

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

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

**Case No. AX-2010-0061**

**STAFF REPORT**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through the Chief Staff Counsel, and hereby submits its Report of its investigation into the circumstances of the above-styled cause, as ordered by the Commission on October 2, 2009, stating:

1. Staff recommends that, because there do not appear to be issues or concerns either with separate fees and payments of bills or with the availability of utility customer service centers, that these portions of Public Counsel's petition be dismissed.

2. As to the issue of payday lenders acting as unauthorized payment agents, Staff continues to investigate and requests that the Commission allow Staff to file a supplemental report or status report by January 31, 2010.

**WHEREFORE**, Staff prays that the Commission will accept its attached Report and grant it leave to supplement its Report with respect to payday lenders acting as unauthorized payment agents by January 31, 2010.

Respectfully submitted,

s/ Kevin A. Thompson\_\_\_\_\_  
**KEVIN A. THOMPSON**  
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Attorney for the Staff of the Missouri  
Public Service Commission.

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **30<sup>th</sup> day of November, 2009**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson

## MEMORANDUM

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

From: Natelle Dietrich, Utility Operations Division

/s/ Natelle Dietrich 11/30/09  
Utility Operations Division/Date

/s/ Kevin Thompson 11/30/09  
Staff Counsel's Office/Date

Subject: Staff's Initial Report and Recommendation on Investigation

Date: November 30, 2009

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.

In its Order, the Commission specifically requested information on the number of utility payments made through authorized and unauthorized pay agents. Staff sent data requests to all regulated electric and gas utilities, a few water companies with known pay agents and selected telecommunications companies, seeking information on payments made through authorized and unauthorized pay agents. Staff also sent OPC a data request seeking Missouri-specific data to support the problems described in its petition.

### Summary of Staff Recommendation

As explained in more detail below, 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 recommends that the Commission dismiss these portions of OPC's petition. Staff continues to investigate the payday agent matter and requests that the Commission allow Staff to file a supplemental report or status report by January 31, 2009.

### Investigation Outcome

#### I. Petition to limit the ability of a utility to establish separate fees for bills and payment of bills

In response to a request for information supporting this portion of the petition, OPC stated, “No specific documents were used to demonstrate the special fees for normal services other than information relating to telecommunications billing in PSC and FCC rulemakings on Billing standards that showed new line item charges that had developed since the Federal Telecom Act of 1996. It also had a Missouri specific basis in the in-state access surcharge cases PSC Consolidated Case TT-2002-129, et al”. OPC also submitted a September 2007 e-mail chain involving Mike Dandino (OPC), Leo Bub (AT&T), Bill Voight (Staff), and an AT&T Communications of the Southwest, Inc. customer. The customer appears to be questioning a \$4.98 in-state connection fee. In his explanation, Mr. Bub indicated the in-state connection fee was \$2.49 and stated, “[t]he additional \$2.49 [was] the bill statement fee [since] (AT&T Communications of the Southwest, Inc. charges \$2.49 for a paper bill).” Staff recalls the exchange; however, nothing was formally filed with the Commission.

OPC did not provide recent information to indicate a problem related to separate fees for bills or payment of bills. As Staff stated in the Commission’s September 9, 2009 agenda meeting, companies incur costs for every aspect of their business and customers, either implicitly through rates or explicitly through surcharges and fees, make payments so utilities may recover those costs. To the extent it has authority, the Commission already has processes to establish and review rates, surcharges and fees. Since there are no known issues and the Commission already has a process in place, Staff recommends that the Commission dismiss this portion of OPC’s petition.

