

MANDATE

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:

STATE, DEPARTMENT OF
TRANSPORTATION

Case No : 1D04-1678

v.

Lower Tribunal Case No : 2-2003

MID CONTINENT ELECTRIC,
INC.

The attached opinion was issued on October 7, 2005.

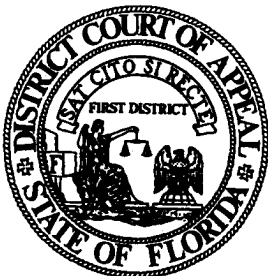
YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.

WITNESS the Honorable CHARLES J. KAHN, JR., Chief Judge

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

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

on this 2nd day of November 2005.



Jon S. Wheeler

JON S. WHEELER, Clerk

District Court of Appeal of Florida, First District

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

STATE OF FLORIDA, DEPARTMENT
OF TRANSPORTATION,

Appellant,

v.

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

CASE NO. 1D04-1678

MID-CONTINENT ELECTRIC, INC.,

Appellee.

Opinion filed October 7, 2005.

An appeal from an order of the State Arbitration Board.

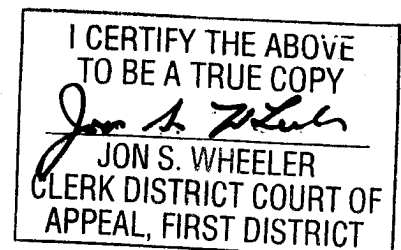
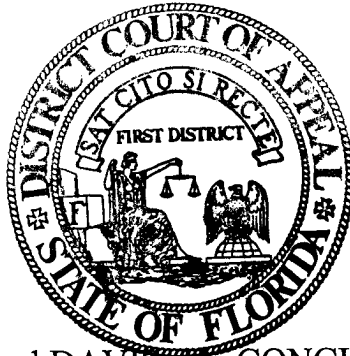
Pamela S. Leslie, General Counsel, and Marianne A. Trussell, Deputy General
Counsel, Department of Transportation, Tallahassee, for Appellant.

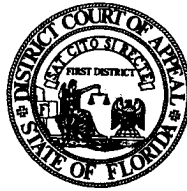
Mary Piccard Vance of Vezina, Lawrence & Piscitelli, P.A., Tallahassee, and Joseph
W. Lawrence, II, and Robert L. Frye, Ft. Lauderdale, for Appellee.

PER CURIAM.

AFFIRMED.

KAHN, C.J., BARFIELD and DAVIS, JJ., CONCUR.





DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA 32399-1850

JON S. WHEELER
CLERK OF THE COURT

(850) 488-6151

November 2, 2005

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

RE: State, Department of
Transportation
Docket No: 1D04-1678
Lower Tribunal Case No.: 2-2003

v. Mid Continent Electric,
Inc.

Dear Mr. Nutbrown:

I have been directed by the court to issue the attached mandate in the above-styled cause. It is enclosed with a certified copy of this Court's opinion.

Yours truly,

Jon S. Wheeler
Clerk of the Court

JSW/je
Enclosures

c: (letter and mandate only)
Marianne A Trussell,
A.G.C.

Joseph W. Lawrence

Mary P. Vance

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

November 2, 2005

CASE NO.: 1D04-1678

L.T. No. : 2-2003

State, Department Of
Transportation

v.

Mid Continent Electric,
Inc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Upon consideration of the appellant's response to this court's October 10, 2005, order to show cause, the order to show cause is hereby discharged.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

John W. Nutbrown, Chairman

Marianne A Trussell, A.G.C.

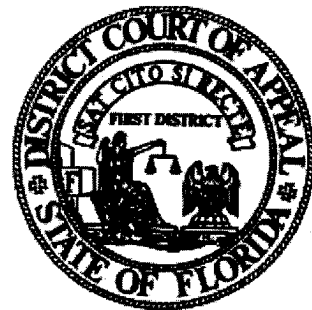
Joseph W. Lawrence

Mary P. Vance

je



JON S. WHEELER, CLERK



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

STATE OF FLORIDA, DEPARTMENT
OF TRANSPORTATION,

Appellant,

v.

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

CASE NO. 1D04-1678

MID-CONTINENT ELECTRIC, INC.,

Appellee.

Opinion filed October 7, 2005.

An appeal from an order of the State Arbitration Board.

Pamela S. Leslie, General Counsel, and Marianne A. Trussell, Deputy General Counsel, Department of Transportation, Tallahassee, for Appellant.

Mary Piccard Vance of Vezina, Lawrence & Piscitelli, P.A., Tallahassee, and Joseph W. Lawrence, II, and Robert L. Frye, Ft. Lauderdale, for Appellee.

PER CURIAM.

AFFIRMED.

KAHN, C.J., BARFIELD and DAVIS, JJ., CONCUR.

**DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151**

October 10, 2005

CASE NO.: 1D04-1678

L.T. No. : 2-2003

State, Department Of
Transportation

v. Mid Continent Electric,
Inc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

This court has affirmed the State Arbitration Board's ("Board") order in this case. The court questions whether the positions taken in the briefs and at oral argument by the appellant can be supported by any application of the law to the facts of this case. Accordingly, this court must consider whether attorney's fees should be awarded pursuant to section 57.105(1), Florida Statutes (2004). See Boca Burger, Inc. v. Forum, 30 Fla. L. Weekly S539 (Fla. July 7, 2005). This statute provides:

57.105 Attorney's fee; sanctions for raising unsupported claims or defenses; service of motions; damages for delay of litigation.--

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

However, the losing party's attorney is not personally responsible if he or she acted in good faith, based on the representations of his or her client as to the existence of those material facts. If the court awards attorney's fees to a

claimant pursuant to this subsection, the court shall also award prejudgment interest.

In contemplating this action, this court has considered two factors present in the case.

First and foremost is the appellant's steadfast contention that this court lacks jurisdiction to hear the issue of whether the contractual limitation period had been tolled by the operation of federal bankruptcy law. In its brief and at oral argument, appellant repeatedly claimed that the Board never passed on the tolling issue. Consequently, appellant argued that the Board must first decide the tolling issue before this court could consider it. According to the record and the order on review, however, the issue was considered by the Board:

Mr. Pickard (Attorney for DOT): The premise behind the claim put forth by Mid-Continent is based on an extension of the 820-day limitation for a submittal of a claim that is due to a bankruptcy and approved by a local court ruling.

This ruling is under, is presently in Federal Appeals Court. If the ruling gets overturned, then we will not be able to pay any additional funding that this board may deem necessary. We request therefore that you withhold your decision until after this appeal has been concluded.

Mr. Nutbrown (arbitrator): Okay. What the board will do is go ahead and issue the order. . . . But the board will issue their [sic] order per the direction of the lower [bankruptcy] court.

(Tr. 8-9). Additionally, the Board, in its final order, quite clearly stated:

The Board also received a copy of the Final Declaratory Judgment 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. (R. 500). Thus, the Board considered the issue of whether the limitation period was tolled. The Board's refusal to undertake its own legal analysis of the issue does not negate this fact. Likewise, the eventual vacation of the bankruptcy order also does not negate the Board's reliance upon the bankruptcy court's declaratory judgment. The Board merely adopted, as its own, the bankruptcy court's reasoning in the declaratory judgment. Although the U.S. District Court vacated the bankruptcy order, the district court noted that a state court should decide the question of: "There is no reason a state court cannot resolve the issue of whether the state statute of limitations was tolled by the bankruptcy statute. . . ." (U.S. District Court Order, 7).

Florida law mandates that this court review decisions, not rationales. See Philip J. Padovano, *Florida Appellate Practice* § 1.7 (2004 ed.) ("In an appeal from a final order, the appellate court has authority to review any decision made in the lower

tribunal until the time the appeal has been filed."). The appellant, in its brief, argued:

The Department respectfully asserts that this Court is without jurisdiction to decide the tolling issue at this time because there has been no ruling on the issue for this Court to review. No ruling has been made by any lower tribunal and no order, final or otherwise, determining whether Mid-Continent's bankruptcy filing tolled the time in which it could seek arbitration of its claims has been entered. As such, there is nothing that determines the tolling issue for this Court to review.

(Appellant's Reply Brief 5-7). The Board's order adopted the bankruptcy's ruling on the tolling issue. The Board's order was a final order. This court has jurisdiction to review final orders. See Art. V, § 5(b), Fla. Const. Considering that the standard of review for such issues is de novo, appellant's argument that this court lacks the jurisdiction to consider the issue on appeal is problematic.

A second point of concern to this court is the appellant's failure to brief the merits of the tolling issue. The appellee argued the tolling issue in its brief. By presuming that its jurisdictional argument was correct, the appellant overlooked the value of both the appellee's and the court's time and resources by not being prepared to argue the determinative issue in this case: Whether 11 U.S.C. § 108(a) tolled the contractual limitation period. This issue is one of statutory construction and is reviewed de novo by this court with no deference to the lower tribunal. Appellant made no showing at all to overcome the appellee's position on tolling.

ACCORDINGLY, the court directs the appellant, Florida Department of Transportation, to SHOW CAUSE within fifteen (15) days why attorney's fees under section 57.105(1) should not be awarded against it.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

John W. Nutbrown, Chairman

Marianne A Trussell, A.G.C.

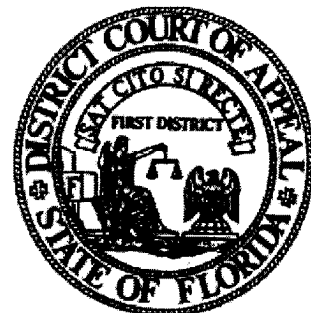
Joseph W. Lawrence

Mary P. Vance

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JON S. WHEELER, CLERK



DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

April 4, 2005

CASE NO.: 1D04-1678
L.T. No. : 2-2003

State, Department Of
Transportation

v. Mid Continent Electric,
Inc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Upon consideration of the status report, filed March 31, 2005, the stay of these proceedings is hereby lifted.

Appellee shall serve the answer brief within 20 days of the date of this order.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

John W. Nutbrown, Chairman

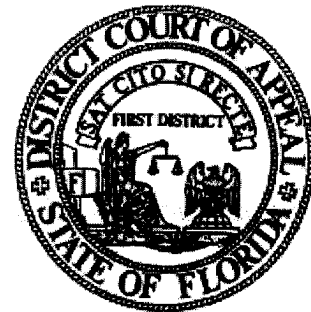
Marianne A Trussell, A.G.C.

