

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

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)	

**RESPONSE OF INTERVENORS LABADIE ENVIRONMENTAL ORGANIZATION and
SIERRA CLUB TO AMEREN’S MOTION FOR CLARIFICATION AND/OR MOTION
FOR RECONSIDERATION**

Intervenors Labadie Environmental Organization (LEO) and Sierra Club file this response in opposition to Union Electric Company d/b/a Ameren Missouri’s (“Ameren”) Motion for Clarification and/or Motion for Reconsideration (“Motion”).

1. In its Motion, Ameren asks that it alone be given special grace for missing the June 28 deadline for the filing of surrebuttal/cross-surrebuttal testimony and that the other parties be precluded from receiving the same opportunity it seeks to reserve for itself. It should be denied the chance to manipulate the Commission’s rules in this way.

2. The original March 19, 2013 Order Adopting Procedural Schedule called for a public hearing the week of June 24, with Ameren’s surrebuttal and other parties’ cross-surrebuttal due June 28, 2013 – after the public hearing.

3. Considerable testimony and documents were submitted at the June 25 public hearing, and Ameren neither filed any surrebuttal testimony by the June 28 deadline nor sought an extension of the deadline. Ameren knew at the close of the June 25 public hearing that the

Commission was likely to schedule a second public hearing to accommodate the numerous people who were unable to speak at the first hearing.

4. After additional testimony and documents were submitted at the July 10 public hearing, Ameren still did not seek leave to file belated surrebuttal testimony after the July 10 public hearing.

5. Instead, Ameren waited until its August 2, 2013, motion, in which it sought to strike documents filed at both public hearings, to belatedly seek another opportunity to file surrebuttal testimony.

6. Recognizing these facts, the Commission's August 14 Order Revising Procedural Schedule essentially moved the deadline for surrebuttal and cross-surrebuttal testimony from June 28 to September 13 in light of the considerable testimony submitted at the public hearings.

7. Ameren's argument that the Commission's August 14 Order removes Ameren's entitlement to the "last word" ignores the fact that the Order preserves the same order of testimony as the parties agreed to, and the Commission adopted, in the original March 19 Order Adopting Procedural Schedule – i.e., Ameren files surrebuttal testimony and all other parties file cross-surrebuttal testimony at the same time.

8. Further, Ameren's August 22 motion is premised in part on a misreading of one sentence uttered by Intervenor's counsel at the June 19 prehearing conference. At that hearing, counsel stated that Ameren's direct testimony – a total of seven pages signed by a lay witness – was so thin that Intervenor's decided not to submit rebuttal testimony. Submitting rebuttal testimony would have simply given Ameren the chance; to make its case on surrebuttal after having filed the skimpiest of direct testimony. Counsel of course has no obligation to share trial

strategy with Ameren and felt no need to elaborate on that sentence, but unfortunately it has taken on a life of its own in Ameren's recent filings.

9. At the same time and in response to comments by Ameren's counsel, Intervenors' counsel also mentioned the importance of the public hearing to Intervenors Labadie Environmental Organization and the Sierra Club. As grassroots organizations representing affected communities, it is important to the Intervenors that members of the affected public have the opportunity to express their well-researched concerns. As indicated at the June 19 prehearing conference, Intervenors' counsel had observed members of the public present compelling, well-documented testimony at several public hearings in Franklin County regarding zoning matters, and was expecting similar presentations at the Commission's public hearing. Ameren uses these statements to suggest, inappropriately, that Intervenors planned an end run around the procedural rules. In fact, Intervenors were attempting to avoid the negative effects of *Ameren's* apparent strategy of lying in wait and pouncing on surrebuttal. While Ameren makes frequent mention of fairness and due process, allowing it to sandbag is not fair and deprives the other parties of their right to due process. Nothing about Intervenors' statements at the June 19 pre-hearing conference should cause the Commission to grant Ameren's request for clarification or reconsideration.

10. Finally, Ameren erroneously claims that Intervenors waived the right to file cross-surrebuttal by not filing rebuttal testimony. (Motion at 3-4). This claim misconstrues the role of cross-surrebuttal testimony. Nothing in the Commission's rules makes the filing of rebuttal testimony a prerequisite to the filing of cross-surrebuttal testimony.

11. The Commission's August 14 Order essentially re-setting the deadlines for surrebuttal and cross-surrebuttal is entirely within the Commission's rules. None of the cases

cited by Ameren is to the contrary. Intervenor's do not plan to ask for additional relief as in *Ahlstrom Development Corp. v. Empire District Electric Co.*, No. EC-1995-0028 1995 WL 789409 (Mo. P.S.C. Nov. 8, 1995), misuse testimony as in *Orler v. Folsom Ridge LLC*, No. WO-2007-0277, 2007 WL 1266552 (Mo. P.S.C. Apr. 12, 2007), or untimely intervene and belatedly offer direct testimony as in *In re Union Electric Co. d/b/a Ameren Missouri's Voluntary Green Program*, EO-2013-030, 2013 WL 1088576 (Mo. P.S.C. Mar. 6, 2013).

12. The Commission's August 14, 2013 Order was fair and reasonable. Ameren received the relief it sought in its August 2 motion – a chance to file surrebuttal testimony and respond to issues raised by members of the public. Ameren makes much ado about the Commission's straightforward decision essentially to change from June 28 to September 13 the deadline in the original Order Adopting Procedural Schedule for filing surrebuttal and cross-surrebuttal testimony. Both Ameren and all other parties are in the same position as they were under the original Order, save for a later deadline that applies to all parties.

13. Intervenor's urge the Commission to deny Ameren's Motion for Clarification and/or Motion for Reconsideration.

Respectfully submitted,

LABADIE ENVIRONMENTAL ORGANIZATION
SIERRA CLUB

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was sent via email on August 26, 2013, to all parties of record.

/s/ Elizabeth J. Hubertz