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

SUGGESTIONS OF UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI OPPOSING APPLICATION TO INTERVENE BY LABADIE ENVIRONMENTAL ORGANIZATION AND SIERRA CLUB

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and opposes the Application to Intervene filed in this proceeding by Labadie Environmental Organization ("LEO") and Sierra Club on February 22, 2013. Ameren Missouri states the following grounds for its opposition:

1. LEO and Sierra Club seek intervention in this action for the sole purpose of opposing Ameren Missouri's application for a Certificate of Public Convenience and Necessity ("CCN") to expand the boundaries of its Labadie Energy Center (which operates under an existing CCN) so that it can construct and operate a utility waste landfill and conduct other plant operations. *Application to Intervene* at ¶ 8. Their only bases for seeking intervention relate to their claims that the landfill "threatens" to contaminate drinking water supplies of their members and "threatens" to reduce the value of homes of their members. *Id.*

2. The Commission's rules governing intervention distinguish between those with a right to intervene and those with a mere desire to intervene. Here, LEO and Sierra Club do not claim a right to intervene, but only the desire to do so. As a result, LEO and Sierra Club must establish they meet this Commission's requirements for intervention. *See, e.g., Augspurger v.*

MFA Oil Co., 940 S.W.2d 934, 937 (Mo. App. W.D. 1997) (discussing the corollary intervention rule in Missouri's Rules of Civil Procedure).

3. To meet this burden, then, LEO and Sierra Club must demonstrate that their intervention request complies with the Commission's rules governing permissive joinder, and they must also convince the Commission that it should exercise its discretion to allow them to intervene. The Commission's rules governing permissive joinder, found at 4 CSR 240-2.075(3), provide that the Commission *may* grant intervention if:

> (a) The proposed intervenor…has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or
> (b) Granting the proposed intervention would serve the public interest.

4. To meet the first ground for intervention, LEO and Sierra Club assert in their Application that they have interests different from that of the general public—that members of their organizations reside in the area of the proposed landfill and that leakage or flooding of the landfill "could" contaminate drinking water in the area and "would likely" reduce home property values in the area. *Application to Intervene* at ¶¶ 5, 6. To support the alternative ground for intervention, LEO and Sierra Club also assert—with no factual support for the conclusion—their intervention as parties "would serve the public interest." *Application to Intervene* at ¶ 8. Neither assertion provides a sufficient basis for the Commission to grant the Application by LEO and Sierra Club.

A. LEO and Sierra Club Misapprehend or Misstate the Relevant Public Interest.

5. Addressing the second prong of the Commission's permissive intervention rule first, in the context of a Public Service Commission proceeding involving a request for a CCN under § 393.170, RSMo,[1] it is the "interest of the public as a whole" that is at issue. *State ex rel.*

[1] All statutory references are to the Revised Statutes of Missouri (2000).

Pub. Water Supply Dist. No. 8 of Jefferson City. v. Pub. Serv. Comm'n, 600 S.W.2d 147, 156 (Mo. App. W.D. 1980). In the appropriate case (see Section B below), Ameren Missouri would not argue that the Commission should ignore LEO and Sierra Club's interests entirely, but the public interest with which public utility regulation and the Commission's jurisdiction is primarily concerned is directed at a much broader segment of the public and not at the private interests of a few individuals. *See, e.g., State ex rel. Webb Tri-State Gas, Inc. v. Pub. Serv. Comm'n*, 452 S.W.2d 586 (Mo. App. W.D. 1970) (rejecting request by local liquid propane ("LP") suppliers to impose conditions on a natural gas utility's CCN to relieve the LP suppliers from financial loss because these conditions would not be in the interest of the general public).

6. Instead, the Commission's interest and duty is primarily directed to the interests of regulated utility ratepayers in terms of their utility service. *See State ex rel. Capital City Water Co. v. Pub. Serv. Comm'n*, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993) ("The Commission's principal interest is to serve and protect ratepayers."), and *State ex rel. Ozark Elec. Coop. v. Pub. Serv. Comm'n*, 527 S.W.2d 390, 394 (Mo. App. W.D. 1975) (in the context of granting of a CCN, stating that "Section 393.130 contains language that gives some indicia that the General Assembly, among other things, concluded that the public interest would be served by requiring regulated electric utilities to render electric service by means of 'adequate' facilities.").

