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

AMEREN MISSOURI'S RESPONSE TO THE OFFICE OF THE PUBLIC COUNSEL'S LIMITED MOTION FOR RECONSIDERATION, RESPONSE TO INTERVENORS' MOTION FOR CLARIFICATION AND/OR RECONSIDERATION AND APPLICATION FOR REHEARING

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and, pursuant to 4 CSR 240-2.080(13), files this Response to the above-referenced filings by the Office of the Public Counsel ("OPC") and by Intervenors Labadie Environmental Organization ("LEO") and Sierra Club ("Sierra Club"). For it Response, Ameren Missouri states as follows:

1. Intervenors' Statement of Position in this case proposed that if the Commission were to grant a certificate of public convenience and necessity ("CCN"), the Commission should condition the CCN on five different conditions. In its Report and Order, the Commission discussed all five conditions and declined to impose them. Intervenors' Motion for Clarification and/or Reconsideration and Application for Rehearing ("Intervenors' Motion") does not take issue with the Commission's decision in this regard, although Intervenors did file a "joinder" supporting OPC's Limited Motion for Reconsideration ("OPC's Motion").

2. OPC's Motion cites to one of those five conditions, which proposed as follows:

> 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.

3. OPC does not ask that the foregoing condition be imposed, but based on it (and testimony OPC cites from the evidentiary hearings), OPC asks the Commission to "require Ameren Missouri to provide proof that (1) Ameren Missouri is adequately self-insured against the specific risks associated with the proposed coal ash landfill; and (2) Ameren Missouri actually has supplemental insurance specifically designed to cover those specific risks."

4. Ameren Missouri is in the process of procuring insurance coverage relating to utility waste landfills and ash impoundments (collectively "coal ash storage units") located at its energy centers. Negotiations with insurance carriers are ongoing but Ameren Missouri expects that an appropriate insurance vehicle will be in place by the end of 2014.[1] Consequently, while Mr. Giesmann may not have been literally correct about the insurance Ameren Missouri had at the moment he testified (he indicated he was not sure in response to Commissioner questions), his expectations about insurance coverage were essentially correct. The Commission was right – the condition is unnecessary.

5. At least as important is the fact that imposing a "condition" requiring "adequate self-insurance" and "supplemental insurance" would be inappropriate and unnecessary in any event. Ameren Missouri, like any business, engages in a prudent decision-making process regarding what insurance coverages it should buy, and what the terms should be (deductibles, co-pays, self-insured retentions, etc.), based upon an assessment of the insurance coverages that are available and the cost of those coverages. In theory, insurance could be procured for virtually every risk and to cover almost every conceivable level of damages, but no person or business would insure everything to that degree because it would not be prudent to do so. And while, as noted, Ameren Missouri does expect to have specific insurance in place relating to coal ash storage units by the end of the year the terms of that coverage have not been determined nor has

[1] The Labadie UWL will not be in operation prior to 2016.

the cost. Moreover, while Ameren Missouri does not expect this to be the case in the future, whether it will always make sense to carry specific coal ash storage unit insurance cannot be determined at this time. It might be more prudent to not insure those risks in the future, given future costs and availability of coverages; Ameren Missouri just cannot know at this point in time. The bottom line is that what insurance coverages to maintain is business decision that will and should be revisited in the future based upon coverage availability, cost and risk.

6. In terms of "self-insurance," we would point out that the Company has been providing regulated utility service in Missouri for approximately 100 years and that there has been and is not now any indication that the Company's balance sheet is inadequate to meet liabilities that could, in theory, arise.[2] Intervenors did not claim otherwise (and neither does OPC). In effect, Ameren Missouri does have substantial "self-insurance"[3]; that is, it has sufficient assets to pay its bills. It truly is unnecessary to direct Ameren Missouri to carry particular insurance. To do so would improperly invades the decision-making responsibilities of the utility's management.[4]

---

[2] Ameren Missouri has assets of just under $13 billion against liabilities of about $4.2 billion. Ex. 107 (Form 10-K, year-end 2013, p. 78).

[3] Ameren Missouri has assets of just under $13 billion against liabilities of about $4.2 billion. Ex. 107 (Form 10-K, year-end 2013, p. 78).

[4] *State ex rel. City of St. Joseph v. Pub. Serv. Comm'n*, 30 S.W.2d 8 (Mo. *banc* 1930) (holding that the company management could not be interfered with as long as the result thereof did not affect the public's rights); *State ex re. Harline v. Pub. Serv. Comm'n*, 343 S.W.2d 177 (Mo. App. W.D. 1960) (holding that the regulatory power of the PSC does not embrace the general management of the utility incident to ownership); *State ex rel. Southwestern Bell Telephone Co. v. Pub. Serv. Comm'n*, 262 U.S. 276, 43 S. Ct. 544 (1923) (holding that the regulatory power of the PSC does not clothe it with general powers of company management incidental to ownership).

