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July 10, 2014

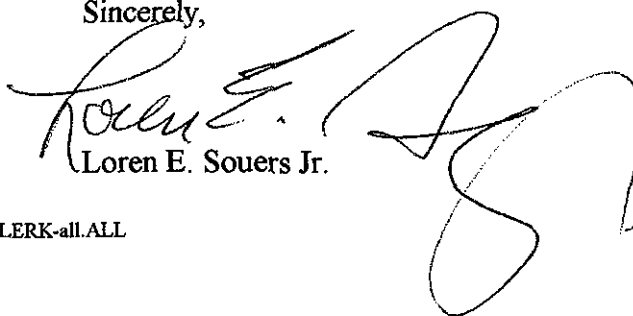
Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, Ohio 43215-3793

To the Docketing Clerk,

Please file the enclosed motion with your Commission and return a time-stamped copy of the order in the enclosed envelope.

Thank you.

Sincerely,



Loren E. Souers Jr.

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2014 JUL 14 PM 4:03

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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF
TRE PROPERTIES LLC**

Complainant,

V.

OHIO EDISON

Respondent

CASE NO. 14-130-EL-CSS

**MOTION FOR RULING ON
APPLICABILITY OF OHIO
ADMINISTRATIVE CODE
§4901:1-18-08**

Complainant, TRE Properties LLC, respectfully moves the Commission for a ruling on the applicability of Administrative Code §4901:1-18-08, Landlord-tenant provisions, to the circumstances at issue in this case, as further set out in the attached Memorandum.

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MEMORANDUM

I. Facts of This Case.

The single largest issue in this case is whether or not Administrative Code §4901:1-18-08 applies to the circumstances here. The case involves electric service to two single family homes which are located on a single parcel of real estate. Each home has a separate meter¹, however up

¹ 9029 Sunnydale has a meter, to which Ohio Edison assigned Account No. 110 094 928 782, and 9033 Sunnydale has a meter, to which Ohio Edison assigned Account No. 110 094 923 478.

until September, 2013 a water pump which serviced both homes was connected to the electric service of one house and, until February of 2014, a septic pump was connected to the electric service of the other house. As of February, 2014, the electricity required for the water pump and the septic pump is billed to a separate meter in the name of the Complainant, TRE Properties LLC.² Bills for the water pump/septic pump service are not in dispute.

In its Answer to Complainant's Complaint, Ohio Edison states at Paragraph 4:

"... Answering further, the Company states that it was advised in or around June 2009 by an individual that: she was the owner of both properties; she wanted service placed in her name at both addresses; shared metering existed; and a well pump that serviced both properties was wired into one of the meters. In good faith reliance upon this information, the Company provided electric service in that individual's name for both properties *as required by Section 4901:1-18-8(H) of the Ohio Administrative Code.*" [Emphasis added]

Further answering, Ohio Edison stated in Paragraph 5 of its Answer:

"... Answering further, the Company states that in or around September 2011, the same individual referenced in paragraph 4 contacted the Company and asked to have electric service at 9029 and 9033 Sunnysdale taken out of her name. The Company advised the individual that it could not take service out of her name because she had reported that she was the owner and that shared metering existed. The individual then advised the Company that she was not the owner, but rather was the property manager and a sub-lessor of one of the properties. The Company took electric service for both properties out of the individual's name on or about September 26, 2011. Using reasonable efforts, the Company then determined that Complainant was the property owner, landlord, and/or agent of the property owner for both properties, and *the Company placed service in Complainant's name in accordance with Section 4901:1-18-08(H) of the Ohio Administrative Code.*" [Emphasis added]

It is to be noted in the above paragraph that "the Company placed service in Complainant's name." There is no suggestion that the Complainant requested electric service for either of these properties.

² The electric service for the two pumps noted in the text are now serviced by an account identified as "9031 Sunnysdale Ave NE Waterpump" and numbered 110 09508350671.

II Ohio Administrative Code §4901:1-18-08.

Ohio Edison clearly claims that Ohio Administrative Code §4901:1-18-08 applies to the circumstances of this case, and further, that it can unilaterally force a party to be responsible to it for utility service under this rule. A complete copy of Ohio Administrative Code §4901:1-18-08 and its Appendix is attached at the end of this Memorandum.

