

M A N D A T E

From

DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

To John W. Nutbrown, Chairman, State Arbitration Board

WHEREAS, in that certain cause filed in this Court styled:

FLORIDA
DEPT. OF TRANSPORTATION

Case No : 1D03-5390

v.

Lower Tribunal Case No : 2-2003

MID CONTINENT ELECTRIC

The attached opinion was issued on February 27, 2004.

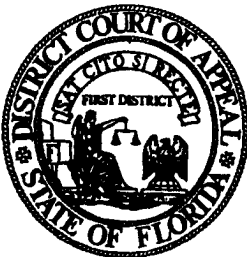
YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.


WITNESS the Honorable JAMES R. WOLF, Chief Judge

of the District Court of Appeal of Florida, First District,

and the Seal of said Court done at Tallahassee, Florida,

on this 16th day of March 2004.





JON S. WHEELER, Clerk
District Court of Appeal of Florida, First District

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

FLORIDA DEPARTMENT OF
TRANSPORTATION,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D03-5390

MID CONTINENT ELECTRIC,

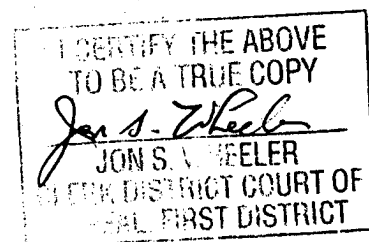
Appellee.

Opinion filed February 27, 2004.

An appeal from an administrative order of the State Arbitration Board.

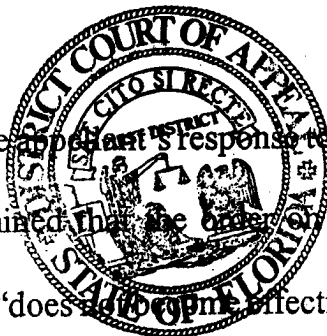
Marianne A. Trussell, Assistant General Counsel, Tallahassee, for Appellant.

Joseph W. Lawrence, II, Ft. Lauderdale, for Appellee.



PER CURIAM.

Upon consideration of the appellant's response to the Court's order of January 9, 2004, the Court has determined that the order of appeal is not a final order. Specifically, because the order "does not become effective until all contract required documents have been submitted," judicial labor appears to remain. See Ponton v.



Gross, 576 So. 2d 910, 911 (Fla. 1st DCA 1991). Accordingly, the appeal is hereby dismissed for lack of jurisdiction.

KAHN, BENTON and VAN NORTWICK, JJ., CONCUR.

STATE ARBITRATION BOARD

Order No. 2-2003

S.A.B. CLERK

NOV 28 2003

FILED

/// NOTICE ///

In the case of Mid Continent Electric, Inc. versus the Florida Department of Transportation on Financial Project No255889 1-52-01 in Hillsborough County, Florida, both parties are advised that the State Arbitration Board Order 2-2003 has been properly filed with The Clerk of the State Arbitration Board on October 25, 2003



John W. Nutbrown
Chairman & Clerk, S.A.B.

Copy of Order & Transcript to:

Bill Albaugh, Highway Operations

E. Douglas McIntyre, President Mid Continent Electric, Inc.

STATE ARBITRATION BOARD

Order No. 2-2003

RE: Request for Arbitration
Mid Continent Electric, Inc
State Financial Project No. 255889-1-52-01 in
Hillsborough County, Florida

The following members of the State Arbitration Board participated:

John W. Nutbrown, Chairman
Freddie Simmons, Board Member
John C. Norton, Board Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 10:00 AM February 7, 2003. The Contractor, Mid Continent Electric, Inc., presented a written request for arbitration of its claim in the total amount of \$24,239.74. The claim arises out of time required by the Florida Department of Transportation to approve Shop Drawings for illuminated street sign brackets SR-597 in Hillsborough County, Florida. The Department of Transportation presented a written rebuttal and summary of position. The Board has considered the written submissions and the testimony and evidence presented at the hearing on February 7, 2003 and enters this Order Number 2-2003

ORDER

The Board is unanimous in this decision.

The Board heard testimony that the basic contract was completed within the original contract time. The Contractor has been charged seven (7) days of liquidated damages for work not completed during the regular contract time.

During the hearing the Department's representative stated that the Sign bracket as installed was superior to the product specified.

The Board is aware this claim was received after the 820 calendar days specified in Florida Statute Section 337.19.

The Board also received a copy of the Final Declaratory Judgement issued on August 2, 2002 by the United States Bankruptcy Court extending the statute of limitations two (2) years. This hearing was held within this extension period.

