

IN THE CIRCUIT COURT OF  
FRANKLIN COUNTY, MISSOURI

COUNTY OF FRANKLIN, MISSOURI, a )  
Missouri County, )

and )

UNION ELECTRIC COMPANY d/b/a )  
Ameren Missouri, a Missouri corporation, )

Plaintiffs, )

vs. )

LABADIE ENVIRONMENTAL )  
ORGANIZATION, a Missouri non-profit )  
corporation, )

Cause No. \_\_\_\_\_

Serve: )  
Ms. Patricia Schuba )  
President )  
2322 Highway 100 )  
Labadie, Missouri 63055 )

Defendant. )

**PETITION FOR DECLARATORY JUDGMENT**

COME NOW plaintiffs, County of Franklin, Missouri (“County”) and Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), and for their cause of action against defendant, Labadie Environmental Organization (“LEO”), state as follows:

1. The County is a Missouri County of the First Class, and political subdivision of the state of Missouri.

2. Ameren Missouri is a corporation duly organized and existing under the laws of the State of Missouri, and specifically is an electrical corporation, as that term is defined in Section 386.020(15) of the Revised Statutes of Missouri (“RSMo”) and a public utility, as that

term is defined in Section 386.020(43) RSMo, subject to the jurisdiction of the Missouri Public Service Commission (“PSC”) pursuant to Chapter 386 RSMo.

3. Ameren Missouri engages in the general utility business including, among other things, generating, transmitting, transforming, distributing, and selling electric energy to the public for light, heat or power in various places, including the County and surrounding regions in eastern Missouri.

4. LEO is a Missouri nonprofit corporation which claims an interest in the subject matter of this controversy pursuant to the pending matters of: (a) *Ruth Campbell, et al. and Labadie Environmental Organization v. County Commission of Franklin County and Union Electric Company, d/b/a Ameren Missouri*, on remand from the Missouri Supreme Court, Franklin County Circuit Court Case Number 11ABCC—00286 (the “Zoning Litigation Claim”); (b) *Ruth Campbell, et al. and Labadie Environmental Organization, et al. v. Board of Zoning Adjustment of Franklin County, Missouri*, Franklin County Circuit Court, Cause No. 14AB-CC00155(the “Landfill Zoning Ordinance Enforcement Claim”); (c) the PSC Certificate Proceeding (defined below), and (d) *Labadie Environmental Organization, et al. Missouri Department of Natural Resources*, before the Missouri Administrative Hearing Commission, Case No. 15-01-0146 NR, commenced on or about February 2, 2015 (the “MDNR Permit Claim”) (collectively, including all political and other opposition in connection therewith, the “LEO Litigation Claims”). Pursuant to the LEO Litigation Claims and generally, LEO opposes construction of the UWL (as defined below) and, specifically, enactment and validity of the Landfill Zoning Ordinance (as defined below).

5. Ameren Missouri owns approximately 813 acres of real property in the County, near its electrical power plant near the Town of Labadie in the County (the “Labadie Energy

Center”), on which it intends to construct a Utility Waste Landfill (the “UWL”), as that term is defined in Section 260.200(52) RSMo. Such property on which the UWL shall be constructed is described on **Exhibit A** hereto, which is incorporated by reference herein (the “Property”). The UWL will manage coal combustion material generated from the Labadie Energy Center.

6. This action seeks to enforce and declare the jurisdiction of the County and the rights of Ameren Missouri in connection with the authorization and construction of the UWL. This Court has subject matter jurisdiction of this matter under Section 527.010 RSMo and Rule 87.02(a) of the Missouri Rules of Civil Procedure.

7. Venue is proper in this Court under Section 508.040 RSMo.

8. In furtherance of the purposes described in Paragraph 3 above, Ameren Missouri has commenced construction of the UWL as authorized by the PSC Landfill Order and the MDNR Permit, both as defined below, but subject to the uncertainty, cost and LEO Litigation Claims, as more fully set out below.

9. The Labadie Energy Center was authorized by Report and Order of the PSC effective December 13, 1966 (the “PSC Labadie Energy Center Order”), a copy of which is attached hereto and incorporated herein as **Exhibit B**.

