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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
May 24, 2006
Jefferson City, Missouri
Volume 1

Hall Holdings, LLC,)
)
Complainant,)
)
v.) Case No. EC-2006-0436
)
The Empire District Electric)
Company,)
)
Respondent.)

CHERLYN D. VOSS, Presiding,
REGULATORY LAW JUDGE

REPORTED BY:
PAMELA FICK, RMR, RPR, CCR #447, CSR
MIDWEST LITIGATION SERVICES

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APPEARANCES:

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FOR: Staff of the Public Service
Commission.

1 PROCEEDINGS

2 JUDGE VOSS: We'll go on the record.

3 Good afternoon, everyone. I'm Judge Voss and we are
4 here today to have a prehearing in EC-2006-0436, Hall
5 Holdings, LLC, Complainant, against Empire District
6 Electric Company. I will now take entries of
7 appearance beginning with the Complainant.

8 MR. COFFMAN: Appearing on behalf of
9 Hall Holdings, LLC, I'm John B. Coffman, address at
10 871 Tuxedo Boulevard, St. Louis, Missouri 63112.

11 JUDGE VOSS: Empire?

12 MR. COOPER: Dean L. Cooper from the
13 law firm of Brydon, Swearingen & England, P.C.,
14 P.O. Box 456, Jefferson City, Missouri 65102,
15 appearing on behalf of Empire District Electric
16 Company.

17 JUDGE VOSS: Staff of the Commission?

18 MR. FREY: Appearing on behalf of the
19 Staff of the Missouri Public Service Commission,
20 Dennis L. Frey and Steve Dottheim, Post Office Box
21 360, Jefferson City, Missouri 65102.

22 JUDGE VOSS: And I do not see anybody
23 present from the Office of Public Counsel. Note that
24 for the record.

25 All right. First we're going to take up

1 the pending issues, which would be Hall Holdings,
2 LLC's request for temporary service with a \$12,000
3 deposit pending the outcome of this proceeding.
4 First I will give Hall Holdings an opportunity to
5 address your request.

6 MR. COFFMAN: Thank you, your Honor.
7 And we certainly appreciate the Commission taking up
8 this matter on an expedited basis. We think that
9 it's very important that we resolve this as soon as
10 possible.

11 I assume you've read the complaint and
12 understand that my client Hall Holdings owns a rather
13 valuable piece of property in Branson that is the
14 MGH Performing Arts Center, and this is located at
15 464 North State Highway 248.

16 It is a piece of property that is
17 insured for around nine million dollars and is
18 currently without service. The previous lessee that
19 had been operating it has recently left, and we're
20 informed at that point by Empire District Electric
21 Company that they would not restore service unless
22 the debt from another location was paid prior.

23 This location is, I guess, known as the
24 Branson Inn, and I think what had lead up to this has
25 been an incredible criminal activity that has

1 occurred involving the Branson Inn, and this has been
2 a couple of different business interests involving
3 Dennis Ray Weaver who has been sentenced in Federal
4 Court for a ponsey scheme involving the Branson Inn,
5 and I think he has left in his wake a lot of chaos
6 and has taken advantage of and has defrauded a great
7 number of people there.

8 This property was owned by Melvin Hall
9 no late -- as late as perhaps June of 2000, no later
10 than that. That property was sold to a company that
11 Dennis Ray Weaver had an interest in. And since that
12 time, neither Melvin Hall nor Hall Holdings has had
13 any title or interest in that property, although
14 there are some related properties that have been
15 foreclosed upon and have now come into the possession
16 of Hall Holdings; Hall Holdings coming into existence
17 in, I believe, 2003. And we just think that there
18 has perhaps been some confusion, but that there is no
19 connection definitely during the time that this debt
20 was incurred.

21 We don't know everything about this, but
22 it appears that this \$31,604 in unpaid debt to Empire
23 was incurred during some time in 2003, which there
24 was definitely no substantial benefit for the
25 electrical service to my client, Hall Holdings.

1 We understand that there is no written
2 contract either, you know, with Hall Holdings or with
3 Melvin Hall or perhaps with anyone. I think that
4 perhaps Empire will argue that there is some sort of
5 an implied contract based on their tariffs and the
6 services that they provided.