STATE ARBITRATION BOARD

Order No. 2-2003

The Department is ordered to compensate the Contractor in the amount of \$16,039.24.
The Department is ordered to grant a time extension for 209 calendar days less the 7 calendar days of actual liquidated damages. This amount bears no interest due to the fact all required project documents have not been submitted as required.


This order does not become effective until all contract required documents have been submitted.


The Department shall reimburse the State Arbitration Board \$176.00 for court reporting costs.

Vero Beach, Florida

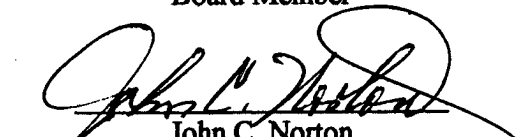
Dated: October 25, 2003

Certified copy:


John W. Nutbrown
Chairman & Clerk


John W. Nutbrown
Chairman & Clerk


Freddie Simmons, P.E.
Board Member


John C. Norton
Board Member



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JOSÉ ABREU
SECRETARY

Mail Station 58
850-414-5265

March 18, 2004

John W. Nutbrown, Chairman
State Arbitration Board
5615 23rd Street, S.W.
Vero Beach, Florida 32968

RE: State of Florida, Department of Transportation
v. Mid Continent Electric
DCA Case No. 1D03-5390

Dear Mr. Nutbrown:

Attached is the Order from the First District Court of Appeal finding the State Arbitration Board's decision in this case is not final since all required contract documents have not been received. Therefore, the Department's time to appeal the Board's decision will not run until Mid Continent Electric provides "all contract required documents."

In the event Mid Continent Electric files such documents with the Board, it is imperative that you immediately notify us of such receipt. I strongly recommend the Board issue a Notice of Receipt of all such documents or similar finding when it has determined that all necessary documents have been received and attach those documents to its Notice. This will allow all parties to perfect their rights of appeal and give a clear record to the First District Court of Appeal that the Board's decision is now final, and the basis for the decision.

Sincerely,

Marianne A. Russell
Deputy General Counsel
Office of the General Counsel

MAT/pfc

Attachment

cc: Joseph W. Lawrence, II, Esquire

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

FLORIDA DEPARTMENT OF
TRANSPORTATION,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D03-5390

MID CONTINENT ELECTRIC,

Appellee.

_____/

Opinion filed February 27, 2004.

An appeal from an administrative order of the State Arbitration Board.

Marianne A. Trussell, Assistant General Counsel, Tallahassee, for Appellant.

Joseph W. Lawrence, II, Ft. Lauderdale, for Appellee.

PER CURIAM.

Upon consideration of the appellant's response to the Court's order of January 9, 2004, the Court has determined that the order on appeal is not a final order. Specifically, because the order "does not become effective until all contract required documents have been submitted," judicial labor appears to remain. See Ponton v.

Gross, 576 So. 2d 910, 911 (Fla. 1st DCA 1991). Accordingly, the appeal is hereby dismissed for lack of jurisdiction.

KAHN, BENTON and VAN NORTWICK, JJ., CONCUR.

LAW OFFICES

VEZINA, LAWRENCE & PISCITELLI, P.A.

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PLEASE REPLY TO:

Fort Lauderdale

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SUITE 1130
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE (954) 728-1270
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March 25, 2004

Mr. Jack Nutbrown, Chairman
State Arbitration Board
5615 23rd Street, SW
Vero Beach, Florida 32968

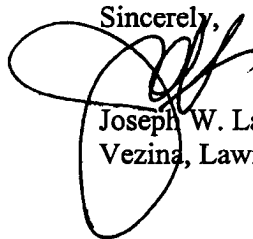
Re: State of Florida, Department of Transportation
v. Mid-Continent Electric
DCA Case Nol 1D03-3590
Our File No. 483-03

Dear Mr. Nutbrown:

Enclosed is a copy of the Consent of Surety to Final Payment addressed to the Florida Department of Transportation and signed by Ulico Casualty Company, surety for Mid-Continent Electric, Inc. This document was forwarded to Grant Young, P.E., assistant to Karla Furney, P.E., Final Estimates Engineer for the Florida Department of Transportation (who, I believe, appeared at the State Arbitration Board hearing) earlier this month. We have no objection to the Florida Department of Transportation's request that the State Arbitration Board issue a Notice of Receipt of these documents, although the Department of Transportation has already received this document as required by the earlier State Arbitration Board decision.

Best regards.

Sincerely,



Joseph W. Lawrence, II
Vezina, Lawrence & Piscitelli, P.A.

JWL/ccw
Enclosure

cc: Mid-Continent Electric, Inc.
Marianne A. Trussell, Esq., Deputy General Counsel, Office of the
General Counsel, Florida Department of Transportation (w/encl.)

