

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

In the Matter of the Application of Union Electric)	
Company d/b/a Ameren Missouri for Permission and)	
Approval and a Certificate of Public Convenience and)	
Necessity Authorizing it to Construct, Install, Own,)	File No. EA-2012-0281
Operate, Maintain and Otherwise Control and Manage)	
A Utility Waste Landfill and Related Facilities at its)	
Labadie Energy Center)	

**INTERVENORS LABADIE ENVIRONMENTAL ORGANIZATION and SIERRA
CLUB’S RESPONSE TO AMEREN’S OBJECTIONS and MOTION TO STRIKE**

Intervenors Labadie Environmental Organization (LEO) and Sierra Club file this response in opposition to Union Electric Company d/b/a Ameren Missouri (“Ameren”) Objections and Motion to Strike (“Motion” or “Mot.”).

ARGUMENT

The rules governing the receipt of evidence in contested cases are found in the Missouri Administrative Procedure Act at § 536.070 and in the Commission’s regulations at 4 CSR 240-2.130. As Ameren acknowledges, these rules are less formal and less technical than the rules of evidence that apply in Missouri’s civil courts. *Ruffin v. City of Clinton*, 849 S.W.2d 108, 118 (Mo. App. 1993) (less formal); *Kramer v. Mason*, 806 S.W.2d 131, 135 (Mo. App. 1991) (less technical).

At the June 25 and July 10 public hearings, witnesses introduced Exhibits A through DD, consisting of forty-seven individual documents. Ameren’s Motion seeks to strike thirty-four of these documents. (Mot. at 11-23.) In e-mails dated August 12 and 19, 2013, attached as Exhibit 1, Ameren agreed not to challenge a subset of these 34 documents on the basis of lack of foundation, hearsay, or other non-relevance concerns, while retaining its right to challenge their relevance.

I. Numerous Documents Are Admitted and Not Subject to Objection.

Neither Ameren nor any other party objects to many of the documents introduced by witnesses at the two public hearings. Documents to which no party objects become part of the record. *See Concord Publishing House, Inc. v. Director of Revenue*, 916 S.W.2d 186, 196 (Mo. banc 1996): “[A]ll probative evidence received without objection in a contested case must be considered in an administrative proceeding.” Accordingly, the following documents which were admitted into the Record at the local public hearings and are not the subject of objection are not affected by the pending Motion and are evidence herein:

Exhibit A	Entire exhibit
Exhibit B	Entire exhibit
Exhibit E	One-page document, witness Ron Trimmer’s notes regarding his testimony.
Exhibit G	Five-page document, witness Barbara Bollman’s notes regarding her testimony.
Exhibit I	Eleven-page document, Missouri State Operating Permit, Permit No. MO-0004812, issued to Union Electric for its Labadie Power Plant on March 18, 1994, expiring on March 17, 1999.
Exhibit J	One-page document, Google Earth map of the Labadie area.
Exhibit L	Entire exhibit
Exhibit M	Entire exhibit
Exhibit O	Entire exhibit
Exhibit P	Entire exhibit
Exhibit R	One-page document, map showing groundwater wells identified by Missouri Department of Natural Resources near Ameren’s proposed Labadie landfill site.
Exhibit S	Entire exhibit
Exhibit DD	Entire exhibit

II. The Challenged Documents Are Relevant And Admissible.

With respect to the documents whose admission Ameren challenges, Ameren raises relevance objections to all and foundation and/or hearsay objections to a number of those documents. Below, Intervenor demonstrate first why the challenged documents are relevant and second why the foundation and/or hearsay objections should not preclude their admission.

A. The Challenged Documents Are Relevant Under the Commission’s Five-Part Test for Issuing Certificates of Convenience and Necessity.

Ameren argues that many of the documents presented by the witnesses at the public hearings are irrelevant because they address the threats posed by Ameren’s proposed Labadie coal ash landfill to public health and the environment. Ameren argues that such concerns “are not the principal considerations of the Commission.” (Mot. at 6.)

