BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Establishment of a Working Case for the Review and Consideration of a Rewrite of the Existing Electric and Gas Promotional Practices Rule into One Rule	))))	File No. AW-2018-0385

COMMENTS OF THE
MISSOURI PETROLEUM MARKETERS AND CONVENIENCE STORE ASSOCIATION IN RESPONSE TO THE REQUEST FOR ADDITIONAL COMMENTS AND NOTICE OF WORKSHOP

The Missouri Petroleum Marketers and Convenience Store Association ("MPCA") respectfully submits these comments in response to the Order Inviting Comments ("Order") issued by the Missouri Public Service Commission ("Commission") on January 30, 2020, in the above captioned matter ("Working Case"). MPCA thanks the Commission for opening this Working Case, and for the opportunity to participate in this important discussion. MPCA submits the following comments for the Commission's consideration.

As discussed below, MPCA supports the important policy goals behind the current rules, which are intended to protect public utility ratepayers from subsidizing promotional practices of investor-owned public utilities. Likewise, MPCA supports efforts to clarify Missouri regulations that effectuate these important policy goals, both substantively and stylistically.

I. Background

a. MPCA

With over 300 members, MPCA is a trade association that represents the majority of Missouri's convenience stores, gas stations, truck stops, and petroleum marketers, as well as their many suppliers and vendors. Many MPCA members are small, second or third generation, family-owned businesses. MPCA members collectively employ thousands of Missouri citizens. MPCA and

its members are customers and ratepayers of public utilities subject to the jurisdiction of the Commission and the rules at issue in this Working Case. MPCA is a nonprofit corporation created pursuant to Missouri law, with a principal office located at 205 East Capitol Avenue, Suite 200, Jefferson City, Missouri 65101.

b. The Commission's Working Case

On June 27, 2018, the Commission opened the Working Case with the filing of its Order Opening a Working Case Regarding a Review of the Commission's Rules Regarding Electric Utility and Natural Gas Utility Promotional Practices ("Opening Order"). The purpose of the Working Case is to allow interested parties to review and comment on "revised and consolidated" draft amendments to rules 20 CSR 4240-3.100(13); 20 CSR 4240-3.150; 20 CSR 4240-3.200(15); 20 CSR 4240-3.255; 20 CSR 4240-14.010; 20 CSR 4240-14.020; and 20 CSR 4240-14.030 (collectively, the "current rules"), prepared by staff of the Commission ("Staff") before the Commission's formal rulemaking process begins.[1] Staff filed its Request for Comments and Notice of Future Potential Workshop on January 29, 2020, which was approved by the Commission on January 30, 2020 via the Order.

II. MPCA's Comments

MPCA supports the important policy goals behind the current rules, which, as stated above, protect public utility ratepayers from subsidizing the costs of public utility promotional practices. MPCA also supports the Commission's efforts to clarify Missouri regulations that effectuate these important policy goals.

a. Substantive Comments

[1] Opening Order, 1, *In re: the Establishment of a Working Case for the Review and Consideration of a Rewrite of the Existing Electric and Gas Promotional Practices Rule Into One Rule*, AW-2018-0385, Dkt. 2 (June 27, 2018).

Consistent with filings in other matters before the Commission, MPCA believes entities should have the benefit and obligation to participate in a market-driven economy, whereby the party who stands to benefit or lose, and who has the authority to act or refrain, bares the risks and opportunities of business decisions. We believe the current rules reflect this policy, in that they were created to "prohibit, with respect to rates and services, the granting of unreasonable preferences or advantages to anyone, or subjecting anyone to unreasonable prejudice or disadvantage."[2] This is accomplished, in part, through the prohibition on investor-owned public utilities placing the risks of promotional practices on, and recouping promotional practice costs from, their customers, the latter of whom have no opportunity or authority related to these costs by nature of the investor-owned public utilities' natural monopolies.

