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, Operate, Maintain and Otherwise Control and Manage A Utility Waste Landfill and Related Facilities at its Labadie Energy Center.

File No. EA-2012-0281

INTERVENORS' POST-HEARING REPLY BRIEF

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I. INTRODUCTION

Intervenors Labadie Environmental Organization (LEO) and Sierra Club ask the Commission to deny Union Electric Company d/b/a Ameren Missouri's (Ameren) Application for a Certificate of Convenience and Necessity (CCN). Ameren has not met its burden of showing that the proposed construction of a coal ash landfill in the floodplain of the Missouri River is necessary or convenient when all of the applicable costs and risks are taken into account. In the alternative, Intervenors ask the Commission to condition any granting of the application on Ameren's compliance with the conditions proposed by Intervenors.

II. THE COMMISSION CAN AND SHOULD HEAR ALL OF THE ISSUES IN THIS CASE.

Staff and Ameren repeatedly urge the Commission to defer blindly to the Missouri Department of Natural Resources (DNR) and pay no heed to the numerous risks posed by Ameren's proposed Labadie landfill. They argue that the issues raised by Intervenors relating to the natural hazards of the proposed landfill site, including the possibility of flooding, earthquake

damage, and groundwater contamination, are mere distractions for the Commission and should be ignored en route to approval of Ameren's certificate of convenience and necessity. Staff Br. at 10-12; Ameren Br. at 4.

However, the Commission has the authority to require any public utility under its jurisdiction:

- to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public …
- to prescribe … the installation, use, maintenance and operation of appropriate safety and other devices or appliances,
- to establish uniform or other standards of equipment, and
- to require the performance of any other act which the health or safety of its employees, customers or the public may demand …"

The Commission's power specifically allows it to require Ameren to operate its premises – including its ash ponds and its proposed landfill – in such a manner as to safeguard the public health. It can prescribe safety measures to be used in Ameren's operations. In fact it can require the performance of "any other act" in order to protect the public. The statute's plain language does not accord with the cramped interpretation the Staff and Ameren would place upon it.

Ameren invoked the Commission's jurisdiction in the first place by applying for a CCN to expand the Labadie plant's boundary "so that it can construct and operate a utility waste landfill." *Application of Union Electric Co. d/b/a Ameren Missouri for a Certificate of Public Convenience and Necessity*, ¶ 1 (filed Jan, 24, 2013) (Doc. # 10). Ameren argued that the Commission has the authority to consider issues related to its CCN application under the rubric of safe and adequate service. *See Suggestions in Opp. To Motion to Intervene*, at ¶ 6 (filed Mar. 4, 2013) (Doc # 16). In moving to dismiss the application, Intervenors pointed out that the

Commission had never before considered an application relating to a landfill and that it would necessarily involve new territory for all the parties, including the kind of safety and adequacy issues this Commission did not commonly hear. However, Intervenors lost that motion, and the Commission found that it had jurisdiction over Ameren's application because "Ameren Missouri cannot generate electricity without planning for the safe disposal of the resulting waste products." *Order Denying Motion to Dismiss*, at 3 (Apr. 17, 2013) (Doc. # 29).

Ameren makes much of the Intervenors' Motion to Dismiss (Doc. #22) and their invocation of DNR's authority to approve many aspects of the landfill as a bar to the Commission's jurisdiction. Ameren Br. at 5 n.4. But it is actually Ameren that wants to have its cake and eat it too. Ameren wants the Commission to hear its case and give the Commission's imprimatur to the proposed landfill project, but it doesn't want the Commission to engage the issues that make the landfill project risky or expensive. Ameren wants the Commission's stamp of necessity and convenience, but doesn't want the Commission to take a hard look at whether the proposed project is actually either one of these.

Consideration of the issues raised by Intervenors is a necessary and completely foreseeable result of asserting jurisdiction over Ameren's application for permission to expand its borders to construct a landfill "for the safe disposal of [the Labadie plant's] waste products." The Commission's evaluation of CCN applications typically involves the five-factor *Tartan* test. While the concerns raised by Intervenors under four of the five *Tartan* factors[1] may be more environmentally oriented than the concerns raised in many of the Commission's other CCN matters, Ameren's application for a first-ever CCN authorizing a landfill is what requires the Commission to step beyond its usual territory. Having called on the Commission to hear its case,

[1] Ameren's financial ability to build and operate the proposed landfill is not at issue.

Ameren should not be surprised when the Commission actually does so in accordance with the framework laid out in its previous decisions.

In addition, Staff and Ameren conveniently ignore the fact that DNR does not address the overarching environmental issues raised in this case:

- **Is the Labadie site Ameren's least-cost option?** Ameren evaluated no other site, and failed to account for long-term environmental costs inherent in the Labadie site. DNR has no regulatory authority to evaluate cost; that is squarely within the Commission's wheelhouse. In addition, DNR's regulatory process does not include an alternatives analysis.

- **Is the groundwater at the Labadie site already contaminated due to leakage from the existing plant's ash ponds?** DNR has not exercised its authority to require Ameren to conduct groundwater monitoring at the ash ponds, even though the water permit that DNR says it will eventually use as a means of requiring groundwater monitoring has been expired since 1999. The unlined pond was visibly leaking for two decades, may still be leaking below ground, and groundwater flows from the ponds toward the landfill site. Without knowing more about contamination at the proposed landfill site, the Commission cannot make a meaningful determination about the need for a coal ash landfill at that site, the economic feasibility of a landfill at that site, or the public interest at stake.

The Commission cannot defer to DNR's decisions as to these issues because DNR has no authority over the first question and has long-neglected its authority under the second. Having exercised jurisdiction, the Commission should consider the issues before it.

III. AMEREN HAS NOT MET ITS BURDEN OF PROVING THAT THE *TARTAN* FACTORS SUPPORT ITS CCN APPLICATION.

Ameren seems to think that it is entitled to a CCN because it will in the future need a new coal ash disposal facility for the Labadie plant's ash, it was able to acquire land next to the Labadie plant, and it really wants to use that site for a new coal ash landfill. Yet it has done

surprisingly little to meet its burden of proving that its application meets the Commission's five-part *Tartan* test for a certificate of convenience and necessity.

In its application and seven-page direct testimony, Ameren made some conclusory statements about the need for a new disposal facility and focused primarily on describing the proposed new landfill and the steps it was taking to obtain regulatory approvals for it. *Application* (Doc # 10), ¶¶ 9-11; Ex. 1. To the extent that Ameren attempted to justify its need for the proposed Labadie site, it created the misleading impression that Ameren selected the Labadie site as its least-cost option after evaluating 22 alternative sites. (*Application* (Doc # 10), ¶6; Ex. 1, at 3:17-4:11). In actuality, it had already selected the Labadie site and started acquiring the property before its consultant compiled the 22-site Rush Island and Meramec alternatives matrix and powerpoint, which contained exactly zero information about the costs of disposal.