Although many of the documents do indeed address environmental issues, they are nonetheless relevant to the Commission’s decision to grant a certificate. In this proceeding relevant evidence is anything “which tends to prove or disprove a fact in issue.” *In re Missouri Gas Energy*, 207 P.U.R. 4th 307 (Mo. P.S.C. 2001). The documents introduced at the public hearings as described below are relevant because they undermine the factual elements of Ameren’s case in chief on which it bears the burden of proof.

In ruling on Ameren’s request for a Certificate for Convenience and Necessity, the Commission considers five factors:

1. Whether there is a need for the proposed facilities;
2. Whether the applicant is qualified to own, operate or manage the proposed facilities;
3. Whether the applicant has the financial ability for the undertaking;
4. Whether the applicant’s proposal is economically feasible; and
5. Whether the proposed facilities are in the public interest.

See In re KCP&L Greater Missouri Operations Co., 2009 WL 762539, at * 9 (Mo. P.S.C. Mar. 18, 2009 (describing these as the *Intercon* or *Tartan* factors). The challenged documents address three of the five factors: whether Ameren is qualified to own, operate or manage the proposed landfill; whether Ameren’s proposal is economically feasible; and whether the proposed landfill at the proposed location is in the public interest.

1. Several Documents are Relevant to Ameren's Qualifications to Own, Operate or Manage the Proposed Coal Ash Landfill.

Several of the challenged documents raise doubts concerning Ameren's qualifications to operate the proposed coal ash landfill, pointing out its poor track record regarding coal ash disposal.¹ The following challenged exhibits are relevant to Ameren's qualifications insofar as they involve recent examples of illegal and/or risky disposal of coal ash generated by Ameren's coal plants.

• **Exhibit D:**

"Ameren Coal Ash Used As Mine Fill Near St. Genevieve"
(www.stltoday.com, March 31, 2013).² This document highlights a situation where Ameren is avoiding coal ash disposal requirements that would otherwise apply and disposing of coal ash in a limestone mine with a public water supply well nearby.

"Illinois AG Says Ameren Illegally³ Disposed of Coal Ash"
(www.stltoday.com, February 7, 2013). This document addresses a complaint filed by the Illinois Attorney General against Ameren with the Illinois Pollution Control Board, alleging that Ameren illegally disposed of coal ash from its E.D. Edwards plant as fill material at its Duck Creek plant, resulting in excessive concentrations of toxic metals in groundwater in violation of state standards.

• **Exhibit F:**

June 27, 2012 Violation Notice from Illinois EPA to Ameren re: Coffeen Generating Station; February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois EPA to Ameren re: Coffeen Generating Station; June 27, 2012 Violation Notice from Illinois EPA to Ameren re: Grand Tower Generating Station; February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois EPA to Ameren re: Grand Tower Generating Station; June 27, 2012 Violation Notice from Illinois EPA to Ameren re: Meredosia Generating Station; June 27, 2012 Violation Notice from Illinois EPA to Ameren re: Newton Generating Station; February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois EPA to Ameren re: Newton Generating Station. In these documents, the Illinois Environmental Protection Agency ("IEPA")

¹ Many documents are relevant to more than one factor. By focusing one factor in this brief, LEO and Sierra Club do not waive any arguments that the documents are also relevant to other factors as well.

² The identical document is also part of Exhibit I.

³ Ameren's Motion (p. 12) repeated the typographical error in the June 25, 2013 Hearing Transcript in describing this exhibit. The exhibit itself contains the correctly spelled headline for the article. *See Suggested Corrections to Transcript of June 25, 2013 Hearing*, Docket Item No. 67 at 2.

notified Ameren in June 2012 that the coal ash disposal ponds at four of its Illinois power plants had caused violations of state water quality standards for heavy metals in the groundwater. A second set of letters from IEPA in February 2013 gives Ameren notice of the agency's intention to pursue legal action over the violations. Ameren has withdrawn its non-relevance objections to the above-listed Exhibit F documents.

● **Exhibit I:**

"Ameren Coal Ash Used as Mine Fill Near St. Genevieve"
(www.stltoday.com, March 31, 2013).⁴

"Leaks from the Ameren Toxic Waste Pond in Labadie Stirs Fears"
(www.stltoday.com, September 1, 2011) – This document notes that existing coal ash ponds at the Labadie plant were leaking 50,000 gallons per day of coal ash wastewater for 19 years without groundwater monitoring by Ameren to determine the extent of any groundwater contamination.

