

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

In the Matter of a Working Case to Consider the)	
Establishment of a Low-Income Customer)	File No. EW-2013-0045
Class or Other Means to Help Make Electric,)	File No. GW-2013-0046
Natural Gas or Water Utility Services Affordable)	File No. WW-2013-0047

REPLY COMMENTS OF LEGAL SERVICES OF EASTERN MISSOURI

Legal Services of Eastern Missouri (LSEM) appreciates the opportunity to submit these reply comments to the Public Service Commission (PSC) regarding the establishment of a low-income consumer class and other approaches to make residential consumer services more affordable. In support of its reply brief, LSEM incorporates by reference its initial comments (letter dated September 7, 2012) regarding LSEM, the individuals LSEM serves and the various utility-related obstacles LSEM clients often encounter.

A. THE PSC CURRENTLY HAS THE AUTHORITY TO SET A LOW-INCOME CONSUMER CLASS OR UTILIZE ANOTHER APPROACH TO ENSURE AFFORDABILITY OF UTILITY RESIDENTIAL SERVICES.

Several of the comments assert that the PSC does not have the authority to set a low-income class or to implement another approach to ensure the affordability of utility residential services. We respectfully disagree with these assertions because the courts have not ruled specifically on whether the PSC may set a low-income consumer class or implement methods designed to make utility services affordable. Additionally, the statute in question does not expressly prohibit such actions by the PSC.

The leading cases cited by commenters in support of the notion that the PSC does not have the authority to set a low-income consumer class or otherwise implement actions to make utility rates affordable are State ex rel. The Laundry, Inc. and Overland Laundry Company v. Public Service Commission, 34 S.W.2d 37 (Mo. 1931) and Re Missouri Gas Energy, 2001 Mo.

PSC LEXIS 195 (Case No. GE-2001-393). Such reliance on these cases is misplaced because State ex rel. The Landry Inc. dealt with *commercial* rates for manufacturers and, specifically, a situation where a water company set a special rate that was intended to fulfill the water company's purpose of luring manufacturers to the water company's service territory. Re Missouri Gas Energy dealt with whether a gas company could legally get a variance from its tariffs to enable it to re-direct federal refunds and certain unauthorized use charges to a separate non-profit agency which would then use the funds to help low-income customers of the gas company. 34 S.W.2d at 37; 2001 Mo. PSC LEXIS 195 at *1. The actions in question in these cases would have resulted in a difference in rates for similarly situated consumers. For example, the actions of the water company in State ex rel. The Landry Inc. would have created two different rates: one for new manufacturers (who would get a special discounted rate) and another for existing manufacturers (who would get the regular rate). The proposed actions of the gas company in Re Missouri Gas Energy would have created two different rates: one for low-income consumers who are customers of the company (who would get assistance with their utility bills as a result of redirected federal refunds and unauthorized use charges) and another rate for low-income consumers who are customers of another gas company (who would not get such assistance).

In the instant case, the PSC would not be setting different rates for similarly situated consumers but instead bringing itself into compliance with Mo. Rev. Stat. § 393.130.2. The statute unequivocally mandates that there not be a difference in the service and rates charged to individuals under the "same or substantially similar circumstances or conditions." The PSC Staff Report admits there are individuals who are paying 5 percent of their income towards utility services while there are other individuals who are paying 18 to 20 percent of their income *or*

more towards utility services. PSC Staff Report at 13. These individuals cannot, by any stretch of the imagination, be considered individuals who are in the same or substantially similar *circumstances*. Therefore, the PSC can legally set one rate for *all* consumers who are paying 5 percent of their income or less to utility services and another rate for *all* consumers who are paying 18 to 20 percent of their income or more. A tiered schedule of rates, consequently, is possible and authorized by Missouri law.

B. NOT SETTING A LOW-INCOME CONSUMER CLASS OR NOT IMPLEMENTING ANOTHER APPROACH TO ENSURE AFFORDABILITY WILL SUBSTANTIALLY HARM OUR CLIENTS.

