

**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	)	<b><u>File No. EA-2012-0281</u></b>
It to Construct, Install, Own, Operate, Maintain,	)	
And Otherwise Control and Manage a Utility	)	
Waste Landfill and Related Facilities at its	)	
Labadie Energy Center	)	

**STAFF’S RESPONSE TO MOTION TO DISMISS**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and in response to the *Motion of Intervenors Labadie Environmental Organization and Sierra Club to Dismiss for Lack of Jurisdiction* filed by Labadie Environmental Organization, Inc. (LEO) and Sierra Club (collectively, “Intervenors”), states as follows:

1. The Missouri Public Service Commission (“Commission”) has jurisdiction over Union Electric Company d/b/a Ameren Missouri’s (“Ameren Missouri” or “the Company”) application for a certificate of convenience and necessity (“CCN”) regarding a utility waste landfill at its Labadie Energy Center, pursuant to Commission Rule 4 CSR 240-3.105, Section 393.170, RSMo., and Section 386.020(14) RSMo.

2. In determining whether the Commission has jurisdiction to grant a CCN for the expansion of the Labadie Energy Center to include the construction and operation of a utility waste landfill, the Commission must decide whether a utility waste landfill is included in the meaning of “electrical plant,” as defined by Section 386.020(14). The statute defines “electrical plant” as,

All real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power.

Staff argues that a utility waste landfill constructed for the purpose of replacing existing methods of dealing with utility waste falls easily within the plain meaning of property that is to be used “in connection with” the generation of electricity. The production of electricity through fossil fuel combustion cannot be separated from the production of utility waste; waste is a natural byproduct of electricity generation, and the only question for a utility is what to do with the waste.

3. As explained in Ameren Missouri’s application for a CCN, the Company has been storing the waste produced by Labadie in ash ponds, which are reaching capacity, located at the existing plant site or recycling that waste when possible. The Intervenor has not alleged, and neither does Staff allege, that Ameren Missouri was improperly managing its waste. Constructing a landfill to dispose of utility waste is neither more nor less a part of the electrical plant and its operations than is an ash pond or a recycling program.

4. Furthermore, though the Intervenor states the Commission has never granted a CCN for a landfill, it is not true that the Commission has never directly claimed jurisdiction over the matter of utility waste. For instance, the Commission has found that sulfur dioxide (“SO<sub>2</sub>”) emission allowances and nitrogen oxide (“NO<sub>x</sub>”) emission allowances are subject to its jurisdiction, pursuant to Section 393.190.1

RSMo.<sup>1</sup> Staff sees no material difference between asserting jurisdiction over SO<sub>2</sub> and NO<sub>x</sub> emissions, ash ponds, recycling programs, and landfills.

5. The Intervenor point out that Ameren Missouri and other utilities have constructed landfills without seeking Commission approval in the past. The Intervenor also detail how it appears Ameren Missouri may not have originally contemplated seeking a CCN for its Labadie landfill. These points seem intended to prove that Ameren Missouri, other utilities, and the Commission have not considered CCNs necessary for landfills. As the Intervenor later correctly note, though, two important cases were decided in recent years – *StopAquila* and *Cass County*<sup>2</sup> – where the court determined that a utility must obtain a CCN before constructing an electric plant, even in geographic areas for which the utility holds certificates. This was not always the Commission's or the utilities' understanding of utility law.<sup>3</sup> So, whether or not Ameren Missouri and other utilities sought CCNs for landfills prior to these cases or originally planned to seek a CCN for Labadie is irrelevant. What is relevant is that Ameren Missouri has applied for a CCN now with its current understanding of the newest caselaw, and Staff cannot fault the Company for covering its bases. At best, this point merely brings the issue back to whether landfills should be considered plant. If we accept that a landfill is electric plant, then *Stop Aquila* and *Cass County* apply, and Ameren is taking the prudent action of asking for the Commission's permission rather than going ahead without it.

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<sup>1</sup> *Re Kansas City Power & Light Co.*, Case No. EO-92-250, Order Establishing Jurisdiction And Clean Air Act Workshops, 1 Mo.P.S.C.3d 359 (August 26, 1992); *Re Kansas City Power & Light Co.*, Case No. EO-95-184, Order Approving Stipulation And Agreement, 3 Mo.P.S.C.3d 415 (May 5, 1995).

<sup>2</sup> *StopAquila.org v. Aquila, Inc.*, 180 S.W.3d 24, 34 (Mo. App. 2005); *State ex rel. Cass County v. Public Service Commission*, 259 S.W.3d 544 (Mo. App. 2008).

<sup>3</sup> *StopAquila.org* at 32-37, citing *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo.App.1960) and *Union Elec. Co.*, 24 Mo. P.S.C. (N.S.) 72, 77 (1980).

6. Finally, the Intervenor argue that the construction of landfills is outside the Commission's mission and expertise – that landfills are the domain of the Missouri Department of Natural Resources ("MDNR"), and the Commission should rather be concerned with such things as the public's need for additional electric power and regulating competition between utilities. These valid concerns are encompassed within the Commission's mission to ensure the public has access to safe, reliable, and reasonably priced utility services. Staff asserts that evaluating a utility's operations relating to the waste they produce is directly related to the Commission's mission in one very simple way: cost. If Ameren Missouri is to construct a landfill, why would the Commission not be immensely interested in and fully qualified to evaluate whether such a cost was incurred efficiently and prudently? And of course, the Commission asserting its unique jurisdiction over the construction of the Labadie landfill does not interfere with any concurrent jurisdiction of other interested authorities such as MDNR.<sup>4</sup>

7. Other than arguing that the construction of a landfill is not within the Commission's expertise, the Intervenor have given no reason why the Commission should fall on the side of limiting its jurisdiction. The Intervenor have presented no arguments regarding how dismissing Ameren Missouri's application is in the public interest. Because Staff believes a landfill falls easily within the statutory definition of electric plant and because the Commission has an interest in whether utilities incur costs prudently, Staff recommends the Commission decide the merits of Ameren Missouri's application for a CCN in this case.

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<sup>4</sup> Concurrent jurisdiction is common. For instance, when a water utility is preparing to build a water treatment facility, it must come to the Commission for a CCN to do so. At the same time, the utility cannot operate a water treatment facility, despite its Commission-granted CCN, without MDNR permits.

**WHEREFORE**, as it is evident that the Labadie landfill should be included under the definition of electrical plant, the application of Ameren Missouri for a CCN to construct a landfill at its Labadie Energy Center is within the Commission's jurisdiction. Furthermore, because there has been no claim that harm will result from such an inclusion, and Staff has found no reason to believe such is the case, Staff suggests the Commission interpret its jurisdiction expansively and reject the Intervenor's motion to dismiss.

**/s/ Amy E. Moore**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of April, 2013.

**/s/ Amy E. Moore**