"EPA Settlement Raises Questions About Coal Ash in Missouri"
(www.stltoday.com, May 31, 2013). This document discusses the settlement of U.S. Environmental Protection Agency ("USEPA" or "EPA") claims that the disposal of 140,000 tons of Ameren's coal ash contaminated wetlands and surface water in Jefferson County.

● **Exhibit CC, Administrative Order on Consent: *In the Matter of Rotary Drilling Supply, Inc.*, Docket No. RCRA-07-2012-0028 (U.S. E.P.A. - Region VII, March 29, 2013).** This document is the settlement referenced in the preceding document. Ameren has withdrawn its non-relevance objections to this document.

All of the above-mentioned documents in Exhibits D, F, I, and CC are relevant to Ameren's qualifications to operate a utility waste landfill because they show a failure to manage the disposal of coal ash in a safe and lawful manner. Failure to comply with environmental regulations is evidence that a utility is not qualified to own, operate or manage a proposed facility. *See In re Missouri-American Water Co.*, 2003 WL 22847346, at *2 (Mo. P.S.C. 2003) (approving sale of assets where the seller utility had "a history of violations of Missouri Department of Natural Resources regulations ...").

Also, as Ameren has acknowledged, the Commission looks at the "adequacy" of the facility to be operated when considering whether to grant a certificate. See Opp. To Application to Intervene, at 3 (*quoting State ex rel. Ozark Elec. Coop. v. Pub. Serv. Comm'n*, 527 S.W.2d

⁴ This document is the same as the document in Exhibit D above.

390, 394 (Mo. App. 1975)). *See also State of Missouri ex rel. Public Water Supply District No. 8 of Jefferson County, Missouri v. Public Serv. Comm'n*, 600 S.W.2d 147 (Mo. App. 1980) (evaluating adequacy of facilities and noting inability to provide fire protection). “Adequacy” includes issues of safety. *Intercon Gas, Inc. v. Pub. Serv. Comm'n*, 848 S.W.2d 593, 597 (Mo. App. 1993) (“The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers.”)

The Exhibit I document regarding ongoing leaks at the Labadie plant’s existing ash ponds questions Ameren’s ability to operate adequate facilities at the very plant in question. All of the other documents above, including the Exhibit F documents regarding numerous groundwater violations alleged by IEPA regarding coal ash disposal at four Ameren plants in Illinois, cast doubt upon Ameren’s qualifications to operate adequate coal ash disposal facilities.

- **Exhibit Q:**

- March 25, 2010 letter to Illinois EPA from Ameren regarding “Ash Pond Closures at AmerenUE’s Venice Plant;**

- In Harm’s Way: Lack of Federal Coal Ash Regulations Endangers Americans and Their Environment, (Environmental Integrity Project, Earthjustice and Sierra Club; August 26, 2010) (portions discussing Ameren’s Venice, Illinois coal ash disposal pond).**

These Exhibit Q documents pertain to extensive groundwater contamination associated with the coal ash disposal pond at Ameren’s Venice, Illinois power plant. The plant operated as a coal-fired plant from the 1940s to the mid-1970s, when it converted to natural gas. Although no coal ash was disposed of at the site after 1977, ongoing groundwater contamination at levels violating federal and state standards has spread several hundred feet from the disposal site. In the 2010 letter, Ameren acknowledges the groundwater “impairment caused by the release of contaminants from this site,” (Ex. Q. at 1), and proposes a remediation plan to address the contamination. The excerpts from “In Harm’s Way” also describe the contamination at the Venice site. Like the documents

that comprise Exhibit F above, these documents relate to Ameren's qualifications to dispose safely of coal ash at its facilities. .