The bulk of Ameren's witnesses' pre-filed testimony focuses not on proving why Ameren's CCN application satisfies the five *Tartan* factors but instead is devoted to a critique of the points raised by members of the public and by Intervenors' expert. When Ameren criticizes Intervenors for lack of specificity, it entirely misses – or attempts to deflect attention from – the point. As the applicant, Ameren bears the burden of proving that it satisfies the criteria applicable to the granting of a CCN. Intervenors' role is not to prove a contrary case, but to highlight the flimsiness of Ameren's case.

A. Ameren Has Not Proven That It Needs This Particular, Risky Site.

Intervenors agree that Ameren needs to do *something* with the large amount of coal waste its Labadie plant will generate over the next 24 years. Intervenors do not agree that Ameren needs to place that coal ash in a landfill located in a seismic zone that is also in a floodplain with

a high groundwater table. Ameren never looked at any other specific site and never considered the costs of any other specific site. Instead it settled on a risky site and focused on persuading everyone that the site was not really all that bad.

Ameren's story of its search for a not-that-bad landfill does not gibe with the story its own documents tell. Ameren says that it looked at the Labadie site as a regional landfill and stopped looking once DNR finished reviewing the site, using the Rush Island-Meramec matrix of 22 sites only to "evaluate the costs of transporting" coal ash. Ameren Br. at 11 (discussing Ex 2, Sch. 21 (HC) at pdf p.24). In reality, Ameren began purchasing the land for the Labadie site in 2007 and did not obtain DNR's approval for even the Preliminary Site Investigation until February 2009. The 22-site Rush Island-Meramec matrix could not have been used to evaluate the cost of anything since it includes no cost information. Ex 2, Sch. 21 (HC) at pdf p.24). In the accompanying powerpoint, the only cost figures mentioned are shown as "$ XX.XX." Ex. 2, Sch 21 (HC) at pdf pp. 8, 11, 14, 17, 20; Tr. Vol. 5 at 131:25-132:13. Ameren picked a site it liked and stuck with it. It shouldn't pretend that any more analysis than that went into the decision.

Ameren's position appears to be that as long as DNR has found the site minimally acceptable, nothing else matters, including the existence of alternatives or the methodological rigor (or lack thereof) of its selection process. Ameren Br. at 11-14.[2] The lowest common denominator approach to site selection requires Ameren to downplay the natural hazards of the site – the potential for flooding, the potential for earthquakes, and the potential for groundwater contamination – and Ameren does so.

[2] This position is at odds with Ameren's approach to the Rush Island-Meramec site-selection process in which it considered the features of potential sites that would make them more or less attractive as a landfill. The Labadie site presents a number of negatives -- being located in a floodplain, a seismic zone, near residences – although there is no indication that Ameren ever gave these any weight in connection with the Labadie site. Ex 2, Sch. 21 (HC) at pdf p.24; Ex. 300 at 22:1-7.

Ameren knew that the base of any landfill built at the Labadie site would necessarily be in contact with the groundwater. It told DNR: "[T]he site conditions require a design that will result in intermittent contact of a small percentage of the constructed bottom liner (primarily at the sumps) with the alluvial groundwater." Ex. 4, Sch. CJG at 3-2 pdf p. 26. When the landfill touches the groundwater, it increases the likelihood that the landfill contents will enter the groundwater – this is the reason that EPA's proposed regulation requires a two-foot gap between the base of the landfill and the upper limit of the natural water table. [3]

Ameren disagrees, and argues that because the landfill is lined, no groundwater contamination can occur, and that its leachate system[4] can safely dispose of any rainwater that mixes with the coal waste. Ameren Br. at 15-17 (citing testimony of Ameren experts Putrich and Gass). The EPA is not so sanguine about the permanent impenetrability of landfill liners, or the operation of leachate systems, noting in connection with its hazardous waste regulations that "most land disposal units, however well designed, will eventually leak after closure to some extent." EPA, Hazardous Waste Management System; Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and EPA Administered Permit Programs, Interim Final Rule, 47 Fed. Reg. 32274**,** 32313 **(**July 26, 1982**);** *see also* EPA, Hazardous Waste Management System; Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities and EPA Administered Permit Programs, Proposed Rule, 46 Fed. Reg. 11126, 11127-11128 (Feb. 5, 1981) (noting that very low permeability clay is not impermeable, that manmade impermeable

[3] Ameren argues through its experts that EPA's proposed rule contains some sort of *de minimis* exception to the two-foot requirement, although the language of the rule itself does not. Ameren Br. at 16 n.10. Ameren is betting the farm on its experts' construction of the proposed rule, since if they are wrong it would be an expensive mistake to fix. Tr. Vol. 5 at 270:13-71:5.

[4] The leachate system is the part of the landfill that is in contact with the groundwater and it is expected to contain 1-3 feet of coal ash mixed with water at most times. Ex. 2, Schedule 23, Appendix Z (in Part 4 of Schedule 23, Appendices A – Z, Figures, Tables, etc., pdf p. 472)

materials eventually deteriorate, and that leachate collection systems do not have 100% liability, especially once they are no longer regularly maintained). Ameren's reliance on its leachate system to prevent contact with the groundwater overlooks another feature of its proposed system – the excess leachate will be pumped into the existing (and leaky) ash ponds if it is not transported off site.[5] Tr. Vol. 5 at 165:17-20.

Ameren also downplays the groundwater contamination risk by arguing that its groundwater monitoring network will quickly detect any leaks so that it can respond immediately. Leaving aside the swiftness of its past response to news of coal-ash leaks – it took Ameren more than 20 years to remedy one of them[6] -- there are problems with the monitoring wells' design. Most of the wells are designed to detect contamination at the top of the alluvial aquifer, as though groundwater flows only in a horizontal direction. Ex. 301 at 4:9-5:3. In actuality, as a standard principle of hydrogeology, groundwater flow contains both a horizontal and a vertical component and to determine groundwater flow, one must measure both. Tr, Vol. 7 at 602:22-604: 23; 604:7-13.[7] Ameren did not measure the vertical gradient and thus cannot calculate vertical flow at the site. Tr. Vol. 7 at 605:10-15. It therefore has no idea whether its shallow-well monitoring system will detect leaking contaminants.[8]

Nonetheless, Ameren expert Gass testified that it was unnecessary to account for vertical gradient because it is two orders of magnitude smaller than the horizontal gradient. Tr. Vol. 5 at 600:24-01:25; 608:21-609:7 Even if he is correct about this – and vertical gradient was never

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[5] The many failures of Ameren's existing ash ponds are discussed in section III.B below.