Failing to set a low-income consumer class or implement another approach to ensure utility affordability will continue to result in substantial harm to our clients, who are low-income Missourians regularly experiencing “barriers to housing, medical care, education or employment” as a result of outstanding utility bills that are unaffordable. First, our clients will continue to face a stark choice that they should not have to face, e.g., choosing between paying their utility bills or medical bills or grocery expenses. Second, many of our clients are dependent upon medical care that requires utility connections. For example, a low-income client who requires the use of a CPAP machine requires electrical power (and potentially water services to obtain water for the humidifier) to be able to breathe while sleeping. Rendering utility services unaffordable negatively affects the health of our clients and could force them into nursing homes for these same services, in violation of Olmstead v. L.C., 527 U.S. 581 (1999). Another potential for harm is in the employment arena: low income individuals who are employed may require electricity to ensure that they can recharge the batteries on their wheelchairs or require electricity to power their alarm clocks to wake up on time and avoid adverse effects from having no alarm clock.

C. SETTING A LOW INCOME CONSUMER CLASS OR OTHERWISE IMPLEMENTING ACTIONS TO ENSURE THE AFFORDABILITY OF UTILITY RESIDENTIAL SERVICES IS NOT UNJUST DISCRIMINATION.

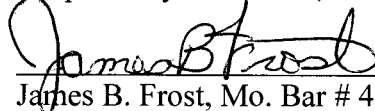
We would like to briefly touch upon an area several comments have pointed to in urging the PSC not to set a low income consumer class or otherwise implement methods to make utility residential services affordable: that such actions are discriminatory and prohibited by Missouri law. The standard in this area is not whether a PSC measure is discriminatory but whether such a measure would be *unjustly discriminatory*. Western Union Tel. Co. v. Call Publishing Co., 181 U.S. 92, 100 (1901); State ex rel. The Laundry, Inc., 34 S.W.2d at 44-45. In the cases cited above, setting different rates based on luring new manufacturers versus existing manufacturers was unjustly discriminatory as well as setting a substantially lower rate for customers of one utility company than customers of another utility company. In the instant case, however, it is not unjustly discriminatory to ensure that all individuals pay out substantially similar portions of their income towards utility costs or even to set up staggered rates *based on the amount of utilities used by individuals* that would apply to *all Missouri citizens*.

D. OTHER REGULATORY APPROACHES TO INCREASE AFFORDABILITY FOR LOW-INCOME MISSOURIANS ARE AVAILABLE.

In addition to setting a low-income consumer class or otherwise implementing methods to make utility residential services affordable, it is certainly within the Commission's authority to improve regulations concerning disconnection, reconnection, and billing practices contained within Title 4, Division 240, Chapter 13 of the Code of State Regulations (Service and Billing Practices for Residential Customers of Electric, Gas and Water Utilities). Better opportunities to access to utility services and better options for service reinstatement can be gained through regulatory improvements.

For example, the PSC could amend 4 C.S.R. § 240-13.020(5) to allow a utility to bill its consumers in unequal amounts to account for seasonal income, temporary loss of income, or income that fluctuates month to month (i.e. income from commissions), with the aim of ensuring full payment of amounts owed within a reasonable period of time, e.g. a year. Additionally, the PSC could amend 4 C.S.R. § 240-13.020(7) to extend the amount of time that a customer may have to pay the utility charges. The PSC could further take action to amend 4 C.S.R. § 240-13.030(4) to ensure that individuals with low income are not charged an excessive deposit or guarantee fee and/or interest rate (e.g. instead of mandating a maximum of 2 times of the highest bill in a 12-month period, individuals at or under the federal poverty level could, for example, only be charged a maximum percentage of their income). Finally, the PSC could amend 4 C.S.R. § 240-13.050 to require that reconnection fees are not charged or are charged at a lower rate to individuals with low income.

Respectfully Submitted,



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