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December 20, 2001

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Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²

DEC 20 2001

Missouri Public
Service Commission

RE: Case No. EE-2002-120

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **SUGGESTIONS IN SUPPORT OF UNANIMOUS STIPULATION AND AGREEMENT**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Eric William Anderson
Assistant General Counsel
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EWA
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
DEC 20 2001

Missouri Public
Service Commission

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

SUGGESTIONS IN SUPPORT OF UNANIMOUS STIPULATION AND AGREEMENT

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and in support of the Unanimous Stipulation and Agreement (Agreement) filed in this matter states as follows:

1. Empire District Electric Company (Empire) is an "electrical corporation," a "water corporation," a "telecommunication company" and a "public utility" as those terms are defined in section 386.020 RSMo 2000, and is subject to the jurisdiction and supervision of the Missouri Public Service Commission (Commission) as provided by law.

2. Section 393.190 requires a utility under the jurisdiction of the Commission to obtain prior approval before any sale, assign or transfer any part of its franchise, works or system, necessary or useful in the performance of its duties. Section 393.190 RSMo 2000. Applicable case law provides that the Commission may approve an asset transfer if it is "not detrimental to the public interest". See State ex. rel Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980).

3. On August 23, 2001, Empire filed an application with the Commission requesting an order approving a proposed transfer of assets, its billing and customer service database software named "Centurion," to an affiliated, unregulated company.

4. The application also requested that the Commission grant Empire a variance of Sections (2), (3), (4), and (5) of the affiliate transaction rule, 4 CSR 240-20.015. These sections deal with the following: (2) Standards (in not providing preferential treatment to an affiliate), (3) Evidentiary standards, (4) Record keeping requirements, and (5) Records of affiliate entities. The Commission may grant a waiver of rule sections for good cause. 4 CSR 240-2.060(14).

5. The Commission on September 13, 2001, issued an order directing any interested party wishing to intervene to file its application no later than October 15, 2001. No requests for intervention were filed.

6. The parties, Empire, Office of the Public Counsel and the Staff filed the proposed Agreement on November 30, 2001.

7. The Staff supports the application as modified by the Agreement and is of the opinion that the asset transfer is not detrimental to the public interest.

8. The "Contribution of Technology and Software Licensing and Maintenance Agreement" (licensing agreement) is attached to the Agreement as Appendix 1.

9. As stated in the application, both Empire and its shareholders may benefit from this transaction. Both the company and customer will have the benefit of the Centurion software, including any enhancements, and continued support. Customers will also avoid the impact of the inclusion of future development costs in Empire's electric and water rates. Empire proposes to transfer its Centurion software to an affiliate, in return that affiliate would provide at no cost to

Empire training, documentation, and updates of the software. (Licensing agreement section 3.2.1)

10. A perpetual license of the transferred Centurion software is provided to Empire at no cost (paragraph 5 of the Agreement and 3.2.1 of the licensing agreement) and the software maintenance and support agreement is now twelve (12) years, instead of the seven years that was originally proposed by Empire in its application. (Paragraph 4A of the Agreement and 3.3.1 of the licensing agreement).

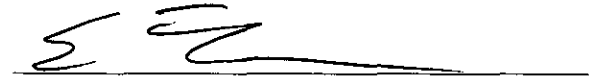
11. Empire has agreed in paragraph 4B of the Agreement that it hold its customers harmless from a ratemaking standpoint if this transfer of the Centurion software results in a higher revenue requirement for Empire in a future rate case than if the transfer had not been made.

12. In 4C of the Agreement, Empire has agreed to make sure the Centurion software will be capable of producing the reports containing the data that Staff may need, as provided in Appendix A-2 to the Agreement. The licensing agreement contains language in provision 3.4 that the transferee company will make certain information available to Commission Staff.

WHEREFORE, the Staff respectfully submits its suggestions in support of the unanimous stipulation and agreement filed on November 30, 2001 in this matter.

Respectfully submitted,

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General Counsel



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Missouri Bar No. 47253

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 20th day of December, 2001.



Service List for
Case No. EE-2002-120
Verified: December 20, 2001 (ccl)

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