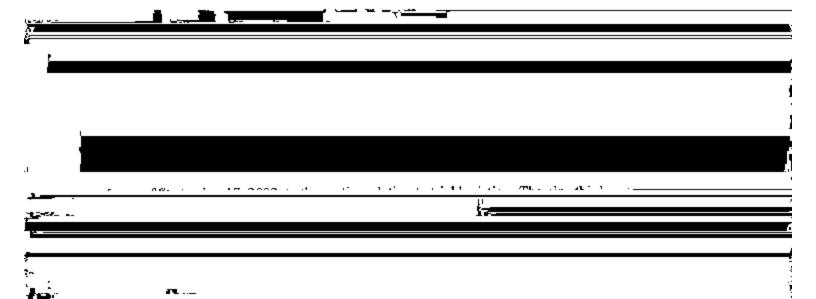
UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

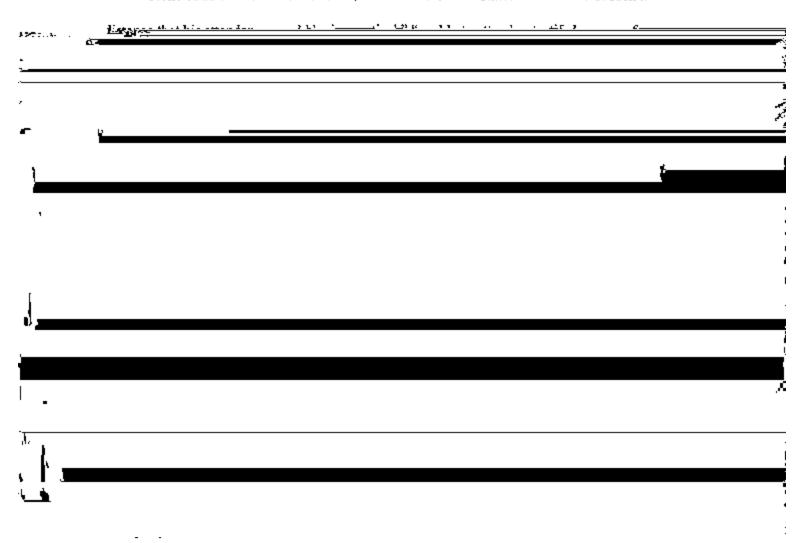


In the Matter of)
CHICAGO BRIDGE & IRON COMPANY N.V.)
a foreign corporation,	į
CHICAGO BRIDGE & IRON COMPANY	
a corporation,))) Docket No. 9300
and)
PITT-DES MOINES, INC.	(
a corporation.	



discovery depositions.

None of these witnesses are "dead," "out of the United States or is located at such a



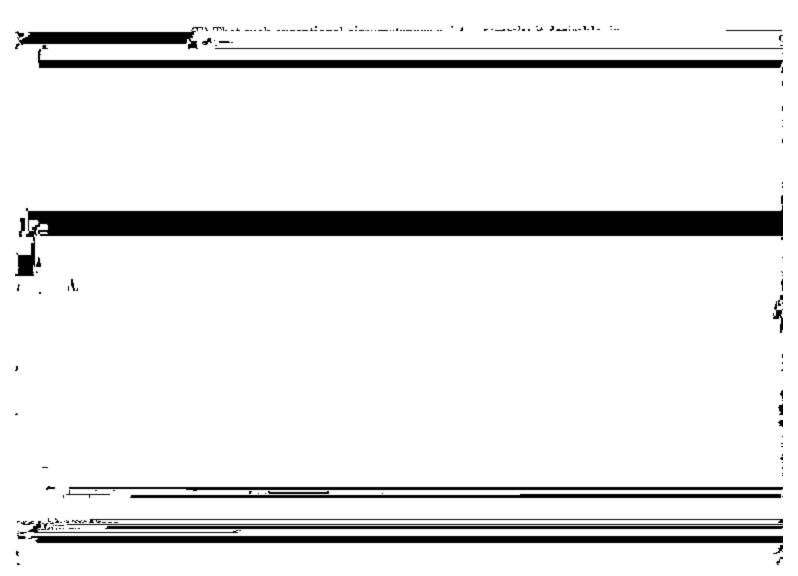
Witnesses by Deposition should be denied.