10. On October 25, 2011, the County, through the County Commission, enacted Commission Order Number 2011-307, adopting a new Section 238 (the “Landfill Zoning Ordinance”) of its comprehensive zoning ordinance (the “Unified Land Use Regulations”), amending the County’s Unified Land Use Regulations to purport to govern permitting and regulation of the UWL and certain other matters, including Non-Utility Waste Landfills, as defined therein. A copy of the Landfill Zoning Ordinance is attached hereto and incorporated herein as **Exhibit C**.

11. After the enactment of the Landfill Zoning Ordinance, Ameren Missouri also filed a request with the PSC for specific authorization to expand the boundaries of the Labadie Energy Center to construct and operate the UWL on the Property.

12. On July 2, 2014, the PSC issued its Report and Order (the “Original PSC Order”) in File Number EA-2012-0281 (the “PSC Certificate Proceeding”), granting Ameren Missouri a certificate of public convenience and necessity (“CCN”). On August 6, 2014, the PSC issued its Order Regarding Applications for Reconsideration, deleting one sentence of the Original PSC Order (the “PSC Reconsideration Order”; collectively with the Original PSC Order, the “PSC Landfill Order”). A copy of the PSC Landfill Order is attached hereto and incorporated herein as **Exhibit D**.

13. The PSC Landfill Order became effective on July 17, 2014.

14. Before adopting the PSC Landfill Order, the PSC:

- a. issued public notices as required by law;
- b. granted a joint application to intervene filed by LEO and The Sierra Club;
- c. held public hearings on June 25, 2013 and July 10, 2013 in Union,

Missouri and Washington, Missouri, respectively; and

- d. conducted a full evidentiary hearing, with extensive testimony and cross-examination, on March 31, April 1 and April 2, 2014.

15. LEO participated fully, both as a formal intervenor and in public meetings, in the proceedings before the PSC leading up to the PSC Landfill Order. Specifically, LEO opposed the issuance of the CCN, and presented testimony and cross-examined witnesses regarding, *inter alia*, the appropriateness of the location of the UWL on the Property and the engineering design of the UWL.

16. In the PSC Landfill Order, the PSC specifically found and ordered, *inter alia*, as follows:

a. Ameren Missouri determined that the existing coal ash ponds will soon be filled to capacity and that a new coal ash storage facility will be needed by approximately 2016. The UWL will have sufficient capacity to store the coal ash produced during the approximately 24 year remaining life of the Labadie Energy Center.

b. If Ameren Missouri is to continue to produce electricity at its Labadie Energy Center, it must put the coal ash somewhere.

c. The UWL will be protected from flooding by a berm to an elevation of 488 feet, which is four feet higher than the 100-year flood plain and 0.4 feet above the 500-year flood plain. The berm will be further protected by a fabric-formed concrete mat designed to protect the berm and thus the coal ash landfill against flood erosion. Finally, the coal ash disposed in the landfill sets into a form that is essentially a large block of concrete that would be impervious to flood erosion.

d. The fact that the UWL will harden into what is essentially a large block of concrete also means that it is not susceptible to earthquake damage. Such an earthquake might at most crack the block of concrete.

e. Approval of Ameren Missouri's application for a certificate of convenience and necessity to construct and operate the UWL would promote the public interest.

f. The UWL may be built without significant danger to the environment or the public and is designed to address seismic hazard and flooding concerns.

17. On January 2, 2015, the Missouri Department of Natural Resources issued its Construction Permit Number 0907101, authorizing the construction of the UWL on the Property and approving the engineering design of the UWL, in the form attached hereto as **Exhibit E** (the “MDNR Permit”).

18. The MDNR Permit includes the following Site Specific Conditions:

**1. Subsequent Operating Permit and Local Approval**

Permittee shall not dispose of coal combustion residuals unless and until so authorized by a subsequent operating permit issued under Section 260.205, RSMo. The Department will again seek local verification pursuant to Section 260.003, RSMo prior to issuance of an operating permit.

**2. Pending Litigation**

There are currently pending legal challenges the Franklin County’s landfill ordinance and issuance of a local permit thereunder. Permittee shall suspend construction activities to the extent so ordered by a court of competent jurisdiction, subject to Permittee’s appeal and bonding rights.

