

In the Matter of the Application of Union Electric)
Company d/b/a Ameren Missouri for Permission and)
Approval and a Certificate of Public)
Convenience and Necessity Authorizing)
it to Construct, Install, Own,) File No. EA-2012-0281
Operate, Maintain, and Otherwise Control and Manage)
A Utility Waste Landfill and Related Facilities at its)
Labadie Energy Center.)

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Company” or “Ameren Missouri”), and in compliance with the Commission’s January 9, 2014 *Order Revising Procedural Schedule* hereby files its statement of positions on the issues in this case, as follows:

Yes. Under the well-established standards governing when CCNs are “necessary or convenient for the public service,”¹ the evidence overwhelmingly establishes that a CCN should be issued. The law in Missouri is that the term “necessity” in Section 393.170 “does not mean ‘essential’ or ‘absolutely indispensable,’” but rather, it means that “an additional service [the proposed utility waste landfill (“UWL”) here] would be an improvement justifying its cost.” *State ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593 (Mo. App. 1993) citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d , 216, 219 (Mo. App. 1973). Moreover, CCN requests are to be judged in terms of whether the CCN promotes the utility’s

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ability to meet its statutory obligation to provide safe and adequate service *to its customers* at just and reasonable rates.²

As applied to the proposed landfill, the law is that “[i]f it [here, the proposed landfill] is of sufficient importance to warrant the expense of making [building] it, it *is a public necessity*” within the meaning of the Public Service Commission Law. *State ex rel. Mo., Kan. & Okla. Coach Lines*, 179 S.W.2d 132, 136 (Mo. App. W.D. 1944) (emphasis added). Put another way, the issue is whether Ameren Missouri needs the UWL to dispose of the coal combustion residuals (“CCRs”³) produced by the Labadie Energy Center so it can produce the electricity it needs to provide service to its customers at just and reasonable rates. The evidence in this case overwhelmingly establishes that the answer to that question is “yes.”

It is undisputed that coal-fired power plants produce CCRs that must be disposed of. It is undisputed that the existing ash ponds at the Labadie Energy Center are nearing capacity. It is consequently undisputed that the Company must have an alternative means of disposing of the CCRs the Center produces. The substantial and competent evidence in this case demonstrates that not only are there numerous practical problems with and risks posed by any other alternative for disposal, but also choosing another alternative would be far more (and unnecessarily) costly for ratepayers, as the table below demonstrates:⁴

² Section 393.130.1 (requiring utilities to provide safe and adequate service and that its charges be just and reasonable).

³ The phrases coal combustion products, coal combustion residuals and coal ash are generally used synonymously. The United States Environmental Protection Agency generally uses the acronym CCRs, which we use herein.

⁴ This table appears in the Surrebuttal Testimony of Ameren Missouri witness Craig Giesmann at p. 18.

SCENARIO	SCENARIO DESCRIPTION	COST OF SCENARIO ⁵
One	On-Site Labadie UWL	\$256,878,736
Two	Transport CCPs to Off-Site UWL ⁶	\$351,198,736
Three	Transport CCPs to Commercial Landfill	\$516,402,000

There is also no question but that the “improvement” – the UWL here – is justified by its cost. The Company must have a means to dispose of the CCRs generated at Labadie, and the evidence demonstrates that the only practical (financially and otherwise) alternative is to construct a UWL designed and constructed to comply with the Missouri Department of Natural Resources (“MDNR”) Utility Waste Landfill regulations, which are codified at 10 CSR 80-11.010. The CCN requested in this case will allow that necessary construction to take place.

The Commission’s Staff agrees that the CCN should be issued. Staff Auditor John P. Cassidy testified that “Ameren Missouri has provided analysis and cost studies to Staff that indicates that the Company has sufficiently evaluated the necessary capital costs and ongoing operating costs associated with the proposed project. This analysis substantiates that the project is economically feasible for Ameren Missouri.”⁷ Staff witness Daniel I. Beck also recommends that the Company’s request be approved, with conditions relating to the issuance of permits, which we address in Issue No. 2 below.⁸

⁵ Present value of revenue requirements through 2058.

⁶ In addition to other practical and financial concerns, this option would require off-site movement of between 160 to 200 trucks *per working day*. Giesmann Surrebuttal, p. l. 8-14. The same is true for Scenario 3.

⁷ Cassidy Rebuttal Testimony, p. 5, l. 4-7.

⁸ Mr. Beck has adopted the original Rebuttal Testimony of Claire Eubanks, who is absent on maternity leave.

