BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

SIERRA CLUB, Petitioner, v. CAROL COMER, in her official capacity as Director of the DEPARTMENT OF NATURAL RESOURCES, Respondent, UNION ELECTRIC COMPANY, d/b/a AMEREN MISSOURI Intervenor. Permit No. MO-0004812	)	Case No. 15-1362 CWC

INTERVENOR'S NOTICE OF DNR'S RECOMMENDED GRANT OF AMEREN LABADIE ENERGY CENTER VARIANCE CWC-V-4-20

Intervenor Union Electric Company d/b/a Ameren Missouri ("Ameren") submits for the Missouri Administrative Hearing Commission's ("AHC") consideration the Missouri Department of Natural Resources' ("DNR") Public Notice of Ameren Labadie Energy Center Variance CWC-V-4-20, dated June 19, 2020 ("Proposed Variance")[1]. The Proposed Variance reflects the DNR's tentative recommendation to grant the Labadie Energy Center ("Labadie") alternative thermal discharge limits for Labadie. If the variance request is granted and alternative

[1] The Proposed Variance may be accessed on the DNR's website at: https://dnr.mo.gov/env/wpp/permits/pn/docs/0004812-Variance.pdf

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thermal discharge limits are established, the appeal currently under consideration by the AHC will be mooted. The Missouri Clean Water Commission is expected to consider the Proposed Variance at its meeting of either August 19, 2020 or October 7, 2020.

BACKGROUND

Sierra Club's Fourth Amended Complaint challenges whether Labadie's final thermal discharge limits are unlawful under the Clean Water Act ("CWA"). Thermal discharges to the Missouri River from Labadie are regulated by Missouri State Operating Permits ("MSOPs") issued by the DNR under the authority of the CWA and Missouri Clean Water Law ("CWL"). In accordance with the CWA and CWL, the DNR establishes the final thermal discharge limits of an MSOP based on either (1) the more stringent between thermal technology-based effluent limitations ("TBEL") and water quality-based effluent limitations ("WQBEL") or (2) a variance issued under CWA Section 316(a).[2] The dispute pending before the AHC exclusively concerns item (1), specifically whether the final thermal effluent limits for Labadie were properly established as the more stringent of a thermal TBEL or WQBEL.

On April 8, 2020, Ameren submitted a request for a 316(a) variance for Labadie. (Ex. A at p. 2.) The DNR published the Proposed Variance for public comment on June 19, 2020, which recommends the approval of Ameren's 316(a) variance request and would establish an alternative thermal effluent limit for Labadie in MSOP #MO-0004812. The Proposed Variance is subject to public comment until July 20, 2020, after which time the DNR will issue a final

[2] *See* Ex. SS, James A. Hanlon, Evaluation of Labadie Thermal Discharge Clean Water Act Permitting at Section D.I.A (Mar. 19, 2018), Hearing Tr. 664:4-9, 690:3-11; SC's Proposed Findings of Fact, Conclusions of Law, and Recommended Decision at ¶ 155 ("When a discharger demonstrates that otherwise-applicable heat pollution limits (whether based on BAT or water quality standards) are more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of fish and wildlife, the permit may contain alternate limits referred to as a '§ 316(a) variance.' 33 U.S.C. § 1326(a).").

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recommendation for the Missouri Clean Water Commission's consideration and approval. *See* RSMo § 644.061. If the 316(a) variance is granted, the DNR will establish new alternative thermal discharge limits in MSOP #MO-0004812 for Labadie, which, as a new agency action, would moot the Sierra Club's permit appeal currently under consideration by the AHC.

Dated: July 9, 2020

Respectfully submitted,

SCHIFF HARDIN LLP

By: */s/ Daniel J. Deeb*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via email this 9th day of July, 2020, to Timothy P. Duggan at tim.duggan@ago.mo.gov, Tara A. Rocque at tarocque@wustl.edu, Thomas Cmar at tcmar@arthjustice.org, Lisa Perfetto at lperfetto@earthjustice.org, and Charles McPhedran at cmcphedran@earthjustice.org.

/s/ Alex Garel-Frantzen
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