7. Analogous law arising in cases involving rezoning of property and its impact on other property owners provides further direction as to the scope of the "public interest" at stake. Under Missouri law, the identity of the public as a whole goes beyond landowners in the immediate vicinity of a parcel to be rezoned. *See, e.g., Lenette Realty Inv. Co. v. City of Chesterfield*, 35 S.W.3d 399, 407 (Mo. App. E.D. 2000). In *Lenette*, the Eastern District, citing the Missouri Supreme Court's decision in *Huttig v. City of Richmond Heights*, 372 S.W.2d 833 (Mo. 1963), stated :

> Missouri case law is clear that the interests of a few neighboring homeowners do not constitute the public interest as a whole * * * They, alone, do not constitute the *public*, and their collective interests are not that "public interest" which must be weighed in any such zoning problem (court's emphasis).

Id.

8. Ameren Missouri has over 1.2 million electric customers in Missouri. Some of those customers (but few, given its location) live within a mile of the Labadie Energy Center, but all depend on the Labadie Energy Center, which is Ameren Missouri's largest power plant and one of its most economical, for the electricity they need. It is the public interest to ensure there are facilities adequate to provide safe and reliable electric service at just and reasonable rates to these customers. As discussed further below, LEO and Sierra Club's issues have been (and are being) raised in other forums. They have no place here.

B. The purported interests of LEO and Sierra Club will not be adversely affected by the final order in *this* action.

9. The issue before this Commission is whether Ameren Missouri's request for a CCN is "necessary or convenient" for Ameren Missouri to carry out its duty to render electric service to the public. § 393.170.3, RSMo.; *see State ex rel. Pub. Water Supply Dist. v. Pub. Serv. Comm'n*, 600 S.W.2d 147, 154 (Mo. App. W.D. 1980) (*citing State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. W.D. 1973) ("The term 'necessity' has been held not to mean essentially or absolutely indispensable, rather, it requires the evidence show that additional service be an improvement justifying the cost and the inconvenience to the public as a result of the lack of the utility, and that such evidence is sufficient to amount to showing the lack thereof would amount to a necessity."); *State ex rel. Ozark Elec. Coop. v. Pub. Serv. Comm'n*, 527 S.W.2d 390 (Mo. App. W.D. 1975) ("It is not judicially remiss to conclude that 'adequate' facilities, although not an exclusive criterion, is in and of itself a proper criterion for determining whether a grant of territorial authority is necessary or convenient for the public service.").

10. 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 this landfill to dispose of the coal combustion products produced by the Labadie Energy Center so it can produce the electricity it needs to provide service. The purported interests of LEO and Sierra Club are wholly unrelated to the Commission's consideration of this issue.

11. The only time the Commission might be called upon to examine the kind of zoning/land use or environmental issues that LEO and Sierra Club seek to raise in a CCN case would be if no other body had or would consider those issues. For example, the Commission might consider similar issues if the utility was asserting it could obtain a CCN *in lieu of* complying with local zoning regulations. *See, e.g., StopAquila.Org and Cass County v. Aquila, Inc.*, 180 S.W.3d 24, 34 (Mo. App. W.D. 2005) (rejecting Aquila's claim that it did not need zoning approval from Cass County under §§ 64.090.3 and 64.620.3(3), RSMo., and because its prior certificates from the Commission (issued decades earlier) allowed it to build a new power plant, and holding that *either* the local zoning authority or the Commission must "more or less contemporaneous with the request to construct such a facility" consider traditional land use issues). This is not the situation here.

12. Under *StopAquila*, Ameren Missouri could have proceeded straight to the Commission for a CCN for the area to encompass the landfill, and bypassed the local zoning process, but did not. Now, as a result of that local zoning process, Franklin County has already legislatively considered in eight public hearings and zoning meetings, a wide array of land use and environmental issues--including the very issues raised here by LEO and Sierra Club.