[6] *See* Exs. 13 and 326; Tr. Vol. 5 at 162:21-163:23 (discussing same).

[7] Although admittedly somewhat simplified, to find the direction of groundwater flow, one first multiplies horizontal gradient times horizontal conductivity to get horizontal flow and vertical gradient times vertical conductivity to get vertical flow. The two flow numbers can then be plotted on an x,y graph to show overall flow. Tr. Vol. 7 at 604:7-13.

[8] Both Andrews Engineering and Intervenors' expert Charles Norris are in agreement on this point and stated that deep wells would be a necessary part of any landfill monitoring system. Ex. 302 at 4:9-5:3.

measured – it still does not demonstrate that the shallow wells will adequately detect contaminants as they move away from the landfill. Two orders of magnitude greater means that if the groundwater moves one hundred feet in a horizontal direction it will move one foot in a vertical direction. Tr. Vol. 5 at 609:3-7.[9] Given the size of the landfill, the distance from the center to the edge where the shallow wells are located is large enough that the escaping contaminants are likely to flow under the wells and escape detection.[10] *See* Ex. 301 at 9:5-19.

Ameren expert Tyler Gass also testified that groundwater has an upward vertical gradient at the river's edge, pointing to Exhibit 1000, a 3-D depiction of the Labadie area containing arrows showing the horizontal direction of groundwater flow. Tr. Vol. 7 at 609:16-610:3; 615:11-19. As Gass acknowledged, however, that document shows a vertical upgradient at a place very close to the river, but not where the ash ponds, the landfill or most of the monitoring wells are located. Tr. Vol. 7 at 616:9 -617:4.

Finally, Ameren argues that even if coal ash contaminants did enter the groundwater, they would be unlikely to harm anyone because the toxicity of coal ash is "grossly overstated." Ameren Br. at 14 (discussing testimony of expert Lisa Bradley). Dr. Bradley's cherry-picked data are discussed in more detail below in section III.B, but when all of the data are considered, including the numbers she overlooked, it is apparent that the Labadie coal ash is significantly more toxic than she claims and that the constituents of coal ash are either harmful at any blood level or are harmful at much lower dose, longer term exposures. Tr. Vol. 5 at 276:23-277:8

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[9] Witness Gass testified at the hearing that the wells were 18-25 feet deep and provided no elaboration on this number. It would appear that he was referring to the number of feet below the ground rather than the number of feet below the groundwater elevation which is itself several feet below the ground surface. Tr. Vol. 7 at 599:15-17; Ex. 4, Appendix Q at pdf. p. 37 (column indicating well depth below surface). It is the well's location within the groundwater table that matters, and those depths will be shallower.

[10] On this same principle, the shallow wells surrounding the landfill area are unlikely to detect groundwater contamination from the unlined ash pond which is 1500-2000 feet from the closest landfill monitoring well. Tr. Vol. 7 at 610:22-611:1.

(lead); 278:11-15 (arsenic); 304:6-14 (use of log scale on bar graph to minimize numeric differences). It is also apparent that for six months out of the year –when the river is high -- the direction of the groundwater flow shifts from its general riverward direction to flow eastward, in the direction of drinking-water wells. Ex. 4, Sch. CJG-ST1, at 3-27, pdf p. 51 ("During periods of high river level, groundwater flow generally is to the east-southeast."); Ex. 2, Schedule 10, Part 1, at pdf p. 34 (from April to November flow is generally eastward); Ex. 333 (map of area showing wells to the east of the landfill).

Ameren may have a need for the disposal of the large amounts of coal ash its Labadie coal-fired plant will generate, but it does not have a need for the proposed landfill project for which it seeks the CCN. It selected a risky site without considering alternatives and it discounted the real problems it knew it would encounter at the site; problems which could have been avoided had alternative sites been considered. It has not met its burden under the first *Tartan* factor.

B. Ameren Has Not Proven That It is Qualified to Build and Operate a Utility Waste Landfill.

Ameren apparently assumes that because it's Ameren, it need not prove that it is qualified to build and operate a utility waste landfill. Ameren Br. at 22. Its CCN application and direct testimony are silent on the issue. In his third pre-filed testimony, Ameren's representative Craig Giesmann offered two sentences in support of Ameren's qualifications. First, he mentioned DNR's issuance of a permit for a UWL at Ameren's Sioux plant. Ex. 3 at 9:6-10. But Mr. Giesmann admitted at the hearing that Ameren has just begun operating a dry utility waste landfill at Sioux like the one proposed here. Tr. Vol. 5 at 206:23-207:1. In other words, Ameren has no experience yet operating a dry coal ash landfill. In addition, DNR has already raised

concerns about arsenic contamination in the groundwater at that site so Ameren's operation of the Sioux site is off to a rocky start. Ex. 358 at 3.

Mr. Giesmann's second sentence noted that "Ameren Missouri has extensive experience with large earth moving operations." Ex. 3 at 9:10-12. Apart from the fact that earth moving will be required to prepare the site for the landfill's construction, this says virtually nothing relevant to Ameren's qualifications to build and operate a utility waste landfill. To the contrary, this attempt to cast around for something Ameren does that might have some connection with landfill operation underscores Ameren's weak case on this point.

Ameren's brief and most of its prefiled testimony attempt to critique Intervenors' and the public's concerns. The fact that Intervenors and the public have raised concerns about cost and safety does not shift the burden of proof to them; it remains with Ameren. Even if the Commission were to discount the concerns raised by Intervenors and the public, Ameren has not met its burden of proving that it is indeed qualified to build and operate the proposed landfill.

The Commission should not discount Intervenors' and the public's concerns, however. Ameren's failure to conduct groundwater monitoring around the existing ash ponds, and its failure to redress the visible leakage for two decades, demonstrate its lack of qualifications to operate a coal ash landfill. While it may have been commonplace for utilities to dispose of coal ash in unlined ponds when Ameren built the unlined ash pond at Labadie in 1970, the issue here is Ameren's failure to maintain the pond once it learned of the risks of unlined ponds (at least by 1993, when it built a second, lined pond) or to test the groundwater once it was aware of ongoing leakage. This reflects a cavalier approach to facility stewardship incompatible with the responsibility of operating a coal ash landfill – permanently burying coal ash at a site with a high groundwater table, in the Missouri River floodplain, and in an earthquake zone.

