

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

2008 SEP 10 PM 2: 54

In the Matter of the Commission's Review )  
of Chapters 4901:1-07 and 4901:1-18 and )  
Rules 4901:1-5-07, 4901:1-10-22, 4901:1- )  
13-11, 4901:1-15-17, 4901:1-21-14 and )  
4901:1-29-12 of the Ohio Administrative )  
Code. )

Case No. 08-723-AU-ORD **PUCO**

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**INITIAL COMMENTS  
OF  
ACE CASH EXPRESS, INC.**

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**I. INTRODUCTION**

On June 25, 2008, the Public Utilities Commission of Ohio (PUCO) issued for comment proposed amendments to a number of its rules. The PUCO's proposed new rules in Ohio Administrative Code Sections 4901:1-5-07(E), 4901:1-10-22(D), 4901:1-13-11(E), 4901:1-15-17(D), 4901:1-21-14(D) and 4901:1-29-12(C) will affect Check Cashing Act licensees and Small Loan Act licensees, authorized payment agents, utility companies that contract with authorized payment agents and residential customers of utilities who choose to pay utility bills through authorized payment agents.

The PUCO's proposed rules would prohibit telecommunications providers, electric distribution utilities, gas or natural gas companies, waterworks companies or sewage disposal system companies, certified retail electric service providers, retail natural gas suppliers and governmental aggregators from contracting with check cashing businesses, as defined in Ohio Revised Code Section 1315.21, or licensees issued a license under Ohio Revised Code Sections 1321.01 to 1321.19, the Ohio Small Loan Act, to be authorized payment agents. The explanation accompanying the proposed new rules provides:

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It has come to the Staff's attention that some utilities have contracted with check-cashing businesses (also known as payday lenders) to act as authorized agents for the receipt of utility payments. Staff believes that this practice unnecessarily exposes Ohio's financially vulnerable low-income population to the predatory lending practices of this industry. For that reason, Staff recommends that the service standards applicable to telecommunications providers, electric distribution companies, gas or natural gas companies, waterworks and/or sewage disposal companies, competitive retail electric service providers and competitive retail natural gas service suppliers be amended to prohibit utilities under the Commission's jurisdiction from contracting with payday lenders to be authorized payment agents. Accordingly, as a part of this proceeding, the Staff recommends that Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14 and 4901:1-29-12, O.A.C., be amended.

No further explanation or data is provided.

## **II. BACKGROUND**

ACE Cash Express, Inc. (ACE) is a leading retailer of financial services, including check cashing, short term consumer loans, utility bill payment and prepaid debit card services, and the largest owner, operator and franchisor of check cashing stores in the United States. As of June 30, 2007, ACE had a network of 1,712 stores in 38 states and the District of Columbia, consisting of 1,528 company-owned stores and 184 franchised stores. ACE focuses on serving consumers, many of whom seek alternatives to traditional banking relationships in order to gain

convenient and immediate access to financial services. In Ohio ACE has 53 corporate owned stores and 12 franchise stores.

ACE holds licenses under the Ohio Check Cashing Act.

As ACE currently holds a Check Cashing Act license in Ohio, ACE would be prohibited from serving as an authorized payment agent if the proposed new rules are adopted. Such a limitation would restrict the services that ACE could offer consumers and harm utility companies and utility customers.

### **III. THE DATA DISPROVES STAFF'S "BELIEF"**

ACE disagrees with the Staff's statement that permitting check cashiers to act as authorized payment agents "unnecessarily exposes Ohio's financially vulnerable income population to the predatory lending practices of this industry." No evidence, data or facts are given to support this "belief." Additionally, the Staff refers to exposure to "predatory lending practices of this industry." ACE strongly objects to the use of the term "predatory." ACE provides check cashing services in compliance with all applicable laws and pursuant to licenses issued by the Ohio Department of Commerce, Division of Financial Institutions. ACE also makes loans to consumers in compliance with all applicable federal and state laws pursuant to licenses issued by the Ohio Department of Commerce, Division of Financial Institutions. There is no evidence that ACE or authorized payment agents that hold Check Cashing Act licenses or Small Loan Act licenses engage in lending practices that are "predatory." Check Cashing Act licensees and Small Loan Act licensees are regulated and examined by the State of Ohio and provide financial services to consumers not served by other lenders.

ACE provides beneficial services to utility companies and utility customers. ACE has stores in neighborhoods where utility customers live who may not have checking accounts and

who may have limited access to transportation. Thus, ACE provides these customers a service that permits them to pay utility bills on time and conveniently in their neighborhoods.

ACE processed over 6.3 million utility and bill payment transactions nationally during the 12 months ended June 30, 2007. In a sample of 602,524 of these utility and bill payment transactions, ACE identified only 5,823 customers who entered into a short term loan transaction on the same day that they paid their bill. Over ninety-nine percent (99%) of ACE customers in this sample did not obtain a short term loan on the same day that they entered into a bill payment transaction.

