

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

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Spigel Properties,

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Complainant,

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v.

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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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20 FOR: Staff of the Missouri Public
21 Service Commission.
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1 P R O C E E D I N G S

2 JUDGE JONES: This is Case No.
3 EC-2005-0110, Spigel Properties, Complainant vs. Union
4 Electric Company, doing business as AmerenUE, Respondent.

5 At this time I'll take entries of
6 appearances, beginning with Spigel Properties.

7 MR. GLADDEN: This is John Gladden for
8 Spigel Properties. What else do you need other than my
9 name?

10 JUDGE JONES: That will be enough,
11 Mr. Gladden. And from AmerenUE?

12 MR. LOWERY: This is James B. Lowery of
13 Smith Lewis, LLP, P.O. Box 918, Columbia, Missouri 65205,
14 appearing on behalf of AmerenUE.

15 JUDGE JONES: Thank you. And from the
16 Staff of the Commission?

17 MR. DOTTHEIM: Steven Dottheim, Post Office
18 Box 360, Jefferson City, Missouri 65102, appearing on
19 behalf of the Staff of the Missouri Public Service
20 Commission.

21 JUDGE JONES: Okay. And I'll note for the
22 record that the Office of Public Counsel is not present.

23 Okay. Mr. Gladden?

24 MR. GLADDEN: Yes.

25 JUDGE JONES: I think I'll start with you.

1 Do you believe that a hearing is necessary in this
2 complaint case?

3 MR. GLADDEN: At the present time, I don't
4 believe a hearing will be necessary. I think we've
5 arrived at a settlement. It depends on the method of
6 payment and the time of payment, and I think that from the
7 discussions I've had with Mr. Lowery earlier today, as
8 long as we have payment made to Ameren by five o'clock
9 Friday, that the case will, in fact, be settled.

10 And I think payment will be made by then.
11 I've been unable to contact my client since I last talked
12 to Mr. Lowery. He won't be in his office until tomorrow.
13 But I do think we have a settlement.

14 MR. LOWERY: Judge, this is Jim Lowery. If
15 I could perhaps just make a brief record as to what the
16 terms of that settlement are and some of the circumstances
17 leading to it just for the record at this time.

18 JUDGE JONES: Go right ahead, Mr. Lowery.

19 MR. LOWERY: There have been settlement
20 discussions ongoing recently. As you know, this matter
21 has taken some time. At an earlier prehearing conference
22 it appeared there really were no facts in dispute, and
23 Mr. Byrne had offered to prepare a Joint Stipulation of
24 Facts and did so. Mr. Gladden indicated that he just was
25 not in a position in response to that to either admit or

1 deny the factual allegations in that stipulation, and then
2 settlement discussions have proceeded.

3 An offer was made to settle this matter for
4 one-third of \$182,588.67, or the settlement amount would
5 be \$60,862.29. Spigel came back and said, we'll do that
6 but we want to pay by credit card rather than by, for
7 example, cashier's check or bank money order.

8 We initially indicated -- we initially
9 rejected that offer primarily because we use a third-party
10 credit card processing service, and I can't honestly tell
11 you I understand all the details, but the long and the
12 short of it is that they simply are not set up to handle
13 that kind of transaction. There was a transactional limit
14 that they impose, and we weren't able to do it.

15 However, after we rejected that initial
16 offer, we did endeavor to see whether or not an exception
17 could be made, and we have convinced our credit card
18 processing agency to make a one-time exception that would
19 allow them to accept that payment.

20 I'm told that Mr. Spigel -- our folks were
21 in contact with Mr. Spigel, that he apparently had to
22 request an increase in his credit line in order to do
23 that, and by doing so he apparently created a new credit
24 card account. He doesn't have that card, although I'm
25 told he's supposed to get it by tomorrow.

1 So we have essentially offered that so long
2 as AmerenUE by five o'clock Friday has immediately
3 available funds, whether that be via this verified credit
4 card payment, cashier's check or bank money order, in hand
5 by five o'clock Friday, that we have offered to settle the
6 matter for that 60,862.29. On that basis, Spigel has
7 agreed that that's what -- that they're willing to settle
8 it on that basis.

9 So I think where the settlement stands is,
10 as long as that payment's made by then, we settle the
11 case. If it's not made by then, we will deem our offer to
12 be withdrawn and then hearings or some kind of disposition
13 of the case would be necessary. I don't expect that's
14 going to be necessary, but I guess it's a possibility
15 because we literally at this moment don't have the funds
16 in hand.

17 JUDGE JONES: Okay. I take it Staff isn't
18 really taking a position one way or another on this
19 settlement issue?

20 MR. DOTTHEIM: Correct.

21 JUDGE JONES: Okay. In the event that
22 payment is not made by Friday or -- do you-all have an
23 agreement already?

24 MR. LOWERY: Not a written agreement,
25 Judge. I think we have a verbal settlement agreement

1 reflected as I just described it. I mean, Mr. Gladden can
2 confirm whether or not I described it accurately, but I
3 believe that's the verbal agreement we have.

4 MR. GLADDEN: The verbal agreement is
5 essentially accurate. The only variation from the verbal
6 agreement is this: AmerenUE had originally agreed to
7 accept a credit card payment and then found out that their
8 credit card processing company would not accept that
9 amount of money. That was the initial glitch. And we
10 backed up from that and tried to go back and correct it,
11 and that's what's happened here. Everything else is
12 correct.

13 JUDGE JONES: So if payment is made Friday,
14 then, Mr. Gladden, would I expect a motion to dismiss the
15 complaint from Spigel?

