

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

In the Matter of a Working Case to Draft a)
Rule Regarding Utility Pay Stations and) File No. AW-2014-0329
Loan Companies.)

THE OFFICE OF THE PUBLIC COUNSEL’S COMMENTS

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Comments states as follows:

Introduction

On May 2, 2014, the Missouri Public Service Commission (Commission) opened the above stated file to facilitate the efforts of the Missouri Public Service Commission Staff (Staff) to gather input from interested stakeholders about drafting a rule regarding utility pay stations and short-term lenders.¹

On May 27, 2014, the Commission issued its *Notice of Opportunity to Comment and Request for Responses* which invited interested stakeholders to provide proposed rule language or comments no later than June 25, 2014.² In its Notice, the Commission also ordered all Missouri regulated utilities that are not small utility companies to provide information to Staff concerning their use of pay stations no later than June 25, 2014.³

Background

In 2009, Public Counsel filed a Petition in Commission File No. AX-2010-0061 asking the Commission to promulgate rules concerning the placement of regulated utility pay stations in

¹ Electronic Filing and Information System (EFIS) Item No. 1.

² EFIS Item No. 4.

³ Id.

locations where payday loans are offered.⁴ In that filing, Public Counsel stated its concern that regulated utilities were outsourcing bill payment functions to outside bill pay stations.⁵ Public Counsel asked the Commission to declare that restrictions on the location of outside pay stations is in the public interest, and that it is reasonable, necessary and proper to advance the protection of the regulated utility consumer from regular and frequent solicitation by payday loan stores, check cashing stores, currency exchanges and other alternative lenders that engage in predatory lending practices at the time the customer pays its utility bill.⁶

In response to Public Counsel's petition, the Commission collected written comments from the regulated utilities that would be affected by the rules.⁷ The Commission also took oral comments from representatives of the potentially affected utilities, the payday loan industry, and Public Counsel at an agenda meeting held on September 9, 2009.⁸ After hearing those comments, the Commission directed its Staff to further investigate Public Counsel's concerns and to report its recommendation to the Commission.⁹

At the Commission's request, Staff investigated Public Counsel's concern and filed a supplemental report addressing those concerns.¹⁰ Staff indicated it found no Missouri-specific issues or concerns with any of the items raised in Public Counsel's Petition and recommended the Commission dismiss Public Counsel's petition.¹¹ Nevertheless, in its June 1, 2011, *Order Regarding Petition for Promulgation of Rules Relating to Billing and Payment*, the Commission

⁴ Commission File No. AX-2010-0061, EFIS Item No. 1, August 20, 2009.

⁵ Id. at 2.

⁶ Id.

⁷ Commission File No. AX-2010-0061, EFIS Item Nos. 3-5 & 10.

⁸ Commission File No. AX-2010-0061, EFIS Item Nos. 6 & 7.

⁹ Commission File No. AX-2010-0061, EFIS Item No. 12.

¹⁰ Commission File No. AX-2010-0061, EFIS Item No. 15.

¹¹ Id.

noted that the relationship of payday lenders with Missouri's utilities was a matter of concern for the Commission.¹² The Commission stated that while it would not undertake rulemaking at that time, it directed Staff to further address consumer concerns about the relationship between payday lenders and Missouri utilities.¹³

Concurrently, the Commission undertook a review of the entire chapter of its rules relating to utility service and billing practices.¹⁴ This review included discussions with various stakeholders about other aspects of these consumer protection rules.¹⁵ As a result, the Commission directed Staff to address consumer concerns about the relationship between payday lenders and Missouri utilities as a part of the overall utility service and billing practices review of 4 CSR 240 Chapter 13 - Service and Billing Practices for Residential Customers of Electric, Gas, Sewer, and Water Utilities.¹⁶

On May 14, 2014, in the instant file, the Commission issued its *Order Opening a Working Case to Assist in the Drafting of a Rule Regarding Utility Pay Stations and Short-Term Lenders* stating the following:

Recently, while considering numerous changes to its Chapter 13 rules regarding utility billing and payment standards, the Commission was presented with a proposal to amend those rules to forbid utilities to establish pay agent relationships with companies that make secured or unsecured short term loans; companies that are sometimes described as payday lenders. The Commission did not add such a provision to the rules at that time, but indicated the proposal deserved full consideration and a fair opportunity for response. The Commission said it would direct its Staff to bring the matter back to the Commission for consideration in a future rulemaking. The Commission is creating this working

¹² Commission File No. AX-2010-0061, EFIS Item No. 21.

