

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Prehearing Conference  
8 March 9, 2005  
9 Jefferson City, Missouri  
Volume 1

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Spigel Properties, )

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Complainant, )

13

v. ) Case No. EC-2005-0110

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AmerenUE, )

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Respondent. )

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KENNARD L. JONES, Presiding,  
REGULATORY LAW JUDGE.

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FOR: Staff of the Missouri Public  
Service Commission.

1 P R O C E E D I N G S

2 JUDGE JONES: This is a prehearing  
3 conference for Case No. EC-2005-0110. My name is Kennard  
4 Jones. I'm the judge presiding over this matter. Spigel  
5 Properties has brought a complaint against AmerenUE  
6 concerning AmerenUE's attempt to collect past charges that  
7 resulted from underbilling.

8 At this time I'll take entries of  
9 appearance, beginning with Spigel Properties.

10 MR. GLADDEN: John Gladden representing  
11 Spigel Properties. I've given you my address and  
12 telephone number earlier. My Bar number is 20458.

13 JUDGE JONES: And from AmerenUE?

14 MR. BYRNE: Yes, your Honor. I'm Tom Byrne  
15 representing AmerenUE. My address is 1901 Chouteau  
16 Avenue, St. Louis, Missouri 63103.

17 JUDGE JONES: Office of the Public Counsel?

18 MR. COFFMAN: John B. Coffman representing  
19 the Office of the Public Counsel, P.O. Box 2230,  
20 Jefferson City, Missouri 65102.

21 JUDGE JONES: And from the Staff of the  
22 Commission?

23 MR. DOTTHEIM: Steven Dottheim, Post Office  
24 Box 360, Jefferson City, Missouri 65102, appearing on  
25 behalf of the Staff of the Missouri Public Service

1 Commission.

2 JUDGE JONES: Thank you all. I'll start by  
3 saying this, and Mr. Gladden, this is primarily directed  
4 toward you. In the Complaint Complainant requested an  
5 independent determination of the actual usage based on the  
6 alleged improper wiring that AmerenUE claims and a new  
7 determination of what, if any, additional charges are due.  
8 Is that your understanding of the relief sought?

9 MR. GLADDEN: Correct.

10 JUDGE JONES: Has that relief been  
11 satisfied?

12 MR. GLADDEN: It has not.

13 JUDGE JONES: It has not. The Staff has  
14 conducted an investigation. Do you consider that to be an  
15 independent determination?

16 MR. GLADDEN: I consider it independent,  
17 yes, but there are things not taken into consideration  
18 that have actually just come to light in the last five  
19 days that I was not aware of that I think have some  
20 bearing on how much my client should have to pay.

21 JUDGE JONES: So you disagree that the  
22 amount owed should be 182,000?

23 MR. GLADDEN: Yes, we do.

24 JUDGE JONES: What do you think it should  
25 be?

1                   MR. GLADDEN: Well, I can't tell you  
2 exactly what it should be. Here's the problem: My client  
3 passed through the cost of utilities to his tenants, but  
4 on the basis of the leases that they had signed, he could  
5 only bill them if there was an error in the amount he  
6 passed through 12 months back.

7                   So now AmerenUE is coming in and charging  
8 my client for three years' usage, but my client, based on  
9 his leases, could only charge his tenants for one year's  
10 usage back. So now he's being told he has to pay for two  
11 years' usage that he cannot recoup from his clients based  
12 on his leases because of AmerenUE's error, and that just  
13 isn't fair.

14                  JUDGE JONES: Do you -- I take it you have  
15 had a chance to get a good reading on Staff's  
16 investigative report?

17                  MR. GLADDEN: Yes, I have.

18                  JUDGE JONES: And in that report Staff  
19 states that Ameren through use of its tariff is able to go  
20 back actually five years for underbilling. Do you  
21 disagree that that is the law or --

22                  MR. GLADDEN: I'm not disagreeing that's  
23 the law. What I'm disagreeing with is the fairness of  
24 what they're doing or being able to do because of the  
25 impact on my client through no fault of his own. They are

1 now charging him for something that he cannot go back and  
2 collect that his tenants would have had to pay through  
3 their own negligence, not through his. Now, you're not  
4 talking just strictly a tariff thing. When you have an  
5 error here on the part of the utility that now impacts on  
6 my client and he can't collect it, it's not fair.

7                   He could -- had they done this correctly,  
8 he would have passed those charges along to his tenants as  
9 they came in. Now he's foreclosed by his own leases from  
10 doing that.

11                   JUDGE JONES: You don't disagree that  
12 Spigel Properties could have contracted with their tenants  
13 to be able to go back and recover three years when there  
14 was an error, do you?

15                   MR. GLADDEN: Well, the point is not  
16 whether or not they could have. They didn't, because  
17 Spigel Properties never anticipated AmerenUE doing  
18 something like they did and making this kind of an error  
19 and not letting him know until it was too late for him to  
20 go back and get this to his tenants.