Joseph W. Lawrence

am



JON S. WHEELER, CLERK



DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

February 17, 2005

CASE NO.: 1D04-1678
L.T. No. : 2-2003

State, Department Of
Transportation

v. Mid Continent Electric,
Inc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Upon consideration of the status report, further proceedings herein are stayed pending disposition of the proceedings in State of Florida, Department of Transportation, et al. v. Mid-Continent Electric, United States District Court, Middle District of Florida, case number 00-1791-9P1. Within 10 days following final disposition of those proceedings, the parties shall file a status report apprising the court of the need for further proceedings herein. In any event, the parties shall submit a joint status report at the end of 180 days, which sets forth the status of the proceedings before the United States District Court.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

John W. Nutbrown, Chairman

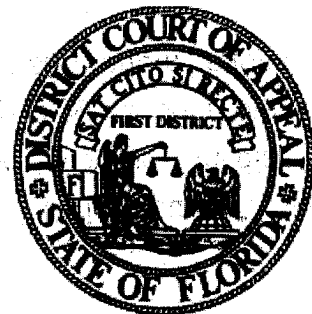
Marianne A Trussell, A.G.C.

Joseph W. Lawrence

am



JON S. WHEELER, CLERK



STATE ARBITRATION BOARD

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

Phone (772) 299-3290

FAX (772) 299-3568

June 29, 2003

Mr. E Douglas McIntyre, President
Mid-Continent Electric, Inc.
4586 Progress Avenue
Naples, FL. 34103-7017

Re: FDOT Financial Project 255889-1-52-01
SR-597 (Dale Mabry Highway) at County Line Road
Hillsborough County, Florida

Dear: Mr. McIntyre:

The State Arbitration Board is ready to issue an order relating to the hearing conducted on February 7, 2003 in Tallahassee, Florida.

At the close of this hearing a discussion took place with Mr. Greg Sims, your representative, as to the documents required by the Standard Specifications to close this project out and allow the Board to issue its order relating to this matter.

The Board at this time is ready to issue the order; however, we have no notification that they have been submitted as required. If you have already submitted these documents please notify the Board as to the date and the party to whom they were submitted. If they have not been submitted please forward them to the Department so we may close this matter.

Thank you for your cooperation in this matter

Sincerely;

State Arbitration Board

John W. Nutbrown,
Chairman and Clerk

Cc: All Board Members
Brian Pickard, FDOT

STATE ARBITRATION BOARD

Order No. 2-2003

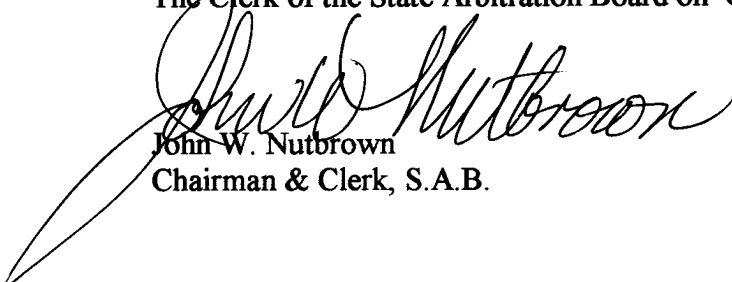
S.A.B. CLERK

APR 05 2004

FILED

/// NOTICE OF RECEIPT ///

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 Notice of Receipt:

Jon S. Wheeler, Clerk of the Court

Bill Albaugh, Highway Operations

E. Douglas McIntyre, President Mid Continent Electric, Inc

Marianne A. Truesell, Deputy General Counsel.

Joseph W. Lawrence, Attorney, Mid Continent Electric

Brian W Pickard, P.E., Tampa Construction

STATE ARBITRATION BOARD

Order No. 2-2003

As stated in State Arbitration Board Order 2-2003.

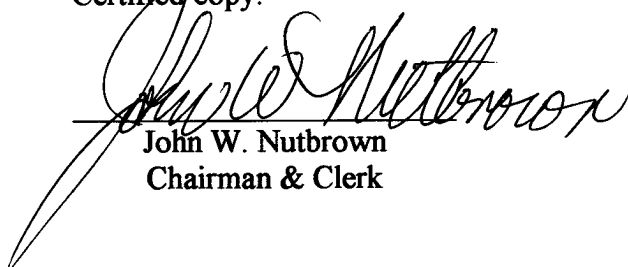
This order does not become effective until all contract required documents have been submitted.

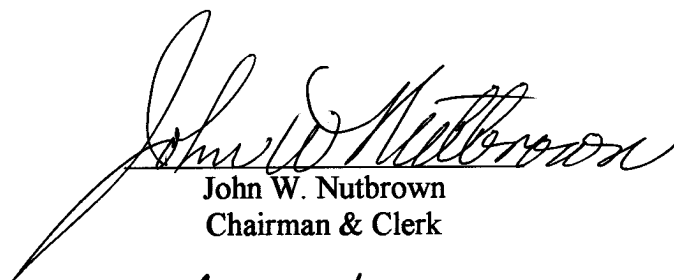
As of March 31, 2004 we have received notice which states that all documents required by the contract have been submitted in full. The last required document Form 21-A was received March 22, 2004 and is so noted by the attached copy.