7 Those tariffs -- and I think this is
8 perhaps the only relevant issue in the case, and that
9 is, what is justification for refusing to provide
10 service. And in those tariffs, the rules and
11 regulations in the cited page, there are -- there are
12 nine stated reasons, valid reasons for refusal of
13 service, and none of those apply to this particular
14 situation.

15 Now, 1(A), the first reason, does state
16 that service can be denied for service previously
17 rendered by the company at a different location to
18 the applicant's spouse, family member or other
19 occupant if the applicant also received substantial
20 benefit from the previous electric service.

21 I think that that -- that is really the
22 core issue here that we will have to resolve, and I
23 know that Empire has lots of questions that they
24 would like to have about what goes on, and we will be
25 as forthcoming as we can and do everything we can

1 through discovery to provide information to them, and
2 we will probably have some questions of Empire in
3 that regard. But we sincerely doubt that there will
4 be any connection made or any substantial benefit
5 proven by Empire that would connect Hall Holdings to
6 this property.

7 You know, perhaps there was some
8 misrepresentation made or some other reason we -- but
9 we -- I guess we've also been told by Empire that
10 they believe that there was not proper notice of
11 termination given at the time that the Branson Inn
12 was sold in the year 2000.

13 We have reason to believe that there was
14 notice given, or at least oral notice of termination,
15 and that the property had changed hands. But
16 regardless of when notice was given and in what
17 format, we don't think that that is any valid reason
18 to burden our client with a debt that is not theirs.

19 And the important issue I guess that
20 we're here arguing today, and that is, should service
21 be restored pending this case, and we see no reason
22 why that shouldn't -- shouldn't take place. My
23 client has good credit. To our information, there
24 has never been a dispute over a bill between our
25 client or even Mr. Hall, for that matter, previously

1 with Empire. We are here before the Commission. We
2 will honor whatever final decision comes out of this
3 Commission. If they say that there is some
4 connection to this \$31,000 debt, I believe that Hall
5 Holdings would be good for that.

6 It does -- seems unfair in the interim
7 to be holding them over a barrel for a debt that they
8 don't honestly believe is their debt, and that
9 justice would be best served to have -- to give them
10 the benefit of the doubt in the interim and for
11 whatever reasonable deposit is due.

12 And I do understand that under the
13 Commission's tariffs, that the proper deposit for a
14 commercial client is one billing period plus a 30-day
15 period, and I'm not sure if that \$12,000 which had a
16 reasonably -- which we thought was the original
17 agreement is sufficient. We, for the purpose of
18 having service restored, are willing to agree to the
19 \$24,000 deposit or whatever is proper under the
20 Commission's rules, to put up a deposit for service,
21 to secure service going forward at the MGH Performing
22 Arts Center, but we are not willing to put money --
23 to pay money forward for a debt that we don't
24 honestly believe is ours and would, again, emphasize
25 that this property is very valuable property, is

1 protected by burglar alarms and fire alarms, which I
2 think have batteries, but which require electric
3 service to charge those batteries and may not be
4 sufficiently protected.

5 At this time we think that there's
6 sufficient liability to everyone involved here if
7 that property is not protected, and that this
8 property is a unique property, and that the public
9 interest generally would be served by protecting this
10 property in the interim while we are trying to
11 resolve this matter of who owes this \$31,000.

12 JUDGE VOSS: Thank you. The last bit
13 was what I wanted. I wanted to get into the record,
14 because it's my understanding that there's currently
15 no fire or security system active at this facility
16 because there's no power to --

17 MR. COFFMAN: What I was told is they do
18 have some batteries with them, but it has been off
19 long enough now, we are not sure if they are active.

20 MR. PORTER: John, can I say anything at
21 this point, just to clarify that point? I'm not sure
22 if --

23 JUDGE VOSS: Does opposing counsel have
24 any problem with clarification of the value of that?

25 MR. COOPER: Well, I don't know. I

1 mean, if we're gonna have an evidentiary hearing --

2 JUDGE VOSS: Yeah. I didn't intend it
3 to be --

4 MR. COOPER: -- maybe we ought to
5 renotify the parties and show up with witnesses and
6 have an evidentiary hearing.

7 JUDGE VOSS: That is something I think
8 we can address off the record.

9 MR. COFFMAN: Okay. I don't --

10 JUDGE VOSS: But --

11 MR. COFFMAN: I don't think they're
12 prepared to let you make a statement.

13 MR. PORTER: That's fine. That's fine.

14 JUDGE VOSS: Because it is my
15 understanding that it is a valuable property, that it
16 is at least potentially without fire or electrical
17 security systems because there's no current service
18 provided.