¹³ Id. at 3.

¹⁴ Commission File No. AW-2011-0252.

¹⁵ Commission File No. AW-2011-0252, EFIS Item No. 23.

¹⁶ Id.

file to facilitate Staff's efforts to obtain input from interested stakeholders regarding the drafting of such a rule.¹⁷

In its May 27, 2014 *Notice of Opportunity to Comment and Request for Responses*, the Commission welcomed Staff and any other stakeholder to view the documents from the 2010 file as a basis for any comments they wish to submit.¹⁸ To assist the stakeholders, copies of the following documents from File No. AX-2010-0061 were incorporated into the instant file: Staff's Report, filed on November 30, 2009; Staff's Supplemental Report, filed on February 3, 2010; and Staff's Response to Agenda Request, filed on March 2, 2010.¹⁹

Public Counsel's Comments

Public Counsel's concern with respect to co-located utility pay stations and predatory lenders continues unabated. In addition to the comments associated with Public Counsel's Petition from the 2010 file, Public Counsel offers the following comments on the Commission's authority to regulate the way a utility collects payments. Public Counsel's comments are not an attempt to alter any existing laws or regulations on payday loan services, but rather they are offered as an attempt to provide appropriate context to the policy question of whether or not payday lending sites are an appropriate venue for utility pay stations.

Public Counsel has concerns that payday loans are associated with long-term delinquency on utility bills. A 2011 study by Brian T. Melzer entitled "The Real Costs of Credit Access: Evidence from the Payday Lending Market"²⁰ finds no evidence that payday loans alleviate economic hardship. To the contrary, the study finds that loan access leads to increased difficulty paying mortgage, rent and utility bills. Additionally, counter to the view that improving credit

¹⁷ EFIS Item No. 2.

¹⁸ EFIS Item No. 4.

¹⁹ EFIS Item Nos. 6-8.

²⁰Quarterly Journal of Economics; 126(1), pg. 517-555,
<http://qje.oxfordjournals.org/content/126/1/517.full.pdf+html>

access facilitates important expenditures, the study suggest that for low-income households the debt service burden imposed by borrowing actually inhibits their ability to pay important bills.

One reason for this can be traced to the fact that most payday loans are obtained not for emergencies but to pay short-term bills. A July 2012 report by the Pew Charitable Trusts titled “Who Borrows, Where They Borrow, and Why”²¹ looked into why borrowers use payday loans. The report confirmed that 69 percent use payday loans to cover a recurring expense, such as utilities, credit card bills, rent or mortgage payments, or food.

Payday loans are also associated with negative spillover. A paper written by Brian Melzer titled “Spillovers From Costly Credit”²² suggests that as borrowers adjust their expenditures to accommodate interest and principal payments on payday loan debt, they turn to transfer programs like food stamps to supplement the household’s resources and they prioritize loan payments over other liabilities like child support payments.

The ability to successfully pay monthly expenses is directly tied to a steady and reliable source of income. However, access to payday loans correlates to decreased job performance. A 2014 paper written by Scott Carroll and Jonathan Zinman titled “In Harm’s Way? Payday Loan Access and Military Personnel”²³ suggests that payday loan access produces declines in job performance and/or severe misbehavior. Also, a 2006 Department of Defense publication titled “Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents”²⁴ reported that “predatory lending undermines military readiness, harms the morale

²¹ <http://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/18/payday-lending-in-america-who-borrows-where-they-borrow-and-why>

²² US Census Bureau Center for Economic Studies Paper No. CES-WP-11 <ftp://ftp2.census.gov/ces/wp/2013/CES-WP-13-11.pdf>

²³ Review of Financial Studies (2014), http://www.dartmouth.edu/~jzinman/Papers/PaydayAirForce_RFS_2014_02.pdf

²⁴ http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf

of troops and their families, and adds to the cost of fielding an all-volunteer fighting force.” This indicates a vicious cycle of payday loans affecting job performance, thus reducing household funds and, ultimately, increasing the likelihood that a payday loan will be sought to cover household expenses such as utilities.