Document3

CONSENT OF SURETY TO FINAL PAYMENT

AIA Document G707

TO OWNER: FLORIDA DEPARTMENT OF TRANSPORTATION
TALLAHASSEE, FLORIDA

CONTRACT FOR: MID-CONTINENT ELECTRIC, INC.

CONTRACT DATED:

PROJECT: FDOT Financial Project No. 255889-1-52-01
SR597 (Dale Mabry Hwy.) at County Line Road

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

ULICO CASUALTY COMPANY

SURETY,

on bond of

MID-CONTINENT ELECTRIC, INC.

CONTRACTOR,

Hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of any of its obligations to

FLORIDA DEPARTMENT OF TRANSPORTATION

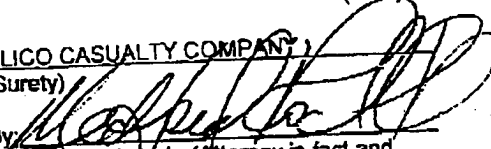
OWNER,

As set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has herunto set its hand on this date: October 8, 2003.

(Seal)

ULICO CASUALTY COMPANY
(Surety)

By: 
Medford Rockstroh (Attorney in fact and
Florida Resident Agent)

STATE ARBITRATION BOARD
STATE OF FLORIDA

Mid Continent Electric, Inc.,)
)
)
) PROJECT NUMBER 255889-1-52-01
 - and -) LOCATION: Hillsborough County,
) Florida
)
 DEPARTMENT OF TRANSPORTATION)

PROCEEDINGS: Arbitration in the Above Matter
 DATE: Friday, February 7, 2003
 PLACE: Florida Transportation Center
 1007 Desoto Park Drive
 Tallahassee, Florida
 TIME: Commenced at 10:03 a.m.
 Concluded at 10:33 a.m.
 REPORTED BY: Mindy Martin, RFR
 Notary Public in and for
 the State of Florida at Large

Wilkinson & Associates
 Certified Court Reporters
 Post Office Box 13461
 Tallahassee, Florida 32317

1 PROCEEDINGS
 2 MR. NUTBROWN: This is a hearing of the State
 3 Arbitration Board, established in accordance with Section
 4 337.815 of the Florida Statutes. Mr. Freddie Simmons was
 5 appointed as a member of the board by the Secretary of the
 6 Department of Transportation. Mr. John C. Norton, on my
 7 left, was elected by the construction companies under
 8 contract to the Department of Transportation.

9 These two members chose me, John Nutbrown, to serve
 10 as the third member and as chairman. Our terms expire
 11 June, 30, 2003.

12 Will each person who will make oral presentations
 13 during the hearing please raise your right hand and be
 14 sworn in.
 15 (Whereupon, the witnesses were duly sworn.)

16 MR. NUTBROWN: The request for an arbitration of a
 17 claim was submitted by the claimant, including all
 18 attachments thereto and the administrative documents
 19 preceding this hearing are hereby introduced as Exhibit
 20 Number 1.

21 (Whereupon, Exhibit No. 1 was received in evidence.)

22 MR. NUTBROWN: Does either party have any other
 23 information that they wish to put into the record at this
 24 time?

25 MR. PICKARD: I have the as-built plans for the

1
 2 APPEARANCES:
 3
 4 MEMBERS OF THE STATE ARBITRATION BOARD:
 5 Mr. John W. Nutbrown, Chairman
 6 Mr. John C. Norton
 7 Mr. Freddie Simmons
 8
 9 ON BEHALF OF THE CONTRACTOR:
 10 Mr. Greg Sims
 11
 12 ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:
 13 Mr. Brian W. Pickard
 14 Ms. Karla J. Furney

INDEX

15 EXHIBITS
 16 Exhibit No. 1 in Evidence 3
 17 Exhibit No. 2 in Evidence 4
 18 Exhibit No. 3 in Evidence 4
 19 Exhibit No. 4 in Evidence 4
 20 Exhibit No. 5 in Evidence 5
 21
 22 CERTIFICATE OF REPORTER 24
 23
 24
 25

1 subject project.
 2 MR. NUTBROWN: Okay.
 3 MR. PICKARD: I was told to bring a fourth copy of
 4 our position statement.
 5 MR. NUTBROWN: All right. We already have that so
 6 I'm not to going to worry about that.
 7 MR. PICKARD: Okay. And I have the contract
 8 document.
 9 MR. NUTBROWN: All right.
 10 MR. SIMMONS: Do you have that?
 11 MR. SIMS: Yes, I do.
 12 MR. PICKARD: And I have four copies of the as-builts
 13 through each submission and comment from the Department.
 14 MR. NUTBROWN: The as-builts --
 15 MR. PICKARD: I'm sorry. Not the as-builts. The
 16 shop drawings. I apologize.
 17 MR. NUTBROWN: The as-built plans will be Exhibit
 18 Number 2. The special provisions and contract documents
 19 will be Exhibit Number 3. And the shop drawings
 20 distributed to each of the parties will be Exhibit 4.
 21 (Whereupon, Exhibits No. 2, 3, and 4 were received in
 22 evidence.)

