

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 Prehearing Conference

6 May 10, 2010

7 Jefferson City, Missouri

8 Volume 1

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11 Superior Bowen Asphalt)
12 Company, LLC,)
13 Complainant,) File No. GC-2011-0101
14 vs.)
15 Southern Union Company,)
16 Respondent.)

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19 DANIEL JORDAN, Presiding

 SENIOR REGULATORY LAW JUDGE

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23 REPORTED BY:

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24 TIGER COURT REPORTING, LLC

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Commission

1 JUDGE JORDAN: We will go on the
2 record.

3 The Commission is calling File
4 No. GC-2011-0101, which is the complaint of
5 Superior Bowen Asphalt Company, L.L.C., versus
6 Missouri Gas Energy, a Division of Southern
7 Union Company. That is how the case is styled.

8 I'm Dan Jordan. I am the regulatory
9 law judge assigned to this case. I will begin
10 with entries of appearance, and I'd also like
11 counsel to introduce any representative of their
12 client that's present. We'll begin with the
13 Complainant.

14 David Woodsmall and Jeremiah Finnegan of
15 the firm Finnegan, Conrad, and Peterson, 3100
16 Broadway, Kansas City, Missouri 64111, appearing on
17 behalf of Superior Bowen, and we don't have any
18 experts or representatives of the company with us
19 today.

20 JUDGE JORDAN: Thank you, counselor.

21 Let's go next with Southern Union, doing
22 business as Missouri Gas Energy.

23 Dean L. Cooper appearing on behalf of
24 Southern Union Company, d/b/a Missouri Gas Energy.
25 While he is not here at the present time, I will

1 be joined by Michael Nowak from the company.

2 JUDGE JORDAN: Thank you.

3 And for Staff.

4 MR. BERLIN: Yes. Thank you, Judge.

5 Appearing on behalf of the Staff of the
6 Missouri Public Service Commission, Robert S. Berlin,
7 and also here with me are two Staff witnesses, Bob
8 Leonberger and Dale Johansen.

9 JUDGE JORDAN: Thank you.

10 And for the Office of Public Counsel.

11 MR. POSTON: Marc Poston appearing for the
12 Office of Public Counsel and the public.

13 JUDGE JORDAN: Thank you very much.

14 The presence of experienced counsel makes
15 unnecessary a lot of what I would usually say in a
16 prehearing conference. I will just go over a few
17 basics.

18 First, we are doing a portion of this
19 conference on the record. Then we will go off the
20 record so that the parties have the opportunity to
21 discuss issues outside my presence that might be
22 sensitive and they don't want me to hear just yet, if
23 ever.

24 I also want to take this opportunity to
25 encourage the parties to discuss the possibilities

1 for settlement, and I want to remind everyone that if
2 negotiations among the parties go only so far and the
3 parties feel that some facilitation or assistance or
4 consultation might help, then the Commission does
5 offer mediation services.

6 If the parties really, really want me to
7 help with that, I can certainly do that, but if the
8 case were to go to hearing, it would have to be
9 reassigned to a regulatory law judge. The other
10 regulatory law judges are also trained in mediation
11 of civil cases and are willing to help the parties
12 well.

13 That's most of what I need to say to the
14 parties that are -- and their representatives that
15 are present right now, so I will ask the parties
16 where we are in the processing of this case. I've
17 read the complaints. I've read the report, and I
18 appreciate everybody's hard work to this point.

19 What I'd like to know -- and I guess I
20 will -- I'll start by asking Staff. Is Staff aware
21 of any settlement offers that are on the table at
22 this point in this case?

23 MR. BERLIN: No, I am not, Judge.

24 JUDGE JORDAN: Can the other parties give
25 me an idea where we are with discussions of resolving

1 these issues without the Commission's decision?

2 MR. COOPER: I don't know that there have
3 been any substantive discussions recently.

4 Jeremiah, is that consistent with your
5 understanding?

6 MR. FINNEGAN: Yeah, that's correct.
7 There have been none. In fact, I'm questioning this
8 prehearing conference, unless we can get some kind of
9 settlement offer.

10 JUDGE JORDAN: Okay. Can anyone else add
11 anything to what's been said already?

12 (No response.)

