

MEMORANDUM

TO: Morris L. Woodruff, Secretary

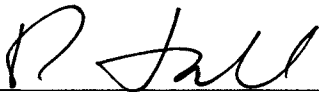
DATE: April 18, 2016

RE: Authorization to File Final Order of Rulemaking with the Office of Secretary of State

CASE NO: AX-2015-0061

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Final Order of Rulemaking with the Office of the Secretary of State, to wit:

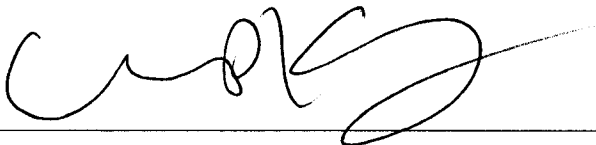
Proposed Rule 4 CSR 240-13.020 – Billing and Payment Standards



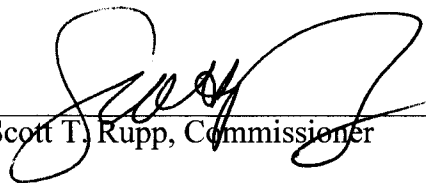
Daniel Y. Hall, Chairman



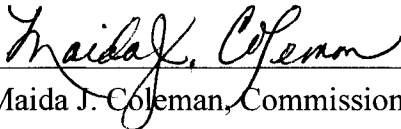
Stephen M. Stoll, Commissioner



William P. Kenney, Commissioner



Scott T. Rupp, Commissioner



Maida J. Coleman, Commissioner

Jason Kander

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-13.020

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

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Data Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

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Interagency mailing address GOB 9th Floor

TYPE OF RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, include effective date
☐ Proposed Rulemaking
☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration
☐ Request for Non-Substantive Change
☐ Statement of Actual Cost
☒ Order of Rulemaking

Effective Date for the Order _____

☐ Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

New Section 13

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
APR 20 2016
ADMINISTRATIVE RULES



Commissioners

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Chairman

STEPHEN M. STOLL

WILLIAM P. KENNEY

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Director of Administration
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KEVIN A. THOMPSON
Chief Staff Counsel

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-13.020 Billing and Payment Standards

Dear Secretary Kander,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 386.250 and 393.140, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

Morris L. Woodruff, Chief Regulatory Law Judge
Missouri Public Service Commission
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Jefferson City, MO 65102
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morris.woodruff@psc.mo.gov

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 13 – Service and Billing Practices for Residential Customers of
Electric, Gas, Sewer, and Water Utilities**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250(6), and 393.140(11) RSMo 2000, the commission amends a rule as follows:

4 CSR 240-13.020 Billing and Payment Standards is amended.

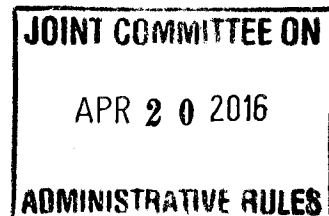
A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on March 1, 2016 (41 MoReg 307). Changes to the proposed amendment are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended April 1, 2016, and the commission held a public hearing on the proposed amendment on April 8, 2016. The commission received timely written comments from the Office of the Public Counsel; Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Empower Missouri; AARP and the Consumers Council of Missouri; and the staff of the commission. The Office of the Public Counsel; Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; AARP and the Consumers Council of Missouri; the staff of the commission; and Laclede Gas Company also appeared at the hearing and offered comments. Legal Services of Eastern Missouri, Inc. submitted untimely written comments on April 7, 2016. AARP and Consumers Council of Missouri offered those written comments into the record at the hearing and the commission accepted them into the record at that time.

COMMENT #1: Empower Missouri describes the social ills that follow from the high interest rates charged by payday-type lenders and supports the amendment as proposed.

RESPONSE: The commission thanks Empower Missouri for its comment and agrees the rule should be amended.

COMMENT #2: The Office of the Public Counsel expresses concern that the language of the proposed amendment is not detailed enough, should be tied to Missouri's statutory usury rate, and should specifically forbid the utilities from



using an affiliate to avoid application of the rule. Public Counsel offered alternative language that it believes would improve the rule.

RESPONSE: The commission thanks Public Counsel for its comment, but will not adopt the alternative language it proposes. The Commission's intent in proposing this amendment is to ensure that payday-type lenders cannot use the prestige and legitimacy afforded by a contractual relationship with a trusted utility to help market high-interest loans to utility customers. Public Counsel's proposed language would seemingly go well beyond the commission's intent. In addition to forbidding a contractual relationship between a utility and an authorized pay agent, it would forbid the utility to use any such lender as a "bill collection service or as a bill payment agent". It is not clear what those terms mean, but at the hearing, Public Counsel suggested they would forbid a utility to accept payment for a customer's utility service if payment were made through a payday-type lender, even if the utility did not have a contractual relationship with the payday-type lender.

Utilities frequently receive customer payments from what are known as unauthorized pay agents. A perfectly legitimate business may inform its customers that it will take payments for local utilities, even though it has no contractual relationship with the utility. The customer takes cash to the business and the business sends a payment by check or other means to the utility. The utility processes the payment as it would any other payment on a customer's account. In addition, churches, social welfare agencies, neighbors, and family members sometimes make utility payments on behalf of customers. It would be unduly burdensome on a utility to require it to examine every payment it receives to ensure that it has not passed through the hands of a payday-type lender.

