

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

In the Matter of Union Electric Company            )  
d/b/a AmerenUE for Authority to File            )  
Tariffs Increasing Rates for Electric Service    )        Case No. ER-2008-0318  
Provided to Customers in the Company's        )  
Missouri Service Area.                            )

**AMERENUE'S MOTION TO ALLOW ADMISSION OF DESIGNATED  
PORTIONS OF DEPOSITIONS**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company") and, pursuant to Mo. R. Civ. P. 57.07(a), hereby requests the Commission to enter its order allowing the admission of designated portions of the depositions of parties' opponents into evidence. In support thereof, the Company states as follows:

**Background**

1. Upon objection, the Bench has ruled that entire deposition transcripts will not be received into evidence in this case. The Company does not seek reconsideration of that order. However, insofar as admissions in depositions are admissible under Mo. R. Civ. P. 57.07(a), and given the change in the Bench's ruling since the Company's last rate case, the Company is, by this Motion, requesting the Commission to issue an order authorizing the admission of selected designated admissions from depositions of parties' opponents taken in this case.<sup>1</sup>

**The Applicable Law**

---

<sup>1</sup> The Commission has routinely admitted deposition transcripts in evidence in past cases, presumably based upon the Commission's discretion to do so under Rule 57.07(a)(2) and in recognition of the limited hearing time often available in complex Commission cases. *See, e.g., In re: Union Electric Company*, Case No. ER-2007-0002 (where depositions of numerous Company and Staff witnesses were admitted into evidence); *Oler v. Folsom Ridge, LLC*, Case No. WC-2006-0082, 2007 Mo. PSC LEXIS 246, 6 (Commission order indicating deposition testimony could be used); *Laclede Gas Company*, Case No. GR-2004-0273, 2007 Mo. PSC LEXIS 179 (Deposition admitted into evidence), and *Laclede Gas Company*, Case No. GC-2006-0390, 2007 Mo. PSC LEXIS 145, 1 (Deposition admitted into evidence).

2. The current version of Rule 57.07(a), which was amended substantially just a few year ago (effective January 1, 2002),<sup>2</sup> provides as follows:

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.

This rule, like the Rules of Civil Procedure generally, applies to contested case proceedings before the Commission. Section 536.073 RSMo (2000).<sup>3</sup>

3. That portion of Rule 57.07(a) relating to those parts “admissible under the rules of evidence” is interrelated with Rule 57.07(b)(4), which recognizes that objections “to the competency, relevancy or materiality” of deposition testimony is not waived by the failure to object at the deposition.

4. All of the depositions from which AmerenUE will be offering admissions were properly noticed to counsel for all parties and the deponent under Rule 57.03(b)(1). Subject only to proper objections, if made and if then sustained as to “competency, relevancy or materiality,” the admissions contained in those depositions are admissible in this case because all parties were either represented at the deposition or had “proper notice thereof.” Rule 57.07(a).

5. All of the depositions from which AmerenUE will be offering admissions were taken of persons who already had pre-filed testimony in this case, and thus of persons acting within the scope of the responsibilities and authority for the party on whose behalf their prefiled testimony and deposition testimony was given. The depositions are thus admissible as admissions of a party opponent. *See, e.g., Bynote v. National Super Markets, Inc.*, 891 S.W.2d 117, 124 (Mo. banc 1995); *Still v. Ahnemann*, 984 S.W.2d 568, 572 (Mo. App. W.D. 1999);

---

<sup>2</sup> Prior to the 2002 revision, the Rule contained restrictions that generally limited the use of depositions to impeachment or to situations where the witness was unavailable to give live testimony. Under the post-2002 version of the Rule, the availability of a witness for a party opponent is irrelevant.

<sup>3</sup> “In any contested case before an agency created by the constitution or state statute, any party may take and use depositions in the same manner, upon and under the same conditions, and upon the same notice, as is or may hereafter be provided for with respect to the taking and using of depositions in civil actions in the circuit court.”

*United Services of America, Inc. v. Empire Bank of Springfield*, 726 S.W.2d 439, 444 (Mo. App. S.D. 1987); *McComb v. Vaughn*, 218 S.W.2d 548, 550 (Mo. 1948).

6. Indeed, failure to admit these designated deposition admissions would constitute reversible error. See *Henson v. Board of Educ. of the Washington Sch. Dist.*, 948 S.W.2d 202, 211 (Mo. App. E.D. 1997) (“The Trial court’s refusal to permit the District to present Henson’s admissions by way of deposition was prejudicial error.”).

#### **AmerenUE’s Request**

7. In circuit court actions, a common practice, particularly in jury trials, is to file deposition designations so that any objections can be ruled upon, and then have the attorney for the party offering the designations ask the designated questions to a member of the attorney’s staff with the staff member reading the answers from the deposition transcript to the jury. In bench trials, the trial judge often dispenses with this time consuming process by reading the designated questions and answers himself or herself as part of the trial judge’s deliberations. The same process could be followed here by the Regulatory Law Judge and the Commissioners.