The code section is titled, "Landlord-tenant provisions." However, a quick reading of this section quickly demonstrates that it is most significantly about disconnection procedures where electric service is provided to a multi-unit dwelling or single-occupancy dwelling where the utilities are included in the rent. Since it is possible that tenants may be paying their rent but a landlord is not paying for its utility service, the procedures set out in this section provide notice and relief to innocent tenants.

Ohio Edison alleges in Paragraph 4 of its Answer, that "it was advised in or around June 2008 by an individual that: she was the owner of both properties; she wanted service placed in her name at both addresses; shared metering existed; and a well pump that serviced both properties was wired into one of the meters." Regardless of the accuracy of the information given to Ohio Edison by this "individual," since she was requesting that the electricity which was to be consumed at the unit other than her own, Administrative Code §4901:1-18-08 probably did apply to that case, since, presumably, the rent for the other unit was to be included in rent for that unit, and, if a disconnection would be required, notice should be provided to the tenant of the other unit. This is true because the purported landlord *requested* that service be placed in her name for the unit she was not inhabiting, despite the fact that both units are separately metered. This is because the code section provides, in its first paragraph, that it applies "for a single-occupancy dwelling where the utilities are included in the rent."

Once Ohio Edison became aware that the "individual" named in Paragraph 4 of its Answer was not the owner or owner's representative, it unilaterally assumed that the real owner or its agent wished to continue the shared metering which had been arranged with the "individual" back in 2009. There is no provision in the subject regulation which provides, 'once shared metering, always shared metering.' Rather than asking either the owner, its agent, or either or both of the

occupants of these two homes how to arrange for service, Ohio Edison took it upon itself to “place service in Complainant’s name in accordance with Section 4901:1-18-08(H)” per Ohio Edison’s Answer, paragraph 4.

Ohio Administrative Code §4901:1-18-08(H) provides, simply:

“The utility company shall provide service to a master-metered premise only if the customer is the landlord/owner of the premises. Company acceptance of new applications for service to master-metered premises requires the landlord/owner to provide to the company an accurate list specifying the individual mailing addresses of each unit served at the master-metered premises.”

Such a provision is logical, as, in the event the landlord fails to pay for the utility’s service, the tenants are required to be notified pursuant to other portions of this same regulation, and the utility will need to know the addresses for such notification. However, the unilateral transfer of a utility service to a landlord, without going through the procedure set out in subsection (H) leaves the utility without the required addresses for future notice to tenants, and the landlord with a bill or bills for utility services without having made “application” as set out in subsection (H), and without an opportunity to provide for the utility expense in its existing leases, a kind of “musical chairs” approach to utility billing.

As set out in the Facts of the Case section above, the two homes in this case have separate meters for electric service. However, a well pump serving both homes is connected to the service of one home and a septic pump serving both homes is connected to the service of the other. This circumstance alone does not warrant the application of Administrative Code §4901:1-18-08. The regulation applies most significantly to multi-unit dwellings, which are in fact master-metered. Although “master-metered” goes undefined in the section, it clearly means properties where a utility service is provided to one metered connection and the utility service is thereafter distributed to multiple dwellings. To be completely accurate, “a single-occupancy dwelling where the utilities are included in the rent” is not within the definition of “master-metered services,” though it is similarly regulated.

The Appendix to Ohio Administrative Code §4901:1-18-08 contains a set of forms for tenants to use to apply to deposit rent at the local municipal or county court under Ohio’s Landlord Tenant Act, Revised Code Chapter 5321. The act sets out duties of residential

landlords and tenants in R.C. §5321.04, which include the provision of certain utilities. This Appendix further clarifies the fact that this administrative code section applies to properties where a landlord is being billed for utility services and is not paying for them.


Nowhere in Ohio Administrative Code §4901:1-18-08 is there any *requirement* for any property to be “master-metered.” It is quite conceivable that a multi-unit dwelling might be wired with separate utility meters for each dwelling unit. Similarly, where two single family homes have separate utility meters though they share common pumps, which are wired one to one home and one to the other, there is no *requirement* that such properties be “master-metered” to a landlord as claimed by Ohio Edison in this case.

