

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

In the Matter of a Proposed Amendment to       )  
Commission Rule 4 CSR 240-13.020                )  
Regarding Authorized Pay Locations.            )

**Case No. AX-2015-0061**

**STAFF COMMENTS**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and hereby submits its *Comments* on the proposed rulemaking.

Respectfully submitted,

**/s/ Kevin A. Thompson**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this 30<sup>th</sup> day of March, 2016.

**/s/ Kevin A. Thompson**

## MEMORANDUM

To: Missouri Public Service Commission Official Case File  
File No. AX-2015-0061

From: Natelle Dietrich 3/30/16  
Commission Staff/Date

Kevin Thompson 3/30/16  
Staff Counsel's Office/Date

Subject: Staff Comments

**4 CSR 240-13.020 Billing and Payment Standards** is proposed to be amended to include a provision that no utility may enter into any contractual or authorized pay agent relationship with any pawnshop, title loan company, payday loan company or other short term lending entity that is in the business of making unsecured loans of \$500 or less, with repayment terms of 31 days or less, or where the loan is secured by a postdated check. The restriction is not applicable in situations where the lending entity offers those loans at an aggregate, effective annual percentage rate of less than 36 percent.

On May 14, 2014, the Commission issued an Order Opening Working Case to Assist in the Drafting of a Rule Regarding Utility Pay Stations and Short-Term Lenders ("Order")<sup>1</sup> to facilitate Staff's efforts in obtaining input from interested stakeholders regarding the drafting of a rule. As discussed in Staff comments in that docket, many consumer groups, individuals and researchers have identified issues related to the practices of certain payday lending institutions, but the Commission does not have clear authority to address those issues.

The concerns related to utilities using pay stations are not new. In 2009, the Office of the Public Counsel petitioned the Commission to promulgate rules related to consumer protection and restricting the use of pay stations. The Commission declined to undertake a rulemaking at that time, and directed Staff to further investigate concerns related to the relationship between payday lenders and Missouri utilities as part of its overall review of the Commission's consumer protection rules in File No. AW-2011-0252. This docket was closed in August 2012, when the Commission opened a rulemaking docket, File No. AX-2013-0091. In its final Order of Rulemaking, the Commission stated,

The commission is very concerned about the threat posed by predatory lending. However, this is a proposal that deserves full consideration and a fair opportunity for response before

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<sup>1</sup> File No. AW-2015-0329

implementation. The commission denied a petition for rulemaking on this issue in 2011 (File No. AX-2010-0061), but the commission will direct its staff to bring this matter back to the commission for full consideration in a future ratemaking. The proposed amendment is a modification of language Staff presented in the working docket.<sup>2</sup>

This amendment is a result of that future ratemaking proceeding.

Perhaps the greatest single obstacle to regulation by the Commission of the use of payday lenders as utility pay stations is the fact that such lenders are engaged in an entirely lawful, even if distasteful, business.<sup>3</sup> Further, many ‘unauthorized’ utility pay stations presently exist and likely will continue to exist without utility permission or agreement. Such ‘unauthorized’ pay stations may exist in payday lending institutions as well as other business types and neither the utilities nor the Commission has any apparent authority over such entities that enter into an agreement directly with utility customers to pay their bills for a fee.

The Commission’s rulemaking authority is distributed over a number of statutory provisions. At § 386.250, RSMo., the Commission is granted authority to make rules concerning utility billing practices:

[The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:]

\* \* \*

(6) To the adoption of rules as are supported by evidence as to reasonableness and which prescribe the conditions of rendering public utility service, disconnecting or refusing to reconnect public utility service and billing for public utility service. All such proposed rules shall be filed with the secretary of state and published in the Missouri Register as provided in chapter 536, and a hearing shall be held at which affected parties may present evidence as to the reasonableness of any proposed rule; and

(7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

Subsection (6) does not specifically list “collection” or “payment” among the

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<sup>2</sup> Final Order of Rulemaking – JCAR filing 4CSR 240-13.020. *In the Matter of a Proposed Rulemaking to Amend 4 CSR 240-13 Service and Billing Practices for Residential Customers.* December 4, 2013.

activities subjected to Commission rulemaking authority. However, with subsection (7), it is arguable that these provisions authorize the Commission to make rules concerning the types of businesses that utilities may enter into formal relationships with as “authorized” pay stations.

Section 393.130.1, RSMo., requires every public utility to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable” and § 393.140(2), RSMo., authorizes the Commission “to order such reasonable improvements as will best promote the public interest [and] preserve the public health[.]”<sup>4</sup> On the theory that a payday loan establishment is in some way “unsafe” for consumers, these provisions arguably authorize the Commission to make rules regulating the use of such establishments as authorized utility pay stations.

Staff has determined that the Commission’s authority to regulate the use by public utilities of payday lenders as authorized utility pay stations is at best unclear.

The information provided by the various commenters in File No. AW-2015-0329 suggests consumers that obtain short-term loans are often caught in a downward financial spiral. Research outlined in that docket suggests that some customers, when threatened with the prospect of disconnected utility service, will use short-term lenders as a funding resource for payments.

The proposed amendment addresses concerns related to payday lenders while recognizing the limitations on the Commission’s jurisdiction.

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<sup>3</sup> See Chapters 367 and 408, RSMo. Payday lenders are licensed by the State of Missouri. According to the Annual Report for 2012 of the Missouri Department of Insurance, Financial Institutions and Professional Registration, there were 934 licensed payday lenders operating in Missouri. <http://difp.mo.gov/documents/2012DIFPAnnualReport>; accessed August 11, 2014.

<sup>4</sup> Similar authority is found at § 386.310.1, RSMo.