Application to Intervene at ¶ 7; *see, generally, Findings of Fact, Conclusions of Law, Order and Judgment as to Count II of Plaintiffs' Petition*, Case No. 11AB-CC00286 (Jan. 11, 2013) (attached as **Exhibit A**). Moreover, Franklin County has passed an ordinance which would allow the landfill to be constructed, subject to numerous new County requirements and Missouri Department of Natural Resources ("MDNR") regulations. LEO (with eleven individuals) is a party to litigation challenging Franklin County's zoning ordinance. The Circuit Court of Franklin County upheld Franklin County's zoning ordinance that authorizes a landfill such as the one proposed by Ameren Missouri. *Id.* LEO is appealing that decision to the Missouri Court of Appeals. *Application to Intervene* at ¶ 7. Having raised these issues in front of the Franklin County zoning authorities and the Circuit Court of Franklin County (and continuing its litigation of these issues), LEO seeks another bite of the land-use apple in this forum. These issues, however, have nothing to do with the Commission's task in this case, which is solely to determine if the landfill is necessary or convenient for the public service.

13. Nor should this Commission wade into the specific environmental matters LEO and Sierra Club wish to raise. As outlined in Ameren Missouri's application that initiated this case, Ameren Missouri has applied for and must obtain a Construction Permit from the MDNR before it can construct the landfill. The Permit must be obtained under 10 CSR 80-11, entitled "Utility Waste Landfill." These MDNR regulations are 11 pages long,[2] and govern all aspects of Utility Waste Landfill construction and operation. The purpose of MDNR's regulations is set forth in the following paragraph:

> (1) General Provisions. This rule is intended to provide for utility waste landfill operations that will have a minimal impact on the environment. The rule sets forth requirements and the method of satisfactory compliance to ensure that the design,

[2] The regulations are extensive, covering the 11 pages with three columns of small print per page.

construction and operation of utility waste landfills will protect the public health, prevent nuisances and meet applicable environmental standards.

MDNR is the agency to whom the General Assembly has delegated authority regarding environmental matters, including those that could be associated with a utility waste landfill, and it is there where LEO and Sierra Club should take their environmental concerns.[3]

14. The Commission's own regulations also contemplate that these land use and environmental issues are to be taken up with other agencies with jurisdiction over them and not the Commission. This is evidenced by the Commission's CCN rules which require Ameren Missouri to obtain the consent or approval from the county and governmental agencies. 4 CSR 240-3.105(1)(D). While the Commission wants to confirm that Ameren Missouri has obtained any required zoning approval or the necessary permits from MDNR, the substance of the land use issues involved in zoning issues or environmental issues involved at MDNR are not within the scope of the Commission's consideration of a CCN application when, as here, those other agencies have addressed or are addressing those issues, which are squarely within their expertise, jurisdiction and regulatory authority.

15. To be clear: Ameren Missouri filed its application not because this Commission is required to consider anew land use issues already decided by the local zoning authority or environmental issues properly before the MDNR, but simply because its existing certificate does not encompass the 813 acres of land on which the 166-acre landfill will be constructed. Ameren Missouri therefore reads *StopAquila* and a later case involving the same power plant, *State ex rel.*

[3] MDNR regulations require that Ameren Missouri identify adjacent property owners in its construction permit application. 10 CSR 80-2.020(2)(A)2.F. Moreover, MDNR regulations require notice of permit application be given so that all interested parties may comment on the application and, if they choose, request a hearing on the application. 10 CSR 6.020. LEO and Sierra Club, in fact, have indicated their desire to participate in the application process and oppose Ameren Missouri's request. *See* "Ameren Files Application for Landfill Permit," *Columbia Missourian* (Feb. 3, 2013) (attached as **Exhibit B**).

Cass County et al. v. Public Serv. Comm'n and Aquila, Inc., 259 S.W.3d 544 (Mo. App. W.D. 2008), to perhaps suggest that it request Commission permission to enlarge the contiguous outboundary of the already-certificated Labadie Plant. There can be no dispute that under *StopAquila* there would have been no requirement for Ameren Missouri to come to the Commission for permission to build the landfill (or otherwise improve the power plant) were the construction to take place within the legal description of the Commission's 1966 Report and Order issuing the original CCN for the Labadie Plant, but that was not the case here. That Ameren Missouri needs a certificate to expand the plant's area does not give LEO and the Sierra Club license to inject into this proceeding land use issues already addressed by Franklin County or environmental issues that are being addressed by MDNR.

