BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric)	
Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues)	Case No. ER-2011-0028
for Electric Service.	,	

MEMORANDUM SEEKING CLARIFICATION AND TO NARROW AREAS OF INQUIRY

COME NOW the Office of the Public Counsel, the Missouri Industrial Energy Consumers, AARP, the Consumers Council of Missouri, the Missouri Retailers Association and the Midwest Energy Users' Association (collectively, the Signatories), and respectfully request that the Commission clarify the scope of information it anticipates seeking from the Parties with respect to the rate case expense incurred by the Parties. While it is unlikely that the Commission intends to seek information related to legal fees incurred by the Parties in preparation for this litigation, the Parties, out of an abundance of caution, respectfully request that the Commission avoid any inquiry that would cause the Parties to disclose such information as it is highly sensitive, not relevant to any of the issues in the case, and may in some instances be confidential and/or privileged.

As a general matter, the cost a party incurs in attorney's fees is irrelevant and thus not discoverable. See generally Monarch Prods., LLC v. Zephyr Grafix, Inc., 2010 U.S. Dist. LEXIS 100242 (E.D. Mo. Sept. 23, 2010) (granting a protective order against a party seeking information about opposing party's attorney's fees). Such information may become relevant if a party places its fees at issue, by for example, seeking recovery for fees incurred. Id. However, even if relevant, a court may choose to exercise an alternative method to determine

3639541.1 **1**

fees rather than require the party to disclose sensitive information related to legal costs. *Id.* (noting that even if an award of attorney's fees is required, the court may determine reasonable rates by use of "lodestar" rather than require a party to reveal its fee arrangement with counsel). Moreover, to the extent the information may disclose trial strategy or communications with counsel, the information is also privileged. *Id.*

In this case, the Signatories have not placed their attorney's fees at issue. They are not seeking recovery for attorney's fees and are not asking the Commission to make any rulings or findings based on the attorney's fees they have incurred in this case. Indeed, the Signatories have already reached a stipulation and agreement with respect to class cost of service allocation that contemplates an overall rate increase that would be implemented on an equal percent, across-the-board basis. Moreover, disclosure of the Parties' legal costs may reveal privileged, confidential, and/or highly sensitive information about the Parties' respective fee arrangements with counsel, and/or trial strategy information. As such, disclosure of the Parties' legal costs is not a proper area of inquiry.

The Parties do not dispute that an inquiry into amounts paid to expert witnesses is a proper area of inquiry, as such information may reveal relevant information about bias. However, any inquiries of non-expert parties into fees incurred for retaining counsel is improper.

3639541.1 2

_

¹ It should be noted that unlike the Signatories to this pleading, the legal costs incurred by Ameren Missouri are relevant to the Commission's decision, because Ameren Missouri seeks to recover its legal costs in rates.

WHEREFORE, for the foregoing reasons, the undersigned Signatories respectfully request that the Commission clarify that it will not seek any information from the parties that may require the disclosure of attorney's fees incurred by the parties in preparation for litigation, as such information is not relevant, and may be confidential and/or privileged.

Respectfully submitted,

/s/Tim Schwarz

Thomas Schwarz #29645 BLITZ, BARDGETT & DEUTSCH 308 East High Street, Ste 301 Jefferson City MO 65101 (573) 634-2500

Facsimile (573) 634-3358

E-mail: tschwarz@blitzbardgett.com

ATTORNEY FOR THE MISSOURI RETAILERS ASSOCIATION

/s/ John Coffman

John B. Coffman #36591 JOHN B. COFFMAN, LLC 871 Tuxedo Blvd. St. Louis MO 63119-2044 (573) 424-6779

E-mail: john@johncoffman.net

ATTORNEY FOR THE CONSUMERS **COUNCIL OF MISSOURI**

<u>/s/ Lisa Langeneckert_</u>

Lisa C. Langeneckert #49781 SANDBERG PHOENIX & von GONTARD P.C. 600 Washington Avenue – 15th Floor St. Louis, MO 63101-1313 (314) 446-4238

Email: llangeneckert@sandbergphoenix.com

ATTORNEY FOR THE

MISSOURI ENERGY GROUP

/s/Diana Vuylsteke

Diana Vuylsteke #42419 BRYAN CAVE LLP 211 North Broadway Suite 3600 St. Louis Missouri 63102 (314) 259-2543

Facsimile: (314) 259-2020

E-mail: dmvuylsteke@bryancave.com

ATTORNEY FOR THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

/s/JohnCoffman

John B. Coffman #36591 JOHN B. COFFMAN, LLC 871 Tuxedo Blvd. St. Louis MO 63119-2044 (573) 424-6779

E-mail: john@johncoffman.net

ATTORNEY FOR AARP

/s/David Woodsmall

David L. Woodsmall #40747 FINNEGAN, CONRAD & PETERSON 428 E. Capitol Ave, Suite 300 Jefferson City, MO 65101 (573) 635-2700

E-mail: dwoodsmall@fcplaw.com

ATTORNEY FOR THE MIDWEST **ENERGY USERS' ASSOCIATION**

3 3639541.1

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed on this 19 th day of May, 2011 to all parties on the Commission's service list in this case.	
/s/ Diana Vuylsteke	

3639541.1 4