

**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 RESPONSE TO STAFF REPORT**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Staff Report 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.<sup>1</sup>

On May 14, 2014, 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* which directed Staff to investigate drafting a rule regarding utility pay stations and short-term lenders and to file a report on its investigation no later than August 13, 2014.<sup>2</sup>

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

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<sup>1</sup> Electronic Filing and Information System (EFIS) Item No. 1.

<sup>2</sup> EFIS Item No. 2.

or comments no later than June 25, 2014.<sup>3</sup> 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.<sup>4</sup> As a result, numerous entities filed written comments to the Commission on this issue and proposed draft rules were submitted by the Consumers Council of Missouri<sup>5</sup> as well as Public Counsel.<sup>6</sup>

On July 10, 2014, Staff convened a workshop to address issues related to pay stations and to discuss proposed rule language. The workshop was well attended with a multitude of stakeholders represented.<sup>7</sup>

On August 13, 2014, Staff filed its Report as directed by the Commission which included the following recommendation: “It is Staff’s recommendation herein that the Commission **NOT** draft the contemplated rule, as the Commission’s authority for doing so is at best unclear.”<sup>8</sup>

### **Response to Staff’s Report**

#### **A. Authority of the Commission to Act**

In its Report, Staff states: “[I]t is Staff’s opinion that the Commission does not have clear authority to address the many issues outlined through the course of this docket.”<sup>9</sup> Public Counsel does not agree. Additionally, Staff states: “[T]he Commission does not have the authority to address issues related to whether the interest rates charged by short-term lenders are usurious or

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<sup>3</sup> EFIS Item No. 4.

<sup>4</sup> Id.

<sup>5</sup> EFIS Item No. 14.

<sup>6</sup> EFIS Item No. 13.

<sup>7</sup> EFIS Item No. 18.

<sup>8</sup> EFIS Item No. 30.

<sup>9</sup> Page 1.

whether the practices of such lenders are predatory in nature.”<sup>10</sup> In this respect, Public Counsel agrees, but it should be clear that Staff’s statement in this regard is entirely irrelevant to the issue before the Commission.

The reason for this docket is to consider rule making relating to the use of short-term loan companies as utility pay stations. Through its statutory authority to regulate public utilities,<sup>11</sup> the Missouri Public Service Commission has broad jurisdiction to address issues relating to the terms and conditions under which the utility accepts payment and to enact rules that are just and reasonable and in the best interest of the customer.<sup>12</sup> Therefore, the Commission has clear authority to regulate billing and collection practices affecting utility customers and the jurisdiction to determine that practices of such lenders exceed what is in the public interest, and so, prohibit public utilities utilizing certain short-term lenders as pay stations.

Staff also claims: “In summary, Staff has determined that the Commission’s authority to regulate the use by public utilities of payday lenders as authorized utility pay stations is at best unclear.”<sup>13</sup> However, Public Counsel would point out that this determination does not match Staff’s earlier statements in the very same Report, including: “At § 386.250, RSMo., the Commission is granted authority to make rules concerning utility billing practices”;<sup>14</sup> and “[W]ith [§ 386.250, RSMo.,] subsection (7), it is arguable that these provisions authorize the Commission to make rules concerning the type of businesses that utilities may enter formal

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<sup>10</sup> Page 10.

<sup>11</sup> See Chapters 386, 392 & 393, RSMo.

<sup>12</sup> See 4 CSR 240 Chapters 10 & 13.

<sup>13</sup> Page 10.

<sup>14</sup> Page 9.

relationships with as “authorized” pay stations.”;<sup>15</sup> as well as “Section 393.130.1, RSMo., requires every public utility to ‘furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable’ and § 393.140(2), RSMo., authorizes the Commission ‘to order such reasonable improvements as will best promote the public interest [and] preserve the public health[.]’<sup>16</sup> On the theory that a payday loan establishment is in some way “unsafe” for consumers, these provisions arguably authorize the Commission to make rules regulating the use of such establishments as authorized utility pay stations.” Since, as Staff concedes, Missouri Statute grants the Commission the authority to make rules concerning billing practices, as well as the authority to make rules regarding utility relationships with pay stations - including rules that promote the public interest, Public Counsel sees absolutely no basis for Staff’s contrary assertion that the Commission’s authority is unclear.

Staff goes on to claim: “Even if the Commission promulgated a rule to prohibit the use of ‘unauthorized’ pay stations, it would be very difficult to monitor and enforce since these entities are outside the purview of the Commission’s jurisdiction. The Commission would have no control over ‘Joe’s Gas Station’ accepting electric payments.”<sup>17</sup> Again, Public Counsel agrees that the Commission has no jurisdiction to regulate a payday lender in its day-to-day activities, but this is beside the point. As stated above, the Commission has broad jurisdiction to address issues relating to the terms and conditions under which the utility accepts payment from entities, such as payday lenders, and to enact rules that are just and reasonable and in the best interest of

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<sup>15</sup> Page 10.

<sup>16</sup> Id.