Vero Beach, Florida

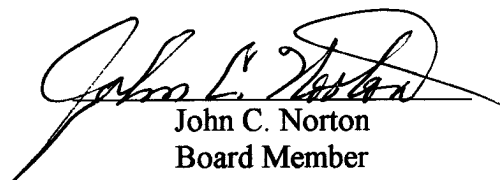
Dated; April 5, 2004

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

2822 Leslie Road-Tampa, FL 33619
(813) 744-6062

JEB BUSH
GOVERNOR

JOSÉ ABREU
SECRETARY

March 31, 2004

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

RE: Receipt of Form 21A
Financial Project No. 255889-1-52-01: County Line Road & Dale Mabry (S.R. 597)--
Hillsborough County, Florida

Dear Mr. Nutbrown:

This is to confirm that the Department has now finally received all previous outstanding contract documents from Mid-Continent Electric. The last document remaining due was the Form 21A, which includes the surety release of payment to contractor authorization. The Form 21A was received by the Department on March 22, 2004.

As the Board has previously been made aware, the Department intends to appeal the Board's decision directing that the Department pay the outstanding contract balance upon receipt of all outstanding contractor documentation. As stated in Marianne Trussell's March 18th letter to you in these regards, kindly issue the requested NOTICE OF RECEIPT and attach copies of those documents to the notice. If your NOTICE OF RECEIPT would specifically reference the Board's prior Order No. 2-2003, and the fact that such Order is now fully effective, this additional clarification would make it clear for appellate purposes. For your easy reference and use, I am attaching a copy of the recently submitted documents.

Your timely issuance of an appropriate NOTICE OF RECEIPT, which the Department requests be also copied directly to Marianne Trussell, is greatly appreciated. At this point, the Department cannot proceed to refile its appeal of the Board's action until the Board issues such a notice.

Sincerely,

Brian W. Pickard, P.E.
Attachment(s)

cc: James Moulton; Teresa Driskell; E. Clay McGonagill, Jr.; Marianne Trussell; Freddie Simmons;
John C. Norton; Karla Furney; E. Douglas McIntyre and Joe Lawrence, Mid-Continent

ROUTING SHEET
FOR ESTIMATES
FORM 21-A (BOND RELEASE)

DATE: 3/24/04

TO: General Law / District 7 Legal

NUMBER OF PAGES INCLUDING COVER: 5

STATE JOB NO.: 255889 15201

CONTRACTOR: Mid-Continent Electric

☒ First Submittal - Date:
☐ Resubmittal - Date:

☒ Executing Agent, or
☐ Countersigning Agent

CONFIRMED THROUGH THE FLORIDA
DEPARTMENT OF INSURANCE AS A
LICENSED AND APPOINTED AGENT ON THIS
DATE:

3/24/04

PLEASE REVIEW / APPROVE AND FAX THIS SHEET ONLY TO 975-6278 (S/C 512-7735)

ATTN: BETH CARLSON

Marian EXT 27970

OFFICE OF THE GENERAL COUNSEL

APPROVED: BAC 3-24-4 (Mark this form and return to Estimates)

NOT APPROVED: _____ (Note needed corrections below and return to Estimates)

REMARKS:

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

on bond of

MID-CONTINENT ELECTRIC, INC.

SURETY,

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

CONTRACTOR,

FLORIDA DEPARTMENT OF TRANSPORTATION

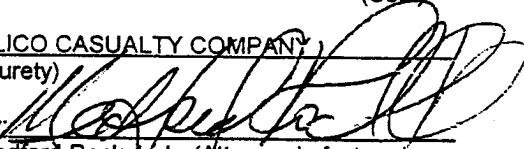
As set forth in said Surety's bond.

OWNER,

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)

We, the ULICO Casualty Company, duly authorized to do business under the laws of Florida, having heretofore executed a performance and payment bond for the Contractor covering the contract described above, hereby consent to the State of Florida Department of Transportation making full payment of the final estimate, including the retained percentage, to the Contractor.

It is fully understood that consenting to the the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

IN WITNESS WHEREOF, the ULICO Casualty Company has caused this instrument to be executed by its President, Chief Executive Officer ors duly authorized Attorney-in-Fact,(and Florida resident Agent, if applicable) and its corporate seal to be hereto affixed, all on this 12th day of January A.D. 2004.

(AFFIX SEAL)

ULICO Casualty Company
SURETY COMPANY
BY: Medford Rockstroh
☐ Its President or Chief Executive Officer
☒ Its Attorney in Fact
☒ Florida Resident Agent

(Attach Power of Attorney)

STATE OF Florida
COUNTY OF Hillsborough

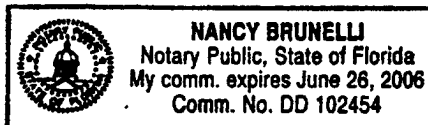
Before me, the undersigned authority, personally appeared Medford Rockstroh, to me well known or has produced N/A as identification as the person in and who executed the forgoing (Type of Identification) instrument in the name of ULICO Casualty Company surety, as its Attorney in Fact and Florida Resident Agent and Medford Rockstroh acknowledged that he/she executed said instrument in the name of said surety as its Attorney in Fact and Florida Resident Agent for the purposes therein expressed and that he/she has due and legal authority to execute the same on behalf of said surety.