23 MR. SIMS: I have just a summary statement that
 24 I need to read into the record.

25 MR. NUTBROWN: We have that.

1 MR. SIMS: Okay.
 2 MR. NUTBROWN: Do you want to pass those out?
 3 MR. SIMS: This one was done up, I believe,
 4 yesterday.
 5 MR. NUTBROWN: Done yesterday?
 6 MR. SIMS: Yeah, just a statement that our attorneys
 7 asked me to read into the record. Is that something that I
 8 would make a copy and give you?
 9 MR. NUTBROWN: I think probably we ought to make a
 10 copy of it and distribute it and let everybody look at it
 11 before you read it in.
 12 MR. SIMS: Fine.
 13 MR. NORTON: Want me to run up and get it, Jack?
 14 MR. NUTBROWN: Yeah. And while you're up there,
 15 Dear -- all right. We'll wait just a minute until he gets
 16 those copies made and let everybody look at it.
 17 MR. SIMS: Thank you.
 18 (Pause)
 19 MR. NUTBROWN: Okay. I'll keep that one. This is a
 20 transcript from another hearing. All right. That will be
 21 Exhibit Number 5 (handing document to claimant and
 22 respondent).
 23 MR. NORTON: Five?
 24 MR. NUTBROWN: Yeah.
 25 (Whereupon, Exhibit No. 5 was received in evidence.)

1 card and if you'll call me, I'll make them for you.
 2 MR. SIMS: All right.
 3 MR. NUTBROWN: As is typical in arbitration
 4 proceedings, this hearing will be conducted in an informal
 5 manner. The board is not required to apply a legalistic
 6 approach or strictly apply the Rules of Evidence used in
 7 civil court proceedings. We are primarily looking for
 8 information in regard to the facts and the contract
 9 provisions that apply to this case.
 10 The order of the proceedings will be for the claimant
 11 to present their claim and then for the respondent to offer
 12 rebuttal. Either party may interrupt to bring a pertinent
 13 point, but you will need to come through the chairman.
 14 Our court reporter is extremely fast but not fast
 15 enough to catch two conversations at once. So I would
 16 appreciate that everybody wait their turn, and we'll be
 17 here until everybody is heard. And if you've got a cell
 18 phone, cut it off.
 19 MR. PICKARD: I already ran out of battery.
 20 MR. NUTBROWN: Okay. With that, we'll allow the
 21 contractor to proceed. And I didn't ask and I make the
 22 assumption, there are no attorneys present. Because if
 23 there is, we have another whole page that needs to be
 24 entered in there. Is it Greg?
 25 MR. SIMS: Yes, sir.

1 (Pause)
 2 MR. NUTBROWN: Okay. We've entered in the
 3 additional -- let me finish. During the hearing, the
 4 parties may offer such evidence and testimony as is
 5 pertinent and material to the dispute being considered by
 6 the board and shall produce such additional evidence as the
 7 board may deem necessary to an understanding of the matter
 8 before it.
 9 The board shall be the sole judge of the relevance
 10 and the materiality of the evidence offered. The parties
 11 are instructed to properly identify the copies of each
 12 exhibit used in the proceeding. You should retain these
 13 exhibits. The board will send the parties a copy of the
 14 court reporter's transcript along with our order but
 15 will not furnish copies of the exhibits.
 16 Greg, if you want -- I think everything is here, the
 17 as-built plans and the other documents, as well as your
 18 recap are already in your possession.
 19 MR. SIMS: I believe so. The only one --
 20 MR. NUTBROWN: That's shop drawings there, but these
 21 documents here that they only had one copy of, one is the
 22 special provisions and the contract documents. The other
 23 is the set of plans, the as-builts.
 24 MR. SIMS: I'm confident we have those.
 25 MR. NUTBROWN: And if you don't, I'll give you my

1 MR. NUTBROWN: okay. Do you have any comments that
 2 you want to make, or do you want to let the record stand on its
 3 own?
 4 MR. SIMS: I believe the record can stand on its
 5 own.
 6 MR. NUTBROWN: All right.
 7 MR. SIMS: Unless you feel that it's necessary for me
 8 to read this into the record. Or is it all right that it's
 9 submitted as an exhibit?
 10 MR. NUTBROWN: Do you want it read in, Freddie?
 11 MR. SIMMONS: I don't see --
 12 MR. NUTBROWN: We've all got copies.
 13 MR. SIMS: Then I'm happy to let it be submitted in
 14 the record.
 15 MR. NUTBROWN: Is that agreeable to the Department?
 16 MR. PICKARD: That's agreeable to the Department.
 17 MR. NUTBROWN: okay. All right, then. We'll move
 18 along and let the Department respond.
 19 MR. PICKARD: The premise behind the claim put forth
 20 by Mid Continent is based on an extension of the 820-day
 21 limitation for a submittal of a claim that is due to a
 22 bankruptcy and approved by a local court ruling.
 23 This ruling is under, is presently in Federal Appeals
 24 Court. If the ruling gets overturned, then we will not be
 25 able to pay any additional funding that this board may deem