8. The Company is amenable to following either process here. However, the Company respectfully suggests that the better and more efficient practice in complex and lengthy Commission cases such as this rate case would be for the party offering the designated portions of the depositions to type, by page and line number, all designations that are to be received into evidence, to file those designations, and to also file the original deposition transcript in the case docket so that the designations could be verified for accuracy, if necessary, against the original transcript. Only the filed designations (which could be assigned an exhibit number) would be received into evidence and read by the Commissioners as part of the Commissioners’ deliberations in this case.

9. The Company also respectfully suggests that a prompt ruling on this Motion is needed so that cross-examination for future witnesses scheduled to appear in this case can be

properly prepared and streamlined. While counsel could literally ask the same questions of every witness (presumably to receive the same answer or, if not, for the witness to then be impeached with his or her prior inconsistent statement), such a process unnecessarily consumes valuable and limited hearing room time. The Company believes the Commission indeed has encouraged the use of depositions to expedite the presentation of complex Commission cases, and that Rule 57.07(a) provides the perfect vehicle to do so.

WHEREFORE, the Company hereby requests that the Commission take up this Motion during the evidentiary hearings for the purpose of receiving any desired argument on the same, and that it then make and enter its order authorizing the receipt into evidence of designated portions of the depositions of witnesses for parties' opponents.

**UNION ELECTRIC COMPANY,  
d/b/a AmerenUE**

**SMITH LEWIS, LLP**

**Steven R. Sullivan, # 33102**  
Sr. Vice President, General Counsel and  
Secretary  
**Thomas M. Byrne, # 33340**  
Managing Assoc. General Counsel  
**Wendy K. Tatro, # 60261**  
Asst. General Counsel  
Ameren Services Company  
P.O. Box 66149  
St. Louis, MO 63166-6149  
(314) 554-2098  
Phone (314) 554-2514  
Facsimile (314) 554-4014  
[ssullivan@ameren.com](mailto:ssullivan@ameren.com)  
[tbyrne@ameren.com](mailto:tbyrne@ameren.com)  
[wtatro@ameren.com](mailto:wtatro@ameren.com)

**/s/James B. Lowery**  
James B. Lowery, #40503  
SMITH LEWIS, LLP  
Suite 200, City Centre Building  
111 South Ninth Street  
P.O. Box 918  
Columbia, MO 65205-0918  
Phone (573) 443-3141  
Facsimile (573) 442-6686  
[lowery@smithlewis.com](mailto:lowery@smithlewis.com)  
**Attorneys for AmerenUE**

**Attorneys for Union Electric Company  
d/b/a AmerenUE**

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition was served via e-mail on the following parties on the 24th day of November, 2008.

Staff of the Commission  
Office of the General Counsel  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 100  
Jefferson City, MO 65101  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

Office of the Public Counsel  
Governor Office Building  
200 Madison Street, Suite 650  
Jefferson City, MO 65101  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Todd Iveson  
State of Missouri  
Attorney General's Office  
8<sup>th</sup> Floor, Broadway Building  
P.O. Box 899  
Jefferson City, MO 65102  
[todd.iveson@ago.mo.gov](mailto:todd.iveson@ago.mo.gov)

Lisa C. Langeneckert  
Missouri Energy Group  
One City Centre, 15<sup>th</sup> Floor  
515 North Sixth Street  
St. Louis, MO 63101  
[llangeneckert@spvg.com](mailto:llangeneckert@spvg.com)

Stuart Conrad  
Noranda Aluminum, Inc.  
3100 Broadway, Suite 1209  
Kansas City, MO 64111  
[stucon@fcplaw.com](mailto:stucon@fcplaw.com)

Michael C. Pendergast  
Rick Zucker  
Laclede Gas Company  
720 Olive Street, Suite 1520  
St. Louis, MO 63101  
[mpendergast@lacledegas.com](mailto:mpendergast@lacledegas.com)  
[rzucker@lacledegas.com](mailto:rzucker@lacledegas.com)

Diana M. Vuylsteke  
Missouri Industrial Energy Consumers  
211 N. Broadway, Suite 3600  
St. Louis, MO 65102  
[dmvuylsteke@bryancave.com](mailto:dmvuylsteke@bryancave.com)

Sherrie A. Schroder  
Michael A. Evans  
IBEW  
7730 Carondelet, Suite 200  
St. Louis, MO 63105  
[saschroder@hstly.com](mailto:saschroder@hstly.com)

[mevans@hstly.com](mailto:mevans@hstly.com)

Shelley A. Woods  
Missouri Department of Natural Resources  
Attorney General's Office  
P.O. Box 899  
Jefferson City, MO 65102-0899  
[Shelley.woods@ago.mo.gov](mailto:Shelley.woods@ago.mo.gov)

Carew S. Koriambanya  
The Commercial Group  
2400 Pershing Road, Suite 500  
Crown Center  
Kansas City, MO 64108  
[carew@bscr-law.com](mailto:carew@bscr-law.com)

Rick D. Chamberlain  
The Commercial Group  
6 NE 63<sup>rd</sup> Street, Ste. 400  
Oklahoma City, OK 73105  
[rdc\\_law@swbell.net](mailto:rdc_law@swbell.net)

John Coffman  
871 Tuxedo Blvd.  
St. Louis, MO 63119  
[john@johncoffman.net](mailto:john@johncoffman.net)

**/s/James B. Lowery**  
James B. Lowery