16. Because these local zoning, land use and environmental issues are not within the Commission's authority in a CCN case on these facts, any final order issued by *this Commission* will not adversely affect the purported interests of LEO and Sierra Club—even if these interests are different from those of the general public. *See Order Regarding Shemwell's Application to Intervene*, Case No. GC-2011-0098 (Jul. 27, 2011) (even though Shemwell's interest differed from that of the general public, her interest that an ethics complaint could be filed against her related to the proceeding was held to be an individual interest that could not be adversely affected by the Commission's final order). Any "adverse impact" to LEO and Sierra Club members will arise from Franklin County's or MDNR's decisions.

17. Moreover, it is entirely inappropriate for LEO and Sierra Club to increase the expense to the parties of this proceeding merely to collaterally attack the Franklin County Circuit Court judgment or any permit decision made by MDNR. *See Order Denying Motion for Reconsideration*, Case No. GR-2010-0363 (Sept. 22, 2010) (reversing previous order and

denying intervention to MoGas because its participation would not serve the public interest but would increase the costs of litigation).

18. Finally, even if the sole purpose of LEO and Sierra Club was to simply advise the Commission of the status of collateral litigation or the MDNR permit process, this would not justify their intervention as parties to this action because it is an interest that would not be adversely affected by the Commission's final order. *See Order Denying Motion for Reconsideration*, Case No. GR-2010-0363 (Sept. 22, 2010) (denying reconsideration of Commission's order denying intervention where MoGas's stated interest was "to ensure that the Commission is properly informed about matters at the FERC" because this interest could not be adversely affected by the final order in the case). The application of LEO and Sierra Club to intervene should be denied.

C. The purported interests of LEO and Sierra Club are also too distant and speculative to support intervention.

19. The Commission has explained that its chief concern is that parties seeking to intervene have a real and direct interest at stake:

> The Commission's chief concern in considering applications to intervene has always been that the intervention applicant have an articulable interest in the subject matter that is different in some way from that of the general public. The reason is that the general public's interest is represented by both the Commission's Staff and by the Public Counsel. **Therefore, intervenors should be entities with a more or less direct interest in the matter at hand, a "stake" in the outcome.** The Commission's Rule 4 CSR 240-2.075 continues to require that intervention applicants show such an interest.

Order Granting Intervention, Case No. EA-2005-0180 (Jan. 25, 2005) at 11 (emphasis added) (*citing State ex rel. Dyer v. Pub. Serv. Comm'n*, 341 S.W.2d 795, 796-797 (Mo. 1960); *Smith v. Pub. Serv. Comm'n*, 336 S.W.2d 491, 494 (Mo. 1960)).

20. LEO and Sierra Club do not have certain or direct interests at stake in this action. In their application, LEO and Sierra Club refer to various, unnamed "members" in their

application whose interest is based upon the conjectural possibility that harm could occur if there is a flood of the proposed waste landfill[4] or property values may be diminished by adding a utility waste landfill to the Labadie facility which has been operating form over four decades. There is no allegation—nor can there be—that either of these harms is certain or even reasonably likely to occur. As explained at sections A and B of these suggestions, these interests are not at stake, but are instead interests at stake before other regulatory bodies.

21. Because LEO and Sierra Club do not assert with any certainty that the interests of their members will be harmed by the outcome of the case, their Application to Intervene should be denied. *See Order Denying Intervention*, Case No. EA-2000-37 (October 21, 1999) (denying permissive intervention by MIEC in case involving utility's restructure and transfer of assets by concluding MIEC's allegation that the interests of its members differed from that of the general public because they were large customers who might face increased costs state an interest too remote and that MIEC had not asserted with "any certainty" this interest would be harmed by the outcome of the case).