1 necessary. We request therefore that you withhold your
2 decision until after this appeal has been concluded.

3 MR. NUTBROWN: Okay. What the board will do is go
4 ahead and issue the order. And then it's up to the
5 Department if they're going to hold it. The board has no
6 control over that. But the board will issue their order
7 per the direction of the lower court.

8 MR. PICKARD: Further, by law and by specification,
9 we can't legally accommodate Mid Continent's request for
10 reimbursement because of the lack of response to the
11 original claim package, although I do recognize that their
12 summary statement says they have three of the four
13 documents present with them. And if that is so, we will
14 certainly need some time to review those documents just as
15 if they had submitted it as part of their response package,
16 to verify validity, completeness, et cetera.

17 MR. NUTBROWN: Okay.

18 MR. PICKARD: It's my understanding you don't have
19 the fourth document. Until the fourth document is
20 received, reviewed, and accepted, we still are not legally
21 able to pay anything.

22 MR. NUTBROWN: okay. Greg?

23 MR. SIMS: would you like me to submit those in as --
24 and give you the originals and leave copies as the
25 exhibit?

1 However, it is the position of the Department that by
2 law and specification, we can't start the clock to
3 accommodate interest until the four documents that we're
4 talking about have been provided to the Department, at
5 which point then the clock would begin and interest
6 certainly would be appropriate if we exceeded the time
7 limits for that.

8 MR. NUTBROWN: Okay.

9 MR. PICKARD: The Department recognizes and agrees
10 that Clay McGonagill, one of our legal staff, did make an
11 offer to Mid Continent, which included seven days of
12 liquidated damages, which were the number of days that
13 Mid Continent actually worked on the job in the field after
14 the last day of contract time.

15 In the summary statement that Mid Continent has
16 provided to us, they say that we did a catch-22 in the
17 settlement offer. And I just want to point out that this
18 offer was withdrawn due to law and contractual agreement.
19 The 820 days were up. By law, we had to withdraw that.

20 We believe that this was a sweetheart deal. We
21 believe we were extremely generous in this offer and only
22 withdrew it because of the contractual agreement between
23 the two parties.

24 Finally, again, it is our position that since the
25 contractor had not provided the required documents,

1 MR. PICKARD: I don't know what the board rules are
2 for that.

3 MR. NUTBROWN: I don't feel that those closing
4 documents of the project are really part of the claim
5 issue.

6 MR. SIMS: Okay.

7 MR. NUTBROWN: They're a contractual issue with the
8 Department, and I don't really feel that they --

9 MR. SIMS: -- need to be brought in here?

10 MR. NUTBROWN: -- are part of the claim. I think
11 that was, you know, material that was required by the
12 contract and not a part of the claim. It was something
13 that was totally different.

14 MR. SIMS: I'll just take care of it with you
15 (addressing Mr. Pickard).

16 MR. PICKARD: I think the Department would appreciate
17 receiving, although be it years later as you put it, a
18 response to the original acceptance offer. And that would
19 be part of that response.

20 MS. FURNEY: Yes.

21 MR. NUTBROWN: Okay.

22 MR. PICKARD: Thirdly, Mid Continent's claim is
23 asking for interest for the moneys due them over the series
24 of years. I'm not sure it documents the exact number of
25 months they're asking for the interest.

1 therefore not allowing the Department to even provide
2 monetary response for the claim we agreed to, we don't
3 believe that the hearing should have been held. That is
4 our position.

5 I do want to point out, however, that there is a
6 discrepancy in the numbers in both the claim package that
7 Mid Continent put in. They're referring to a dollar value
8 from a project that is in Jacksonville and has absolutely
9 nothing to do with the project that was presented in the
10 package.

11 But the dollars aren't significantly different, I
12 will point out. It's not a major issue to us. I just want
13 to make it very clear and on the record that, and it is
14 part of our record, the original contract dollar amount was
15 \$62,168.25. However, Mid Continent only accomplished work
16 worth \$54,333.70, leaving an unpaid balance -- or we
17 actually paid them through checks through the third
18 estimate, \$31,490.46, leaving an unpaid balance of
19 \$22,843.24.