While Ameren makes much of the fact that there is no data proving that its long-leaking Labadie ash pond has contaminated groundwater (Ameren Br. at 22-23; 25), the reason for the lack of data showing contamination is because Ameren has refused to test for contamination. As an excuse for its failure, Ameren claims that it did not want to undertake monitoring that might be different from what DNR might later require.

> We wouldn't want to do anything that MDNR – in terms of how they would want us to install wells.
>
> So voluntarily doing something, we would have to get their permission, and we would want to do it in the fashion, in the direction – and under their direction I think.

Tr. Vol. 5 at 160:9-15.

That excuse is specious. There is no indication that Ameren asked DNR for permission to conduct groundwater monitoring, although nothing stood in the way of its making such a request. And of course there is no indication that DNR refused to grant any such request for permission. Indeed, it is inconceivable that DNR would refuse to allow Ameren to test the groundwater at a site where coal ash wastewater was leaking for two decades and where everyone in the area relies on groundwater for drinking water. The more likely explanation for Ameren's failure to conduct groundwater monitoring at the Labadie ash ponds is that it did not want to know whether, and to what extent, the site is already contaminated. Ignorance is bliss, especially where knowledge might bring liability along with it.

Ameren also claims that "the hard scientific data suggests" that there is no contamination from the ash ponds. Ameren Br. at 28. But there is no "hard scientific data" for the groundwater near the ash ponds. The groundwater data for the proposed landfill site – which is downgradient from the ash ponds – does show numerous exceedances of federal drinking water standards, including very high arsenic levels (more than six times higher than the drinking water standard).

Ex. 8, Sch. LJNB-S13, Tables 2 and 3 (pdf pp. 66-67); Ex. 352 (Table 11). Thus, to the extent that Ameren's testing of the landfill site counts as testing "near" the ash ponds, the "hard scientific data" shows contamination.

To deflect attention from this fact, Ameren's witness Lisa Bradley theorized that these high arsenic readings are nothing more than the "natural conditions for the area." Ex. 8, Sch. LJNB-S13 at 4 (pdf p. 61). Her testimony on this point is not credible:

- Her theory is based on generic information regarding arsenic concentrations in soils – not groundwater. *Id.* at 3 (pdf p. 60).

- Her theory is well outside of her area of expertise. She is not a geologist and is not authorized to "engage in the practice of geology affecting public health, safety and welfare." § 256.456.1, RSMo.[11]

- Her theory is not based on any data showing the "natural conditions" of the groundwater and is contradicted by the only data that exist. First, Ameren has not tested the alluvial aquifer upgradient from the ash ponds, so no one knows what the natural condition of the groundwater is in that location. On the other hand, Ameren did test the bedrock aquifer upgradient from the ash ponds and found no contamination. Ex. 8, LJNB-S13 at Table 4 (pdf p. 68) The only actual data showing the natural conditions of alluvial groundwater in "the area" is found in the United States Geological Survey's (USGS) database of actual arsenic concentrations in alluvial groundwater – "hard scientific data." Those data show consistently low concentrations of arsenic in Franklin County and in surrounding counties. Ex. 353.[12]

- She repeatedly cherry-picked data to fit the story line she was hired to tell. For example:

    - While there was much concern about high concentrations of arsenic and other contaminants in the groundwater at the proposed site (but no issues raised regarding soil contamination), Dr.

[11] "Public health, safety and welfare" includes "protection of groundwater" and "waste disposal or causes of waste pollution …"

[12] While Ameren claims that the data do not indicate "current conditions" (Ameren Br. at 24 n.18), its argument misses the point. The USGS database includes all arsenic concentrations that were obtained in Franklin, St. Louis, and St. Charles Counties. In addition, Ameren offers no other data that would reflect "current conditions" in the alluvial aquifer in the area – apart from the very high levels at the site itself.

Bradley focused on contaminant concentrations in soil. Ex. 8, Schs. LJNB-S2-6 and 8-11.

- Although she provided a chart accurately downloaded from the EPA's website showing Regional Screening Levels (RSLs) for numerous contaminants (Ex. 8, Sch. LJNB-S7), she multiplied the EPA's RSL by 100 (two orders of magnitude) in creating bar graphs comparing arsenic concentrations in fly ash with EPA's RSLs. While the EPA sets RSLs for soil based on a target risk level of 10^{-6} (1 in 1 million), Dr. Bradley set the top of her bar graph depicting EPA's RSLs based on a target risk level of only 10^{-4} (1 in 10,000). Ex. 8, Schs. LJNB-S8-11.

- In comparing the concentrations of various contaminants in fly ash with EPA's RSLs (for soils), Dr. Bradley relied on fly ash from only one plant with arsenic concentrations well below industry-wide levels. Ex. 8, Schs. LJNB-S8-11[13].

- Her purported justification for relying solely on the one plant's fly ash was that the plant burned Powder River Basin coal, as does the Labadie plant. Ex. 8 at 8:14-17. According to EPA, however: "There was no clear effect of coal type at the high level categorization based on coal rank and region on As [arsenic] content in CCRs." Ex. 348 at 54-55 (pdf pp. 2-3).

Ameren could have readily obtained "hard scientific data" regarding groundwater conditions in the area by testing the groundwater at the plant site surrounding the ash ponds, including groundwater immediately upgradient and downgradient from the ponds. It chose not to, despite its knowledge of multiple long-term leaks, and now attempts to use the absence of evidence as evidence of non-contamination. When testing at the landfill site shows high levels of arsenic, Ameren attempts to explain away the test results, instead of responsibly coming to terms

[13] The fly ash she selected was from one of five plants covered in a USGS report. Tr. Vol. 5, 285:5-10. The arsenic concentrations in fly ash ranged from 17.22 – 20.9 (10^{th} – 90^{th} percentiles) for the one plant whose data she used for her testimony here, while they were 14.55 - 57.95 (10^{th} – 90^{th} percentiles) for the five plants covered in the USGTS report. Ex. 347, Tables 7, 11 (pdf pp. 9-10). Moreover, arsenic concentrations in fly ash from a 59-plant dataset analyzed by the Electric Power Research Institute ranged from 22 – 261 (10^{th} – 90^{th} percentiles). Ex. 349, Table 2-1 (pdf p. 19).

with what appears to be contamination. Ameren's penchant for specious theories rather than "hard scientific data" further demonstrates that it is not qualified to build and operate a utility waste landfill that will sit forever in the Missouri River floodplain.

C. Ameren Has Not Demonstrated That Its Proposal to Build a Utility Waste Landfill at the Labadie Site is Economically Feasible.