#### II. Petition to place restrictions on the use of pay stations

Staff sent data requests to all regulated electric and gas utilities, three water companies and seven of the largest telecommunications companies in Missouri, for a total of 18 companies. (According to Ric Telthorst, President and Chief Executive Officer, Missouri Telecommunications Industry Association, smaller telecommunications providers do not use pay agents because they are small, more community-based companies.<sup>1</sup>) Responses have been received from 16 of those companies. The data requests asked for information regarding the number of authorized and unauthorized pay agents and the number of payments made through those agents. Following is a summary of the responses:

Number of authorized pay agents - 14 companies indicate they have a total of 924 authorized pay agents. Authorized pay agents include banks, grocery stores, retail stores ranging from bridal shops to liquor stores, cash advance and check cashing entities, city offices, insurance agencies, gas stations, and Western Union.

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<sup>1</sup> Transcript of Proceedings. Agenda Discussion September 9, 2009, University of Missouri-Kansas City. Volume 1, page 64, lines 22-24.

Number of unauthorized pay agents - Only 2 companies were able to identify unauthorized pay agents. One company indicated it was aware of 37 unauthorized agents, the other indicated it was aware of 3 unauthorized agents. Most respondents indicated they were not able to identify unauthorized agents since there was no contract between the unauthorized agent and the utility. Wal-Mart, Check Into Cash, and various markets and shops were identified as agents that collect payments for customers without a contract. Pay agent services such as MasterCard and on-line pay agents were also identified as entities not authorized by the companies.

Total payments received monthly by 14 companies – 10,631,600

Total Payments received by authorized agents for 14 companies – 847,494

Total known payments received by unauthorized agents for 2 companies – 14,887

OPC was asked to provide Missouri-specific data documenting concerns with payday lenders as pay agents. OPC provided 27 documents, some were Missouri-specific and some discussed payday lenders in general.

While some of the general information discusses utility payments and encourages customers to explore arrangements such as establishing payment arrangements for past due accounts, LIHEAP, etc., instead of using payday lenders, the majority of the information, including the Missouri-specific information, is largely directed to payday lending practices, usurious rates and the ability of consumers to continuously obtain loans to pay off loans – making it so the customer never gets out of debt. Following are excerpts from some of the Missouri-specific information illustrating the concerns that are discussed in the various documents provided by OPC:

The Missouri Division of Finance conducted a survey of payday lenders for the reporting period of October 1, 2003 through September 30, 2004. During the reporting period there were 350 complaints against payday lenders, relating to triple digit APRs, borrowers obtaining loans with multiple lenders, checks being deposited early, collection tactics, proper crediting of payments and customers being unable to make payments because locations were closed.<sup>2</sup>

The Missouri Division of Finance conducted a survey of payday lenders for the reporting period of October 1, 2007 through September 30, 2008. During the reporting period there were approximately 10 calls per day about payday loans or payday lenders. Complaints involved checks being deposited early, collection tactics, proper crediting of payments, customers being unable to make payments because locations were closed and internet lenders.<sup>3</sup>

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<sup>2</sup> Letter to Governor Matt Blunt from D. Eric McClure, Commissioner of Finance regarding Report to General Assembly pursuant to section 408.506, RSMo, January 18, 2005.

<sup>3</sup> Letter to Governor Jeremiah W. (Jay) Nixon from Richard Weaver, Deputy Commissioner of Finance regarding Report to General Assembly pursuant to section 408.506, RSMo, January 14, 2009.

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“While Missouri has issued licenses to 33 online payday loan operators, other states and the federal government are clamping down on such operations, state records show... ‘It’s very difficult for Missouri to pursue unscrupulous lenders when the state allows such abnormally high interest rates for payday loans,’ said Michelle L. Corey, president and CEO of the BBB in St. Louis.”<sup>4</sup>

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*How Payday Loans Work – Worst Case*

Example 2: If a customer who makes Missouri’s minimum wage (\$6.65 per hour or \$13,832 per year) takes out one \$300 loan at 15% per fortnight and takes out loans or renews the original loan for the ten times that the typical customer takes out a loan over a year, he would owe \$450 in fees or 3.25% of his annual income...