20 I'd like to point out that the difference between the
21 contract amount and the amount of work that Mid Continent
22 actually accomplished was mostly due to a reduction in the
23 amount of off-duty law officers from what was expected to
24 what was used.

25 MR. NUTBROWN: There were some other items in the pay

1 estimates that were included in your package that showed a
2 zero participation. I mean, they were items that either
3 weren't used -- but rather small.

4 MR. PICKARD: In general. Correct. I didn't want to
5 go through the whole list.

6 MR. NUTBROWN: No, it's not necessary.

7 MR. PICKARD: Just the majority.

8 MR. NUTBROWN: That's fine.

9 MR. PICKARD: And so our position is that, number
10 one, we don't feel, because of the 820-day limitation, that
11 we owe Mid Continent anything. If, however, the board
12 disagrees with that, we believe that, worst case, we would
13 owe them \$16,039.24, which would be the remaining balance
14 minus the seven days of liquidated damages.

15 MR. NUTBROWN: Okay. I think that the biggest
16 questions the board has is in the original claim package by
17 the contractor was the amount of time that it took to get
18 the shop drawings approved for the illuminated sign
19 brackets on the drain poles. And I know my first question
20 would be how many of those things have you got in the
21 seventh district and why did it take so long? That's all.

22 MR. PICKARD: For this particular type of sign
23 bracket, we asked our structural people how many others
24 they had reviewed of this version. And this is the only
25 one they had reviewed since this job. The reason why --

1 MS. FURNEY: Prior to.

2 MR. PICKARD: Prior to this job. Excuse me. The
3 reason why it took so long is simply a matter that we do
4 not believe Mid Continent satisfied the reviewers -- well,
5 let me start earlier than that.

6 And I believe I brought it out in here, but if it's
7 not clear enough, I want to make it clear, that originally
8 Mid Continent, back in March, supplied us with a cut sheet
9 showing what they intended to use for a bracket.

10 They went ahead and put that bracket up. Our staff
11 did not recognize that it was not the same bracket as was
12 called out in the plans until June. We recognize that. We
13 recognize that should have been caught much earlier.

14 However, in June we asked for wind loads, structural
15 calculations, as well as the full shop drawings. And it
16 took five submittals to get all of the correct and
17 appropriate calculations that our structural review team
18 needed to make that decision.

19 MR. NUTBROWN: Since this issue came to the board,
20 I've made it a point to go look at some of these. And
21 standing on the ground looking up, you can't tell the
22 difference from what is shown in these, in these cut sheets
23 and shop drawings as to what's used elsewhere. And I just
24 wondered what's so different about this one versus others?

25 MR. PICKARD: It's my understanding that this one

1 uses a different type of metal. And I can't tell you how
2 significantly different it is, but enough difference to
3 require wind load calculations, stress calculations,
4 et cetera.

5 Not having been involved in the review process
6 myself, I can't readily give you a good answer as to how
7 significantly different these brackets are from what our
8 plans presently call for. But it was enough to require
9 that review.

10 MR. NUTBROWN: Okay.

11 MR. SIMMONS: Looking at some of the detailed
12 comments that were provided back, a lot of it was just a
13 matter of some of the details weren't shown on there. And
14 one question I guess that was part of the next submittal,
15 every time they would find something that wasn't there,
16 whether it was weld sizes or those kind of details, it just
17 wasn't there, I think. And that's typical of one of our
18 structure reviews, to catch those kind of details.

19 MR. PICKARD: I do want to say that we recognize that
20 Mid Continent isn't totally at fault in the extraordinary
21 time it took to review these. And I think that's why we
22 ultimately agreed that the number of liquidated damages
23 should be reduced to what they did for actual work in the
24 field.

25 MR. SIMMONS: Let me ask you, you said the first shop

1 drawing submittal was on the 11th of March, the very first
2 details they sent in.

3 MR. PICKARD: Correct.

4 MR. SIMMONS: Those were rejected the next day. But
5 then you said we didn't know they put up the wrong things
6 till June. So what happened between March and June?

7 MR. PICKARD: The original cut sheet that was
8 submitted back in March was rejected. The field -- and it
9 was rejected by district traffic operations, who were not
10 the field inspectors.

11 There was a miscommunication that those had been
12 rejected and more information was needed between that
13 office and our field staff. And our field staff did not
14 recognize that they didn't have all of the proper
15 documentation to allow approval of those brackets until
16 June.

17 MR. NUTBROWN: What was involved in the seven days of
18 work past the last contract date?

19 MR. PICKARD: Pointed out in Mid Continent's claim
20 package, they had the lights up toward the end of April.
21 What was needed after that was they still had to put the
22 sign brackets up. They still had two signs to put up.
23 They still had striping because they couldn't redo the
24 striping until the signals were in place. And there were
25 some sod issues that had to be accommodated.