2. Several Documents are Relevant to the Economic Feasibility of Ameren's Proposal.

Many of the challenged documents are relevant to the economic feasibility of the proposed landfill. Ameren's pre-filed testimony contends that disposing of the Labadie plant's coal ash on site is the cheapest option available and minimizes environmental impacts. Pre-filed Testimony of Craig J. Giesmann at 4:9-14 (Docket Item No. 30.). But there is no indication that Ameren took into account either the risks posed by construction of the landfill at the proposed location in the Missouri River floodplain and floodway, with a high groundwater table, in an earthquake risk zone, or the economic cost of addressing the damage to the environment and risks to public health that could be caused by building a coal ash landfill in this risky location. Those costs include cleaning up toxic coal ash that leaks or is catastrophically released from the landfill and contaminates local groundwater used for drinking water and/or the Missouri River due to routine operations, flooding of the landfill from the Missouri River, and/or a major earthquake.

The following documents are relevant to the economic feasibility inquiry as they tend to show the likelihood, the consequences, and/or the cost of coal ash contamination that could result from Ameren's Labadie landfill proposal.

• **Exhibit C:**

"Coal Combustion Waste Damage Case Assessments" (U.S. E.P.A. Office of Solid Waste; July 9, 2007)⁵;

"Out of Control: Mounting Damages from Coal Ash Waste Sites" (Environmental Integrity Project and Earthjustice; February 24, 2010);

⁵ Ameren has withdrawn its non-relevance objections to this document.

“In Harm’s Way: Lack of Federal Coal Ash Regulations Endangers Americans and Their Environment” (Environmental Integrity Project, Earthjustice and Sierra Club; August 26, 2010);

“Risky Business – Coal Ash Threatens America’s Groundwater Resources at 19 More Sites” (Environmental Integrity Project; October 31, 2011);

“Forty-Nine Coal-Fired Plants Acknowledge Groundwater Contamination in Response to EPA Collection Data” (Environmental Integrity Project; April 2012);

“Final Report – Inspection 2009 – 12991 – TVA’s Groundwater Monitoring at Coal Combustion Products Disposal Areas” (Office of Inspector General; June 21, 2011).

“State of Failure – How States Fail to Protect Our Health and Drinking Water from Toxic Coal Ash” (Earthjustice and Appalachian Mountain Advocates; August 2011).

• Exhibit R: "Potential Contamination of Domestic Wells in the Labadie Bottoms, Franklin County, Missouri" (Robert E. Criss, December 9, 2010).

The above documents demonstrate that the costs associated with contamination that could result from Ameren’s proposed risky location are real costs which relate to the economic feasibility of Ameren’s proposal. EPA’s collection and evaluation of “damage cases” – examples of contamination caused by coal ash disposal – along with similar studies compiled by the non-governmental organizations, describe how commonplace it is for coal ash to leak from disposal sites and contaminate groundwater, surface water, and land. The document prepared by Dr. Criss evaluates the possibility that the proposed landfill will contaminate local residents’ groundwater wells used for drinking water.

The costs of remediating coal ash contamination – cleaning up coal ash that escapes from the landfill, treating contaminated groundwater, surface water, and soil, and possibly providing a new source of drinking water for nearby residents – were not part of Ameren’s calculation that locating its proposed landfill at the Labadie site was cost-effective. The above documents are relevant to the economic feasibility issue.

• Exhibit F:

June 27, 2012 Violation Notice from Illinois EPA re: Coffeen Generating Station; February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois

EPA re: Coffeen Generating Station; June 27, 2012 Violation Notice from Illinois EPA re: Grand Tower Generating Station; February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois EPA re: Grand Tower Generating Station; June 27, 2012 Violation Notice from Illinois EPA re: Meredosia Generating Station; June 27, 2012 Violation Notice from Illinois EPA re: Newton Generating Station; February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois EPA to Ameren re: Newton Generating Station.

In addition to being relevant to Ameren's qualifications to dispose of its coal ash on-site, these Exhibit F documents also relate to the economic feasibility issue inasmuch as they highlight the costly consequences of coal ash disposal in unsafe locations. Moreover, the water quality violations at the coal ash sites in Illinois were revealed through groundwater monitoring required by IEPA. Although one of the existing ash ponds at the Labadie plant has been leaking since 1992, Missouri has not yet required and Ameren has not yet performed groundwater monitoring of the type that documented groundwater contamination at Ameren's Illinois sites. In the absence of monitoring, it is certainly possible that similar groundwater contamination may already have occurred at the proposed Labadie landfill site due to long-term leakage from the nearby ash ponds.