**Exhibit E**, MDNR Permit, pages 8-9.

19. LEO has specifically opposed the issuance by MDNR of the MDNR Permit authorizing the construction of the UWL on the Property and approving the engineering design of the UWL, including pursuant to the MDNR Permit Claim.

20. Over a course of years, commencing in 2010, LEO has specifically opposed and continues to oppose the enactment and implementation the Landfill Zoning Ordinance. Specifically, in the Zoning Litigation Claim, LEO challenges the County’s enactment of the Landfill Zoning Ordinance, over LEO’s numerous and prolonged objections, as well as the public hearing process by which such Ordinance was enacted. LEO contends that such Ordinance is unlawful and void.

21. In the Zoning Ordinance Enforcement Claim, LEO alleges that the County's Board of Zoning Adjustment ("BZA") erred in upholding the County's determination that the UWL design complied with the Landfill Zoning Ordinance requirements.

22. Ameren Missouri has moved to dismiss defendant's Zoning Ordinance Enforcement Claim, on the grounds that MDNR Site Specific Condition 3, pertaining to the new UWL base elevation imposed by the MDNR permit (5 feet above the ground surface) is more stringent than the County's requirement (2 feet above the natural water table), and thereby renders defendant's Zoning Ordinance Enforcement Claim moot. The County has joined in Ameren Missouri's motion. LEO and other landfill opponents contend that the MDNR permit does not moot their Zoning Ordinance Enforcement Claim.

23. The PSC Landfill Order constitutes sufficient, specific and final authority, independently of any claimed power of the County or County Commission, for Ameren Missouri to continue the construction and proceed with the operation of the UWL within the meaning of *StopAquila.Org. v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. 2005) and Section 393.170.1 RSMo.

24. No party, including LEO, appealed the PSC Landfill Order.

25. On November 7, 2014, the County issued its Order approving and authorizing execution of a Memorandum of Understanding with Ameren Missouri (hereinafter "MOU"). In the MOU, Ameren Missouri agreed to abide by specified design requirements in the event the Landfill Zoning Ordinance is as a final and non-appealable matter deemed invalid. A copy of the MOU is attached hereto and incorporated herein as **Exhibit F**.

26. The County has incurred, and will continue to incur substantial expense and effort in defending the Landfill Zoning Ordinance from the Zoning Litigation Claim, and in defending the Zoning Enforcement Claim and other LEO Litigation Claims and various other legal and

political challenges brought by LEO and other landfill opponents included as co-parties with LEO in the LEO Litigation Claims.

27. Specifically, the Landfill Zoning Ordinance has become a vehicle by which LEO and other landfill opponents has challenged and will continue to challenge every decision made by Franklin County Officials relating to the UWL including those made by the County Commission, the Planning and Zoning administrator and the Board of Zoning Adjustment.

28. In entering into the MOU, the County has secured a commitment from Ameren Missouri that the construction and operation of the UWL will occur consistent with the objectives and safeguards set forth by the County in the Landfill Zoning Ordinance, whether or not the Landfill Zoning Ordinance is superseded in whole or in part as provided below.

29. The issuance of the PSC Landfill Order, together with MDNR Construction Permit Number 0907101, now exempts Ameren Missouri and the UWL from, and supersedes, Sections 238(C)(1)(d) through (e), and Sections 238 (C)(3) through (7) and 238(C)(9) of the Landfill Zoning Ordinance (the “Superseded Provisions”).

30. The issuance of the PSC Landfill Order in 2014, nearly three years after the County enacted the Landfill Zoning Ordinance, divests the County of the authority to prohibit or regulate the UWL through the Superseded Provisions, and any other land use regulations, excepting only Sections 238(C)(1)(a)-(c), 238(C)(2) and 238(C)(8) of the Landfill Zoning Ordinance, and Section 238(C)(9) of the of the Landfill Zoning Ordinance, as such latter section relates to the enforcement of such Sections 238(C)(1)(a)-(c), 238(C)(2) and 238(C)(8) (collectively, the “Non-Superseded Provisions”).