1 MR. NUTBROWN: Greg?
 2 MR. SIMS: I was of the understanding that it was
 3 just the signs were put up. And in that seven days, I
 4 guess that they, Mid Continent, was under the impression
 5 they couldn't put them up. And then finally, through
 6 wording, it sounded like the DOT was waiting for us, told
 7 us to go ahead and put them up.
 8 So the seven days were only, my understanding, the
 9 actual time that it took to put up the last two signs. And
 10 then we walked away from the job as far as being complete.
 11 Before that, everything was finished but just those
 12 except --
 13 MR. NUTBROWN: I think your package stated that
 14 somewhere at the end of April you asked for final
 15 inspection on it or something of that nature.
 16 MR. SIMS: Correct.
 17 MR. NORTON: I didn't quite understand either what
 18 happened during those seven days.
 19 MR. NUTBROWN: Yeah.
 20 MR. NORTON: Because it appeared that everything was
 21 up when they asked for final inspection. And I was hoping
 22 you brought along some dailies or something to show.
 23 MR. PICKARD: I have the dailies with me, but
 24 I didn't recognize the reports of them and did not make
 25 four copies of the applicable dailies in enough time to

1 all signs needed to be placed. And that was May 17th,
 2 17 -- or actually almost 20 days after the end of contract
 3 time.
 4 MR. SIMMONS: And that was just a punchlist of things
 5 needed to be redone or fixed?
 6 MR. PICKARD: That's correct.
 7 MR. SIMMONS: And what was the response to that after
 8 that? Did they come back and say, well, we've done it now,
 9 come check it again, or what happened after that?
 10 MR. PICKARD: That verbal communication happened. I
 11 do not, I can't tell you without going through the dailies
 12 exactly what day that happened. But it's my understanding
 13 from Mr. Haberle that yes, he had verbal communication with
 14 Mr. Tyska to get those things corrected.
 15 Well, some of those still didn't get corrected in a
 16 timely man- -- well, didn't get corrected. And you'll see
 17 a letter from Mr. Haberle to Mr. Tyska, which is Exhibit
 18 Number M in Mid Continent's claim package, a letter that
 19 identifies five areas that still needed to be accommodated
 20 before the Department could final accept the job. It is my
 21 understanding that that work was completed by the end of
 22 that day, June 14th.
 23 MR. NORTON: Is this the point in which -- it says
 24 here the two-way sign bracket arm assemblies are not made
 25 in the same dimensional materials as indicated by the

1 present them to the board. I do have the dailies with me.
 2 I think that, however, Mid Continent's claim package
 3 actually includes --
 4 MR. SIMS: Yes.
 5 MR. PICKARD: -- a list of items that were deficient
 6 at that time. If you see the letter dated May 17th, 1999,
 7 Exhibit L?
 8 MR. NUTBROWN: I think I saw it was right in back of
 9 here.
 10 MR. SIMMONS: It's Exhibit L.
 11 MR. NORTON: L?
 12 MR. SIMMONS: Yeah.
 13 MR. SIMS: Is Exhibit L the --
 14 MR. PICKARD: It's a punchlist submitted to Mr. Tyska
 15 by Mr. Dan Haberle, our project engineer at the time. And
 16 it lists ten things that need to be corrected in order for
 17 us to final accept the project.
 18 Of those ten, there's an antenna. The signal heads
 19 had to be adjusted. The overhead streets signs were still
 20 missing. The span wire needed to be adjusted. Sod was
 21 dead. There were bare areas that needed to be seeded and
 22 mulched. The sign plate for the ped buttons was placed
 23 incorrectly and that needed to be corrected.
 24 There was some masking tape that needed to be
 25 removed. And again, the permanent markers on the back of

1 original project plans, note 3 on plan sheet T-7,
 2 et cetera. Is this when the Department realized in the
 3 field that the materials were different?
 4 MR. PICKARD: Yes, sir.
 5 MR. NORTON: Okay.
 6 MR. SIMMONS: But those brackets had been in place
 7 already for several months?
 8 MR. PICKARD: They had been installed for some time,
 9 yes.
 10 MR. SIMMONS: And they actually never were taken down
 11 and replaced, any of them, were they?
 12 MR. PICKARD: That's correct. They were accepted
 13 and --
 14 MR. SIMMONS: Or modified?
 15 MR. PICKARD: No, they're recognized as equivalent if
 16 not perhaps superior to what the Department presently
 17 specifies.
 18 I think, in fact, Mr. Haberle urged Mr. Tyska on
 19 several occasions to submit them to Tallahassee for
 20 approval on the pre-qualified list. And I don't know the
 21 status of that, but the Department would love to see that
 22 happen because this is a nice bracket.
 23 MR. NORTON: Okay. I guess what you're saying,
 24 Brian, is that the brackets, this was the first time they
 25 were used in Hillsborough County that you know of?