*Conclusion*

Payday lending is a relatively recent phenomenon that has experienced growth both nationally and in Missouri over the last seven years. These organizations market their services to low and middle income people and military personnel and charge interest rates higher than any other for of credit available. (footnotes omitted)<sup>5</sup>

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Last year, customers of payday loan companies filed 473 complaints with BBBs alleging wrongdoing on the part of their lenders...

Currently there are four pending bills in Congress and two were introduced in the recently concluded Missouri Legislature...

- U.S. Senate Bill 500 – bill would cap interest rates and provide penalty for violations.
- U.S. House of Representatives Bill 1608 – identical to U.S. Senate Bill 500.
- U.S. House of Representatives Bill 1214 – bill would cap interest rates and fees.
- U.S. House of Representatives Bill 1846 – bill would preempt state laws on payday lending.
- Missouri Senate Bill 20 – Pre-filed December 1, 2008 by Senator Rita Heard Days (D-St. Louis). The bill allows a 390% APR (based on a two-week loan) for the first 30 days of a loan and an APR of 36% thereafter. The bill also prohibits renewal of payday loans. The legislative session ended with no action on the bill or its companion bill, HB 150, pre-filed by Rep. Mary Still (D-Columbia)...

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<sup>4</sup> “Missouri Licenses Online Payday Lenders; Other States Are Clamping Down on Them”. St. Louis, Mo, September 8, 2009.

<sup>5</sup> “Payday Loans in Missouri”. Institute of Public Policy. Nathaniel Albers. Report 1-2008.

Class action suits have been filed in St. Louis County Circuit Court and the U.S. District Court in Jefferson City. Both suits are pending appeal regarding procedural matters. The suit in St. Louis County alleges that QC Holdings (Quik Cash) violated Missouri law by renewing loans more than six times, by failing to determine the customer's repayment ability, and by charging interest and fees which were more than 75% of the face amount of the original loan.<sup>6</sup>

As these excerpts demonstrate, while there appear to be concerns with the payday lending industry in general, there is no support for concerns related to Missouri-specific issues and utility payments.

In addition to the various documents OPC submitted in its data request response, OPC also stated, "Public Counsel is not aware of specific written consumer complaints in Missouri regarding payday loan stores acting as pay stations for utilities other than those referenced in the newspaper article attached to Public Counsel's petition for rulemaking. Approximately 5 years ago, supermarkets in Columbia and in some other areas raised the fee they charged customers to pay utility bills, in particular, LaCleda Gas Co [*sic*]. Public Counsel made an investigation into the customer fee system and had discussions with the utility companies and Staff was involved in these meetings and discussions. At this time, Public Counsel is unable to locate information/files/documents related to this investigation, but will continue to research that matter. Upon information and belief, no action was taken."

Staff is waiting for additional information from another source and is following up on a few references that were recently brought to its attention. Representative Mary Still is also conducting public hearings on payday lenders, which Staff is monitoring. Therefore, Staff recommends the Commission take no action on this part of the petition at this time, but requests that the Commission allow it to provide either a supplemental report or a status report on the additional information by January 31, 2010.

### III. Increase the availability of customer service centers

OPC did not provide any Missouri-specific information to indicate there is a need to increase the availability of customer service centers. As Staff indicated at the Commission's September 9, 2009 agenda meeting, over the past few years, companies have adjusted the number of customer care locations in an effort to be more cost effective and efficient. Staff receives monthly and quarterly call center reports so it is regularly monitoring the customer responsiveness of companies within its authority. Since there are no known issues and Staff monitors call center reports, Staff recommends the Commission dismiss this portion of OPC's petition.

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<sup>6</sup> "A Study of the Payday Loan Industry In Missouri." Executive Summary. BBB Researcher: Robert H. Teuscher, July 2009.

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

**AFFIDAVIT OF NATELLE DIETRICH**

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE        )

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.

  
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Natelle Dietrich

Subscribed and sworn to before me this 30<sup>th</sup> day of November, 2009.



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

  
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Notary Public