Such an effect on the ability to cover household expenses will inevitably cause increased bankruptcy rates. A 2009 paper by Ms. Paige Marta Skiba and Mr. Jeremy Tobacman titled “Do Payday Loans Cause Bankruptcy?”²⁵ found that even though the size of the typical payday loan is only \$300, loan approval for first-time applicants increases the two-year Chapter 13 bankruptcy filing rate by 2.48 percentage points. According to the paper, there appear to be two components driving this large effect. First, consumers are already financially stressed when they begin borrowing on payday loans.²⁶ Second, approved applicants borrow repeatedly on payday loans and pawn loans, which carry very high interest rates.²⁷ What starts out to be a relatively small loan snowballs into an out of control financial situation where bankruptcy may be the only viable option.

Additionally, there is a direct correlation between increased financial stress and increased crime. A 2011 publication by Charis E. Kurbin, Gegory D. Squires, Steven M. Graves and Graham C. Ousey titled “Does Fringe Banking Exacerbate Neighborhood Crime Rates?”²⁸ indicates that payday lending is significantly associated with both violent and property crime

²⁵ Vanderbilt Law and Economic Research Paper 11-13.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1266215

²⁶ Id..

²⁷ Id.

²⁸ Criminology & Public Policy, 10(2), 437-466.
<https://webfiles.uci.edu/ckubrin/Payday%20Lending%20and%20Crime.pdf?uniq=fn1t8f>

rates. Their study found that this relationship holds even after controlling for a host of factors typically associated with neighborhood crime rates.²⁹

Payday loans cause an overall net loss of economic growth as a result of the transaction. A 2013 publication by Tim Lohrentz titled “The Net Economic Impact of Payday Lending in the U.S.”³⁰ examined the net impact of payday lending in terms of value added to the national economy and job creation, and found that the payday lending industry had a negative impact of \$774 million in 2011, resulting in the estimated loss of more than 14,000 jobs. Specifically, the study found that each dollar in interest paid subtracts \$1.94 from the economy through reduced household spending while only adding \$1.70 to the economy through spending by payday lending establishments.³¹

Further, many payday lenders specifically target safety net beneficiaries such as the unemployed, those with low income, the disabled and the elderly. A 2008 article by Francis T. & E. Schultz titled “High-Interest Lenders Tap Elderly, Disabled”³² stated that lenders are increasingly targeting recipients of Social Security and other government benefits, including disability and veteran’s benefits. “These people always get paid, rain or shine,” says William Harrod, a former manager of payday loan stores in suburban Virginia and Washington, D.C. Government beneficiaries “will always have money, every 30 days.”³³

Finally, it is important to note that customers themselves prefer in-person bill payment at grocery stores, pharmacies, and other retailers rather than payday lenders. During a 2007 Pacific

²⁹ Id.

³⁰ Insight: Center for Community Economic Development, <http://www.insightcced.org/uploads/assets/Net%20Economic%20Impact%20of%20Payday%20Lending.pdf>

³¹ Id.

³² Wall Street Journal, <http://www.csun.edu/pubrels/clips/Feb08/02-12-08G.pdf>

³³ Id.

Gas and Electric Company (PG&E) rate case in California, a 2005 survey was presented stating that of customers actually using authorized payment locations and local offices, 80% of PG&E's customers prefer grocery stores, while only 7% (the lowest preferred percentage of any option) preferred "check cashing establishments."³⁴

Conclusion

Public Counsel continues to have the same concern it presented to the Commission in File No. AX-2010-0061. Like a utility-run service center, the customer could walk into the payday loan store and pay their utility bill in person and in cash. However, a bill payment at these locations then becomes an opportunity to solicit the utility customer to borrow money at an extremely high interest rate. Often the payday loan customers are low-income customers with large unpaid utility bills who can be specifically targeted for an on-the-spot loan to pay the utility bills. As a result, and as demonstrated herein, the potential negative impact of co-locating a regulated utility pay station with a predatory lender far outweighs the modest benefit of convenience afforded by having an additional payment option.

