

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of Union Electric,)	
d/b/a AmerenUE’s Tariffs to)	Case No. ER-2010-0036
Increase Its Annual Revenues for)	Tariff Nos. YE-2010-0054
Electric Service)	

**MOTION IN LIMINE: DESIGNATIONS FOR PORTIONS OF
DEPOSITION TRANSCRIPTS**

The Missouri Industrial Energy Consumers (“MIEC”) moves the Public Service Commission to order each party that wishes to submit deposition testimony in this matter to designate the portions of the deposition transcript it intends to admit, and offer all other parties an opportunity to object to the designations before any portions of the deposition transcript are admitted into the record. Importantly, this designation process should not allow parties to use deposition designations in lieu of live testimony from any witnesses in this proceeding. Accordingly, no party is permitted to enter a deposition transcript into the record without making specific designations and providing other parties with an opportunity to object. In support of its Motion in Limine, MIEC states:

1. In case number ER-2008-0318, *In the Matter of Union Electric Company d/b/a AmerenUE’s Tariffs to Increase its Annual Revenues for Electric Service*, Judge Woodruff ruled on or around November 25, 2008 that parties were unable to admit an entire deposition transcript into the record. *See* pg. 907; lns. 17-19. As Judge Woodruff explained: “the Commission’s concern is that we don’t get a 400-page deposition dropped on us with no indication of what’s important because that increases the bulk of the material that the Commissioners have to read.” *See* pg. 911; lns. 12-16. Moreover, there were numerous depositions just “cluttering the record” that were never mentioned in the briefs. *See* pg. 911; lns. 17-21. Accordingly, the MIEC moves that parties are not allowed to simply introduce the entire deposition transcript into the record.

2. In the 2008 proceeding, Judge Woodruff determined that it was appropriate for the sponsoring party to designate portions of the depositions. *See* pg. 911, lns. 22-24. The Judge also stated that all parties could object in writing to the designations, if deemed necessary. *See* pg. 912, lns. 5-15; *see also* pgs 914-915; lns. 25, 1-2. If no objection is made, then the designated portions of the transcript are admitted into the record. *See* pg. 912; lns. 16-18. Similarly, the MIEC requests that the same process be used in the present matter whereby the sponsoring party must designate specific portions of the deposition into evidence, and all other parties have an opportunity to object to the designations in writing prior to the deposition testimony being admitted.

3. This procedure is consistent with Missouri Rule of Civil Procedure 57.07(a) which states the following: “Any part of a deposition that is admissible under the rules of evidence applied as though the deponent were testifying in court may be used against any party who was present or represented at the taking of the deposition or who had proper notice thereof. Depositions may be used in court for any purpose.”

4. Missouri Case Law also supports the position that an entire deposition transcript should not be admitted. *See, e.g., Viacom Outdoor, Inc. v. Taouil*, 254 S.W.3d 234, 237 (Mo. Ct. App. 2008)(holding that portions of the deposition testimony should not be admitted, especially those portions that are inadmissible hearsay).

5. This requested deposition designation procedure should not diminish the PSC’s stated preference for live testimony, especially since live testimony enables the PSC and the parties to ask questions of a witness. *See, e.g., USW Local 11-6 v. Laclede Gas Co.*, 2006 Mo. PSC LEXIS 1660, at *3. The MIEC recommends that the PSC include in its order that any party not be allowed to use deposition designations in lieu of live testimony of any witness.

Wherefore, for the reasons stated above, MIEC respectfully requests the PSC to grant its motion in limine, and for such other and further relief as the PSC may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR INTERVENOR MIEC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by electronic mail this 14th day of March to each person on the Commission's official service list in this case.

/s/ Diana Vuylsteke