MPCA members make these same decisions every day, as do countless investor-owned public utility ratepayers throughout Missouri. For example, operators of petroleum-based gas stations are responsible for costs associated with operating their stations. These operators make decisions about new services to add or existing services to modify, based on the economics of the proposal. These costs would be recouped through the sale of goods or services to the customer base, i.e., the people and businesses who elect to use that specific gas station. These members do not have a captive customer base they can exploit to recoup the costs of improvements. The risks, e.g., a loss in new customer generation or customers who refuse to pay the new costs by taking their business to a competitor, are borne by the operators. MPCA believes the same treatment is appropriate for investor-owned public utilities, which already enjoy a captive customer base, and believe that the

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[2] *Promulgation of rules concerning certain promotional practices of public utilities*, Case No. 17,140, 16 Mo. P.S.C. (N.S.) 67, 68 (1975).

current rules provide for such treatment. Updates to the rules should not undermine these policy goals.

The current rules are to encourage investor-owned public utilities to make reasonable and prudent business decisions by requiring promotional practices not only be reasonably sound, but also be "reasonably calculated to benefit both the utility *and its customers*."[3] Spreading costs of promotional practices across an investor-owned public utility's larger customer base is not "reasonably calculated to benefit [the investor-owned public utility's] customers," particularly, but not exclusively, when such costs exceed a reduction in rates.

Even where rates may decrease, promotional activities that serve to increase demand without a corresponding increase in production or transmission – paid for by the new customers or the investor-owned public utility itself – result in a investor-owned public utility's ratepayers incurring additional costs without benefits, while the investor-owned public utility and its shareholders reap the benefits of additional revenues, and any new customers obtain priceless access to the existing customers' investment. It is fundamentally unfair for investor-owned public utilities to use their monopoly to force their ratepayers to pay extra to subsidize promotional practices, particularly when such practices are ultimately designed to compete directly with private sector entities who are ratepayers themselves. Investor-owned public utilities want the benefit and power of their monopoly, the upside of the free market, but none of the downside.

As MPCA has stated previously in regards to electric vehicle charging stations and infrastructure specifically, but which applies equally to all such promotional practices, "[i]ncreased

[3] 20 CSR 4240-14.030(1) (emphasis added).

demand on the system will affect supply costs and demand charges to ratepayers, because it is they who have financed the current surplus of electricity and investments in generation, transmission and distribution that the electric utilities will be exploiting for increased demand from [electric vehicle charging stations]."[4]

MPCA disagrees with other commenters who would recommend expanding the exceptions under promotional practices or load building programs to include "activities that can be beneficial to a utility system and its customers."[5] Such an expansion of exceptions promises to swallow the rule and negate the intended policy outcomes. The standard under Missouri law, as noted above, is that promotional practices must be "reasonably calculated to" benefit both,[6] and not result in "unreasonable prejudice or disadvantage" for either.[7] Any promotional practice intended to build load "can be" beneficial to both interests in theory, and yet fail to meet these requirements under scrutiny. While load building activities that *are* beneficial to an investor-owned public utility and its customers are worthy of consideration, the risks of testing whether these activities are beneficial to both the utility and its customers should be borne by the utility, which has the most to gain.[8] This is particularly the case where the promotion practice fails to result in the desired increase in the investor-

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[4] Party Submission of American Fuel & Petrochemical Manufacturers and MPCA in Response to the Request for Additional Comments, EW-2019-0229, Dkt. 28, 27 (April 30, 2019). MPCA opposes investor-owned electric utility ratepayers being forced in any way to pay more per month to subsidize, either directly or indirectly, any portion of the electric vehicle ("EV") charging station including the electricity, the lines, infrastructure, construction, or ongoing costs of the EV charging station. This would allow investor-owned electric utilities to socialize the costs and risks associated with EV charging stations and unfairly compete against private businesses in the private sector retail motor fuel market. If investor-owned electric utilities want to enter and compete in the private sector retail motor fuel market, and therefore compete directly with private sector businesses, they should have to play by the exact same rules as other private sector motor fuel businesses.

[5] Missouri Division of Energy's Response to Public Service Commission Staff's Proposed Revisions to Promotional Practices Rules, AW-2018-0385, Dkt. 6, ¶ 5 (July 27, 2018).