Moreover, Ameren Missouri does not believe the Commission has ever imposed such a requirement; at least, it has not been able to locate a Report and Order in which such a condition was imposed by the PSC. Further, there are risks associated with operating a nuclear plant, or any large facility of the type an electric utility must operate. The Commission has never gotten into the business of dictating to utility management when and how it should (or should not) insure such risks.

7. Ameren Missouri appreciates and respects the views of those who want to make sure that in the very unlikely event remediation costs arise, customers would not bear any imprudently-incurred costs. The Commission retains the ability to reviews all costs whenever it sets rates and may disallow imprudently incurred costs.[5] OPC's Motion should be denied.

8. Separately, Intervenors seek clarification or reconsideration or rehearing regarding one sentence in one finding of fact in the Report and Order, as follows:
"This design complies with Missouri Department of Natural Resources (MDNR) and proposed federal environmental regulations."

9. We will not re-debate the evidence on this issue, as Intervenors do in their Motion. There is substantial and competent evidence of record provided by the expert testimony of given by engineer and coal ash impoundment expert Stephen Putrich (which was obviously believed by the Commission) that provides direct support for the Commission's finding, Intervenors' counsels' post-hearing legal interpretations and arguments notwithstanding. The Commission was entitled to believe Mr. Putrich. Intervenors simply re-hash arguments that have already been rejected.

10. However, to the extent one could characterize the precise wording of the sentence in question as a "legal conclusion," Ameren Missouri agrees it is not necessary to the Commission' decision in this case. The CCN that has been issued is conditioned on Ameren Missouri obtaining the required DNR permits. Ameren Missouri will have to meet DNR's requirements to do so. Consequently, the sentence Intervenors complain of could properly be

[5]As the Report and Order recognizes, the Commission is in no position today to decide if remediation costs would or would not be imprudent, or to decide if insurance costs now or over the coming decades would or would not be imprudent. That is precisely why these kinds of ratemaking considerations have no place in a CCN case. The condition at issue here appears to be an attempt to prejudge an issue that cannot (and should not) be prejudged.

replaced (giving Intervenors the clarification they seek) by the following clear statement of facts that is directly supported by *uncontroverted* evidence of record[6]:

> (1) the UWL designed has been determined to meet the county's two-foot separation requirement (base and water table)[7] and (2) Ameren Missouri has presented to MDNR a demonstration in its permit application (Appendix Z) that intermittent contact of groundwater with the liner will not affect the liner's design, function or performance.[8]

WHEREFORE, Ameren Missouri prays that the Commission make and enter its order denying OPC's Motion, and that it clarify the last sentence of Paragraph 27 of its Findings of Fact by deleting the last sentence and replacing it with the findings of fact outlined in Paragraph 10 of this Response, and that it otherwise deny Intervenors' Motion.

Respectfully submitted,

/s/ James B. Lowery
James B. Lowery MBN#40503
Michael R. Tripp MBN#41535
Smith Lewis, LLP
111 S. Ninth Street, Ste. 200
P.O. Box 918
Columbia, MO 65205
Telephone: (573) 443-3141
Fax: (573) 442-6686
Email: lowery@smithlewis.com
tripp@smithlewis.com

Thomas M. Byrne MBN#33340
Director - Assistant General Counsel
Ameren Services Company
1901 Chouteau Ave.
P.O. Box 66149
St. Louis, MO 63166-6149
Telephone: (314) 554-2514
Facsimile: (314) 554-4014
E-Mail: AmerenMOService@ameren.com

[6] Intervenors witness, Mr. Norris, took no issue with either of the statements that follow. Tr. Vol. 6, 485:1-15; 487:1-9.
[7] Exh. 4, Giesmann Supplemental, Schedule CJG-ST1 at Appendix F, December 4, 2013 Letter from Andrews Engineering, Inc.
[8] Exh. 4, Giesmann Supplemental, Schedule CJG-ST1 at Appendix Z.

ATTORNEYS FOR
UNION ELECTRIC COMPANY
d/b/a AMEREN MISSOURI

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via e-mail to the following on July 28, 2014:

Nathan Williams
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360
staffcounselservice@psc.mo.gov
Nathan.Williams@psc.mo.gov

Lewis R. Mills
Missouri Office of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230
opcservice@ded.mo.gov

Elizabeth J. Hubertz
Lauren Grady
Maxine I. Lipeles
Interdisciplinary Environmental Clinic at
Washington University School of Law
1 Brookings Drive, Campus Box 1120
St. Louis, MO 63130
ejhubertz@wulaw.wustl.edu
laurengrady@wustl.edu
milipele@wulaw.wustl.edu

/s/ James B. Lowery
James B. Lowery