Ameren makes the circular and conclusory argument that the proposed landfill is economically feasible because it offers "a place to safely and economically store" its coal ash from the Labadie plant. Ameren Br. at 28. In addition to the significant safety risks posed by the Labadie site, Ameren lacks support for this claim because it has not evaluated either the costs of any other site or the costs of contamination or catastrophic damage at the Labadie site.

Although Ameren asserts that it has accounted for the risks posed by the Labadie site in the landfill design, thereby accounting for the costs as well (Ameren Br. at 29-30), the testimony and evidence prove otherwise. Ameren's representative Craig Giesmann testified that while the costs estimated for the Labadie site include the cost of DNR's design requirements related to flood and seismic risks, they do not account for the cost of remediating the damages caused by catastrophic flooding and earthquake events - events that could cause serious damage to the landfill and result in significant contamination of the surrounding area. Tr. Vol. 5 at 197:3-198:1. Nor is there any claim that Ameren's estimates include the costs associated with the contamination that is a result of the site's high groundwater table and the landfill's design that places the liner in "intermittent contact with groundwater." Ex. 2, Sch. 23, Appendix Z (in Part 4 of Schedule 23, Appendices A – Z, Figures, Tables, etc., at pdf p. 471).

Ameren's three-scenario chart (Ameren Br. at 30) and the underlying "revenue requirements" document (Ex. 2, Sch. 22 (HC)) highlight this point. Ameren's revenue requirements document (and chart in its brief) posits three scenarios: build landfill at Labadie;

build landfill at a different unspecified location; use an unspecified commercial landfill. Indeed, Ameren admits that scenario two does not reflect the costs of any particular site. Tr. Vol. 5 at 155:8-13.

In fact, scenario two is merely scenario one with transportation costs tacked on. Except for the tacked-on (and hypothetical) transportation figures, the costs presented in the revenue requirements document for scenarios one and two are identical. As Ameren indicated in testimony, it blithely assumed that any other hypothetical alternative site would have its own set of hazards – without identifying any alternative site or evaluating the risks, or lack thereof, inherent in that site. Tr. Vol. 5 at 194:19-196:6 and 201:23-203:3. Thus, scenario two is not based on any actual estimated costs for any actual alternative site. It is based on the preposterous assumption that there is no alternative site with less costly risks than the Labadie site. It is nothing but a straw man concocted to justify, after the fact, Ameren's decision to dispose of its Labadie ash at the Labadie site without identifying or evaluating the actual costs associated with alternative sites.

D. Ameren Has Not Demonstrated That Its Proposal is in the Public Interest.

Consistent with its failure to sustain its burden of proof with respect to the other *Tartan* factors, Ameren argues (1) that the proposed landfill must be in the public interest because (in Ameren's view) it prevails as to the other *Tartan* factors, and (2) the Commission should defer to DNR with respect to the concerns raised by Intervenors. Ameren Br. at 31-32. *See also* Staff Br. at 12. In passing and without support, Ameren argues that the proposed UWL would be an "improvement to its utility infrastructure." *Id.* at 32-33. Not so. It may be an "addition" but it will not be an "improvement." The existing, leak-prone ash ponds will remain at the site; Ameren is not proposing to close them or clean out the coal ash in them. Tr. Vol. 5 at 165:11-16

and 21-24. In fact, Ameren plans to continue using the ponds, even if it builds the proposed landfill, to store the excess stormwater runoff and leachate from the landfill. *Id.* at 165:17-20. Ameren's asserted "improvement" is to add one more, large area for coal ash disposal, this one in intermittent contact with groundwater, in the Missouri River floodplain and floodway, and in a seismic zone. Instead of the two existing ash disposal facilities, the Labadie plant will have three sources of groundwater and Missouri River contamination.

Staff repeats the mantra that the Labadie site is the least-cost option, Staff Br. at 12, notwithstanding the fact that it is the only site for which Ameren has presented cost information. Staff also raises the specter that if Ameren is denied the opportunity to build a coal ash landfill at the Labadie site, the plant will have to close. Staff Br. at 7, 11. There is not one iota of evidence to support the illogical notion that Ameren would close its largest baseload plant if it could not have its first choice landfill site. Staff knows better. In Data Request 16, it asked Ameren for its "contingency plans for ash disposal in the event MDNR-SWMP or Franklin County does not approve the construction permit application…" Ameren responded:

> If Ameren Missouri is unable to secure a construction permit or annual operating permit for the new Utility Waste Landfill, Labadie Energy Center will be forced to transport their Coal Combustion Products (CCP's) to an off-site landfill licensed to receive CCP waste.

AmerenUE Response to MPSC Data Request MPSC 0016.[14]

Ameren plainly has other options. It has not developed or analyzed them, however, because it decided at the outset to build a coal ash landfill at Labadie and never evaluated alternative sites for the Labadie ash. Its position in this matter is either the product of hubris – if

[14] While this was not formally submitted into evidence (as no one had previously raised the implausible argument that a decision denying Ameren use of the proposed Labadie landfill site would force the plant to shutter), Intervenors quote it here to refute the argument made for the first and only time in this proceeding in Staff's Initial Brief.

it thinks it can control the groundwater, the Missouri River, and seismic forces – or audacity-- if it is planning to roll the dice and bet that the catastrophic events do not occur during the next 44 years or so (24 years to operate the landfill and 20 years in post-closure mode). The landfill, and the coal ash buried therein, is a forever decision. It will forever pose a risk of groundwater contamination to a community dependent on the groundwater. It will forever pose a risk of contaminating the Missouri River, a significant source of drinking water for the St. Louis metropolitan region. Ameren's convenience in burying the Labadie coal ash next door to the Labadie plant does not, by itself, establish that the proposed landfill is necessary and convenient within the meaning of the PSC statute and the *Tartan* factors. Ameren has not demonstrated that it is, and its application should be denied.