D. There is no basis for this Commission to conclude that intervention by LEO and Sierra Club serves the public interest.

22. While permissive intervention is allowed under the Commission's rules where the public interest is served, LEO and Sierra Club have stated no single fact to demonstrate *why* the public interest would be served because of their intervention. Because they have failed to assert

[4] To demonstrate the extreme level of uncertainty that the purported interest that LEO and Sierra Club members have that their wells will be polluted as a result of flooding of the proposed utility waste landfill, Ameren Missouri states in its application that the utility waste landfill "will be designed and constructed so that it would not be impacted by a 500-year flood." *Application of Union Electric Company d/b/a Ameren Missouri, for a Certificate of Public Convenience and Necessity* at p. 5, n.3. Furthermore, Ameren Missouri has applied for and received a Flood Plain Development Permit from the body with authority over such matters -- Franklin County.

any fact demonstrating why the public interest would be served, LEO and Sierra Club have failed to bear their burden in meeting the Commission's requirements for intervention.

E. LEO and Sierra Club should not be granted limited intervention because any issues they have relevant to the matter are already being represented in this proceeding.

23. The Commission's intervention rules provide that the Commission may limit intervention to particular issues or interests in this case. 4 CSR 240-2.075(9). Given that the interests raised by LEO and Sierra Club are those not properly within the consideration of the Commission, the only remaining interests of LEO and Sierra Club would be those of the general public. These interests are adequately represented by the Office of Public Counsel[5] and other consumer groups; therefore, even limited intervention would be inappropriate. *See, e.g., Order Denying Application to Intervene*, Case No. ER-2008-0318 (May 20, 2008) (denying motion to intervene by individual ratepayer in rate case because the customer's interest did not differ from that of the general public); *Order Denying Application to Intervene, But Inviting the State of Missouri to File as an Amicus Curiae*, Case No. TC-2005-0357 (Feb. 9, 2006) (denying intervention by State of Missouri in complaint case because "the mere fact that agencies of the state pay phone bills does not give the state any more standing than that enjoyed by any other individual telephone customer").

24. If LEO and Sierra Club believe that Public Counsel has failed to represent any interests they have relevant to this proceeding, they are free to petition the Commission to file a brief as amicus curiae under the Commission's rules. 4 CSR 240-2.075(11).

WHEREFORE, Ameren Missouri respectfully requests the Commission deny the request to intervene by LEO and Sierra Club.

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[5] The Office of the Public Counsel "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission." Section 386.710(2), RSMo.

Respectfully submitted,

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ATTORNEYS FOR
UNION ELECTRIC COMPANY
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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 4, 2013:

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/s/ James B. Lowery
James B. Lowery

IN THE CIRCUIT COURT OF FRANKLIN COUNTY, MISSOURI
STATE OF MISSOURI

State of Missouri, ex rel. RUTH CAMPBELL, et al.,	)	
Relators-Plaintiffs,	)	
vs.	)	
COUNTY COMMISSION OF FRANKLIN COUNTY,	)	No. 11AB-CC00286
Respondent-Defendant,	)	Visiting Judge Division
and	)	
UNION ELECTRIC COMPANY, D/B/A AMEREN MISSOURI,	)	
Intervenor-Defendant.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT AS TO COUNT II OF PLAINTIFFS' PETITION,

FINDINGS OF FACT

1. Plaintiffs have filed their Petition for Writ of Certiorari, in six counts, contesting the enactment of an ordinance by Franklin County, Missouri, Ordinance No. 11-307 (the "Zoning Amendment"). Count II remains for adjudication.

2. This matter has been submitted to the Court on the record established before defendant Franklin County Commission, as certified by said defendant on October 11, 2012, pursuant to this Court's Writ of Certiorari after various motions of the parties (the "Record").

3. Plaintiffs participated in the public hearings and other proceedings before the County Planning and Zoning Commission and the County Commission regarding the Zoning Amendment, and submitted evidence against the Zoning Amendment both to the Planning and Zoning Commission and the County Commission.