• **Exhibit H:**

"National Flood Policy Challenges – Levees: The Double-Edged Sword" (Ass'n of State Floodplain Managers, April 17, 2007);
"Difference Between Flood Plain and Flood Way" (YouTube video; date unknown);
"So, You Live Behind a Levee!" (Am. Soc. Of Civil Eng., 2010);
"Fact Sheet – Living Behind Levees" (FEMA, January 2008)⁶;
"Floodway and Flood Hazard Areas at the Proposed Site" [Satellite Map] (Washington Univ. Interdisciplinary Environ. Clinic, date unknown);
"Earthquake Hazards Map of the St. Louis, Missouri Metro Area" (unknown);
"Flood Risk at Labadie Bottoms, Franklin County, Missouri" (Robert E. Criss, December 9, 2010).

These Exhibit H documents are relevant to the economic feasibility of Ameren's proposal to construct a coal ash landfill in the Missouri River floodplain and floodway, and in an

⁶ Ameren has withdrawn its non-relevance objections to this document.

earthquake zone. They also demonstrate that Ameren’s plan to construct a berm or levee around the landfill will not alleviate, and could exacerbate, the flood risk. According to the FEMA fact sheet, “no levee provides full protection from flooding. All levees are designed to provide a specific level of protection and can be overtopped in larger flood events.” Fact Sheet—Living Behind Levees at 1 (FEMA, January 2008). Moreover, “when levees do fail, or are overtopped, they fail catastrophically — the flood damage may be more significant than if the levee was not there.” *Id.*

Ameren did not take the costs of catastrophic flooding into account in its financial analysis and in reaching its conclusion that the proposed Labadie site is cost-effective. If flooding occurs – and the site is in the floodway, where flood waters move with greatest velocity – the ash could spread over neighboring farmland and wash into the Missouri River, which is the source of drinking water for much of metropolitan St. Louis. Ameren has ignored these costs, which could substantially undermine the economic feasibility of its proposal.

The Earthquake Hazards Map in Exhibit H demonstrates that the proposed landfill location is in an earthquake hazard zone. As with flooding, the collapse of the landfill due to seismic activity could have disastrous and expensive consequences if it occurs. However, there is no indication that Ameren took these costs into account when it concluded that the Labadie site was cost-effective.

- **Exhibit K:**

- “Health Effects Associated with Coal Combustion Residues” (compiled by R. Gregory Evans, Ph.D., M.P.H.; undated);

- “Coal Ash: The Toxic Threat to Our Health and Environment” (Physicians for Social Responsibility and EarthJustice; Barbara Gottlieb with Steven G. Gilbert, Ph.D., DABT, and Lisa Gollin Evans; September 2010).

- **Exhibits T and BB:**

“Inhalation of Fugitive Dust – A Screening Assessment of the Risks Posed by Coal Combustion Wastes Landfills” (U.S. E.P.A., May 2010) (Ex. T contains portions of the EPA report; Ex. BB contains the entire report).⁷

These documents are relevant to the calculation of the costs associated with the disposal of coal ash – the effects on human health. The documents discuss the multiple pathways through which coal ash travels and the risks of coal ash exposure to human health.

3. Several Documents are Relevant to the Public Interest Aspects of Ameren’s Proposal.

Several of the challenged documents are relevant to the public interest factor, demonstrating that the proposed Labadie landfill is not in the public interest.

- **Exhibit E: How Much Do Health Impacts from Fossil Fuel Electricity Cost the U.S. Economy?” (Justin Gerdes; Forbes; April 8, 2013);**

- **Exhibit G:**

- **“Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard” (February 6, 2013) (www.epa.gov/airquality/sulfurdioxide/pdfs/20130207SO2StrategyPaper.pdf)**

- **“State Pressed to Monitor SO₂ Pollution Near Coal Plants” (www.stltoday.com; June 28, 2012)**

- **Exhibit J: “Green – A Blog About Energy and the Environment: Twilight of the Coal Era?” (green.blogs.nytimes.com, June 14, 2010);**

- **Exhibit N: “Net Loss: Comparing the Cost of Pollution vs. the Value of Electricity from 51 Coal-Fired Plants” (Environmental Integrity Project; June 2012);**

- **Exhibit T:**

- **January 26, 2010 Letter from U.S. E.P.A., Region VII, to Warner Baxter re: Notice of Violation under Section 113(a)(1) of the Clean Air Act.”⁸**

For more than 40 years, the Labadie community has borne the brunt of air, water, and land pollution generated by the Labadie plant, which serves a large regional population. Even if

⁷ Ameren has withdrawn its non-relevance objections to this document.