IV. THE COMMISSION CAN AND SHOULD IMPOSE THE INTERVENORS' REQUESTED CONDITIONS.

In their Statement of Position, the Intervenors requested relief in the alternative. If the Commission were to grant Ameren's Application, its grant should contain the following conditions:

> (1) Before commencing construction of the landfill, Ameren must conduct comprehensive groundwater monitoring at its existing coal ash ponds, with monitoring wells both upgradient and downgradient from the ponds, and with both shallow and deep wells, pursuant to a monitoring plan approved by the Missouri Department of Natural Resources (DNR), and submit a report containing all monitoring data and analyses to the DNR and the Commission;
>
> (2) Ameren shall not be able to charge, include in its rate, or in any other way recover from ratepayers and members of the public costs attributable to environmental damage caused by the landfill, including damage to the landfill, river and surrounding area associated with flood events, damage to the landfill, river and surrounding area associated with seismic action, and contamination of groundwater resources associated with the existing ponds and/or proposed landfill;

(3) Ameren shall be responsible for all costs in excess of its current estimate of costs to construct and operate the proposed landfill and shall not be able to charge, include in its rate, or in any other way recover any excess costs from ratepayers and members of the public;

(4) Ameren must provide evidence of financial responsibility to remediate damage to, and contamination caused by, the landfill after the formal post-closure period addressed by DNR regulations;

(5) Ameren must comply with all applicable zoning, construction, operating, safety, and environmental requirements, and all other applicable laws and regulations, including obtaining and filing with the Commission the following permits and licenses: (a) a Utility Waste Landfill construction permit issued by the DNR; (b) compliance with all Franklin County construction and zoning-related rules and regulations and the issuance of a zoning permit by Franklin County allowing for the construction of the landfill at the proposed location; (c) any required transportation and/or road permits; (d) any floodplain development permits; and (e) any land disturbance or stormwater permits.

These conditions are necessary to ensure that Ameren as an entity bears the costs of its decisions regarding the proposed coal ash pond. It has argued strenuously that its proposal is the "least cost" option available to it and that it does not need to include the costs of catastrophic contamination, flooding, or collapse into its financial calculations. If Ameren is correct in the assumptions it confidently places before the Commission, then it will never have to contend with the costs of a catastrophe at the site, and the financial impact to it will be minimal. It will never have to remediate contaminated groundwater, or clean up the Missouri River.[15] On the other hand, if Intervenors are correct about the unaccounted-for potential for outsize costs, and Ameren is wrong, then it is only fair to place those costs where they belong – on Ameren's shareholders and not on the Labadie plant's neighbors or the Ameren ratepayers. Nonetheless,

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[15] *Compare* Valerie Bauerlein, *Duke CEO Lynn Good Addresses Coal-Ash Spill*, Wall Street Journal On-line (May 6, 2014) available at http://online.wsj.com/news/articles/SB10001424052702303417104579545972043311730 (last accessed May 9, 2014).

Ameren is not inclined to take this bet and opposes the inclusion of conditions (1) through (4). Ameren Br. at 33-42.

A. The Commission's Authority to Impose Conditions is Rooted in Its Statutory Responsibility to Oversee Utility Monopolies.

The Commission's authority over a utility's expansion of its business grows out of the Commission's very purpose: the protection of the public from the economic consequences of a utility having monopoly power,[16] as well as from the chaos of unbridled competition for utility customers.[17] The owners of a monopoly enterprise lack economic incentives to act in the public interest, to avoid risky investments, or even to act prudently in general, knowing that its customers have nowhere else to go, and in the case of a utility, need the services to complete the basic tasks of everyday life. Similarly, the owners of a monopoly firm have no incentive to provide environmentally safe products or services, and if compelled to incur the costs of health or safety, have no incentive to bear those costs themselves instead of passing them along to the customers.

Accordingly, the Commission is empowered to fulfill its regulatory purposes by imposing "such condition or conditions as it may deem reasonable and necessary," on any expansion of a utility's operations. Mo. Rev. Stat. § 393.170.3. Such conditions can be very specific such as requiring the utility to maintain accurate time cards for its employees or follow certain accounting procedures. *See* In *re EMC of St. Charles Cty., LLC*, SA-2007-0373, 2007 WL 4614550, at p.4 (Mo. P.S.C. Dec. 20, 2007) (time cards);*In re Environmental Utils. LLC,* WA-2002-0065*,* 2002 WL 32057492 at * 14 (Mo. P.S.C. Jun. 27, 2002) (order contains specific

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[16] *Hurricane Deck Holding Co. v. Public Serv. Comm'n*, 289 S.W.3d 260, 268 (Mo. Ct. App. 2009) (purpose of public utilities law is to protect the customer "from the natural monopoly power that the public utility might otherwise enjoy as the provider of a public necessity …").

[17] *May Dep't Stores v. Union Elec. Co.,* 341 Mo. 299, 316, 107 S.W.2d 41, 48 (1937) (before the PSC, "the only protection to consumers as to rates and service was their right to make the best contract they could with utilities in competition with each other for their business.").

accounting requirements).

Ameren argues that since the Commission is a creature of statute, it cannot award damages or impose equitable relief as could a Missouri court. Ameren Br. at 33 (citing *In re Aquila Inc.,* 2006 WL 1455774 (2006)). But Intervenors do not ask for these. Where the *Aquila* intervenors sought monetary compensation for the loss of their property value, Intervenors ask here that Ameren merely demonstrate that it is financially able to deal with disaster should it occur and that it stand by the financial representations it has made in this proceeding.

Moreover, where the *Aquila* intervenors sought to include vague and aspirational conditions in the CCN, such as full satisfaction of all their "concerns regarding decreased property values, noise, aesthetics, nuisance, pollution, safety, road damage and traffic," Intervenors here are specific about the nature of the environmental hazards facing the site, and specific about the means of addressing the hazards.

What Intervenors ask for is within the Commission's power to grant. The Commission has "plenary power to coerce a public utility corporation into a safe and adequate service," which includes "the authority to require a utility to make any necessary upgrades to its facilities." *Lollar v. AmerenUE,* 2004 WL 1842496 (Aug. 4, 2005). If Ameren's provision of electricity depends upon its use of an unsafe site with the potential to cause catastrophic environmental damage, then its service cannot be said to be safe.

The conditions that Intervenors propose grow out of the Commission's basic purpose. The proposed conditions are designed to protect the public and ratepayers from the economic consequences of Ameren's decision to build a coal ash landfill on a risky site without taking into account the environmental liabilities of the selected location. The conditions are reasonable and necessary.

B. The Commission Can And Should Make Ameren Shareholders And Not Ratepayers Liable For The Economic Consequences Of Selecting A Risky Site.