21                   You know, most of us when we receive a  
22 utility bill assume the utility knows that what they're  
23 charging us is what we have used. I mean, whether he  
24 could have or couldn't have is not relevant. The fact of  
25 the matter is he has a standard lease that if you go and

1 check leases of other commercial properties, you will find  
2 this is a standard commercial lease.

3 Now because of AmerenUE's own error, he's  
4 being penalized if you go ahead and agree with this kind  
5 of assessment. It's just not fair.

6 JUDGE JONES: Mr. Byrne, I'll let you  
7 speak.

8 MR. BYRNE: Yes, your Honor. I guess, you  
9 know, I don't have that much to say. Our tariff -- this  
10 is a problem that occurs from time to time for utilities,  
11 and it's a problem that the Commission has specifically  
12 addressed through tariff provisions, and the tariff  
13 provision that governs this situation, as the Staff has  
14 confirmed, allows us to go back 60 months. We only went  
15 back three years because -- honestly, I think we probably  
16 could have gone back 60 months, but our records only went  
17 back three years, so we chose to only go back three years.

18 I'm sorry that they didn't have a contract  
19 that allowed them to continue to flow this through to  
20 their customers, but the fact remains that the electricity  
21 was used, we've got a tariff provision that exactly  
22 addresses this point, and we're employing that tariff  
23 provision.

24 JUDGE JONES: Mr. Coffman, do you have any  
25 thoughts you want to ring in?

1                   MR. COFFMAN: No, your Honor. We're simply  
2 monitoring this situation, have not done our own  
3 investigation of it.

4                   JUDGE JONES: Okay. I have a question to I  
5 suspect Ameren and probably Staff. Now, Ameren, the  
6 initial letter that was sent was 240-some thousand  
7 dollars. After Staff's investigation, they determined it  
8 was 60,000 less. That may not be a lot of money to  
9 Ameren, but to me that's just a lot of money.

10                  MR. BYRNE: Your Honor, the \$240,000 was  
11 the current amount that the customer owed on October 5th.  
12 That included two months of regular billings that aren't  
13 at issue. So our calculations match the Staff's  
14 calculations.

15                  MR. GLADDEN: And the difference between  
16 240,000 and 188,000 was paid as part of that billing.

17                  MR. BYRNE: That's correct. That has since  
18 been paid.

19                  MR. GLADDEN: So the \$188,000 is the only  
20 difference. There has been no discount whatsoever from  
21 the 240,000. The difference has been paid.

22                  MR. BYRNE: I think it's -- the actual bill  
23 is, I believe, 180,000.

24                  MR. GLADDEN: And the difference between  
25 240 and 188 has been paid.



1 JUDGE JONES: I don't think you-all are  
2 arguing about that point, Mr. Gladden. I think that  
3 Mr. Byrne's effort was directed towards explaining to me  
4 why there was a difference. Apparently the 60-some-odd  
5 thousand or 50-some-odd thousand is not in dispute. It's  
6 only the 182,000 I think that you're taking issue with and  
7 that Ameren is seeking to collect.

8 MR. GLADDEN: That's correct.

9 JUDGE JONES: And it sounds like your --  
10 your concern is that the tariff provision is unfair?

11 MR. GLADDEN: I think the application of  
12 the tariff provision is unfair under these circumstances  
13 because the leases were commercial leases, typical actual  
14 standard commercial leases where the utility costs are  
15 passed through to the tenant, and my client gets hit with  
16 a 240,000, which now amounts to a \$188,000 bill.

17 MR. BYRNE: Let me address the --

18 MR. GLADDEN: Because Ameren made a  
19 mistake, they are now entitled to collect it, but my  
20 client is left with two years' difference that he has to  
21 make up for out of his own pocket because Ameren made a  
22 mistake, and he is precluded from going back and  
23 collecting that.

24 JUDGE JONES: Let me ask you this question,  
25 and then I'm going to leave you-all to figure out how you

1 want to proceed with this, but consider this hypothetical,  
2 Mr. Gladden. What if your client was unable to pass  
3 through under whatever circumstances even that last year,  
4 what if your client was unable to pass through any of  
5 these costs, do you still think it would be unfair?

6 MR. GLADDEN: Had my client signed leases  
7 with his tenants which required him to pay the utilities,  
8 no, it would not have been unfair, but that is not the  
9 fact. The fact is he had leases which passed the utility  
10 costs through.

11 JUDGE JONES: And do you think that  
12 those -- that fact is relevant to interpreting the tariff?

13 MR. GLADDEN: I think it should be relevant  
14 to interpreting the tariff when it is the utility's fault  
15 that has caused this error.

16 MR. BYRNE: Let me say something about that  
17 if I could, your Honor. I don't think we can have  
18 different tariffs that apply to different customers  
19 differently depending on what contracts they happen to  
20 enter into. I mean, you've got to have a standard tariff  
21 that applies equally to every customer whether they choose  
22 to enter into contracts with their -- with their tenants,  
23 you know, one way or another. It's got to be the same  
24 tariff and the same result to every customer.

