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 Loan Companies	**)**	**File No. AW-2014-0329**

SUPPLEMENTAL COMMENTS OF
MISSOURI ENERGY DEVELOPMENT ASSOCIATION

MEDA previously filed comments relating to this workshop on June 25, 2014. Through the undersigned counsel, MEDA also participated in a July 10, 2014 workshop hosted by the Commission's Staff. These Supplemental Comments are with regard to the Staff Report filed with the Commission on August 13, 2014. The Commission, by virtue of an August 19th Notice of Opportunity to Respond to Staff Report, has invited additional public comments.

MEDA compliments Staff on its management of the workshop and the thoroughness of its Report. MEDA supports the conclusion reached by Staff that the Commission should not embark on promulgating a rulemaking, the purpose of which would be to arbitrarily prohibit or restrict a utility's ability to contract with third-parties, including payday loan establishments, to act as authorized utility pay agents. MEDA concurs in Staff's observation that the Commission's statutory authority to address this issue is at best unclear.

Staff notes that payday loan establishments are engaged in a lawful business that is regulated by the Missouri Division of Finance. *See*, Staff Report page 9 of 11. As such, any discussion on this topic must start with the presumption that such businesses operate in a lawful and reasonable manner.

Another consideration is whether the Commission, by promulgating a rule restricting the ability of utilities to contract with third-party pay agents, would be interfering with the prerogative of utility management to operate their businesses in a lawful manner. A rule that would restrict how utilities may arrange for their customers to pay their bills would amount to

micromanaging a utility's day-to-day business practices. There is ample case law to the effect that the Commission's power to regulate utilities, though very broad, does not allow the Commission to assume "the general power of management incident to ownership". *See, State v. Public Service Commission of Missouri*, 343 S.W.2d 177, 182 (Mo. App. 1960). *See also, State ex rel. City of St. Joseph v. Public Service Commission, 30 S.W.2d 8, 14 (Mo. banc 1930)*[1]*; State ex rel. Laclede Gas Company v. Public Service Commission*, 600 S.W.2d 222, 228 (Mo. App. 1980); *State of Missouri ex rel. Public Service Commission v. Bonacker*, 906 S.W.2d 896, 900 (Mo. App. S.D. 1995).

The workshop discussions were spirited and wide-ranging but the salient fact is that Staff's Consumer Services Division has not received any complaints from utility customers about having been subjected to "bait-and-switch" tactics by payday loan companies acting as authorized utility pay stations. Neither has the Office of the Public Counsel. This is confirmed in the Staff Report at page 11 of 11.

MEDA suggests that a Commission rulemaking to restrict the use of payday loan stations as authorized pay agents is a solution in search of a problem. In fact, while the Missouri Division of Finance lists roughly 900 licensed payday lender locations, the utilities reported using only about 30 pay stations that make, or may make, payday loans. *See*, Staff Report, pages 7-9. It is clear that the proponents of such a rule harbor heartfelt grievances concerning the payday loan industry generally and MEDA in no way wishes to disparage or minimize those concerns. Nevertheless, the correct avenue for addressing these grievances is through the

[1] In this case, the Missouri Supreme Court stated that "[t]he company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in doing so it does not injuriously affect the public. The customers of a public utility have a right to demand efficient service at a reasonable rate, but <u>they have no right to dictate the methods which the utility must employ in the rendition of that service</u>." *Id.* (emphasis added.)

legislative process. Just because the legislature does not act, or does not act in a sufficiently assertive manner, does not mean it is the Commission's place to step in and act on its own. To the contrary, the lack of movement on the legislative front despite the strenuous advocacy of many of the workshop participants during the last legislative session should be a cautionary tale for the Commission.[2]

MEDA additionally agrees with Staff's observations that a prohibitive rule likely would not address the issue in any comprehensive way because it would not end the operations of unauthorized pay agents which, unlike authorized agents, are not subject to utility-imposed controls such as caps on service costs. *See*, Staff Report, pages 10 and 11.

Promulgating a rule on the topic of utility pay stations likely would be ineffective or even counter-productive. As Staff noted in Commission Case No. AX-2010-0061:

> Commission restriction of ratepayer ability to use payday loan lenders may actually impede the ability of some customers to pay their utility bills in a timely manner. Specifically, the location of some payday lenders in neighborhoods where utility customers reside as well as the ability for customers to cash checks and pay their bills without requirement of a checking account may provide some customers with bill paying alternatives that they may not have otherwise.

Additionally, the Commission should not be adopting rules which have purely symbolic purpose because if symbolism becomes the decisive factor then the question becomes "where do you draw the line?" What about stores that sell liquor or cigarettes?

As an alternative, Staff has submitted some suggested rule language in the event the Commission decides to embark on a rulemaking. MEDA reserves the right to submit comments

[2] This topic has partisan overtones. It should be noted that the Missouri General Assembly *did* pass legislation this past session which would have placed additional limitations/restrictions on payday loan companies. *See*, Senate Bill 694. At the urging of Consumer's Council and others, it was vetoed by Governor Nixon.

concerning any rulemaking proposal if, and at such time as, the Commission may decide to publish a notice of proposed rulemaking.

Respectfully submitted,

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