Public Counsel is also concerned that the proposed amendment's provision that the restriction on a utility's contractual relationship would not apply to lending entities that offer loans at an effective annual percentage rate of less than 36 percent is vague. As an alternative, Public Counsel would link that exception to the state usury rate established in Section 408.030.1, RSMo, or the market rate defined in that statute, whichever is higher. A perusal of the state's usury statute shows that it is far from a model of clarity and linking this regulation to that statute is not necessary. The commission is not attempting to regulate the interest rates charged by lenders. That is far beyond the Commission's authority. Instead, the commission is attempting to limit the contractual relationship between regulated utilities and lenders who offer short-term high-interest loans. The 36 percent annual percentage rate specified in the regulation is based on federal law regulating the marketing of loans to members of the armed services, and is sufficient to inform utilities about which lenders it may contract with for pay agent services.

Finally, there is no reason to believe that a rule is needed to prevent Missouri's utilities from using affiliate organizations to avoid application of the rule proposed by the commission. On the contrary, the large utilities that have utilized a few payday-type lenders as authorized pay agents in the past, have

shown a willingness to move away from those relationships, even without this rule in place.

COMMENT #3: AARP and the Consumers Council of Missouri applaud the Commission for moving forward with this rule amendment. They contend the amendment is needed and find the legal foundation for the amendment to be solid.

RESPONSE: The commission thanks AARP and Consumers Council of Missouri for their comment and agrees the rule should be amended.

COMMENT #4: Legal Services of Eastern Missouri submitted written comments explaining the problems facing people who find themselves in a cycle of debt after taking out a short-term, high-interest loan from a payday-type lender. Legal Services supports the proposed rule amendment.

RESPONSE: The commission thanks Legal Services of Eastern Missouri for its comment and agrees the rule should be amended.

COMMENT #5: Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, which are regulated electric service providers, express skepticism about the effectiveness of the rule. They explain that authorized pay stations in the community are a valuable customer service bill payment option for certain customers. They have used a few payday-type lenders as authorized pay stations in the past and no predatory behavior on the part of those short-term lenders have ever been reported to the utilities. They are concerned that the amendment creates uncertainties and the risk of non-compliance for a utility in that the utility must now oversee the business practices of its authorized pay agents beyond the contracted function of accepting payments. However, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, indicate they are sympathetic to concerns about payday-type lending. They have voluntarily found alternative locations for their pay stations and have discontinued their use of such businesses as authorized pay agents

RESPONSE: The commission thanks Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for their comments. The commission understands the concerns they express, but believes those concerns are outweighed by the need to protect utility customers. The commission will proceed with the amendment.

COMMENT #6: Laclede Gas, which is a regulated natural gas service provider, expressed similar concerns about the effectiveness of the rule and about the enforcement burden it will impose on the utilities. Laclede points out that the rule will have no effect on unauthorized pay agents, but concedes that unauthorized pay agents are not allowed to utilize the utility's logo at their business location.

Laclede is concerned that it is difficult to identify a payday-type lender simply by the name used by that business and as a result the utility is at risk of unknowingly contracting with such a lender.

RESPONSE: The commission thanks Laclede Gas for its comments. The commission understands the concerns it expresses, but believes those concerns are outweighed by the need to protect utility customers. The commission believes it is important to ensure that payday-type lenders are not afforded the legitimacy that comes with a contractual relationship with the utility. The commission will proceed with the amendment.

COMMENT #7: The commission's staff advises the commission that it has authority to make rules regarding utility billing practices under section 386.250, RSMo 2000, and under the "safe and adequate" and "just and reasonable" provisions of section 393.140(2), RSMo 2000. Staff concludes that the proposed amendment addresses concerns related to payday lending while recognizing the limitations on the commission's jurisdiction.

RESPONSE: The commission thanks staff for its comments, and will proceed with the amendment.

COMMENT #8: At the hearing, the commission's staff suggested that Laclede's concerns about the uncertainties associated with identifying which authorized pay agents are engaged in payday-type lending could be alleviated by removing the sample list of types of short-term lenders from the rule. The rule currently speaks of any "pawnshop, auto title loan company, payday loan company, or other short-term lending entity engaged in the business of making unsecured loans ..." Staff suggests that instead of including that list of examples, the rule should just forbid a contractual relationship with "any entity" engaged in the business of making unsecured loans ... In response, Laclede expressed concern that removing the list of types of lenders would only make it more difficult for a utility to identify which businesses it may or may not contract with for pay agent services.

RESPONSE AND EXPLANATION OF CHANGE: The partial list of businesses that may be engaged in the type of short-term lending with which the rule is concerned is unnecessary to the rule and could create confusion. The commission will make the change suggested by Staff.

COMMENT #9: At the hearing, a question was raised about whether the rule would require utilities to terminate existing contractual relationships with payday-type lenders, or whether it would merely forbid them from entering into new contracts with such lenders.

RESPONSE AND EXPLANATION OF CHANGE: The proposed amendment provides that "no utility may enter into" a contractual relationship with a payday-type lender. That phrase is ambiguous about what impact the rule will have on

existing contractual relationships. The commission believes that existing contractual relationships between utilities and payday-type lenders should be terminated in a reasonable manner and will add a sentence at the end of the rule to explain when that must be done.

4 CSR 240-13.020 Billing and Payment Standards.

(13) No utility may enter into any contractual or authorized pay agent relationship with any entity engaged in the business of making unsecured loans of five hundred dollars (\$500) or less, with original payment terms of thirty-one (31) days, or less, or where repayment of the loan is secured by the borrower's postdated check. This restriction shall not apply if the lending entity offers such loans at an aggregate, effective annual percentage interest rate of less than thirty-six percent (36%). Any utility currently in a contractual or authorized pay agent relationship that is forbidden by this section shall terminate that relationship no later than sixty (60) days after this rule becomes effective.