25 And I guess on the issue of fairness, I

1 mean, to the best we can tell, this metering problem has  
2 existed for like since 1992. So the bills that his client  
3 has been getting have understated the proper charges for  
4 electricity, you know, on an order of magnitude that would  
5 get you to \$180,000 after three years, all the way since  
6 1992.

7 I just don't think his client is being  
8 treated all that unfairly to be, you know, in accordance  
9 with the tariff billed back three years.

10 JUDGE JONES: Does everyone agree that the  
11 cause of the undercharge is because of the improper wiring  
12 of the transformer?

13 MR. BYRNE: Yes, your Honor.

14 JUDGE JONES: Mr. Gladden, you agree with  
15 that?

16 MR. GLADDEN: Yes, we do.

17 JUDGE JONES: Does everyone agree, then,  
18 that that situation -- or I should say that that situation  
19 is covered by the portion of the tariff, I believe it's  
20 subsection C, Schedule No. 5, Revised Sheet 170, Part 5  
21 and all the rest of that, where it says bills rendered  
22 which are based on incorrect registrations due to improper  
23 meter connections? Are you following me, Mr. Gladden?

24 MR. GLADDEN: I'm following you. I don't  
25 have the tariffs in front of me, but I'm following you.

1 JUDGE JONES: When you read Staff's report,  
2 do you recall that at subsection C that I believe Staff is  
3 opining is applicable to this situation, do you remember  
4 that?

5 MR. GLADDEN: Yes.

6 JUDGE JONES: And so we all agree that that  
7 is the applicable law; is that correct?

8 MR. GLADDEN: I'll agree that's the law.

9 JUDGE JONES: Mr. Byrne, do you agree?

10 MR. BYRNE: Yes, your Honor.

11 MR. GLADDEN: But I'm not agreeing that  
12 strict application of the law here is equitable or fair.

13 JUDGE JONES: Okay. Well, I'm going to  
14 leave you-all with an opportunity to discuss this further  
15 because I don't think I can help you any more. You-all  
16 are set on what law applies, and you-all are set on the  
17 amounts that are applicable. The only problem you have is  
18 how it's going to be handled between the two of you.

19 So does anyone have any concerns they'd  
20 like to address while we're still on the record? Hearing  
21 none, then I'll leave you-all to discuss the matter  
22 further.

23 Mr. Dottheim, if I might impose on you the  
24 burden of informing me of how you-all think you might go  
25 forward after you're done talking today?

1 MR. DOTTHEIM: Yes.

2 MR. BYRNE: Presumably, your Honor, if we  
3 don't reach an agreement, we'll need to set a schedule.

4 JUDGE JONES: That's true. And in this  
5 particular case, I don't know -- we're trying to get away  
6 from this prefiled testimony. I don't think the magnitude  
7 of this case is even necessary for prefiled testimony.

8 MR. BYRNE: I'm not sure there's any facts  
9 in dispute, your Honor.

10 JUDGE JONES: It doesn't seem like there  
11 are. Mr. Gladden, is that --

12 MR. GLADDEN: I don't think there are any  
13 facts in dispute at this point in time, no.

14 JUDGE JONES: In that case, then, if  
15 you-all can't agree, it sounds like some type of  
16 on-the-record question and answer is the only thing that  
17 will help the Commission resolve this issue. Are you-all  
18 in agreement with that?

19 MR. BYRNE: I think maybe we could present  
20 if we had to -- if we had a hearing, if we're not able to  
21 reach any kind of agreement and we had a hearing, we could  
22 file a stipulation as to the facts and then do whatever  
23 the Commission would like after that, answer questions or  
24 whatever.

25 MR. DOTTHEIM: Judge Jones, your

1 inclination, the Commission's inclination is even if there  
2 were facts in dispute, to proceed without prefiled  
3 testimony?

4 JUDGE JONES: Well, that's what I would  
5 think. I don't -- it doesn't seem like there would be a  
6 whole lot of testimony. I don't know what anybody could  
7 testify to. They were overcharged and Ameren's trying to  
8 collect and that's the tariff that applies. You-all  
9 disagree on whether it's being applied fairly.

10 So I don't want to -- I don't want to make  
11 too much work in this case as far as prefiled testimony if  
12 it's not -- when the burden is going to outweigh the  
13 benefit. But it doesn't sound like we're going to have to  
14 go that route. If there are no facts in dispute, then we  
15 won't need testimony. We'll just have to hear from the  
16 attorneys on why or why not -- I should say why they think  
17 the application of this tariff is fair and why they don't.  
18 Beyond that, I can't -- I don't see anything else for the  
19 Commission to decide.

20 Is there anything else from anyone? Seeing  
21 nothing, then I will go off the record and I'll leave  
22 you-all to discuss it further.

23 WHEREUPON, the recorded portion of the  
24 prehearing conference was concluded.

25