<sup>17</sup> Page 11.

the customer. The Commission also has authority to determine if an entity is acting as a utility by offering utility-related services that profit the entity.<sup>18</sup> For example, an entity offering to pay a person's utility bill – with an added un-tariffed charge for that service – could be seen as meeting the definition of a utility by the Commission.

### **Harm to the Utility Customer**

Staff notes: “The public comments indicate payday lenders should not be allowed as utility pay stations.”<sup>19</sup> However, Staff states: “Despite the various concerns and issues raised by commenters and the works cited, there is no evidence in the file indicating that there are issues specifically related to Missouri regulated utility companies using payday lenders as “authorized” utility pay stations – arguably bringing the practice under the oversight of the Commission.”<sup>20</sup> As a result, Staff states: “Should the Commission take proactive, preventative actions to promulgate a rule...? Staff recommends the Commission not promulgate a rulemaking for the sake of addressing a problem that may or may not happen at some point in the future.”<sup>21</sup> Therefore, despite the multitude of comments to the Commission providing research data, legal actions, publications and anecdotal evidence of harm, as well as the large number of participants at the workshop who came together on the very issue of preventing that harm that they know exists, the Staff somehow found no evidence of harm to the customer.

Staff's statement of no harm is incorrect and by no means a truism. Numerous comments were filed in this docket which note the often predatory nature of payday lending and the issues

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<sup>18</sup> See Chapters 386, 392 & 393, RSMo.

<sup>19</sup> Page 3.

<sup>20</sup> Page 11.

<sup>21</sup> Id.

associated with using such entities as utility pay stations.<sup>22</sup> Public Counsel notes that the public, not Staff, are the ones most greatly affected by the predatory lending facilitated by a co-located utility pay station, and their voices should carry a greater weight with the Commission than the statements of Staff. Even assuming for the sake of argument that there is no evidence of existing harm, the Commission's jurisdiction is not limited to addressing only existing problems – many Commission rules and regulations are prophylactic in nature. Such action is within the Commission's jurisdiction and is in the public interest. Acting in the public interest can mean acting proactively and preventatively. It is not in the public interest to wait until a harm has occurred. But, in any event, the comments provided to the Commission in this docket show that harm is occurring; utilities have used and are using short-term lenders as pay stations, and the pay stations do not offer this service out of a sense of altruism.<sup>23</sup> Therefore, the Commission can and should act, not only in response to the evidence of current harm to the utility customer, but also to proactively respond to prevent any future harm from occurring.

## **B. Proposed Rule Language**

Regarding the issue of rulemaking, Staff states: “Should the Commission determine that a proposed rulemaking is necessary, Staff recommends the following proposed rule language which is a modification of language suggested by Consumer's Council of Missouri:

### **4 CSR 240-10.090 – Restrictions applicable to the use of authorized pay stations**

PURPOSE: This rule prescribes the restrictions applicable to the use of authorized pay stations by electric, gas and water utilities operating under the jurisdiction of the Public Service Commission.

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<sup>22</sup> See EFIS.

<sup>23</sup> Id.

(1) No utility may enter into any contractual or authorized pay agent relationship with:

(A) Pawnshops, auto title loan companies, payday loan companies or other short term lending entities that are engaged in the business of making unsecured loans of five hundred dollars or less with original payment terms of 31 days or less; or,

(B) Pawnshops, auto title loan companies, payday loan companies or other short term lending entities that otherwise lend money where repayment is secured by the customer's postdated check; or,

(C) Liquor stores; or,

(D) Cigarette stores; or,

(E) Casinos.”<sup>24</sup>

Public Counsel appreciates that Staff's proposed rule is an attempt to control “authorized” pay stations at locations offering payday-type loans, but Staff's propose rule is both under-inclusive and potentially over-inclusive, and so, not narrowly tailored to address the harm alleged. First, Staff's proposed rule fails to include language broad enough to address all types of short-term usurious lending. Being under-inclusive, Staff's proposed rule likely will fail to protect the public. As well, Staff's proposed rule applies to the listed establishments irrespective of interest charged in their lending practices. Even if the short-term lender offers completely unobjectionable and reasonable lending terms, Staff's rule prohibits use of the lender as a pay station. As such, Staff's proposed rule is over-inclusive, not narrowly tailored to correct the harm occurring, and so, should be avoided.

In contrast, Public Counsel's proposed rule is properly drafted in that it ties the prohibition to the relationship of the interest rate charged by the short-term lender to the state usury rate established in Mo. § 408.030.1, RSMo., or the market rate. As a result, while certainly amenable to the additional discussion about the rule that would ensue if the

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<sup>24</sup> Page 11.

Commission opens a formal rule making process, at this time Public Counsel will continue to support over others its proposed rule entitled Bill Payment – Restrictions on Eligible Pay Stations, which was included as Attachment A to the Comments Public Counsel submitted on June 25, 2014 in this docket.

**WHEREFORE,** Public Counsel respectfully submits its Response and prays the Commission open a formal rule making process on this issue in order to continue these discussions.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

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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 25<sup>th</sup> day of August 2014.

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**/s/ Christina L. Baker**

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