

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 14<sup>th</sup> day of January, 2015.

In the Matter of Union Electric Company	)	
d/b/a Ameren Missouri's Tariff to Increase its	)	<b><u>File No. ER-2014-0258</u></b>
Revenues for Electric Service	)	Tariff No. YE-2015-0003

**ORDER DENYING MOTION IN LIMINE OR TO STRIKE TESTIMONY**

Issue Date: January 14, 2015

Effective Date: January 14, 2015

The Missouri Industrial Energy Consumers (MIEC) filed the direct testimony of Greg R. Meyer on December 5, 2014. On January 6, 2015, Union Electric Company, d/b/a Ameren Missouri, filed a motion asking the Commission strike a portion of Mr. Meyer's testimony concerning recovery of solar rebates paid by Ameren Missouri. Because Ameren Missouri requested that the Commission rule on its motion before rebuttal testimony would be due, the Commission ordered that any responses to the motion be filed no later than January 9. MIEC and Consumers Council of Missouri filed timely responses opposing Ameren Missouri's motion.

Ameren Missouri's motion contends that Mr. Meyer's testimony and the position it espouses on behalf of MIEC violates the terms of the approved stipulation and agreement in File No. ET-2014-0085. Ameren Missouri contends that in that stipulation and agreement, which MIEC signed, MIEC agreed it would not object to "Ameren Missouri's recovery in retail rates of prudently paid solar rebates." The stipulation and agreement further provides:

Given the Signatories' agreement that the specified amount should be paid, the only questions in future general rate proceedings regarding the recovery of solar rebate payments is whether the claimed solar rebate payments have

been made and whether they were prudently paid under the Commission's RES rules and Ameren Missouri's tariff.<sup>1</sup>

In its response, MIEC challenges Ameren Missouri's motion on both procedural and substantive grounds. Procedurally, MIEC contends that Motions in Limine are never appropriate before the Commission and that a motion to strike testimony is not appropriate in these circumstances. Substantively, MIEC contends that Meyer's testimony does not advocate that Ameren Missouri not recover the cost of its solar rebate payments. Rather, he contends that because of past over-earnings, Ameren Missouri has already recovered those payments from ratepayers and should not be allowed to "double recover" those amounts.

Addressing the procedural argument first, the Commission agrees that a motion in limine in the sense it is used in civil court is never appropriately made before the Commission. By definition, a motion in limine is intended to prevent another party from referring to some matter of evidence that would unfairly prejudice a jury.<sup>2</sup> Obviously the Commission is not a lay jury that could be misled by the mere mention of irrelevant or prejudicial testimony.

A motion to strike testimony can be appropriately brought before the Commission, but the Commission must exercise caution in dealing with such a motion at this stage of the proceeding. Mr. Meyer's direct testimony has been prefiled, but it has not yet been offered into evidence. Generally, the proper time to object to the admissibility of evidence is after it has been offered. But in some circumstances prefiled testimony may be so inappropriate

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<sup>1</sup> Non-Unanimous Stipulation and Agreement, File No. ET-2014-0085, Footnote 7.

<sup>2</sup> Black's Law Dictionary, Ninth Edition, Thomson Reuters, 2009. See also, *Jefferson v. Lyon Sheet Metal Works*, 376 S.W. 3d 37, 41 (Mo. App. E.D. 2012).

and prejudicial to make it unjust to require the other parties respond to that testimony. In such circumstances, the Commission might appropriately grant a motion to strike.

Substantively, MIEC contends the testimony that Ameren Missouri challenges does not attack the recoverability of the solar rebate costs in violation of the provisions of the approved stipulation and agreement. Instead, it attempts to show that Ameren Missouri has already recovered those costs during a period of what the witness describes as over-earnings by the company.

MIEC's argument may or may not be valid and supported by the evidence, but the Commission can only test the sufficiency of that evidence through the contested hearing process. Requiring Ameren Missouri to respond to that testimony by filing appropriate rebuttal testimony is not unfairly burdensome. For that reason, the Commission will deny Ameren Missouri's motion to strike. In doing so, the Commission makes no findings about the ultimate admissibility, relevance, or truth of the matters asserted in Mr. Meyer's testimony.

**THE COMMISSION ORDERS THAT:**

1. Union Electric Company d/b/a Ameren Missouri's Motion in Limine or to Strike Testimony is denied.
2. This order shall be effective when issued.



**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, W. Kenney,  
Hall, and Rupp, CC., concur.

Woodruff, Chief Regulatory Law Judge