A review of the pre-filed testimony in this case demonstrates that the dispute in this case is not about any of the things that fall within the core of the Commission's delegated authority and expertise – the need for the issuance of the CCN to facilitate and promote providing electric service to Ameren Missouri's customers at just and reasonable rates. Early in this case we opposed Labadie Environmental Organization's ("LEO") and the Sierra Club's intervention requests, pointing out that they were and are asking the Commission to wade into the design, construction and operation of a UWL, even though all of those issues, by statute, have been delegated to MDNR, which has 11 pages of regulations governing UWL siting, design, engineering, construction and operation. The Commission exercised its discretion to allow the interventions, noting that in its view the scope of what it should ultimately consider in deciding this case was not an issue it believed should be resolved at the intervention stage of the case, but rather, that it would resolve that issue after the evidentiary hearings were held. The Company of course respects the Commission's decision and, despite its belief that this is not the proper forum to debate UWL design, construction and environmental protection, has endeavored to provide the Commission information based on science, data and facts with respect to all of the issues Intervenor have raised.

The Company will not unduly lengthen this filing with a blow-by-blow rebuttal of the many points Intervenor attempt to make through their witness Charles Norris's testimony, or via the local public hearing testimony presented, predominantly, by LEO or Sierra Club members. Ameren Missouri witnesses Craig Giesmann, a civil engineer and the project manager for the UWL project, Tyler Gass, a hydrogeologist, Steven Putrich, a civil and environmental engineer and expert in the design and construction of UWLs, and Dr. Lisa J.N. Bradley, a toxicologist, have fully and thoughtfully addressed Intervenor's many contentions, as a review of their pre-

filed testimonies will demonstrate. We urge you to review their testimonies carefully and to ask them questions during the evidentiary hearings.

The evidence in this case more than adequately should assure the Commission that the proposed UWL is properly designed for safe and environmentally sound operation, and as earlier noted, is certainly an improvement worth the cost and is by far the most cost-effective way for the Labadie Energy Center to dispose of the CCRs that it must dispose of so that the Company can continue to generate low-cost power from Labadie to serve its customers. As we discuss below, we agree the Commission should condition exercise of authority under the CCN the Company seeks on obtaining the required MDNR permits. Those permits will of course not be obtained unless MDNR itself is satisfied that indeed the UWL is properly designed for safe and environmentally sound operation in accordance with its extensive regulations.

The bottom line is that application of the statutory standard that governs the Commission's decision in this case leads to the conclusion that the CCN request is proper and should be granted. This is true whether the Commission follows the case law that interprets Section 393.170, as discussed above, or looks to certain factors that it has sometimes applied as a guide to making CCN decisions, such as the five factors outlined in *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994) and other cases, which are as follows:

- Whether there is a need for the facilities and service;
- Whether the applicant is qualified to own, operate, control and manage the facilities and provide the service;
- Whether the applicant has the financial ability for the undertaking;
- Whether the proposal is economically feasible; and
- Whether the facilities and service promote the public interest.

We've already discussed the need for the UWL. Ameren Missouri, under the Commission's supervision and jurisdiction, has operated complex power plants, utility

infrastructure, and has managed CCRs for decades. Moreover, if Ameren Missouri were not qualified to own, operate control and manage the UWL, MDNR will not grant it a Construction Permit. As indicated in the verified Application filed in this case and although the UWL investment is not insubstantial, Ameren Missouri has sufficient funds to construct and operate the UWL, the cost of which is rather minor as compared to the size of Ameren Missouri's rate base. The Company also presented evidence that the proposed UWL is by far the most economically advantageous option for disposing of the CCRs generated at Labadie, and the Staff agrees. And finally, this state-of-the-art UWL, designed to comply with MDNR's comprehensive regulatory requirements which are protective of the environment, will clearly promote the public interest and, more particularly, will promote the Company's ability to provide safe and adequate service at just and reasonable rates.

2. *If the Commission decides to grant the CCN, what conditions, if any, should the Commission impose?*

The Staff had originally suggested six conditions, which are summarized (using bullets) on page 5 at lines 1- 8 of Mr. Beck's Supplemental Testimony. The items described in the third, fourth and fifth bullets are no longer an issue, as all required letters or permits mentioned in those bullets have been obtained and provided. The items described in the first two bullets are in actuality one item in that the MDNR-SWMP design approval mentioned in the first permit is obtained and issued as part of MDNR's issuance of the Construction Permit mentioned in the second bullet. As noted above, we expect the Construction Permit to be issued in late May. The Company will then obtain the routine but required land disturbance permit mentioned in the last bullet.

Consequently, the Company agrees it is appropriate to condition the Company's exercise of authority under the CCN requested herein on the Company obtaining and providing to the Commission the Construction Permit from MDNR, and the land disturbance permit, also from

MDNR, as described above. No other conditions should be imposed on the CCN requested herein.

WHEREFORE, Ameren Missouri respectfully submits its statements of position.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via e-mail to the following on March 21, 2014:

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