Page 21

1 MR. PICKARD: First time used on a Department
 2 project. Mid Continent points out it had been used
 3 throughout Hillsborough County. I don't have any knowledge
 4 of that. It's very possible. They're an excellent
 5 bracket. But this is the first time they had been
 6 submitted to District VII for approval.
 7 MR. NORTON: Okay.
 8 MR. SIMMONS: So, really, then, from that point on
 9 June the 14th when that was recognized until November the
 10 24th when the drawings were finally approved, those five
 11 different submittals or so in that time period, all that
 12 was just basically to get documentation that everything was
 13 okay with it?
 14 MR. PICKARD: Exactly.
 15 MR. SIMMONS: With the brackets?
 16 MR. PICKARD: Exactly. All the other field issues
 17 were resolved on June 14th. I will point out, however,
 18 that June 14th is a month and a half after contract time
 19 had expired.
 20 MR. NUTBROWN: Okay. Greg, do have anything else you
 21 want to add to it?
 22 MR. SIMS: No, I'm fine.
 23 MR. NUTBROWN: Brian, have you got anything else you
 24 want to add to it?
 25 MR. PICKARD: No, I think we've provided a complete

Page 23

1 (Whereupon, the proceedings were concluded at 10:33 a.m.)
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Page 22

1 case.
 2 MR. NUTBROWN: Okay.
 3 MR. NORTON: I've got one question for Greg.
 4 MR. NUTBROWN: All right.
 5 MR. NORTON: Greg, do you know what the date of the
 6 bankruptcy was?
 7 MR. SIMS: August 17th, 2000.
 8 MR. NORTON: Thank you.
 9 MR. NUTBROWN: Mr. Simmons, have you got any
 10 questions?
 11 MR. SIMMONS: (shaking head negatively)
 12 THE COURT: Okay. The hearing is hereby closed. The
 13 board will meet and deliberate on this claim in
 14 approximately six weeks. And the parties will be each
 15 furnished with an order shortly thereafter.
 16 And I appreciate your participation this morning.
 17 And it will be, I think our next hearing is May 6th or May
 18 7th. And it could be that long before the order comes
 19 out. We try to deliberate the next time for what we did
 20 this time.
 21 And last year it got bad, because we had a meeting in
 22 January and didn't have another one all year long, so. But
 23 with that, we'll consider the hearing closed, and we'll try
 24 to get everything taken care of.
 25 MR. PICKARD: Thank you.

Page 24

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

 COUNTY OF LEON)

I, MINDY MARTIN, registered Professional Reporter, do

 hereby certify that I was authorized to and did stenographically

 report the foregoing proceedings and that the transcript is a

 true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee,

 attorney, or counsel of any of the parties, nor am I a relative

 or employee of any of the attorneys or counsel connected with

 the action, nor am I financially interested in the action.
 Dated this ____ day of February, 2003

 Notary Public, State of Florida
 CATHERINE WILKINSON & ASSOCIATES (904) 224-0127

STATE ARBITRATION BOARD

**5615 23rd Street S.W.
Vero Beach, FL. 32968**

Phone (772) 299-3290

FAX (772) 299-3568

November 28, 2003

Bill Albaugh
Highway Operations
Florida Department of Transportation
605 Suwannee Street MS 31
Tallahassee, FL. 32399-5200

Re Arbitration Order 2 / 2003
DOT Fin Project No255889-1-52-01
Hillsborough County, FL.

Dear Bill:

Find enclosed Arbitration Order 2 / 2003 for the above captioned project. A copy of the transcript is enclosed, and copies of the Contractors submittal and the Department rebuttal are being kept by Freddie Simmons for your use.

Sincerely;

State Arbitration Board

John W. Nutbrown,
Chairman and Clerk

Cc: All Board Members

STATE ARBITRATION BOARD
5615 23rd Street S.W.
Vero Beach, FL. 32968

Phone (772) 299-3290

FAX (772) 299-3568

November 28, 2003

Mr. E. Douglas McIntyre, President
Mid Continent Electric, Inc.
4586 Progress Avenue
Naples, FL. 34103

Re: State Arbitration Board Order 2 / 2003
Financial Project No 255889-1-52-01
County Line Road
Hillsborough County, Florida

Dear Mr. McIntyre:

Find enclosed State Arbitration Order 2 / 2003 along with a copy of the hearing transcript for your records.

Sincerely;

State Arbitration Board

John W. Nutbrown
Chairman & Clerk

Cc: All Board Members