

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

Office of the Public Counsel's Petition	)	
for Promulgation of Rules Relating to	)	Case No. AX-2010-0061
Billing and Payment Standards for	)	
Residential Customers.	)	

**MOTION FOR EXTENSION OF TIME AND PRELIMINARY RESPONSE OF THE  
MISSOURI ENERGY DEVELOPMENT ASSOCIATION**

COMES NOW, the Missouri Energy Development Association ("MEDA"),<sup>1</sup> by and through counsel, and for its Motion for Extension of Time<sup>2</sup> and Preliminary Response to the above-referenced Petition filed by the Office of the Public Counsel ("OPC"), states as follows:

1. On August 20, 2009, OPC, without prior notice to or discussion with any of the MEDA utilities, filed a 35 page (including attachments) Petition that upon initial review appears to propose sweeping changes in the billing and bill payment processes used by all Missouri utilities.<sup>3</sup>

2. Given the scope of the allegations in OPC's Petition, its length, and the unique circumstances of each Missouri utility (which are not addressed or acknowledged by the Petition), the MEDA utilities are not at this time in a position to

---

<sup>1</sup> MEDA is a Missouri not-for-profit corporation, which represents the interests of Missouri's investor-owned utilities, including Union Electric Company, d/b/a AmerenUE; Kansas City Power & Light Company; The Empire District Electric Company; The Empire District Gas Company; Laclede Gas Company; Missouri Gas Energy; Atmos Energy Corporation and Missouri-American Water Company (the "MEDA utilities").

<sup>2</sup> A response to a Petition such as this is not required, but MEDA believes is appropriate given the sweeping nature of the proposed rulemaking. It is also not clear when any response to a petition to initiate a rulemaking would be due because the 10-day response time provided for in Commission Rule 4 CSR 240-2.080(15) does not by its terms apply to a rulemaking petition, which appears to be governed solely by 4 CSR 240-2.180, which contains no deadline for response. However, given the existence of the 10-day deadline in 4 CSR 240-2.080(15), MEDA has filed this Preliminary Response within that 10-day period.

<sup>3</sup> OPC's proposal appears to apply to all Missouri utilities – electric, gas, water, sewer and telecommunications.

provide the Commission with a full and complete response to OPC's request that a rulemaking be initiated. Consequently, MEDA hereby requests that the Commission allow approximately 30 days from the date the Petition was filed (until September 18, 2009) for interested persons, including MEDA, to provide any desired response to OPC's request that a rulemaking be initiated and, further, that the Commission give no consideration to the question of whether the Commission should act on OPC's Petition, or deny it, until after the requested September 18, 2009, deadline has passed. No one will be prejudiced or disadvantaged by providing additional time for response.

3. Although a full and complete response cannot be made on such short notice, a few preliminary observations about the Petition can be made at this time.

4. First, MEDA's initial review of the Petition suggests strongly that OPC's advocacy for a vast new and prescriptive utility billing rule, which is largely based upon OPC's extended discussion about payday loan stores, currency exchanges and the like (which in turn is based largely on newspaper articles dealing with alleged problems with payday loans, and not with utility billing practices) represents a solution in search of a problem. In fact, OPC cites no evidence of any particular problems that have occurred in Missouri related to the issues addressed in the petition, and cites no complaints from any Missouri customers to support its sweeping proposed rule change. The vast majority of the "substantial evidence"<sup>4</sup> that OPC points to is hearsay and conjecture in the form of news accounts and commentary, often from out-of-state sources.<sup>5</sup> In terms of the OPC's broad allegations regarding utility billing practices, MEDA is still gathering

---

<sup>4</sup> Petition, p. 17.

<sup>5</sup> In several cases, OPC points to studies written by other consumer representatives. See, Petition, p. 10. This is an echo chamber of advocacy; not a fact-based set of circumstances.

information from its member utilities, but MEDA's initial survey of its members indicates that OPC's allegations are unfounded and in many respects just plain wrong.

5. Second, OPC's Petition is an attempt to induce the Commission to address what OPC appears to view as a shortcoming in Missouri law regarding payday loan regulation, despite the fact that the Missouri General Assembly, the elected body with jurisdiction over that issue, declined to regulate payday lenders during its last session, as OPC acknowledges at page 8 of the Petition. MEDA questions whether the Commission, which itself is a creature of statute (with only those powers that the Legislature has given it) should be addressing OPC's perceived concerns with payday loan establishments via sweeping utility billing rules. Given the great demands on the Commission and its Staff, MEDA questions if this is an appropriate and productive use of the Commission's time.

6. Third, the rule is problematic in that the proposed regulation of charges and fees related to billing and payment are rate design questions that would be most appropriately addressed in a rate case proceeding, not in a one-size-fits-all rule. This is all the more pertinent because it would be the best forum in which to address a particular company's practices concerning billing fees or so-called "convenience charges", if any.

7. Fourth, OPC's Petition appears deficient in at least the following two respects:<sup>6</sup>

- a. The first deficiency arises under 4 CSR 240-2.180(3)(A)5, which requires an "estimation of the effect of the rulemaking on private persons or entities with respect to required expenditures of money or

---

<sup>6</sup> MEDA may provide additional information on these apparent deficiencies in its full response.

reductions in income, sufficient to form the basis of a fiscal note required under Chapter 536, RSMo.” The Petition contains no such estimation, and indeed, no information upon which such an estimate could possibly be made. At first blush, MEDA can advise the Commission that to the extent OPC’s proposed rule, if adopted, would drive the utilities to re-establish physical customer billing offices throughout the State, there would be a very substantial financial impact on utility customers throughout the state. How substantial that impact would be is unknown, but it would undoubtedly be quite substantial.

- b. The second deficiency arises under 4 CSR 240-2.180(3)(A)6, which requires that a petition that seeks initiation of a rulemaking be verified. Implicit in this requirement is that the person verifying the petition be personally familiar with the facts alleged. While MEDA certainly accepts that what Mr. Dandino alleges is indeed true “to the best of his information, knowledge and belief,” the fact remains that Mr. Dandino is an *advocate* representing the Public Counsel’s office, not a payday loan or utility billing expert with the knowledge or expertise of those business practices sufficient to verify any facts pertinent to its Petition.<sup>7</sup>

WHEREFORE, for good cause shown, MEDA requests that the Commission waive the 10-day deadline provided for in 4 CSR 240-2.080(15) (or otherwise find that it does not apply), that the Commission establish a deadline of September 18, 2009, for responses by interested persons to OPC’s Petition, and that the Commission give no

---

<sup>7</sup> A “verification” is a “[c]onfirmation of correctness, truth, or authenticity, by affidavit, oath or deposition.” Black’s Law Dictionary (5<sup>th</sup> ed. 1979).

consideration to the question of whether it should act on OPC's Petition, or deny it, until after the requested deadline.

Respectfully submitted,

/s/ Paul A. Boudreau  
Paul A. Boudreau - MO Bar # 33155  
Brydon, Swearingen & England, P.C.  
312 East Capitol Avenue, P. O. Box 456  
Jefferson City, Missouri 65102-0456  
Telephone: (573) 635-7166  
Facsimile: (573) 636-6450  
Email: [paulb@brydonlaw.com](mailto:paulb@brydonlaw.com)  
Attorney for Missouri Energy Development  
Association

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing has been duly served on this 31st day of August, 2009, by hand-delivery, facsimile, electronic mail, or by placing a copy of such brief, postage prepaid, in the United States mail to the following:

General Counsel  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102-0360

Michael Dandino  
Office of the Public Counsel  
Governor Office Building  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102-2230

/s/ Paul A. Boudreau  
Paul A. Boudreau