⁸ Ameren has withdrawn its non-relevance objections to this document.

Ameren builds a new coal ash landfill in a different location from the proposed Labadie site, the plant's neighbors will bear the legacy risks of the existing, leaking coal ash ponds far into the future, as well as the plant's substantial air and water pollution for as long as the plant continues to operate. These above documents address the air and health impacts that have been affecting and will continue to affect the plant's neighbor, including air pollution impacts. They support the argument that it is not in the public interest to locate a risky coal ash landfill at the proposed Labadie site, where it threatens to contaminate the community's drinking water.

B. Ameren's Authenticity and Hearsay Objections Are Withdrawn or Without Merit.

Ameren also objects to the admission of many of the documents introduced by witnesses at the public hearing on the basis that the witnesses did not lay a proper foundation for their admission and on the basis that the documents are hearsay. (Mot. at 6-8.) Intervenors plan to use the Missouri law provisions for the admission of public records to lay the foundation for the introduction of these documents as indicated below.

Neither MAPA nor the Commission's rules specifically address the admission of public records from agencies other than the Commission.⁹ In the absence of a specific provision, Missouri's fundamental rules of evidence provide guidance in determining whether to accept a document. *State Bd. of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 154-55 (Mo. 2003) (Missouri statute for admission of expert testimony applies in administrative case); Alfred Neely IV, *Administrative Law* § 10.60 . 20 Mo. Prac. at 611 (4th ed. 2006) ("rules are helpful guides when MAPA is not clear").

⁹ Section 536.070(5) and section 4 CSR 240-2.130(2) address only the admissibility of the Commission's records from other cases, but not the records of any other state or federal government body.

Missouri law contains many provisions allowing for the authentication of public records and other government documents without the need to call the records custodian and lay a foundation at the evidentiary hearing. *See, e.g.*, Mo. Rev. Stat. § 490.240 (records of cities and towns); § 490.460 (copies of public contracts). Section 490.220 allows for the admission of government documents relevant to the issues, providing that “[a]ll records and exemplifications of office books, kept in any public office of the United States, or of a sister state, not appertaining to a court, shall be evidence in this state, if attested by the keeper of said record or books, and the seal of his office, if there be a seal.” Mo. Rev. Stat. § 490.220. Section 490.220 has been used to admit public records in proceedings before the Missouri Administrative Hearings Commission, *State Board of Registration for the Healing Arts v. Griswold*, 1991 WL 11007283, at * 5 (Mo. Admin. Hearings Comm’n 1991), and in administrative proceedings before the Missouri Labor and Industrial Relations Commission, *In re Parker*, 1994 WL 108933 (Mo. Lab. Indus. Rel. Comm’n Mar. 23, 1994) (portions of OSHA investigative report into decedent’s death).

As interpreted by Missouri’s courts, section 490.220 is remarkably broad in its coverage and allows for a wide range of government documents to be admitted. Moreover, section 490.220 not only eliminates the foundational requirements of authentication and best evidence, as described above, but hearsay objections as well. *See Rodriguez*, 996 S.W.2d at 57; 22A Mo. Prac. 803(8):1 & n.13. As long as the prerequisites of this section have been met and the document is relevant, it is admissible. *Hadlock v. Director of Revenue*, 860 S.W.2d 335, 337 (Mo. 1993) (citing *Wiggins v. Coy*, 462 S.W.2d 751 (Mo.1971); *State v. Gray*, 423 S.W.2d 776 (Mo. 1968)).