19 All right. Would Empire like to --
20 really, the bulk of Mr. Coffman's comments were
21 related to the facts of the case, and the underlying
22 decision, which is not going to be decided at this
23 point, is simply whether in the interim pending an
24 outcome, whether it's appropriate to hook service up
25 to the facility with a reasonable deposit.

1 MR. COOPER: Okay. And your Honor, I
2 think I'd like to follow up on that last comment. I
3 think you talk about the service being off. It's my
4 understanding service has been off since April
5 sometime. Would you agree with that, John?

6 MR. COFFMAN: I think that's correct.

7 MR. COOPER: So it's been off for a fair
8 amount of time now. It's not something that just
9 happened within the last week.

10 I'm afraid, your Honor, that all these
11 issues are gonna really be bound together, the
12 factual issues that Mr. Coffman alluded to, combined
13 with how should the property be treated at this point
14 in time.

15 For Empire, its refusal to provide
16 service now is based upon two aspects of this
17 dispute: One, the aspect that the debt from what was
18 called the Branson Inn of about 31, \$32,000 has not
19 been paid; and two, there's the disagreement as to
20 the deposit. We think both those issues are
21 sufficient to refuse service to the theater at this
22 point in time.

23 In regard to the Branson Inn property, I
24 think it's important to note that Empire will show in
25 this hearing that it started providing service to

1 that property to Mr. Hall in approximately 1981, and
2 it continued to provide service to Mr. Hall at that
3 property through about 2003 when that property -- the
4 service to that property was disconnected eventually
5 due to nonpayment.

6 It was never notified that that customer
7 had changed, Mr. Hall remained the customer, the
8 bills continued to go to the same address during that
9 period, bills continued to be paid for the most part,
10 even after the year 2000 when it is said that that
11 property was to have been sold. It's for those
12 reasons that Empire believes that that 31, \$32,000 is
13 owed by Mr. Hall, by Mr. Hall's revocable trust, and
14 that's the connection back to the new property, the
15 theater property which purports to be owned by Hall
16 Holdings, which the complaint states the sole member
17 of Hall Holdings is Mr. Hall's revocable trust.

18 In looking at Empire's tariffs on, I
19 think there's a sheet 7 in Section 5, which is the
20 Rules and Regulations for Service, "Failure to pay a
21 delinquent account for the same class of service
22 previously rendered by the company to the applicant"
23 is the sentence that Empire would look to first. And
24 although there's a difference on the service, an
25 identity between the Branson Inn customer and the

1 Hall Holdings, LLC, you have to read through that
2 provision to the end to find where it says, "This
3 provision cannot be avoided by applicant's use of an
4 alias or by substituting application for service in
5 the name of some other member of the household or any
6 other person, which includes entities such as an LLC
7 acting for or on behalf of the applicant as a device
8 to escape payment of the applicant's unpaid
9 obligation."

10 So it's in that fashion that we tie that
11 Branson Inn debt to the Hall Holding application and
12 believe that that past debt must be paid before
13 Empire's required to provide service at the theater.

14 Now, the second issue, as we said, is
15 the deposit question. Well, let me back up. I also
16 would point out at this time -- and this goes back to
17 the Branson Inn property, the first issue here. On
18 sheet 11 of Section 5 of Empire's tariffs,
19 Termination of Service says, "Written or verbal
20 notice of termination must be given by the customer
21 at the office of the company. Customer will be
22 responsible for payment of all service used by
23 him/her as determined by final readings on the
24 termination date requested by the customer."

25 And that's another aspect of why we

1 believe that that continues to be Mr. Hall's
2 obligation at Branson Inn no matter what the
3 ownership of the property may have done in the
4 meantime.

5 On the issue of the deposit, it's
6 Empire's discretion to charge a deposit to a
7 nonresidential customer. That's found on Section 5,
8 sheet 28. "Nonresidential customers may be required
9 to provide a security deposit, surety bond or
10 irrevocable letter of credit as a condition of
11 service."