The Commission commonly protects ratepayers from risky financial decisions of utilities by placing the liability for the decision on the utilities' owners and shareholders rather than on their customers and ratepayers. For example, in *In re Southern Missouri Gas Company, L.P*, Southern Missouri Gas Company asked the Commission to grant it a CCN so that it could expand the territory in which it provided natural gas service to include the towns of Lebanon, Houston, and Licking, Missouri. The utility projected that in the proposed expansion territories, 50% of the households that were currently using propane, and 20-30% of the households that were currently using electricity would switch to natural gas, enabling the utility to generate additional revenue. The Commission was concerned that these customer conversion rates might be overly optimistic. Accordingly, the Commission conditioned its grant of the CCN as follows: "The certificates granted in Ordered Paragraphs No. 1 and 2, above, are conditioned upon the shareholders assuming responsibility for any loss associated with inaccurate estimations of the customer conversion rate or of customer usage rates." *In re Southern Missouri Gas Co., L.P.,* 2007 WL 5022617, *5 (Mo. P.S.C. 2007).[18]

[18] This is one of many territory expansion cases containing similar conditions. *In re Application of Summit Natural Gas of Missouri, Inc., for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Distribution System to provide Gas Service in Benton, Morgan, Camden and Miller Counties in Missouri, as a Certificated Area*, GA-2012-0285, 2012 WL 3544926, at p.3 (Mo. P.S.C. Jul. 17, 2012) (condition imposed at Staff request); *In the Matter of the Application of Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Natural Gas Distribution System to Provide Gas Service in Laclede County, Missouri as an Expansion of its Existing Service Area,* GA-2010-0114, 2009 WL 4023595, at p.3 (Mo. P.S.C. Dec. 16 , 2009); *In the Matter of the Application of Missouri Gas Utility, Inc., for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Distribution System to Provide Gas Service In Benton, Morgan, Camden and Miller Counties in Missouri, as a New Certificated Area*, GA-2010-0012, 2009 WL 4023595, at p.4 (Mo. P.S.C. Nov. 12, 2009); *In re In the Matter of the Application of Missouri Gas Utility, Inc., for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Natural Gas Transmission Line and a Distribution System to Provide Gas*

Like Southern Missouri Gas Company, Ameren here wants to pursue a project which has a certain economic downside if the projections turn out to be incorrect. If Southern Missouri Gas Company's estimates of the number of households that would agree to use natural gas proved incorrect, the company risked losing substantial revenue which could have an effect on its existing customers if it tried to pass along its losses. Here, too, if Ameren's estimate of the safety of the proposed site turn out to be incorrect, the damage could be substantial and could adversely affect Ameren's customers.[19]

The Intervenors have identified several ways in which Ameren's financial projections are incomplete. First, it could have underestimated the cost of the construction of the landfill due to its belief that it does not need to take any additional environmental hazards into account or plan for any additional environmental safeguards. Meeting the minimum requirements of regulatory agencies does not shield Ameren and the public from significant costs should an earthquake exceed the design requirements, should a flood overtop the berm or the berm fail. In addition, Ameren has not designed the site to account for perhaps the most costly risk – groundwater contamination. It is proposing to build the site below the groundwater table, at the very place where contaminants are collected and concentrated.

Ameren acknowledges that if it did guess wrong, the miscalculation could be costly. For example, Ameren's expert witness Steven Putrich testified that the base of the landfill liner was sufficiently above the water table to satisfy his interpretation of the requirement in proposed

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Service in Pettis and Benton Counties, Missouri, as a New Certificated Area, GA-2009-0264, 2009 WL 1323263, at p.6 (Mo. P.S.C. Apr. 29, 2009).

[19] This is a reasonable concern. As pointed out at the hearing, Ameren has in the recent past sought to have ratepayers bear the remediation costs of environmental and safety disasters. Tr. Vol. 5 at 81:11-82:6. The Office of Public Counsel was compelled to open a separate case to ensure that the ratepayers were not held harmless. *Id.*; *see also In re Public Counsel`s Motion to Open a New Case to Investigate Whether Ratepayers are Being Held Harmless From the Taum Sauk Disaster*, ER-2008-0015 (filed Jul. 12, 2007).

federal regulations for a two-foot separation between the base of the landfill and the upper limit of the natural water table, even though the liner at the leachate-filled sumps would unquestionably come into intermittent contact with the groundwater. Ex. 5 at 11:5-12:23; Tr. Vol. 5 at 238:18-39:17. However, he also acknowledged that if his interpretation of the proposed EPA regulation were incorrect, the costs of re-engineering the landfill would be significant and would likely be passed along to ratepayers. Tr. Vol. 5, at 270:13-71:5. Intervenors ask the Commission to spare the public the price of Ameren's miscalculation by imposing condition (3): "Ameren shall be responsible for all costs in excess of its current estimate of costs to construct and operate the proposed landfill … ."[20]

Ameren also did not account for its long-tail liability after the site is officially closed. The useful life of the coal-ash landfill is expected to be 44 years, including a 20-year post-closure period. But the coal ash will remain in the Missouri River floodplain in perpetuity. As the world has recently been reminded, a closed ash pond is not a safe ash pond, especially where abandonment means a lack of maintenance. [21] There is no reason to think that Ameren will maintain the landfill indefinitely in the absence of an order requiring it to do so, especially since it has made clear its unwillingness to assume environmental responsibility voluntarily at the existing Labadie ash ponds. Tr. Vol. 5 at 164:21-65:8; 244:19-245:13. For this reason, Intervenors ask the Commission to ensure that Ameren has the financial capability to fulfill its responsibilities over the long haul.

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[20] Intervenors' Statement of Position (Doc # 166) at 2 (filed March 21, 2014). Intervenors take no position as to Ameren's ability to attempt to recover its acknowledged and planned for costs in a future rate proceeding. Intervenors object specifically to Ameren's passing along of the downside risks of its landfill project which it refuses to acknowledge are legitimate expenses.

[21] *See* Michael Wines & Timothy Williams, *Huge Leak of Coal Ash Slows at North Carolina Power Plant,* N.Y. Times, Feb. 7, 2014, at A11 (plant where leaking ash pond was located had been closed for several years).

Finally, none of these risks should be placed on Ameren's customers. Just as the Commission placed the risk of financial loss on the shareholders rather than the ratepayers of Southern Missouri Gas when it applied for a certificate, Intervenors ask here that Ameren and its shareholders similarly bear the burden of Ameren's decision to place a coal ash landfill in a location with a high groundwater table that is also in a seismic zone and the Missouri River floodway, and that Ameren continue to bear those costs even after it closes the landfill.[22] Ameren has maintained throughout this proceeding that there is no basis for taking the consequences of these hazards into account and that such catastrophes are no more likely than a plane falling out of the sky and onto the Labadie Plant. Ameren Br. at 39 (allegations of risks not credible, citing hearing testimony); Tr. Vol. 5, at 169:22-170:3. If Ameren is right, there will be no losses and everyone will smile. If Ameren is wrong, its owners will rightly bear the costs of the risks they assumed.