Sworn to and subscribed before me this this 12th day of January 2004.

Nancy Brunelli
My commission expires 6/26/06
Notary Public, State of Florida

Countersignature: _____
Required ONLY if executed by Non-Florida Resident Agent

A223329
License Number
for license verification.



ULICO CASUALTY COMPANY

111 Massachusetts Avenue, N.W. Washington, DC 20001

FDOT- 642

POWER OF ATTORNEY

Know All Men By These Presents: That Ulico Casualty Company, A Delaware Corporation, having its principal office in Washington, DC, pursuant to the following resolution, adopted by the Board of Directors of the Corporation effective on the 28th day of January, 1993:

RESOLVED: "That the Chairman and Chief Executive Officer be, and hereby is, authorized to execute Powers-of-Attorney, qualifying the attorney named in the Powers-of-Attorney to execute on behalf of the Corporation contract bonds and other related surety bonds, and to attach thereto the corporate seal of the Corporation, in the transaction of its surety business."

RESOLVED: "That the signatures and attestations of such officers and the seal of the Corporation may be affixed to any such Power-of-Attorney or to any certificate relating thereto by facsimile, and any such Power-of-Attorney or certificate bearing such facsimile signatures and facsimile seal shall be valid and binding upon the Corporation when so affixed with respect to any contract bond or other related surety bond to which it is attached."

This Power of Attorney is signed and sealed in facsimile under and by the authority of the above Resolution.

DOES HEREBY MAKE, CONSTITUTE AND APPOINT: Medford Rockstroh, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred in its name, place and stead to sign, execute, acknowledge and deliver in its behalf, and as its act and deed, without power of redelegation, as follows:

Contract bonds and other related surety bonds: IN AN AMOUNT NOT TO EXCEED FOUR MILLION (\$4,000,000.00) DOLLARS; to bind Ulico Casualty Company thereby as fully and to the same extent as if such bond was signed by the duly authorized officers of Ulico Casualty Company, and all the acts of said Attorney(s)-in-Fact pursuant to the authority herein given are hereby ratified and confirmed; consents for the release of retained percentages and/or final estimates on engineering and construction contracts as required by The Department of Transportation, State of Florida.

In Witness Whereof, Ulico Casualty Company of Dover, Delaware, has caused this Power of Attorney to be signed by its Chairman and Chief Executive Officer and its Corporate seal to be affixed this 1st day of February, 1999.

This Power of Attorney is void unless the seal is readable, the text is in black ink, the signatures are in black ink, this notice is in red ink, and if attached to a document executed subsequent to March 31, 2004.

Ulico Casualty Company

District of Columbia

ss:



By:

Robert A. Georgine
Robert A. Georgine, Chairman and Chief Executive Officer

On this 1st day of February, 1999, before the subscriber, a Notary Public of the District of Columbia, duly commissioned and qualified, came Robert A. Georgine of Ulico Casualty Company to me personally known to be the individual and officer described therein, and who executed the preceding instrument, and acknowledged the execution of the same, and being by me duly sworn, deposed and said, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of the Company, and the Corporate Seal and signature as an officer were duly affixed and subscribed to the said instrument by the authority and direction of the Corporation, and that the resolution of the Company, referred to in the preceding instrument, is now in force.

In Testimony Whereof, I have hereunto set my hand, and affixed my official seal at Washington, DC the day and year above written.



By:

D.Y. Justice
A Notary Public
D.Y. Justice, Notary Public
Notary Public, District of Columbia
My Commission Expires March 31, 2001

CERTIFICATION

I, Joseph A. Carabillo, Assistant Secretary of Ulico Casualty Company of Dover, Delaware, do hereby certify that the foregoing Resolution adopted by the Board of Directors of this Corporation and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolution and the Powers of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the corporation this 12th day of January, 2004.



By:

Joseph A. Carabillo
Joseph A. Carabillo, Assistant Secretary

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
CONTRACTOR'S AFFIDAVIT AND SURETY CONSENT
(FORM 21-A)

700-050-21
CONSTRUCTION
03/03
Page 1 of 3

STATE OF FLORIDA

COUNTY OF Collier

Before me, the undersigned Notary Public, personally appeared Doug McIntyre
to me well known or has produced _____ as identification,
(Type of Identification)

who being first duly sworn, deposes and says that he/she is: PRESIDENT
(Title of duly authorized person)

of MID-CONTINENT ELECTRIC, INC a CORPORATION,
(Contracting entity) (Type of entity)

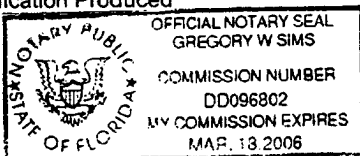
the Contractor on Financial Project I.D. 255889-1-52-01, Road No. SR 5978 in
Hillsborough County, Florida under Contract No. _____

with the State of Florida Department of Transportation dated the _____ day of _____,
and that the Deponent based on his/her personal knowledge says that:

1. Said contract has been complied with in every particular by the Contractor and that all parts of the work have been approved by the District Director of Operations of the State of Florida Department of Transportation.
2. The Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the Department in connection with obtaining or performing said contract.
3. All amounts payable for labor, materials, or otherwise, in connection with said contract and work, have been paid except for normal sub-contract retainages, which will be satisfied within 30 days after payment and/or release of retainage withheld under said contract.
4. There are no claims or suits pending against said Contractor or anyone in connection with the work done, materials furnished or otherwise under said contract, except as listed below. As to any such exception listed below, the Contractor has stated the name of the entity making the claim, the name of the entity against whom the claim is being made, and demonstrated below good cause as required by Section 337.11(10)(b), Florida Statutes.