12 No further limitation to that, other
13 than the amount of that deposit, which is found on
14 sheet 29. And I think I differ a little bit with
15 John on that point, because I think the tariffs say
16 that Empire can -- "The deposit shall not exceed two
17 times the highest bill for utility charges actually
18 incurred or estimated to be incurred by the customer
19 during the most proximate 12-month period at the
20 service premises."

21 So that's a little different. I believe
22 the 24,000 that Empire has requested is within that
23 limitation, and that's what I think the deposit
24 limitation is.

25 There's this mention of substantial

1 benefit. As I said before, Empire connects through
2 the terms of its tariff, the service provided to
3 Mr. Hall at the Branson Inn and the application for
4 service at the theater.

5 I also would point out that I think
6 substantial benefit is a phrase. It's a test used
7 when we're talking about more often someone who's not
8 the named customer. In this case, whether he owned
9 the property or not, Mr. Hall was the named customer
10 up until the year 2003, and I think he's presumed to
11 have substantial -- or the benefit of that if he's
12 the named customer. Or in other words, there's no
13 question of substantial benefit because he has
14 requested service, he's been provided service by the
15 company; therefore, he's required to pay for that
16 service.

17 Lastly, I guess in regard to the Dennis
18 Weaver issue which was raised by Mr. Coffman, Empire
19 really has no connection to that, and I don't know
20 that that's relevant to this proceeding. From
21 Empire's perspective, it had no dealings with
22 Mr. Weaver. Empire is in the business of providing
23 electricity. It was requested to provide
24 electricity. It provided -- provided that
25 electricity and expects to be paid under the terms of

1 its tariff, or by the terms of its tariff.

2 I don't -- while Mr. Hall or one of
3 these other entities, it's possible they were
4 short-changed by Mr. Weaver, I don't think there's
5 anything in regard to Empire's position that suddenly
6 says, well, Empire, even though you have absolutely
7 no connection with Mr. Weaver, you're gonna suffer
8 the consequences of his problems just because you
9 happen to be the utility company.

10 Again, I think the utility did what it
11 was supposed to do: It provided service as
12 requested, it sent bills as provided by its tariffs,
13 and I don't think there's any reason for it to be
14 short-changed at this point in time when it has no
15 wrongdoing in this situation.

16 JUDGE VOSS: It seems that the parties
17 are very strongly inclined to intermix the key issues
18 of the case with this request. Staff, do you have
19 any position at this time?

20 MR. FREY: We're not -- we're -- we're
21 sort of at loose ends here without a lot of the facts
22 here, Judge, and we're still looking at it to the
23 extent that we can, but sort of taking a back-seat
24 role at this point.

25 JUDGE VOSS: I appreciate that. Because

1 both parties are so intermixing, the facts I think
2 will ultimately be for the Commission to determine
3 after an evidentiary hearing into this.

4 Mr. Coffman, in your -- could you give
5 me an official motion actually requesting this
6 instead of -- because it was requested within the
7 complaint.

8 MR. COFFMAN: Certainly. To the extent
9 that you need it, I would now formally move that the
10 Commission order Empire District Electric Company to
11 restore service based on the Hall Holdings'
12 application made in April for service to the MGH
13 Performing Arts Center at --

14 JUDGE VOSS: Mr. Coffman, if you could
15 give me something in writing that then Mr. Cooper
16 could respond to.

17 MR. COFFMAN: Okay.

18 JUDGE VOSS: Just because the facts of
19 the case are getting so intertwined with what could
20 very easily be a superficial issue because there's no
21 determination as to the underlying facts that's gonna
22 be made in the near future, I can tell.

23 MR. COFFMAN: Right. And I mean,
24 several things that we've heard. I mean, there are
25 factual disputes on several points here, and

1 address your motion and figure out why it doesn't
2 believe it should on an interim basis give Hall
3 Holdings --

4 MR. COOPER: Well, and let me explain, I
5 guess, one thing if I could. I mean, this
6 turn-on-or-not issue is very important to the company
7 because it's really what brings this issue into focus
8 and gives us the possibility for a resolution.