ACE processed 134,836 utility payments for customers in its Ohio stores during the 12 months ended July 31, 2008. In a sample of 9,083 of these utility payment transactions, ACE identified only 115 customers who entered into a short term loan transaction on the same day that they paid their bill. Over ninety-eight and one-half percent (98.5%) of ACE customers in this sample did not obtain a short term loan on the same day that they entered into a bill payment transaction. In fact, over 93% of ACE utility payment customers in the sample did not obtain a short term loan at any time during such year. This data demonstrate that bill payment transactions and short term loans are two different services offered by ACE that are purchased by two different groups of customers.

#### **IV. THE PROPOSED RULES WOULD HARM CONSUMERS AND UTILITIES**

Utility customers rely on authorized payment agents to make timely payments to utilities. Utility companies also rely upon authorized payment agents to obtain timely payments from their customers.

As noted above, ACE processed 134,836 utility payments in Ohio in the twelve month period from August of 2007 through July of 2008. The 134,836 payments processed by ACE

totaled \$13,081,382 in utility bill payments. Thus, ACE assists utilities companies thousands of times each year in receiving timely payment of millions of dollars.

The fact that consumers chose to pay utility bills at an ACE office 134,836 times in one year demonstrates that ACE is providing a needed service to consumers. In addition, ACE is not the only check cashing licensee that accepts utility payments. There are many other similar companies. Thus, ACE's experience would need to be multiplied by the number of other similar companies providing similar services to calculate the extent of use by consumers of such business locations to pay utility bills. If there are, as we have estimated, approximately 20 companies similar to ACE doing a similar volume of business in Ohio, then the total utility payments made to utility companies through such offices exceed two-and-a-half million transactions per year, resulting in estimated payments to the utility companies in excess of two and a half billion dollars each year. The utility customers who rely upon this payment method may not have alternative viable options for paying their utility bills. Accordingly, there may be a significant number of utility bills that will go unpaid or will be paid late if the proposal to restrict the types of businesses that can act as authorized payment agents is adopted. The restriction of business entities that can serve as authorized payment agents will ultimately harm utility customers and utility companies.

Based on the data, ACE and similar companies play a positive role in the utility bill payment process. ACE is uniquely situated to offer such services as ACE has stores in all types of neighborhoods, including low income neighborhoods, throughout Ohio. If companies like ACE cannot serve as authorized payment agents, some utility bills will go unpaid or be paid late, harming the utility companies.

## **V. THE PROPOSED RULES ARE OUTSIDE THE PUCO'S AUTHORITY**

The Ohio Revised Code provides that the PUCO is vested with the power and jurisdiction to supervise and regulate public utilities and railroads. Ohio Rev. Code § 4905.04(A). “Public utility” includes every corporation, company, copartnership, person or association, their lessees, trustees or receivers, defined in Section 4905.03, including all public utilities that operate their utilities not for profit, with certain exceptions. *Id.* § 4905.02. Section 4905.03 provides that any person, firm, copartnership, voluntary association, joint-stock association, company or corporation, wherever organized or incorporated, includes:

- (1) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through or in Ohio and as such is a common carrier;
- (2) An electric light company, when engaged in for light, heat or power purposes to consumers within Ohio, including supplying electric transmission service for electricity delivered to consumers in Ohio, but excluding a regional transmission organization approved by the federal energy regulatory commission;
- (3) A gas company, when engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within Ohio or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within Ohio, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within Ohio is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission.

(4) A natural gas company, when engaged in the business of supplying natural gas for lighting, power or heating purposes to consumers within Ohio.

(5) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within Ohio.

*Id.* § 4905.03. Thus, the PUCO has the power and the authority to regulate the business of transmitting telephonic messages, the business of supplying electricity, the business of supplying natural or artificial gas and the business of supplying water, referred to collectively as public utilities. Regulating contracts between utility companies and third party service providers, including the types of business entities that can act as authorized payment agents, exceeds the PUCO's power and authority under Ohio law.

Although the PUCO has broad authority over utility companies, the PUCO's powers are not without limit. *Ohio Manufacturer's Association v. Public Utilities Commission*, 46 Ohio St. 2d 214 (1976) (PUCO has no power to authorize a utility to levy penalties against its consumers to deter consumers from exceeding their natural gas allocations); *Akron & Barberton Belt Rd. Co. v. Public Utilities Commission*, 165 Ohio St. 316 (1956) (PUCO has authority to determine track clearance for railroad yards, but no power to promulgate an order without a full hearing and production of evidence to support the findings on which order is based (*emphasis added*)); *Directory Sales Management Corp. v. Ohio Bell Telephone Co.*, 1986 WL 10897 (N.D. Ohio June 23, 1986) (PUCO does not have authority to regulate the market for advertising and listings in classified business telephone directories). The Ohio Supreme Court has stated that the PUCO is a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute. *Baltimore & Ohio Rd. Co. v. Public Utilities Commission*, 16 Ohio St. 2d 60 (1986); *The Akron & Barberton Belt Rd. Co. v. Public Utilities Commission*, 165 Ohio St. 316 (1956). Thus,

certain areas are beyond the power of the PUCO and this includes the power to restrict a utility company's decision to contract with authorized payment agents to assist in the transmission of funds to the utility company in payment of utility bills.