Upon being informed of Intervenor's plan to make use of the certification provisions of this statute, Ameren has agreed that Intervenor need not go through the process of obtaining certification for the following documents, and has waived all non-relevance objections to them:

- **Exhibit C.**

“Coal Combustion Waste Damage Case Assessments” (U.S. E.P.A. Office of Solid Waste; July 9, 2007);

Final Report –Inspection 2009-12991 TVA’s Groundwater Monitoring at Coal Combustion Products Disposal Areas (TVA Office of the Inspector General, June 21, 2011)

- **Exhibit F:**

June 27, 2012 Violation Notice from Illinois EPA re: Coffeen Generating Station;

February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois EPA re: Coffeen Generating Station;

June 27, 2012 Violation Notice from Illinois EPA re: Grand Tower Generating Station;

February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois EPA re: Grand Tower Generating Station;

June 27, 2012 Violation Notice from Illinois EPA re: Meredosia Generating Station;

June 27, 2012 Violation Notice from Illinois EPA re: Newton Generating Station;

February 13, 2013 Notice of Intent to Pursue Legal Action from Illinois EPA to Ameren re: Newton Generating Station.

- **Exhibit G: “Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard” (February 6, 2013)**

- **Exhibit H: “Fact Sheet – Living Behind Levees” (FEMA, January 2008);**

- **Exhibit T: January 26, 2010 Letter from U.S. E.P.A., Region VII, to Warner Baxter re: Notice of Violation under Section 113(a)(1) of the Clean Air Act.”**

- **Exhibit BB: “Inhalation of Fugitive Dust – A Screening Assessment of the Risks Posed by Coal Combustion Wastes Landfills” (portions) (U.S. E.P.A., May 2010)¹⁰;**

- **Exhibit CC: Administrative Order on Consent: *In the Matter of Rotary Drilling Supply, Inc.*, Docket No. RCRA-07-2012-0028 (U.S. E.P.A. - Region VII, March 29, 2013).**

A copy of Ameren's e-mails discussing its waiver is attached as Exhibit 1.

¹⁰ Portions of this document were offered as part of Exhibit T.

Intervenors plan to use the Missouri certification statute or other provisions of Missouri law to render admissible the following challenged documents as to which Ameren has not withdrawn its non-relevance objections.

- **Exhibit H: Missouri Department of Natural Resources, Earthquake Hazards in the St. Louis Area (1995).**

Intervenors have obtained the certification of the Missouri Department of Natural Resources (“DNR”) that the original map is a business record of that Department. See Exhibit 2.¹¹ DNR’s records custodian certified the document pursuant to section 490.692, Missouri’s business records provision. This certification also satisfies section 536.070(10) of the Missouri Administrative Procedure Act, which contains the version of the business-records rule applicable to this proceeding.

The map found in Exhibit H is a magnified version of the portion of the certified map focusing on the Labadie area. Because of the enlargement, the map’s title and legend was omitted. To make the map comprehensible in the absence of the title and legend, the map found in Exhibit H was labeled with the title and the terms of the legend, indicating which map color represented which earthquake risks. Also, the outline of the Labadie power plant, present on the original map, was given the written label “Labadie Plant.” The fact that the Exhibit H map is a zoomed-in portion of the certified map is readily apparent to the naked eye. Given the relaxed evidentiary standards and the certification of the full map, the authenticity of Exhibit H cannot reasonably be challenged and its status as a business record overcomes Ameren’s hearsay objection.

- **Letter from Ameren UE to IEPA re: Ash Pond Closures at Ameren UE’s Venice Plant dated March 25, 2010 (Exhibit Q at 1-19).**

¹¹ The map is also available online at the Missouri Department of Natural Resources website: http://www.dnr.mo.gov/geology/images/StLouis_Discl.jpg

Ameren's March 25, 2010 letter to IEPA is an admission against its interest and thus not hearsay. *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Commission of Mo.*, 116 S.W.3d 680, 691 & n.7 (Mo. App. W.D. 2003). Although Ameren's Motion argues that this letter is not an admission because it was submitted by someone authorized to speak on behalf of Ameren Missouri (Mot. at 20), the document itself contradicts this argument. It is on Ameren letterhead and sent from the corporate headquarters in St. Louis, Missouri. In addition, Ameren Missouri lists the Venice plant as part of its fleet. See "Facts About Ameren Missouri" at <http://www.ameren.com/sites/aeu/AboutUs/Documents/AmerenMissouriFactSheet.pdf> (last visited Aug. 18, 2013).