Claiming Entity	Claim Agent	Nature of claim	Good cause explanation
<u>NONE</u>	<u>NONE</u>	<u>NONE</u>	<u>NONE</u>
↓	↓	↓	↓
↓	↓	↓	↓
↓	↓	↓	↓
↓	↓	↓	↓

State of Florida
County of Collier
Sworn to and subscribed before me this 17 day
of March 2004, by Doug McIntyre
(Print name of person signing Certification)
GREGORY W. SIMS
Notary Public
3/18/06
Commission Expires
Personally Known ☒ OR Produced Identification ☐
Type of Identification Produced _____



A false statement or omission made in connection with this certification is sufficient cause for suspension, revocation, or denial of qualification to bid, and a determination of non-responsibility, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable Federal and State Law.

MID-CONTINENT ELECTRIC, INC
Contractor
By PRESIDENT
Title

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.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

August 12, 2004

CASE NO.: 1D04-1678

L.T. No. : 2-2003

State, Department Of
Transportation

v. Mid Continent Electric,
Inc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellee's agreed motion to stay and abate appellate proceedings, filed August 10, 2004, is granted. Further proceedings herein are stayed pending disposition of the proceedings in State of Florida, Department of Transportation, et al. v. Mid-Continent Electric, United States District Court, Middle District of Florida, case number 00-1791-9P1. Within 10 days following final disposition of those proceedings, the parties shall file a status report apprising the court of the need for further proceedings herein. In any event, the parties shall submit a joint status report to this court at the end of 180 days, which sets forth the status of the proceedings before the United States District Court.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

John W. Nutbrown, Chairman

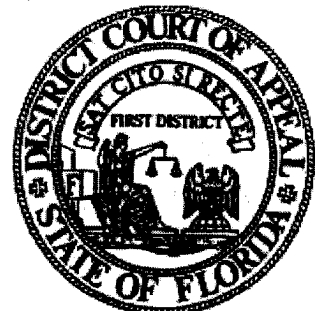
Marianne A Trussell, A.G.C.

Joseph W. Lawrence

am



JON S. WHEELER, CLERK



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

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION,

Appellant,

v.

CASE NO. 1D04-1678

MID-CONTINENT ELECTRIC, INC.,

Appellee.

_____ /

INDEX TO
STIPULATED RECORD ON APPEAL

ON APPEAL FROM THE STATE ARBITRATION BOARD
ARBITRATION ORDER NO. 2-2003

Marianne A. Trussell, Esquire
Deputy General Counsel
FLORIDA BAR NO. 437166
Department of Transportation
Haydon Burns Building, MS-58
605 Suwannee Street
Tallahassee, Florida 32399
(850) 414-5265
Attorney for the
Department of Transportation

Joseph W. Lawrence, III, Esquire
FLORIDA BAR NO. 211303
Vezina, Lawrence & Piscitelli, PA
350 East Las Olas Boulevard,
Suite 1130
Fort Lauderdale, Florida 33301
(954) 728-1270
Attorney for
Mid-Continent Electric, Inc.

INDEX TO RECORD ON APPEAL

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December 9, 2002	Memorandum to John F. Temple from E. Douglas McIntyre Hearing scheduled February 7, 2003 . . .	227
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November 28, 2003	Letter to E. Douglas McIntyre from John W. Nutbrown Transmitting State Arbitration Order and copy of the hearing transcript	322
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December 17, 2003	Notice of Appeal with attachments . .	324-328
December 22, 2003	Acknowledgment of Notice of Appeal from the First District Court of Appeal, Case No. 1D03-5390 . . .	329

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December 29, 2003	Docketing Statement and Notice of Appearance of Counsel for FDOT . .	332-334
January 20, 2004	Response to Order to Show Cause . . .	335-369
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March 25, 2004	Letter to Jack Nutbrown from Joseph W. Lawrence, II Transmitting Consent of Surety To Final Payment with attachments . .	379-383
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November 24, 1999	Copies of Various Shop Drawing Submittals	406-498
October 25, 2003	State Arbitration Board Order No. 2-2003, Notice with attachments, deemed final March 22, 2004	499-509

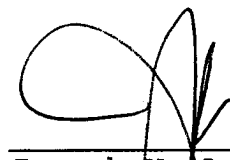
February 23, 2003 Transcript from Hearing on
February 7, 2003, before the
State Arbitration Board
with Index T. 1-T. 24

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the original index to stipulated record and the original stipulated record have been furnished by hand delivery on this 23rd day of July, 2004, to **JON S. WHEELER, CLERK**, First District Court of Appeal, State of Florida, 301 Martin L. King, Jr., Boulevard, Tallahassee, Florida 32399-1850.