EXHIBIT A

4. Lisa J.N. Bradley, a toxicology expert, testified to the Commission that:

(a) coal ash deposited in a facility meeting the County's Zoning Amendment would not create a risk to public health or drinking water sources, and there was no indication of any exposure of any toxic components of coal ash to the environment;

(b) there would be no exposure to the public of any toxic components of coal ash for a Utility Waste Landfill designed pursuant to Missouri Department of Natural Resources ("MDNR") regulations at the state level, and the Zoning Amendment;

(c) constituents of coal ash are naturally occurring and present in the water and soil throughout the country, in foods we eat, and even in daily supplements and vitamins, and this includes arsenic, cadmium, chromium, lead, mercury and selenium, which are not toxic in low concentrations;

(d) a house could be built on top of a coal ash landfill and if a child were exposed to the coal ash in the landfill every day by eating it, the exposure dose to arsenic is what you would get in your food every day.

5. The Court finds that the testimony of Ms. Bradley is credible and also that the County Commission may have reasonably and without arbitrariness chosen to believe this testimony.

6. The County Commission could reasonably and without arbitrariness have found further, and there was substantial and competent evidence in the Record to support findings, that:

(a) a Utility Waste Landfill, constructed in compliance with MDNR regulations and the Zoning Amendment, would not be unsafe or pose a risk to the public, and that it would function, in fact, in a much better way than the existing pond storage technology at the Labadie power plant;

EXHIBIT A

(b) the existing Labadie power plant is running out of pond storage space for coal ash;

(c) the Zoning Amendment required a state-of-the-art design and construction for future coal ash storage which was an improvement over existing methods already permitted as of right on the Labadie power plant site;

(d) bottom ash, a form of the Labadie plant coal ash, is itself put to many beneficial uses directly in the environment, including by the County itself on its own roads;

(e) MDNR already comprehensively regulates the siting, location, design, operation and monitoring of Utility Waste Landfills;

(f) the Labadie power plant is already surrounded by floodplain, and state Utility Waste Landfill regulations expressly permit utility waste landfills in floodplains;

(g) based upon the professional opinion by Richard C. Ward, a land use expert with substantial experience, a Utility Waste Landfill use pursuant to the Zoning Amendment was, by definition, public, and promoted the public welfare of not only the region, but all residents of Franklin County, and among other things, it was irrefutably logical and promoting of the public welfare to keep the Labadie ash storage adjacent to the 40-year-old power plant;

(h) the Public Service Commission's original approval of the Labadie power plant in 1966 found that the power plant itself was in the public interest, and disposal of coal ash is inherent and essential to operation of a power plant;

(i) neither plaintiffs nor other witnesses submitted substantial and competent evidence of any legitimate zoning issues in opposition to the Zoning Amendment, including the issues of aesthetics, traffic, noise, pollution through fugitive air emissions, negative effect on property values, or inconsistency with the County's master plan; and

EXHIBIT A

(j) a Utility Waste Landfill use designed and operating subject to the Zoning Amendment would promote the health, safety, morals, comfort and general welfare of Franklin County by conserving and protecting property and building values, securing the most economical use of the land, and facilitating adequate provision of public improvements in accordance with the master plan adopted by the County, and otherwise satisfied all statutory and ordinance requirements for a valid zoning amendment.

7. The Zoning Amendment requires that any Utility Waste Landfill be adjacent to an operating public utility power plant and that it be owned by a public utility, and therefore is a use which promotes the public welfare. In addition, based upon this provision of the Zoning Amendment and ample other evidence in the Record, the Zoning Amendment minimizes truck hauling traffic, most notably by allowing Labadie plant coal ash to be kept near the plant, and by prohibiting importation of coal ash from other Ameren power plants outside of Franklin County.

8. The County Commission specifically sent out a sample of the Labadie power plant coal ash for environmental testing, and the results indicated that the material was not hazardous.

9. The Zoning Amendment includes numerous notable measures protecting the public, groundwater and the environment, including County review and permitting.

CONCLUSIONS OF LAW

1. Franklin County is a first-class County which has adopted "alternative zoning" pursuant to Sections 64.800 *et seq.* of the Missouri Revised Statutes.

2. Defendant County Commission of Franklin County (the "County Commission") is the duly constituted county commission of Franklin County, created and existing under the laws of the State of Missouri.

