

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. AX-2010-0061

From: /s/ Natelle Dietrich 1/29/10
Utility Operations Division/Date

/s/ Kevin Thompson 1/29/10
Staff Counsel's Office/Date

Subject: Staff's Supplemental Report and Recommendation on Investigation

Date: January 29, 2010

On August 20, 2009, the Office of the Public Counsel (OPC) filed a petition asking the Commission to promulgate rules to limit the ability of a utility to establish separate fees for bills and payment of bills, to place restrictions on the use of pay stations, and to increase the availability of customer service centers. At the Commission's September 9, 2009, agenda meeting, Staff explained it did not support OPC's request for rulemaking. Representatives from Community Financial Services Association of America, United Payday Lenders of Missouri, Missouri Energy Development Association, AmerenUE, and the Missouri Telecommunications Industry Association indicated they were not aware of any Missouri-specific concerns raised by OPC's petition and, therefore, did not support the proposed rulemaking. On October 2, 2009, the Commission issued an Order Directing Staff to Investigate and File Recommendation by November 30, 2009, investigating the problems described in OPC's petition and recommending whether the Commission should proceed with a rulemaking. Staff filed its initial report on November 30, and asked for additional time until January 31, 2010 to provide supplemental information on the pay stations portion of OPC's petition. Staff's request was granted on December 16, 2009.

Summary of Staff Recommendation

As explained in its initial report and recommendation, there do not appear to be issues or concerns with separate fees and payments of bills or with the availability of utility customer service centers. In addition, there are processes in place to appropriately address both of these areas should issues arise; therefore, Staff recommended the Commission dismiss these portions of OPC's petition. Staff has continued to investigate the pay agent matter and, as explained in more detail below, has not found any Missouri-specific concerns. Therefore, Staff recommends the commission dismiss the petition in its entirety.

Investigation Outcome

In its petition, OPC expresses a concern that a utility bill payment at "predatory lenders" becomes an opportunity to solicit the utility customer to borrow a few hundred dollars at an extremely high interest rate. In June 2007, the National Consumer Law Center (NCLC), a non-profit organization that deals with consumer issues, released "Utilities

and Payday Lenders: Convenient Payments, Killer Loans” (Report).¹ The Report claims, “[A]t hundreds of [] payday loan stores across the country, utility customers’ economic health is in danger every time they go to pay a bill. They may inquire about a payday loan. A commission-driven seller may suggest one...a sales lead may have been generated for a future predatory loan...Or an idea may have been planted in the mind of a potential borrower.”² However, the same Report notes, “Available data offers no way to measure how many utility bill payers have been put on the road to becoming payday loan customers.”³ Despite the lack of measurable data, the Report ends by making 7 recommendations, several of which are very similar to ideas contained within the OPC petition. The recommendations include such things as: 1) Prohibit utilities from entering into arrangements for bill collection from entities that lend money at exorbitant rates; 2) Require utilities to maintain company owned and operated service centers; 3) Only allow utilities to sign contracts for bill payment services with supermarkets, drug stores, community groups, banks, etc.; 4) Require utilities to verify the eligibility of all retail service providers; 5) Require utilities to negotiate contracts such that bill payment services charge no more than a nominal amount for the service; 6) Utilities should only be allowed to close service centers upon a demonstration that the cost of maintaining those centers would place a burden on ratepayers; and 7) Prohibit lenders who collect utility payments from promoting or soliciting lending services before, during or after the transaction.

Interestingly, the Report focuses on utilities that use bill payment services, yet according to the United Payday Lenders of Missouri (UPLM), its members collect payments on behalf of 40 to 200 entities around the state. If the Commission were to restrict the ability to make utility payments at these agents, it could have the affect of telling the consumer – “You can pay four of your six bills at this location, but you have to go elsewhere to pay your electric and water bill.” While utility rate payers who use payday lenders could engage in borrowing at high interest rates from such businesses, Commission restriction of rate payer ability to use payday 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.

In response to the Report, and noting the lack of data to support the NCLC claims, ACE Cash Express conducted a sampling of its utility and bill payment transactions. ACE processed over 6.3 million bill-payment transactions during the 12 months ending June 30, 2007. In a sample of approximately 600,000 transactions, ACE identified less than 6,000 customers, or approximately 1%, who also became short-term loan customers on

¹ National Consumer Law Center. Written and researched by: Rick Jurgens, Consumer Advocate. www.consumerlaw.org

² Id. Pages 12-13.

³ Id. Page 13.

the same day they paid their bill.⁴ Similarly, UPLM and the Community Financial Services Association of America surveyed some of their members. These members indicated they processed approximately 15,000 bill payments in Missouri in 2009. Only 132 of those customers obtained a loan, although it is not known if the loan was obtained at the time of the bill payment transaction or at another time. Further, of the 12 UPLM members that responded, five indicated they do not provide a bill-payment service at all. In its petition and responses to Staff's data requests, OPC cites several articles or publications. Some of these express concerns that "predatory lenders" serve the working poor, the very poor, minorities and immigrants.⁵ UPLM conducted a customer survey, choosing a random point in time when all customers seeking loans were surveyed. Following is a summary of pertinent results:

Male: 32 percent Female: 65 percent

Age: 18-24	7 percent
25-35	17 percent
36-45	27 percent
46-65	37 percent
Over 65	5 percent

Education (highest level attended):

High School	48 percent
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College

Two year	17 percent
Community College	13 percent
Four Year	11 percent
Post graduate	4 percent
Tech college	5 percent

Level of Income:

Under \$15,000	16 percent
\$15,000-25,000	20 percent
\$25,000-35,000	29 percent
\$35,000-50,000	19 percent
\$50,000-100,000	9 percent
Over \$100,000	1 percent

Reason for Loan:

House payment	8 percent
Car payment	6 percent
Medical	6 percent

⁴ "ACE Cash Express Refutes National Consumer Law Center Report". Eric C. Norrington. Dallas. July 17, 2007.

⁵ Petition for Promulgation of Consumer Protection Rules Relating to Billing and Payment. Page 7.

Utilities	17 percent
Taxes	2 percent
Car repairs	11 percent
Unexpected expense	52 percent

As can be seen, at least during the time period surveyed, loans were obtained for various needs by people from all walks of life.

Finally, the documentation provided by OPC included reference to a couple class action suits. Legal Counsel for Staff conducted research on those suits and advises neither case has yet to be decided on the merits, both have recently been decided on procedural matters regarding whether the mandatory arbitration clause of their respective loan contracts were binding, but neither case mentions the relationship between payday lenders and utility bills.

Staff Recommendation

Staff has reviewed many documents, articles, surveys and court cases, and had conversations with various interested entities. There do not appear to be Missouri-specific issues or concerns with any of the items raised in OPC's petition. Staff recommends the Commission dismiss OPC's petition in its entirety.

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

In the Matter of Office of Public
Counsel's Petition for Promulgation of
Rules Relating to Billing and Payment
Standards for Residential Customers

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Case No. AX-2010-0061

AFFIDAVIT OF NATELLE DIETRICH

STATE OF MISSOURI

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COUNTY OF COLE

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Natelle Dietrich, of lawful age, on oath states: that she has participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was given by her; that she has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of her knowledge and belief.



Natelle Dietrich

Subscribed and sworn to before me this 29th day of January, 2010.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



Notary Public