IT IS HEREBY CERTIFIED that a true and correct copy of the index to stipulated record foregoing has been furnished by United States Mail on this 23rd day of July, 2004, to **JOHN W. NUTBROWN, CHAIRMAN**, State Arbitration Board, 5615 23rd Street SW, Vero Beach, Florida 32968, and the parties identified below.


Marianne A. Trussell, Esquire
Deputy General Counsel
FLORIDA BAR NO. 437166
Department of Transportation
Haydon Burns Building, MS-58
605 Suwannee Street
Tallahassee, Florida 32399
(850) 414-5265
Attorney for the
Department of Transportation


Joseph W. Lawrence, III, Esquire
FLORIDA BAR NO. 211303
Vezina, Lawrence & Piscitelli, PA
350 East Las Olas Boulevard,
Suite 1130
Fort Lauderdale, Florida 33301
(954) 728-1270
Attorney for
Mid-Continent Electric, Inc.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

June 28, 2004

CASE NO.: 1D04-1678

L.T. No. : 2-2003

State, Department Of
Transportation

v.

Mid Continent Electric,
Inc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time filed June 17, 2004, is granted. The time for filing the stipulated statement, record on appeal and initial brief is extended to July 23, 2004.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

John W. Nutbrown, Chairman

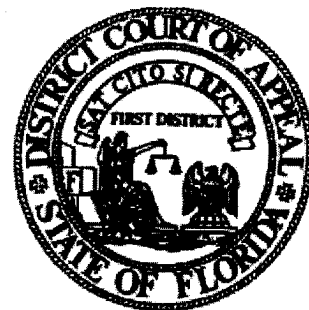
Marianne A Trussell, A.G.C.

Joseph W. Lawrence

bb



JON S. WHEELER, CLERK



STATE ARBITRATION BOARD
STATE OF FLORIDA

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION,

Appellant/Defendant,

v.

ARBITRATION ORDER NO. 2-2003

MID CONTINENT ELECTRIC, INC.,

Appellee/Plaintiff.

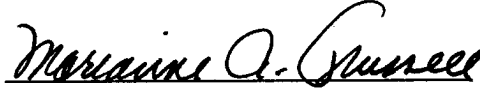
_____ /

NOTICE OF APPEAL

Notice is hereby given that the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (DEPARTMENT), appellant in the above named case, hereby appeals to the First District Court of Appeal, the Order rendered October 25, 2003, on behalf of MID CONTINENT ELECTRIC, INC. (MID CONTINENT), by John W. Nutbrown, Chairman, State Arbitration Board, deemed rendered on April 14, 2004, by the filing of the required contractor documentation. The nature of the order is the award of compensation from the DEPARTMENT to MID CONTINENT in a construction claims case in which the DEPARTMENT asserted the claim was untimely filed. A copy of the order is attached hereto, together with a copy of this Court's opinion dismissing the Department's prior Notice of Appeal as premature and a copy of the

State Arbitration Board's Notice of Receipt of the documents required by the parties' contract.

Respectfully submitted,



MARIANNE A. TRUSSELL
Deputy General Counsel
FLORIDA BAR NO. 437166
Department of Transportation
Haydon Burns Building, MS 58
605 Suwannee Street
Tallahassee, FL 32399-0458
(850) 414-5265

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail on this 15th day of April, 2004, to **JOSEPH W. LAWRENCE, ESQUIRE**, Vezina, Lawrence & Piscitelli, P.A., 350 East Los Olas Boulevard, Suite 1130, Fort Lauderdale, Florida 33301, counsel for MID CONTINENT; **E. DOUGLAS MCINTYRE, PRESIDENT**, Mid Continent Electric, Inc., 4586 Progress Avenue, Naples, Florida 34104; and **JON S. WHEELER, CLERK**, First District Court of Appeal, State of Florida, 301 Martin L. King, Jr., Boulevard, Tallahassee, Florida 32399-1850.



MARIANNE A. TRUSSELL

STATE ARBITRATION BOARD

Order No. 2-2003

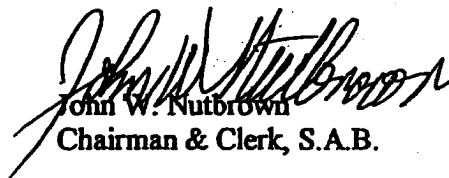
S.A.B. CLERK

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.

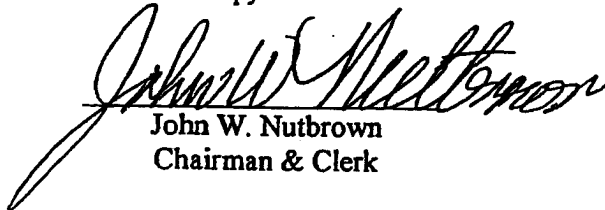
This order does not become effective until all contract required documents have been submitted.

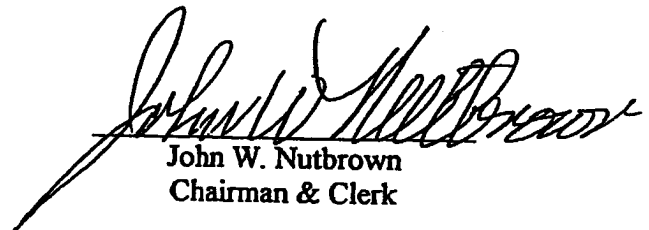
The Department shall reimburse the State Arbitration Board \$176.00 for court reporting costs.