13 JUDGE JORDAN: I'm seeing shaking heads.

14 Well, part of the reason that I mention
15 this is that a complaint case is unlike certain other
16 actions that come to the Commission. For example, a
17 rate case, there can be no resolution until the
18 Commission issues its decision and wraps up the case,
19 but this is not a rate case. It's a complaint case,
20 and it really belongs to the Complainant and to the
21 other parties, so it's possible for the parties, in
22 my reading of the law, to come to a settlement and
23 simply dismiss the action.

24 My experience is that the parties, having
25 more facts than the Commission will ever have about a

1 complaint, can come to a resolution that meets their
2 needs better than the Commission can impose. That
3 being said, of course, if the parties feel they need
4 to go to hearing, the Commission will hear the case,
5 and if the Commission hears the case, it will be
6 before me.

7 I'm not an engineer. I'm not an
8 accountant. My background is administrative law.
9 That's what I bring to the table. I bring a certain
10 expertise in the process, but if you try the case to
11 me, you're going to have to speak in very small words
12 of one syllable to make it understandable to me, just
13 so everyone knows.

14 In reviewing the things that have been
15 filed so far, I see that there's been some
16 discovery -- the parties have been doing some
17 discovery -- and there's some references to issues
18 that have not been addressed in data requests. I'm
19 not aware of any motions to compel or any discovery-
20 related motions that are outstanding.

21 Does anyone have any of those that
22 they're getting ready to file? Anything like that we
23 can discuss today?

24 MR. COOPER: No.

25 JUDGE JORDAN: Okay.

1 MR. BERLIN: No, Judge.

2 JUDGE JORDAN: I'm seeing shaking heads.

3 All right. All right.

4 Is there anything else of a procedural
5 nature that I can help the parties with? Now I'm
6 going to ask again: Are there any discovery issues
7 that we can take care of right here while I'm present
8 with you?

9 MR. COOPER: None that MGE is aware of.

10 MR. BERLIN: None.

11 JUDGE JORDAN: Okay. I just wanted to
12 clarify that.

13 Anything else procedurally that I can
14 help you with that may have heard the filing of
15 formal motions and rulings? Something I can help you
16 with? Anyone?

17 MR. COOPER: We have a procedural schedule
18 at this point.

19 JUDGE JORDAN: Yes. Yes. Yes.

20 Well, I'm not hearing any problems, so I
21 guess we're just moving along very smoothly, which is
22 good.

23 Well, any questions about how I intend to
24 proceed in this case from any of the parties?

25 (No response.)

1 JUDGE JORDAN: I'm not hearing
2 anything. All right. Well, then I'll just go
3 ahead and ask this: Is there anything else I
4 can do for you while I'm here present in the
5 room before we go off the record?

6 MR. COOPER: I'm not aware of
7 anything.

8 MR. BERLIN: Nor am I.

9 JUDGE JORDAN: Okay then. I will go ahead
10 and leave the room shortly. I'll leave this
11 telephone line open. I'll ask Staff counsel to hang
12 up the phone when everyone's done. I hope that
13 people will use the time in between to work out some
14 issues, maybe move towards the resolution of this
15 complaint without a Commission decision, if that's at
16 all possible.

17 Other than that I have nothing else for
18 the parties. Do the parties have anything else for
19 me?

20 MR. COOPER: No, your Honor.

21 MR. POSTON: No, Judge.

22 MR. BERLIN: No, Judge.

23 JUDGE JORDAN: All right then. I will
24 leave the room. I thank you for your attendance and
25 participation, and with that we will go off the

1 record.

2 (The hearing concluded.)

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1 CERTIFICATE

2 I, Nancy L. Silva, RPR, a Certified
3 Court Reporter, CCR No. 890, the officer before
4 whom the foregoing hearing was taken, do hereby
5 certify that the witness whose testimony appears
6 in the foregoing hearing was duly sworn; that
7 the testimony of said witness was taken by me to
8 the best of my ability and thereafter reduced to
9 typewriting under my direction; that I am
10 neither counsel for, related to, nor employed by
11 any of the parties to the action in which this
12 hearing was taken, and further, that I am not a
13 relative or employee of any attorney or counsel
14 employed by the parties thereto, nor financially
15 or otherwise interested in the outcome of the
16 action.

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19 Nancy L. Silva, RPR, CCR
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