FACTUAL BACKGROUND

On September 17, 2002, this Court issued a letter to the parties stating that "Judge Chappell will allow the use of properly offered and admitted depositions of third parties in lieu of live testimony where such use is agreed to by both sides." The parties engaged in negotations relating to the use of deposition testimony of various witnesses and reached an agreement relating to several witnesses. Complaint Counsel has not agreed to use of depositions in lieu of live testimony for nine third-party witnesses referenced in Respondents' Motion because Complaint Counsel intends to cross examine these witnesses at trial.

ARGUMENT

(B) That the deponent is out of the United States or is located at such a distance that his attendance would be impractical, unless it appears that the observed of the deponent was preserved by the party offering the demonstration.



restrictions imposed by Fed. R. Civ. P. 32 codify the long-established principle that testimony by deposition is less desirable than oral testimony and should ordinarily be used as a substitute only

The Rule, however, also recognizes that depositions of party witnesses are admissions,

lives in Washington state. CB&I Letter (Oct. 8, 2002). Respondents have offered no rationale why the journey to Washington D.C. is any more arduous for some third-party witnesses than for others. In fact, Complaint Counsel and Respondents intend to call live witnesses from as far away as Alaska, California, and Washington state.

Respondents note that the third-party witnesses at issue have "extremely pressing job responsibilities that prevent them from traveling to Washington." Respondents' Motion ¶13-14.

Many of the third party witnesses Complaint Counsel and Respondents intend to call live are high high-level executives or principals in small businesses. For example, Respondents have

etated that they intend to call live Decreandants, third party witness number 8 is a vice provident

stated that they intend to call live Respondents' third-party witness number 8 is a vice president proposed would push the trial into the holiday season. Indeed, Complaint Counsel warned, in its opposition to Respondents' motion, that Respondents' requested 60-day extension would push

depositions in lieu of live testimony. II. Respondents Can Not Meet the Standards Set Out by this Court for the Use of Depositions in Lieu of Live Testimony On September 17, 2002, this Court issued a letter to the parties stating that "Judge Charles I will allow the war of meanable offered and admitted depositions of third section in time of

party may be used by an adverse party for any purpose. As explained above, the individuals at Control for the control of control of the control o III. Complaint Counsel Would Be Prejudiced by the Use of Deposition in Lieu of Live Testimony for the Witnesses at Issue would lose the ability to pursue those issues later at trial. Further, Respondents elected to use leading questions in conducting their examination of the witnesses, as is their right in conducting discovery. Complaint Counsel did not interfere with

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	witnesses are employees of The Williams Companies, which sold its Cove Point LNG facility to
	Dominion Resources, Inc. on Sept. 5, 2002. Respondents disclose, in their Supplement to
	Respondents' Motion to Call Certain Witnesses by Deposition, filed November 4, 2002, that the
	two witnesses have been assigned to other duties at Williams. Respondents' Supplement ¶ 3.

purposes of cross examination and would have the witness confirm the statements in the declaration. These statements record the perception of the witness at the time of the acquisition.

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Respondents cros	ss examined the witness :	regarding the content	s of the declaration	. The
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		<u> </u>	د ۱۳۶۶ به ماهد دستان آخورین <u>دست.</u>	1
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UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

In the Matter of	
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a foreign corporation,)
)))) N COMPANY)
CHICAGO BRIDGE & IROI	.)
CHICAGO BRIDGE & IROI) N COMPANY) c conditions required under FTC Rule 3.33 (g)(1)(iii), 16 C.F.R.
CHICAGO BRIDGE & IROI Respondents have not met the	.)
CHICAGO BRIDGE & IRON Respondents have not met the 3.33 (g)(1)(iii), or the condition	c conditions required under FTC Rule 3.33 (g)(1)(iii), 16 C.F.R.
CHICAGO BRIDGE & IRON Respondents have not met the 3.33 (g)(1)(iii), or the condition	c conditions required under FTC Rule 3.33 (g)(1)(iii), 16 C.F.R. ons set out in this Court's letter of September 17, 2002, for the use

	IT IS FURTHER ORDERED that Respondents may present the testimony of these
witne	sses live.

ORDERED

D. Michael Chappell Administrative Law Judge

Date: November , 2002

CERTIFICATE OF SERVICE

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