A review of the PUCO statutes illustrates that the PUCO's authority to issue rules and orders relates to the providing of utility services by utility companies and not the method by which customers pay utility bills. Section 4905.37 provides:

Whenever the public utilities commission is of the opinion, after hearing had upon complaint or upon its own initiative or complaint that the rules, regulations, measurements or practices of any public utility with respect to its public service are unjust or unreasonable, or that the equipment or service of such public utility is inadequate, inefficient, improper, insufficient or cannot be obtained, or that a telephone company refuses to extend its lines to serve inhabitants within the telephone company operating area, the commission shall determine the regulations, practices, and service to be installed, observed, used, and rendered, and shall fix and prescribe them by order to be served upon the public utility.

Ohio Rev. Code § 4905.37. The PUCO is authorized in the Ohio Revised Code to adopt and enforce rules regarding utility services provided by utility companies. Ohio Rev. Code §§ 4901.13 (rules governing PUCO proceedings), 4905.061 (rules necessary for protection of public safety), 4905.0241 (rules regarding area and time of telephone services), 4905.28 (rules regarding accuracy of measurements), 4905.30 (rules for keeping rate schedules), 4905.302 (a purchase gas-adjustment rule), 4905.304 (rules on coal research and development), 4905.381 (rules after a hearing regarding the furnishing of telephone service), 4905.402 (rules regarding acquisition of control of a public utility company), 4905.403 (rules regarding securities relating



to acquisition of control of a natural gas company), 4905.50 (rules regarding telephone company equipment), 4905.70 (rules regarding programs to promote conservation of energy), 4905.72 (rules regarding obtaining consumer consent to change gas services), 4905.79 (rules to allow communicatively impaired persons to participate in PUCO proceedings), 4905.84 (rules regarding telecommunication relay services), 4905.91 (rules regarding pipeline safety), 4905.04 (rules regarding valuation of public utility property), 4909.172 (rules regarding waterworks and sewage systems), 4927.03 (rules regarding competitive telephone companies), 4927.04 (rules regarding establishing rates for telephones), 4928.06 (rules regarding competitive retail electric service), 4928.08 (rules regarding capacity standards for competitive retail electric services), 4928.10 (rules regarding service standards for electric service), 4928.11 (rules specifying minimum service, quality and safety standard, for competitive retail electric service), 4928.14 (rules regarding competitive bidding process), 4928.141 (rules regarding filings), 4928.142 (rules regarding competitive bidding), 4928.151 (rules regarding electric transmission and distribution), 4928.16 (rules regarding dispute resolution), 4928.17 (rules regarding corporate separation), 4928.20 (rules regarding government aggregation), 4928.21 (rules regarding do not aggregate list), 4928.31 (rules regarding transition plans), 4928.53 (rules regarding low-income assistance plans), 4928.65 (rules regarding energy credits), 4928.66 (rules regarding energy efficiency programs), 4928.67 (rules regarding customer generators), 4928.68 (rules regarding gas emissions), 4929.10 (rules regarding natural gas service and rates), 4929.20 (rules regarding capacity standards), 4929.22 (rules regarding consumer protection in regarding to contracts with natural gas suppliers), 4933.122 (rules regarding termination of gas or electric service), 4933.25 (rules regarding certificates of public convenience and necessity), 4935.03 (rules regarding emergency energy conditions), 4935.04 (rules regarding long-term energy forecasts), 4963.40

(rules regarding telephone lines). When the legislature intends to give the PUCO the authority to issue rules regarding utility companies, the legislature enacts specific statutory provisions regarding the scope of the rule making authority and the procedure to be followed by the PUCO. In the absence of such express authority regarding rule making, it follows that the PUCO is without authority to issue rules.

The only statutory provision dealing with authorized payment agents provides that payments to authorized payment agents made prior to the due date may not be considered past due. *Id.* § 4905.75. This single statutory provision on authorized agents provides for no rule making authority. Thus, there is no statutory authority for the PUCO to issue rules that restrict the type of business entities that may serve as an authorized payment agent for a utility company.

## **VI. CONCLUSION**

For the reasons stated above, ACE requests that the proposed rules regarding authorized payment agents be withdrawn.

Respectfully submitted,

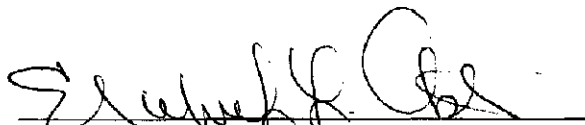
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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of ACE Cash Express, Inc.'s *Initial Comments* was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 10 day of September, 2008.

  
Elizabeth L. Anstaett

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