9 The 31, \$32,000 debt that we're talking
10 about here was actually transferred to the Hall
11 Holdings bill in the year 2003, so, I mean, it's been
12 sitting out there on the account for almost three
13 years now. Never came -- came up to a resolution or
14 got close to a resolution until finally Empire took
15 the steps that it did to refuse service here, and
16 now -- now maybe we are in a position where it will
17 be resolved one way or another.

18 But that just kind of brings into focus
19 why -- why that issue is very important to the
20 company.

21 MR. COFFMAN: Well, and ever since this
22 issue has come up, this -- it has been vigorously
23 disputed, and, you know, I don't -- I don't think
24 that, you know, there's any reason to believe that if
25 this Commission issues a decision, that Hall Holdings

1 will not honor that final decision from the
2 Commission. To me, that's the matter. If we have to
3 make a motion for which Empire then has ten days to
4 respond and we have to wait another week or longer
5 for the Commission to determine, that's another, you
6 know, at least a couple of weeks that this property
7 is unprotected.

8 JUDGE VOSS: Well, I'm prepared, as soon
9 as you get a motion filed, to give parties a five-day
10 turnaround, taking into account the holiday weekend.
11 Because I believe that Mr. Cooper has the
12 information, but I would like it in a more organized
13 pattern to present to the Commission because I think
14 it's a contested issue. You want to protect the
15 property and you want to be sure you're gonna get
16 paid for service in the interim as well as anything
17 that's owed to Empire from the past.

18 But at this point we don't know what's
19 owed from the past, if anything, because that's a
20 decision for the Commission to make at a later date.

21 Right now, I just want to be able to
22 give the Commission the appropriate evidence and
23 arguments as to why this property should be protected
24 and -- or why it's not appropriate in the interim of
25 the case to offer temporary service. That's the only

1 issue that's important. To the extent that the
2 extraneous facts have to be brought into that, I
3 understand. But a lot of the statements made here
4 are facts as you see them, but they're not facts
5 as -- that are before the Commission yet.

6 MR. FREY: Your Honor, if I may?

7 JUDGE VOSS: Yes, please, Mr. Frey.

8 MR. FREY: I would ask if Mr. Coffman,
9 just for purposes of clarification, could state
10 whether the electricity is to be used -- the power is
11 to be used strictly for purposes of protecting the
12 building, or would other activities be conducted in
13 the building at that time?

14 MR. COFFMAN: It's my understanding that
15 at the current time, there's no plans to use the
16 property for shows or for other activities, other
17 than the immediate concern is to simply power the
18 alarms and protect the edifice. And again, we are
19 willing to compromise on the deposit, whatever is
20 proper under the tariffs and the Commission's rules.
21 As far as deposits, I don't think that that needs to
22 be an issue any longer. And if there was something
23 that could be worked out as far as some sort of a
24 limited load, I think we'd be willing to talk about
25 that too, but --

1 MR. COOPER: Would that include --

2 JUDGE VOSS: Could we go off the record
3 for a second?

4 (DISCUSSION HELD OFF THE RECORD.)

5 JUDGE VOSS: Back on the record. All
6 right. As I understand it, Mr. Coffman is going to
7 file a motion tomorrow if the parties cannot come to
8 some type of an agreement. And if he files a motion
9 by tomorrow, that Empire will file their response,
10 and staff, if they have a response, will file by
11 Wednesday of next week, which I believe is the 31st
12 of May.

13 Okay. Putting that motion aside, I
14 would also ask the parties to develop a procedural
15 schedule to be filed with the Commission on or before
16 June 1st. And I will warn you that the hearing dates
17 for the next several months are very crowded.

18 So seeing that, are there any other
19 issues that we need to address on the record?

20 MR. COFFMAN: Do you have any hearing
21 dates that you would recommend in the next month or
22 two?

23 JUDGE VOSS: If you'd like, I can go up
24 and look again and check because we may -- it may be
25 a case of a hearing being conducted in this room.

1 There's a lot of rate cases that are taking week-long
2 hearings. So are there any other issues before us
3 today?

4 (No Response.)

5 JUDGE VOSS: Hearing none, that will
6 conclude the on-the-record portion. Thank you.

7 (WHEREUPON, the hearing was concluded.)

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