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 REPLY TO INTERVENORS' RESPONSE TO AMEREN MISSOURI'S MOTION FOR CLARIFICATION AND/OR MOTION FOR RECONSIDERATION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and in reply to the above-referenced *Intervenors Labadie Environmental Organization and Sierra Club's Response* ("Intervenors' Response") states as follows:

1. Intervenors' Response is replete with false claims and premises, and it completely ignores both the Commission's rules and well-settled Missouri law respecting the proper process for presenting evidence, including the right of the party with the burden of proof to open and close.

2. Intervenors claim that Ameren Missouri missed the deadline to file surrebuttal testimony on June 28. That allegation is false, as the Commission already recognizes: "[T]here was nothing for Ameren Missouri to address through surrebuttal testimony."[1] In fact, the transcript from the June 24 local public hearing was not even available until July 3 (five days after surrebuttal testimony had been due), and the exhibits were not available until July 9. Given

[1] *Order Revising Procedural Schedule*, Aug. 14, 2013.

that the transcript plus the exhibits covered well in excess of a thousand pages of material, it is incredible that Intervenors seriously contend that Ameren Missouri should have prepared surrebuttal testimony in response. This specious claim is made even more incredible given the reasonable process agreed to among the parties and approved by the Regulatory Law Judge whereby written objections to exhibits could be filed and considered after the local public hearings were over – those objections were filed in less than 10 days after the last of the local public hearing exhibits were available.

3. Intervenors claim that the Commission's August 14 Order simply "moved" the deadline for surrebuttal and cross-surrebuttal testimony. That claim is also false. Intervenors had two pieces of testimony that they could have surrebutted – the rebuttal testimonies of Staff witnesses John Cassidy and Claire Eubanks. Those testimonies were filed on May 31. Nothing prevented Intervenors from cross-surrebutting those testimonies on June 28, as the procedural schedule required. That Intervenors chose not to do so is Intervenors' problem, and Intervenors' problem alone.[2]

4. Intervenors claim some inadequacy in Ameren Missouri's direct case. That claim is also false. Ameren Missouri's Verified Application included all of the information required by Section 393.170, RSMo. and the Commission's rules governing applications for a certificate of public convenience and necessity ("CCN"). Ameren Missouri filed direct testimony with its Application addressing each and every one of the factors the Commission traditionally examines in considering CCN applications[3]:

[2] Indeed, Intervenors did waive their right to file cross-surrebuttal testimony by ignoring the June 28 deadline to cross-surrebut the only rebuttal testimony that was filed – from the Staff.

[3] Those factors are: the need for the service; the applicant's qualifications; the applicant's financial ability; economic feasibility; and the public interest. *See, e.g.,* In re: Application of

a. Need: Mr. Giesmann directly addressed the need for the proposed utility waste landfill ("UWL"), testifying that the Labadie Energy Center is running out of room to dispose of coal combustion products ("CCPs"). Obviously, a coal plant cannot operate if it cannot dispose of its CCPs.

b. Qualifications: The Company has owned and operated the Labadie Energy Center for approximately 43 years under a CCN obtained from the Commmission in the late 1960s. Mr. Giesmann directly addressed the extensive permitting process the Company would have to complete with the Missouri Department of Natural Resources in order to operate the UWL. Short of recounting the engineering expertise of the hundreds of engineers working for the Company, there was no need or requirement to further outline the Company's qualifications.

c. Financial Ability: The Application indicated the funds to build the UWL would come from the Company's treasury. As the evidentiary record in the several recent Company rate cases show, the Company has a rate base of nearly $15 billion and revenues in excess of $2.5 billion annually. Obviously it is financially capable of financing the UWL, which is estimated to require an initial capital investment of approximately $27 million, as Mr. Giesmann testified.

d. Economic Feasibility: Mr. Giesmann specifically testified that 22 alternative sites were examined and that the proposed UWL was the lowest cost option.

Entergy Arkansas, Case No. EA-2012-0321, *Order Granting Certificate of Convenience and Necessity*.

Staff's rebuttal testimony agreed. Intervenors had in their possession responses to six data requests containing documentation relating to this issue prior to the date their rebuttal testimony was due in this case.

e. Public Interest: This is a policy consideration for the Commission. The utility meets its burden to make a prima facie case on this issue by demonstrating that the public convenience and necessity supports the Application. The Verified Application and Mr. Giesmann's testimony does this.

Intervenors could have taken issue with, and rebutted the adequacy of, the Company's direct case on each and every one of these factors through rebuttal testimony that should have been filed on May 31-- they chose not to.

5. Intervenors claim they did not perform an end run around the Commission's rules and the procedural schedule. We are confident that the Commission recognizes that both Intervenors' Counsel's statement at the June 19 conference and the subsequent facts belie that contention. Intervenors were affirmatively required to include in rebuttal testimony, "all testimony which explains why a party rejects, disagrees with or proposes an alternative to the moving party's [the Company's] direct case." 4 CSR 240-2.130(7)(C). As Intervenors' Counsel indicated, Intervenors consciously decided to disregard this requirement. Intervenors cannot misuse cross-surrebuttal testimony to cure their conscious disregard of the Commission's rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via e-mail to the following on August 27, 2013:

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