16 MR. GLADDEN: Whatever you want, your
17 Honor, is what we will do. I thought we'd have a joint
18 dismissal or a stipulation dismissing this.

19 MR. LOWERY: Judge, this is Jim Lowery. I
20 had contemplated we would file a joint notice or joint
21 stipulation of dismissal asking the Commission to dismiss
22 the complaint with prejudice based on the settlement.

23 JUDGE JONES: Okay. Now, in the event that
24 things don't happen as planned by Friday, Mr. Gladden, do
25 you still have factual disputes with the case?

1 MR. GLADDEN: No, we have no real factual
2 disputes. As I -- I think if you go back to the earlier
3 prehearing conference we had, we have no real factual
4 disputes. Our only dispute is an equitable one, and
5 that's all we've ever had.

6 JUDGE JONES: Okay.

7 MR. LOWERY: And, Judge, on that basis, I
8 mean, again, I think this is probably going to take care
9 of itself by Friday, but I think the company would
10 certainly strongly consider promptly filing probably for
11 summary disposition or something of that nature given that
12 there are no material facts in dispute at all, and I think
13 the law is probably clear here in terms of what the relief
14 should be. That would be our position.

15 JUDGE JONES: Okay. Well, good luck with
16 trying to pay that by Friday, and --

17 MR. GLADDEN: I think, your Honor, we'll
18 have it paid by Friday. My client assured me it would
19 happen today. I am a little concerned that it didn't
20 happen today. I thought this was all taken care of.
21 We'll do what we can.

22 JUDGE JONES: You say you thought it would
23 happen today. So does that mean -- are you saying Friday
24 because you anticipate your client being able to do that?

25 MR. GLADDEN: I anticipate my client being

1 able to do it tomorrow morning. Supposedly this is all
2 going to happen by overnight mail. I thought it had been
3 taken care of quite some time ago, and apparently it was
4 not.

5 JUDGE JONES: What makes you think it will
6 happen by Friday then? Have you talked to your client
7 about that?

8 MR. GLADDEN: I have not, but I have talked
9 to Mr. Lowery and Mr. Lowery told me that the business
10 people from Ameren have talked to my client. So
11 everything I'm getting is thirdhand.

12 MR. LOWERY: Judge, I'm getting it
13 secondhand obviously, but Mr. Spigel told our business
14 folks today that the -- and actually, I think perhaps they
15 actually had the credit card company on the phone -- that
16 the credit card was being overnighted, which overnighted
17 today means he gets it tomorrow, and that once they have
18 that, the payment should be made.

19 And the Friday date really came from our
20 side, Judge. We -- I guess we're a little bit at the end
21 of our patience in getting this resolved, and so we agreed
22 that we'll give you a couple days, in effect we'll give
23 you to five o'clock Friday to pay it, and as long as
24 that's done the settlement stands. And if that's not
25 done, then we're -- we may reserve our right to just

1 proceed to recover the full amount, or at least to get a
2 Commission order if that's what the Commission ultimately
3 orders indicating we're entitled to the full amount.
4 Whether we can collect it could be another issue given
5 some events that have occurred, but we'll cross that
6 bridge when we come to it.

7 JUDGE JONES: So regardless of what happens
8 Friday, then, I'll hear something from the parties, and
9 when can I expect to hear something?

10 MR. LOWERY: If it's -- if it's all right
11 with Mr. Gladden, at a minimum I would call you and let
12 you know what happened Monday morning. If it settled we
13 would then, I think, get a joint stipulation submitted
14 next week. If it doesn't settle, we would then proceed to
15 take other action.

16 MR. GLADDEN: Your Honor, that's perfectly
17 agreeable with me. I mean, I will let you know as soon as
18 I know. I'm going to be in contact -- I've tried to reach
19 my client this afternoon. He has left his office for the
20 afternoon. I will be talking to him tomorrow morning, and
21 as soon as I know for sure what has happened, I will be in
22 contact with Mr. Lowery and with you to let you know what
23 has happened.

24 JUDGE JONES: To both of you, as far as
25 contacting me is concerned, that's not necessary. The

1 only thing that impresses me is if something's filed. So
2 just file something. You don't have to call me.

3 And Mr. Lowery, I noted that you said joint
4 stipulation. You're calling it stipulation, but is this a
5 joint motion to dismiss?

6 MR. LOWERY: Yes. I guess I would call it
7 a joint notice of dismissal requesting a dismissal, yes,
8 so it's a joint motion to dismiss. That's what I was
9 contemplating.

10 MR. GLADDEN: And that's exactly what I
11 hope we have in your hands early next week.

12 JUDGE JONES: Well, if I don't see anything
13 within the next two weeks, then I'll probably issue an
14 Order directing filing to both of you-all telling me
15 what's going on.

16 MR. LOWERY: Okay.

17 JUDGE JONES: Okay.

18 MR. GLADDEN: That will be fine, your
19 Honor. Thank you.

20 JUDGE JONES: Is there anything else from
21 either of you?

22 MR. GLADDEN: Not from me, your Honor.

23 MR. LOWERY: Not from me either at this
24 point, Judge.

25 JUDGE JONES: Mr. Dottheim?

1 MR. DOTTHEIM: Nothing from the Staff at
2 this point.

3 JUDGE JONES: Well, with that, then, we
4 will conclude the hearing. Thank you all for calling in.

5 WHEREUPON, the recorded portion of the
6 prehearing conference was concluded.

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