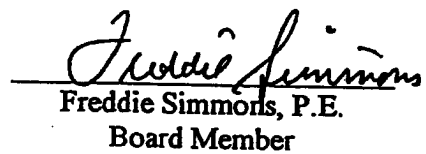
Vero Beach, Florida

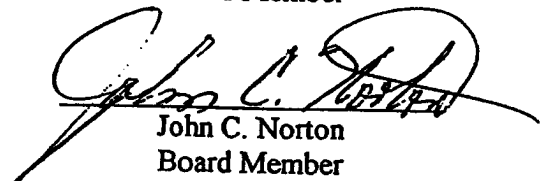
Dated; October 25, 2003

Certified copy:


John W. Nutbrown
Chairman & Clerk


John W. Nutbrown
Chairman & Clerk


Freddie Simmons, P.E.
Board Member


John C. Norton
Board Member

DOT GENERAL COUNSEL.
REC'D LEGAL
04 MAR -1 PM 1:08

140
IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

FLORIDA DEPARTMENT OF
TRANSPORTATION,

Appellant,

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

v.

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.

STATE ARBITRATION BOARD

Order No. 2-2003

/// NOTICE OF RECEIPT ///

S.A.B. CLERK

APR 05 2004

FILED

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 Notice of Receipt:

Jon S. Wheeler, Clerk of the Court

Bill Albaugh, Highway Operations

E. Douglas McIntyre, President Mid Continent Electric, Inc

Marianne A. Truesell, Deputy General Counsel.

Joseph W. Lawrence, Attorney, Mid Continent Electric

Brian W Pickard, P.E., Tampa Construction

STATE ARBITRATION BOARD

Order No. 2-2003

As stated in State Arbitration Board Order 2-2003.

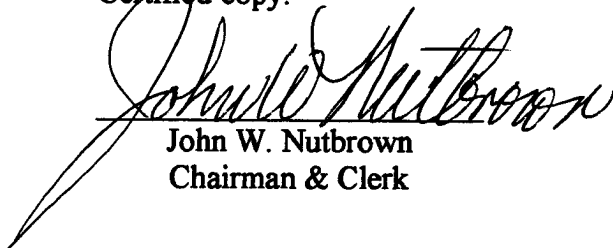
This order does not become effective until all contract required documents have been submitted.

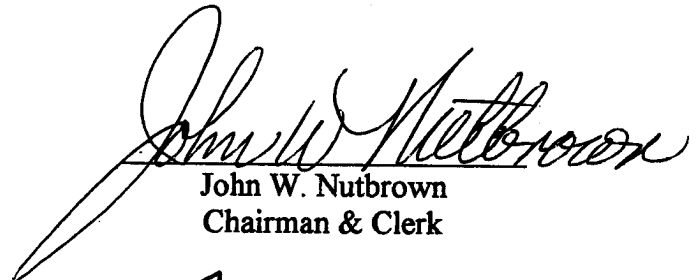
As of March 31, 2004 we have received notice which states that all documents required by the contract have been submitted in full. The last required document Form 21-A was received March 22, 2004 and is so noted by the attached copy.

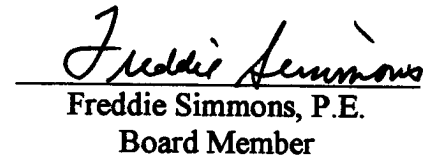
Vero Beach, Florida

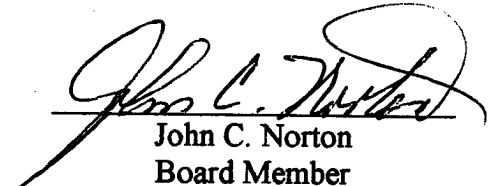
Dated; April 5, 2004

Certified copy:


John W. Nutbrown
Chairman & Clerk


John W. Nutbrown
Chairman & Clerk


Freddie Simmons, P.E.
Board Member


John C. Norton
Board Member



DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA 32399-1850

JON S. WHEELER
CLERK OF THE COURT

(850) 488-6151

April 21, 2004

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

RE: State, Department of
Transportation

v. Mid Continent Electric,
Inc.

CASE NUMBER: 1D04-1678

Lower Case Number : 2-2003

Dear John W. Nutbrown, Chairman:

As Clerk of the Court, I acknowledge receipt of the Notice of Appeal in this Administrative action, filed in this court on 4/15/2004, and in the lower tribunal on N/A. Receipt number N/A for the filing fee attached.

In the future, please use this Court's case number on all pleadings and correspondence filed in this cause.

Before this case can be assigned to a panel of judges for consideration, **the attached Docketing Statement must be completed and filed with this court** by the appellant/petitioner. Appellee/Respondent/Amicus needs to review the information on the appellant/petitioner's Docketing Statement and file a Docketing Statement if required as explained in the attached Docketing Statement.

Sincerely yours,

Jon S. Wheeler
Clerk of the Court

Copies: Marianne A Trussell,
A.G.C.

Joseph W. Lawrence