31. Enforcement of the Superseded Provisions of the Landfill Zoning Ordinance and any other County land use regulations, excepting only the Non-Superseded Provisions, would



interfere with the UWL and invade the area of regulation and control vested in the PSC under the holding of *StopAquila.Org. v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. 2005) and Section 393.170.1 RSMo., and is therefore in excess of the authority and jurisdiction of the County and the County Commission.

32. The County has sought, through the Landfill Zoning Ordinance, and through its Unified Land Use Regulations exclusive of the Landfill Ordinance (“Non-Landfill Ordinance Land Use Regulations”), to comprehensively regulate and control permitting for construction and operation of the UWL.

33. The Landfill Zoning Ordinance, excepting the Non-Superseded Provisions, cannot validly be enforced by the County against Ameren Missouri or the UWL as a result of the PSC Landfill Order.

34. The County’s Non-Landfill Ordinance Land Use Regulations cannot validly be enforced by the County against Ameren Missouri or the UWL as a result of the PSC Landfill Order.

35. The PSC Landfill Order preempts the County’s authority to regulate and control permitting for construction and operation of the UWL, excepting as to the Non-Superseded Provisions.

36. The LEO Litigation Claims, including specifically the Zoning Litigation Claim and the Landfill Zoning Ordinance Enforcement Claim, have caused and will continue to cause great controversy, cost and uncertainty to the damage and detriment of the public, the County and Ameren Missouri and its customers throughout the region.

37. Such controversy, cost and uncertainty is the subject of the Zoning Litigation Claim now pending before the Franklin County Circuit Court, but in advance of any final

decision in such matter, such uncertainty continues to cause harm and damage to the public and plaintiffs, and plaintiffs further cannot be certain as to when, whether or to what extent such uncertainty, cost and controversy may be abated by any such decision.

38. A controversy exists among plaintiffs and defendant as to the County's jurisdiction to permit and regulate the construction and operation of the UWL and Ameren Missouri's right to construct and operate the UWL under the PSC Landfill Order and the MDNR Permit.

39. A declaratory judgment is both necessary and proper in order to set forth and determine the legal rights of Ameren Missouri to complete the construction of, and operate the UWL and the jurisdiction, if any, of the County to regulate and control permitting for construction and operation of the UWL.

40. Ameren Missouri has commenced construction of the UWL consistent with the requirements of the MDNR Permit. At the conclusion of such construction activities, Ameren Missouri will apply to MDNR for an Operating Permit. Such construction activities are expected to extend into late 2016.

WHEREFORE, plaintiffs Franklin County and Ameren Missouri pray for a judgment declaring that:

(a) As a result of the issuance of the PSC Landfill Order, the County no longer has any right, power or authority over permitting or regulation of the UWL pursuant to the Landfill Ordinance, excepting only the Non-Superseded Provisions;

(b) As a result of the issuance of the PSC Landfill Order, the County no longer has any right, power or authority over permitting or regulation of the UWL under its Non-Landfill Ordinance Land Use Regulations;

(c) As a result of the issuance of the PSC Landfill Order, the UWL is exempt from the provisions of the Landfill Zoning Ordinance, excepting only the Non-Superseded Provisions;

(d) As a result of the issuance of the PSC Landfill Order, the UWL is exempt from the County's Non-Landfill Ordinance Land Use Regulations;

(e) The Landfill Ordinance, excepting only the Non-Superseded Provisions, is now superseded and pre-empted by the PSC Landfill Order and is no longer enforceable or valid;

(f) As to the UWL, the County's Non-Landfill Ordinance Land Use Regulations are now superseded and pre-empted by the PSC Landfill Order, and are no longer enforceable or valid as to the UWL;

(g) As a result of the issuance of the PSC Landfill Order, the Landfill Zoning Ordinance, excepting only the Non-Superseded Provisions, is null and void as to the UWL;

(h) As a result of the issuance of the PSC Landfill Order, the County's Non-Landfill Ordinance Land Use Regulations are null and void as to the UWL;

(i) Ameren Missouri has the right to complete the construction of the UWL, subject only to the conditions of the PSC Landfill Order, MDNR Permit and MOU; and

(j) for such other and further relief as the Court may deem just and proper.

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