any other legal remedies which may be available.

4.6 Entire Agreement. This Agreement contains the entire understanding of the parties, and supersedes any and all other agreements presently existing or previously made, written or oral, between Company and Parent concerning its subject matter. This Agreement may not be modified except by a writing signed by both parties.

4.7 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement nevertheless will continue in full force and effect without being impaired or invalidated in any way.

4.8 Notices. All notices, requests, demands, and other communications hereunder shall be deemed to have been duly given if delivered or mailed, certified or registered mail, postage prepaid; or sent by a nationally recognized overnight delivery service:

If to Company:

Newco
Address

with a copy to:

Hill & Barlow, P.C.
One International Place
Boston, MA 02110
Attn: Peter Katz, Esq.

If to Parent:

Empire District Electric Company
602 Joplin Street
Joplin, MO 64801
Attn: Clifford A. Stark

with a copy to:

Cahill, Gordon & Reindel
80 Pine Street
New York, NY 10005
Attn: Michael A. Sherman

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION
WHICH MAY BE ENFORCED BY THE PARTIES.**

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this
Agreement as of the _____ day of _____, 2001.

NEWCO

The Empire District Electric Company

By: _____

By: _____

Appendix A-2

The Empire District Electric Company: Case No. EE-2002-120 DATA TO BE PROVIDED MO PSC STAFF

(1) Certain monthly reports that The Empire District Electric Company currently sends the Commission's Energy Department in compliance with Section 8(E) of the Case No. ER-2001-299 Stipulation and Agreement Regarding Fuel and Purchased Power Expense will continue to be provided indefinitely. These reports consist of:

- A. Revenue Report: Monthly billed customers, kWh, rate revenue, IEC revenue, excess facilities revenue, franchise fee, and total revenue by revenue class and rate class (Missouri jurisdiction)
- B. Monthly Manual Revenue Adjustments: by revenue class and rate class (Missouri jurisdiction)
- C. Monthly Billing Adjustments (Missouri jurisdiction)
- D. Monthly Unbilled kWh Sales & Revenues (Missouri jurisdiction)
- E. Monthly General Ledger Summary (Report GLN1020E)
- F. Monthly kWh sales, Customers and Revenues (All jurisdictions)
- G. Schedule 1: Monthly Customers, kWh sales and System Input

Notes:

- 1. Reports: Revenue Report (A), Manual Revenue (B), and Billing Adjustments (C) may be combined into a single report.
- 2. Accounts: Only balances in revenue accounts are required in the General Ledger Summary (E).
- 3. Media: reports (A), (B), (C), (D), (F) will be provided in electronic, spreadsheet format; reports (E), (G) may be provided in hard copy.

(2) The Empire District Electric Company will create and provide the Commission's Energy Department with a "Summary Billing Data File" on a monthly basis.

General Concept: Billing transactions for a given billing month will be summarized in a way that is consistent with, but more detailed and more disaggregated than, EDE's current Revenue Report. In spreadsheet parlance, this new version of the revenue report will contain both additional data fields (columns) and additional categories (rows). The proposed data fields (columns) are listed below under the headings "ID Data Fields" and "Metered & Billed Data Fields." The ID Data Fields associated with each transaction will be used to categorize the records; i.e., the resulting electronic "report" will consist of one record (row) for each unique combination of ID Data Fields. The Metered & Billed Data Fields for each category (row) are the aggregation of the specific data over all billing transactions with the same combination of ID Data Fields.

Metered & Billed Data Fields

- Usage (kWh)
- Customer Count
- Rate Revenue (w/o Franchise Taxes)
- Revenue Credits (EDR, IR, etc.)
- Excess Facilities Charges
- Billing Units (Bills, Billed kW, kWh by block, etc.)

ID Data Fields

Financial Month: the month that the transaction was recorded for financial purposes

Revenue Month: the billing month that the data refers to (in the case of a cancel/rebill situation, the cancel and/or the rebill may refer to a prior billing month)

Jurisdiction

Revenue Class

Rate Code

Type of Transaction: Normal, Cancel, Rebill, etc

Cycle Designation for Meter Reading

Meter Reading "from" Date

Meter Reading "to" Date

No of Days in Period

Seasonal Rate Designation: Summer, Winter

The specific fields to be contained in this Summary Data File may be modified only with the Staff's approval from those listed above during the time when the initial programming to extract billing data is being done by EDE and reviewed by the MOPSC Staff. Any data fields that the Staff requests to be added to the above list will be limited to data fields that currently exist within the Centurion billing system.

The Empire District Electric Company will reconcile the summary data file each month to ensure that it is consistent with the Revenue Report specified in Section 1(A) prior to it being provided to the Commission's Energy Department. The summary data file will be provided in electronic spreadsheet format.

Atty/Secretary:

Mills/B. re

Date Circulated

1-4 EE-2002-120
CASE NO.

absent

Simmons, Chair

CM

Murray, Commissioner

JS p. 2

Lumpe, Commissioner

7/6 - X

Gaw, Commissioner

Forbis, Commissioner

F-10

Agenda Date

Action taken:

3-1 AS

Must Vote Not Later Than

What benefit is derived by sub. what was awarded by ratepayers?

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 10th day of Jan. 2002 .

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