3. This Court has jurisdiction over this matter pursuant to Section 64.870.2 RSMo. and venue is proper in Franklin County.

4. The Zoning Amendment is a legislative action of the Franklin County Commission. *Gash v. Lafayette County*, 245 S.W.3d 229, 233 (Mo. 2008).

5. This Court may reverse the Zoning Amendment, a legislative decision, only if it is arbitrary and unreasonable, meaning that the decision by the County Commission is not fairly debatable, *Summit Ridge Co. v. City of Independence*, 821 S.W.2d 516, 519 (Mo. App. 1991), and this level of judicial deference to local legislative zoning decisions applies even in the rare cases, such as the present case, where the legislative decision is submitted for judicial review "on a legislative record." See, *Kolb v. County Court of St. Charles County*, 683 S.W.2d 318, 321 (Mo. App. 1984), and *Gash v. Lafayette County*, 245 S.W.3d 229, 233 (Mo. 2008).

6. The Zoning Amendment is presumed to be valid. *Vatterott v. City of Florissant*, 462 S.W.2d 711, 713 (Mo. 1971), *Kolb*, supra.

7. Plaintiffs have the burden of proof that the County's decision was arbitrary and unreasonable and not even fairly debatable. *Vatterott, supra; Rhein v. City of Frontenac*, 809 S.W. 2d 2107, 109-110 (Mo. App. 1991).

8. Plaintiffs have not met their burden of proof. The Record supports the legislative decision approving the Zoning Amendment, and the County Commission could have reasonably found that the plaintiffs and other opponents did not effectively rebut or refute the fundamental facts in support of the Zoning Amendment listed in this Court's findings above and elsewhere in the Record.

EXHIBIT A

9. This Court may not inquire into the interests or motives of the members of the Franklin County Zoning Commission when exercising legislative functions such as the Zoning Amendment. *Kolb*, supra, at 322.

10. Applying the foregoing standards of judicial review, the Court finds that the Zoning Amendment was fairly debatable, and not arbitrary or unreasonable.

11. Even if the Zoning Amendment were reviewed by this Court under a less deferential standard, such as whether it is supported "substantial and competent evidence upon the whole record," the Zoning Amendment is valid and legal, as it is amply supported by competent and substantial evidence in this voluminous Record.

ORDER, JUDGMENT AND DECREE

The Court therefore orders, adjudges and decrees that judgment be entered on Count II of plaintiffs' Petition for Writ of Certiorari in favor of defendants County Commission of Franklin County, Missouri and Union Electric Company, d/b/a Ameren Missouri, and against plaintiffs, and that costs be taxed against plaintiffs.

SO ORDERED:

Judge Robert D. Schollmeyer
Date: January 11, 2012

STATE OF MISSOURI
County of Franklin
I, Bill D. Miller, Clerk of the Circuit
Court of said County, do hereby certify the foregoing to be
a true copy from the records in my office.
In testimony whereof, I have hereunto set my hand and affixed
the seal of said Court, this 11 day of
January 13
Bill D. Miller
Clerk of the Circuit Court, Franklin County
By Rene Hancock D.C.

EXHIBIT A

NOTICE OF ENTRY
(SUPREME COURT RULE 74.03)

In The 20th Judicial Circuit Court, Franklin County, Missouri
401 EAST MAIN ST, RM 100A,UNION, MISSOURI

RUTH CAMPBELL ET AL V FRANKLIN COUNTY COMMISSION **CASE NO : 11AB-CC00286**

To: MAXINE I LIPELES
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ST LOUIS MO 63130

YOU ARE HEREBY NOTIFIED that the court duly entered the following:

Filing Date	Description
21-May-2012	Order

Defendant-Intevenor Ameren's Motion to Dismiss Counts 1,3,4, and 5 filed herein on February 6, 2012, is hereby granted. Respondent-Defendant Franklin County Commission's Motion to Dismiss Counts 1, 3, 4 and 5 filed herein on February 22, 1012, is hereby granted. So ordered. RDS