To be sure, payday loan facilities will continue to exist in Missouri even if the Commission acts in this matter. To facilitate continued discussion on the matter, Public Counsel offers the attached proposed rule entitled Bill Payment – Restrictions on Eligible Pay Stations. (See Attachment A).

WHEREFORE, Public Counsel respectfully submits its Comments.

³⁴ PG&E (2007) General Rate Case Phase 1, PG&E, Exhibit 5, workpapers p. 6AB-171 (2005 Local Office and Pay Station Survey by Hiner & Partners Inc.), filed with the California Public Utilities Commission.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the parties of record this 25th day of June 2014.

/s/ Christina L. Baker

CSR – Bill Payment – Restrictions on Eligible Pay Stations

1. For purposes of this rule, the following terms mean:
 - (1) **“Affiliate Entity”**, consistent with 4 CSR 240-20.015(1)(a), any person, including an individual, corporation, service company, corporate subsidiary, firm partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or combination of political subdivisions, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electric, gas, water or sewer entity.
 - (2) **“Currency Exchange”**, the location at which or premises in which one form of currency is exchanged for another in the regular conduct of business, and which is not a bank, credit union, trust company, savings and loan association or other financial institution.
 - (3) **“Financial Institution”**, consistent with Mo. Rev. Stat. § 374.300 (2000 & Supp.)¹, any bank, bank holding company, sales finance company, consumer finance company, credit union, insurance company, lender as that term is defined in subdivision (3) of section 367.100, savings and loan association, savings and loan association holding company, savings and loan association service corporation, company operating under the mortgage brokerage laws of this state, or any subsidiary of any of the foregoing.
 - (4) **“Pawnbroker”**, consistent with Mo. Rev. Stat. § 367.011(3), any person engaged in the business of lending money on the security of pledged goods or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.
 - (5) **“Pawnshop”**, consistent with Mo. Rev. Stat. § 367.011(4), the location at which or premises in which a pawnbroker regularly conducts business.
 - (6) **“Secured Personal Credit Loan”**, consistent with Mo. Rev. Stat. § 367.011(7), every loan of money made in this state, the payment of which is secured by a security interest in tangible personal property which is physically delivered into the hands of the lender at the time of the making of the loan and which is to be retained by the lender while the loan is a subsisting obligation.
 - (7) **“Short-Term Loan Establishment”**, any business engaged in providing loans in this state with initial terms of 31 days or less as an element of its operation, and which is not a bank, credit union, trust company, savings and loan association or other financial institution. Except as provided herein, the term “Short-Term Loan Establishment” includes, but is not limited to, businesses subject to licensure pursuant to Mo. Rev. Stat. § 408.500, and any other business offering small loans, payday loans, signature loans, and other similar loans whether or not secured.

¹ Hereinafter all statutory citations refer to Mo. Rev. Stat. (2000 & Supp.).

- (8) **“Title Loan Establishment”**, any business engaged in providing title loans in this state as an element of its operation, and which is not a bank, credit union, trust company, savings and loan association. Except as provided herein, the term “Title Loan Establishment” includes, but is not limited to, businesses subject to licensure pursuant to Mo. Rev. Stat. § 367.509.
- (9) **“Title Loan”**, any agreement between two parties qualifying for treatment under Mo. Rev. Stat. § 367.512.
2. No electric, gas, water or sewer utility, or agent thereof, shall use for any bill collection services or as a bill payment agent any financial institution, trust company, currency exchange, pawnshop or pawnbroker issuing secured personal credit loans, short-term loan establishment or title loan establishment which lends money to any customer when, aggregating all interest, fees and other charges, the effective interest for such loan exceeds the state usury rate established in Mo. Rev. Stat. § 408.030.1 or the market rate defined therein, whichever is higher.
3. No electric, gas, water or sewer utility, may receive any funds transferred from any affiliate entity where the affiliate entity accepts any funds as payment for regulated services provided by the utility where such payment, if transacted directly with the utility, would be disallowed under section 2 of this rule.