[6] *Supra*, n.3 and accompanying text.

[7] *Supra*, n.2 and accompanying text.

[8] Absent a clear determination by the Commission that a particular activity "will best promote the public interest." 393.140(1), RSMo.

owned public utility's customer base or service receipts; the cost of the failed activities should not be subsidized by ratepayers. Public policy must continue to require that it is the investor-owned public utility and its shareholders, not the ratepayers, that should be baring the risk of promotional activities.

MPCA does not begrudge investor-owned public utilities the opportunity to take such risks and realize such opportunities, so long as the risks are not borne by ratepayers. As such, MPCA support the version of the propose rule presented by the Office of Public Counsel,[9] subject to continuing evaluation of related considerations.

b. Stylistic Comments

MPCA believes the proposed rule can be further refined to improve ease of use. Staff should replace the redundant defined terms "public utility" and "utility" in subpart (1)(M) of the proposed rule with a single, consistent term, in this case "public utility." Likewise, Staff should eliminate references to "electric or gas utilities" outright. Active voice should the utilized throughout the propose rule. Eliminate references to intentions or construing; for example, the second sentence of the definition for "demand-side resource," found in subpart (1)(F) of the proposed rule, should read as: "The meaning of this term shall not include load-building programs." Staff may limit the use of unnecessary words in the proposed rule by using defined terms within the definitions of other defined terms. For example, "affiliate" and "public utility" are both defined terms, but "affiliate" is only used independently of "public utility" once, in subpart (2)(C)(6). All other uses qualify "public utility." Staff should include "affiliate" in the definition for "public utility," and remove all unnecessary,

[9] *See* Initial Comments of the Office of the Public Counsel, AW-2018-0385, Dkt. 5 att. B (July 27, 2018).

subsequent references: "Public utility shall mean any electrical corporation or gas corporation, as defined in section 386.020, RSMo, or such corporation's affiliate." Inclusion of "affiliate" within the definition of "public utility" would not harm the meaning in any instance where "public utility" appears without "or affiliate."

VI. Conclusion

MPCA's concerns are straightforward:

- assurance of a level playing field that prevents unfair competition, and
- protection for ratepayers from obligations to pay for speculative or promotional activities.

MPCA, and certainly the majority of ratepayers within the state, encourages the Commission to promulgate rules that retain the important policy goal of protecting ratepayers by placing risk where it belongs, and not allowing Missouri citizens to finance the commercial growth of investor-owned public utilities while in handcuffs. The Commission should not unilaterally amend this important and far-reaching public policy - which will directly impact investor-owned public utilities, their ratepayers, and consumers and the private sector at large. Such changes to public policy should instead be addressed solely by the elected officials in the Missouri Legislature which represent the people of Missouri.

MPCA seeks a fair and free market and does not object to more choices for market participants. However, MPCA opposes efforts to force decisions onto consumers and ratepayers, particularly decisions that may not be in their best interest. The free market, as dictated by consumers, ratepayers and other demand-side forces, should be allowed to run its course. As such, this policy should be retained and protected in any amendments to the current rules. Of the drafts available to

date, MPCA believes the draft rule presented by the Office of Public Counsel best accomplishes these varied goals and protects and promotes the varied interests.

MPCA again thanks the Commission for opening this Working Case and for soliciting input from all interested parties as these important policy considerations are evaluated. MPCA would be happy to provide any additional information the Commission may desire.

Respectfully submitted,

LATHROP GAGE LLP

By:/s/ David A. Shorr
David A. Shorr (41283)
314 East High Street
Jefferson City, MO 65101
Telephone: (573) 761-5006
FAX: (573) 893-5398

Grant A. Harse (68948)
2345 Grand Boulevard, Suite 2200
Kansas City, MO 64108
Telephone: (816) 292-2000
FAX: (816) 292-2001

Attorneys for Missouri Petroleum Marketers and Convenience Store Association

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Submission of the Missouri Petroleum Marketers and Convenience Store Association was served on all parties participating in the Electronic Filing Information System on this day.

/s/ David A. Shorr
David A. Shorr