06-Feb-2012 Motion Filed
22-Feb-2012 Motion Filed

Clerk of Court

CC: File
FRANK K CARLSON
JOSEPH W PURSCHKE
MARK S VINCENT
MAXINE I LIPELES
STEVEN P KUENZEL
TIMOTHY JAMES TRYNIECKI

ECC:

Date Printed : 21-May-2012

EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2013, the foregoing Notice of Appeal 8-A Form and attachments were sent via electronic mail to counsel for Respondent County Commission of Franklin County:

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EXHIBIT A

Ameren Files Application for Landfill Permit

By Josh Mitchell, Missourian Staff Writer | Posted: Sunday, February 3, 2013 8:00 am

Ameren Missouri has applied for a permit with the Missouri Department of Natural Resources to build a coal ash landfill next to its power-generating plant in Labadie.

The 1,500-page construction permit application was filed with the state agency on Tuesday, and Ameren hopes to have approval within a year.

But the Missouri Sierra Club plans to oppose the landfill permit. John Hickey, director of the Missouri Sierra Club, said he still believes the landfill project can be stopped.

Ameren should be required to conduct groundwater monitoring at the Labadie power plant site before the DNR permit is approved, Hickey said.

DNR should not allow Ameren to build the coal ash landfill until it is determined whether there is already groundwater contamination from the coal ash ponds currently at the site, Hickey said.

"It's just common sense," he said.

Ameren spokesman Kent Martin said the company will conduct a groundwater study before the landfill operating permit is granted.

Hickey said coal ash contains mercury and arsenic, which he said are toxic. Mercury can cause brain damage in children.

Residents should be protected from the coal ash getting into the groundwater and ultimately into drinking water, Hickey said.

"It's dangerous stuff," he said.

Without approval from the DNR, Ameren cannot build its coal ash landfill. The landfill is needed because ash storage ponds are reaching capacity, according to Ameren.

Ameren is expecting DNR engineering staff to conduct a detailed review of the application.

"I'm sure they're going to go through it with a fine-toothed comb," said Paul Pike, environmental science executive with Ameren.

Ameren has also filed a separate application with the Public Service Commission to get a certificate of public need and necessity to expand the boundaries of the Labadie Energy Center by 813 acres for the coal ash landfill.

The Sierra Club also plans to oppose that application, Hickey said.

Not all of the 813 acres will be for the actual landfill. The landfill itself is only planned to be 166

acres, and the area surrounding it would be a buffer, according to Ameren.

Asked how Ameren feels about its chances of getting DNR approval of the project, Pike said, "We're obviously hopeful that we've got all the issues resolved."

Pike added that it "should be a fairly smooth process."

The permit describes how Ameren intends to build the landfill and includes plans for monitoring groundwater, Pike said.

The landfill is expected to meet coal ash disposal needs for about 20 years, and it will be built in several phases, with phase one expected to cost $27 million.

Pike noted that a copy of the application has been provided to Franklin County.

Groundwater monitoring wells would be installed around the landfill and checked quarterly to make sure there is no contamination, Pike said.

He noted that Ameren has also met with the Department of Geology and Land Survey in Rolla about the proposed groundwater monitoring plan.

This would not be Ameren's first coal ash landfill. It has three coal ash landfills in Illinois and has plans to build one near St. Charles.

The landfill planned for Labadie is a fairly basic facility, according to Pike.

"It doesn't need lots of bells and whistles," he said, noting that the landfill will only be used to dispose of ash and sludge.

The landfill will be built upward. It could go as a high as 100 feet, he said. Two feet of compacted clay will be put down for a liner and a synthetic liner will also be used, he said.

There also will be a system in place to collect any leakage from the landfill so it can be treated, Pike said.

The Labadie Environmental Organization, a group of Labadie property owners, recently sued the county over the proposed landfill. They argued that the landfill poses a health risk since it would be built in a floodplain. An associate circuit court judge recently ruled in the county's favor, but the plaintiffs have vowed to appeal.

Hickey said his group is communicating with the Labadie Environmental Organization.

The DNR will hold a public hearing on the permit application, but the hearing has not been scheduled, according to Ameren.

EXHIBIT B