Ameren calls this "single-issue ratemaking" and argues that it is prohibited under the Commission's rules. Am. Br. at 38-40. Single-issue ratemaking occurs when the Commission adjusts rates based on a single factor and is viewed as improper because consideration of one rate-related item alone could lead to "an inaccurate assessment of the company's revenue requirement, resulting in an unjust and unreasonable rate." *In re Noranda Aluminum Inc.,* EC-2014-0224, 2014 WL 1666320, at * 1 (Mo. P.S.C. Apr. 16, 2014). Instead, a change in the rate due to a particular change in circumstances, such as a hike in the price of a commodity, must wait until all factors can be considered together. *Id.* However, Intervenors have been unable to

[22] Ameren argues here that the condition is improper since the Intervenors did not provide an estimate of the amount Ameren ratepayers would lose in the event of a catastrophe or groundwater contamination, Ameren Br. at 35-38. ,Although CCN applicants in most cases include feasibility studies containing some financial information about the costs of the proposed project, the Commission does not seem to have required any party –Staff, intervenors or applicants -- to calculate the amount of the economic downside before apportioning liability to the shareholders over the customers. *See, e.g., In re Southern Missouri Gas Co., L.P.,* GA-2010-0114, 2009 WL 4023595.

find any cases in which adding a condition to a CCN has been deemed single-issue ratemaking, and Ameren has not cited any.[23] In the gas utility expansion cases noted above, the Commission plainly took the kind of action that Ameren describes as "single-issue rate making" – it ordered the shareholders and not the ratepayers to bear the costs of the project allowed by the CCN it granted.

As can be seen from the numerous CCN cases cited above, the time for apportioning the risk caused by territorial expansion and new construction is at the issuance of a CCN, and not in a later rate proceeding. In each of the cases cited above, it would have been possible to take the approach Ameren and the Staff urge on the Commission here: wait until the negative consequences materialize and then account for the downside in a future rate proceeding. The Commission declined to do so then, and should decline to do so now. It is within its power to include the conditions proposed by the Intervenors and they are reasonable and necessary.

C. The Commission can and should require Ameren to ensure the health and safety of its customers and the public.

As mentioned above in section II, the Commission may "prescribe …appropriate safety and other devices or appliances, … establish uniform or other standards of equipment, and … require the performance of any other act which the health or safety of … employees, customers or the public may demand. …" Mo. Rev. Stat. § 386.310.1. This broad authority to regulate

[23] In the two recent Orders cited by Ameren at page 38, the Commission stated that the CCN Order should not be considered a finding of facts binding on the Commission during future ratemakings. However, the Commission has limited the ability of a party to recover a certain financial outlay in future ratemakings as a condition of a sale of assets while simultaneously stating that the order would not preclude the Commission from "considering the ratemaking treatment to be afforded any matters, including future expenditures … in any later proceeding." *In re Joint Application of Missouri-American Water Company and Tri States Utility, Inc. for Authority for Missouri-American Water Company to Acquire Certain Assets of Tri States Utility, Inc.,* No. WO-2013-0517, 2013 WL 5133245, at*4-5 (Mo. P.S.C. Aug. 29, 2013) (conditioning sale of assets on buyer being unable to "recover any acquisition adjustment or acquisition premium in relation to this action or any future rate case"). *See also* 2010 WL 1737866 (conditions include both a "hold harmless" clause for ratepayers and a directive that "Nothing in this order precludes the Commission from considering any ratemaking treatment of any future company expenditure … pertaining to the certificate of convenience and necessity").

public health and safety gives the Commission the authority to impose a condition on its granting of a certificate that protects the public health, such as requiring groundwater testing to determine whether contamination has taken place or the siting of a utility's premises in an unsafe location.[24] The Commission has in the past taken actions to protect public health and the environment, such as appointing an interim receiver where a lack of revenue has led to unsafe service. *In the Matter of the Petition for an Interim Receiver and for an Order Directing the General Counsel to Petition the Circuit Court for the Appointment of a Receiver for Mill Creek Sewers, Inc*. *SO-201-0237,* 2010 WL 887270 (Mo. P.S.C. Mar. 3, 2010). It has also directed utilities themselves to undertake actions protective of the environment. For example, in *In re Hickory Hills Water and Sewer Co.*, 2006 WL 1667696 (Mo. P.S.C. 2006), the Commission was concerned that its order might be interpreted as authorizing the owner/operator of the system to "to compensate himself without regard for needed improvements" and clarified that he should receive no additional compensation or reimbursement from the ordered rate increase. *Id.* at *4 Instead, the monies were to be used "to allow Hickory Hills additional revenues to be used to maintain the plant in proper repair for effective water and sewer service in compliance with DNR and Commission rules." *Id.* In *Staff v. Hurricane Deck Holding Co*., 2006 WL 2528005 (Mo. P.S.C), the Staff asked the Commission to find that the respondent company was acting as a water and sewer company so that it could be subject to the Commission's health and safety authority and held responsible for violations of DNR regulations. *Id.* at p.5 ("the public can be assured that if Hurricane Deck Holding Company provides service to the public, it provides safe and adequate

[24] When granting CCNs, the Commission regularly reminds applicants of its power under this statute to take immediate action without a hearing if the public health or safety is threatened. *See, e.g*., *In the Matter of the Application of Oakbrier Water Company, Inc., for a Certificate of Convenience and Necessity,* WO-2009-0004, 2009 WL 1561064 (Mo. P.S.C. Jun. 3, 2009) (water CCN); *In the Matter of the Application of Timber Creek Sewer Company for Permission, Approval and a Certificate of Convenience and Necessity*, 2006 WL 64602 (Mo. P.S.C. Jan. 5, 2006) (sewer CCN); *In re Missouri Gas Energy, Inc.*, 2004 WL 1922776 (Mo. P.S.C. Aug. 4, 2004) (gas CCN).

service."). And in one complicated matter involving the transfer of assets from a failing sewer company to a new and more responsible owner and a request for a rate increase, the Commission allowed the transfer and an emergency rate increase so that the new owner could make the required environmental upgrades and directed the new owner to work out a schedule of compliance with DNR to make sure the upgrades were completed, *See In the Matter of the Joint Application of Stoddard County Sewer Company, Inc., R.D. Sewer Co., L.L.C. and the Staff*, 2008 WL 4724833, at *8, *102 (Mo. P.S.C. Oct. 23, 2008),

This condition, like the others, is within the Commission's power, as well as reasonable and necessary. It should be part of any granted application.

IV. CONCLUSION

For these reasons, Intervenors ask the Commission to deny Ameren's Application for a Certificate of Convenience and Necessity in this matter. In the alternative, if the Commission decides that the Certificate should issue, Intervenors ask that it contain the conditions listed in Intervenors' Statement of Position at 2-3 (filed March 21, 2014) (Doc. # 166).

LABADIE ENVIRONMENTAL
ORGANIZATION and
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 May 21, 2014, to all parties of record.

/s/ Elizabeth Hubertz