Finally, Ameren argues that none of the witnesses at the public hearing were qualified as experts within the meaning of Mo. Rev. Stat. § 490.065 and that the documents should be excluded on that basis. Intervenors agree that the witnesses were not experts; their voices were intended to be heard as the voice of the public – not only as the people who will bear the costs of Ameren's proposed coal-ash landfill as local landowners and residents relying on local groundwater, but also as ratepayers who could ultimately bear the costs of environmental damage attributable to Ameren's decision to locate the landfill in a floodway and a seismic zone. They did not claim to be experts, just informed citizens.

The purpose of the public hearing is to allow the Commission to hear directly from such informed citizens, customers, ratepayers, and facility neighbors. *In the Matter of Union Electric Company of St. Louis, Missouri, for Authority to File Revised Tariffs Reflecting Increased Rates for Electric Service to Customers in the Missouri Service Area of the Company*, 24 Mo.P.S.C. (N.S.) 434 (Mo. P.S.C. 1981) (local hearings were "for the purpose of receiving public testimony from customers of UE regarding the Company's proposed rate increase"). In many cases, the

public testimony centers around the customers' complaints about the quality of the services provided by the utility and /or the witnesses' belief—usually based on the utility's history—that the utility cannot provide the services it has asked the Commission to be allowed to provide. *In the Matter of Missouri Public Service Company of Kansas City, Missouri*, 1982 WL 190871, * 43 (Mo. P.S.C. 1982) (members of public complained about failure of utility to correct problems with “dead-end loops” which caused decreased water quality)

In this vein, many of the documents were offered by the witnesses to show the reasonable basis for their informed opposition to Ameren's Labadie landfill proposal. These would include the challenged documents as to which Ameren has not waived foundation and hearsay objections, and which Intervenors have not otherwise demonstrated are admissible, in Exhibits C, D, E, G, H, I, J, K, N, Q and R. Evidence which is otherwise hearsay may be admitted for the purpose of showing the witness' state of mind, or what the witness believed. So, for example, testimony that a purchaser of stolen goods was told the goods came from an estate sale was not hearsay because it was offered to show purchaser's state of mind rather than fact that the goods really did come from an estate sale. *State v. Beck*, 673 S.W.2d 122, 125-26 (Mo. App. E.D. 1984). Similarly, in *Tauvar v. American Family Mut. Ins. Co.*, 269 S.W.3d 436 (Mo. App. W.D. 2008) a doctor's report indicating that the plaintiff did not need chiropractic care was admissible to show the basis for the insurer's decision to deny the claim, even though it was not admissible to show that the plaintiff did not need such treatment. *Id.* at 440. *See also Replogle v. Replogle*, 350 S.W.2d 735, 737 (Mo. App. 1961) (witness could testify as to what he was told about the legal effects of probate administration to show the basis for his belief that he could possess the property under a claim of right). In these situations, it does not matter whether the facts

contained in the third-party document or testimony are true or not – what matters is that the witness believed them to be true.

Here, the witnesses at the public hearing offered newspaper articles, studies, and other publications they found in the course of their research for the purpose of showing that they had a reasonable basis for their testimony. The fact that they investigated coal ash and/or did research related to the risks posed by the proposed landfill's location in the Missouri River floodplain and floodway, and in a seismic zone, bolsters their credibility. At a PSC public hearing, where the standards of evidence are relaxed, allowing the admission of the documents for this limited purpose would be in keeping with the reasons for holding the hearing in the first place. Moreover, the Commission is experienced at hearing from members of the public at these hearings and has the skill and judgment to determine how to weigh the various materials presented to it in making its decisions. There is no danger here, as there might be if this were a jury trial, that the Commission will improperly accredit the documents and give them undue weight.

CONCLUSION

For these reasons, Intervenor asks that Ameren's Objections and Motion to Strike be denied.

LABADIE ENVIRONMENTAL ORGANIZATION
SIERRA CLUB

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August 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was sent via email on August 19, 2013, to all parties of record.

/s/ Elizabeth J. Hubertz