Finally, as a result of Ohio Edison’s demands, the Complainant, TRE Properties LLC, had the two pumps taken off of the service to the two homes here and requested and obtained separate electric service for the pumps, which is, in fact, billed to TRE Properties LLC. The Complainant does not dispute that the electric service for the two pumps, now in the name of the landlord’s agent, is properly subject to the provisions of Ohio Administrative Code §4901:1-18-08, and, should TRE fail to pay the bill for this separate service, the tenants in both homes would be entitled to the notice provisions of this code section together with the rights provided them under the Ohio Landlord Tenants Act.

Wherefore, the Complainant, TRE Properties LLC, respectfully moves this Commission for a ruling that Ohio Administrative Code §4901:1-18-08 does not apply to the electric service provided to the single family homes at 9029 and 9033 Sunnydale, though it is conceded that such section applies to the separate service now provided for the two pumps.

The Complainant further respectfully moves the Commission for a determination that, whether or not the above code section applies, the Respondent, Ohio Edison, can not unilaterally place utility service in a landlord’s name without any agreement between the parties

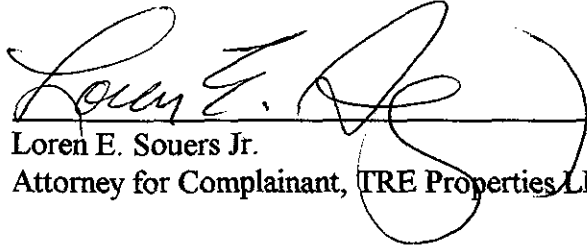
Respectfully submitted,


Loren E. Souers Jr.
Attorney for Complainant, TRE Properties LLC

PROOF OF SERVICE

The foregoing Motion was sent by First Class U.S. Mail on July ^{10th} 2014, to the following:

Christine E. Watchorn
Ulmer & Berne LLP
88 East Broad Street, Suite 1600
Columbus, Ohio 43215



Loren E. Souers Jr.
Attorney for Complainant, TRE Properties LLC

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4901:1-18-08. Landlord-tenant provisions

This rule is to address circumstances where the utility company knows that the customer is the landlord for a multi-unit dwelling (i.e., tenants who receive master-metered services) or for a single-occupancy dwelling where the utilities are included in the rent. A utility company may disconnect the utility service of these consumers, for nonpayment by the landlord, only in accordance with the following:

(A) The utility company shall give a notice of disconnection of service to the landlord/agent at least fourteen days before the disconnection would occur. If, at the end of the fourteen-day notice period, the customer has not paid or made payment arrangements for the bill to which the fourteen-day notice relates, the utility company shall then make a good faith effort by mail, or otherwise, to provide a separate ten-day notice of pending disconnection to the landlord/agent, to each unit of a multi-unit dwelling (i.e., each tenant who receives master-metered service), and to single-occupancy dwellings where the utilities are included in the rent. This ten-day notice shall be in addition to the fourteen-day notice given to the landlord/agent. This notice requirement shall be complied with throughout the year. In a multi-unit dwelling, written notice shall also be placed in a conspicuous place.

(B) The utility company shall also provide all of the following information in its ten-day notice:

- (1) A summary of the remedies tenants may choose to prevent disconnection or to have service reconnected.
- (2) A statement to inform tenants that a list of procedures and forms to prevent disconnection or to have service reconnected are available from the utility company upon request. A model form of the tenants' ten-day notice is attached as appendix A to this rule.

(C) The utility company shall inform any consumer inquiring about the notice, posted pursuant to paragraph (A) of this rule, of the amount due for the current month's bill and that the disconnection of service may be prevented if the consumer(s) makes a single payment to the utility company in the amount of the current month's bill.

(D) The utility company shall credit to the appropriate account any payment made by tenants equal to or exceeding the landlord's current bill for those premises. The utility company is under no obligation to accept partial payment from individual tenants. The utility company may choose to accept only a single payment from a representative acting on behalf of all the tenants.

(E) No utility company shall disconnect service to master-metered premises, or to a single-occupancy dwelling where utilities are included in the rent, when all of the following actions take place:

- (1) A tenant delivers to the utility company a copy of the written notice required by division (A) of section 5321.07 of the Revised Code, signed by fifty per cent or more of the tenants of the occupied dwelling units in a multi-unit dwelling, or the tenant in a single-occupancy dwelling, which notice shall designate the imminent disconnection of utility service (as shown by the disconnection notices received) as a reason for the notice.

(2) A tenant informs the utility company in writing of the date of the last day on which rent may be paid before a penalty is assessed or the date on which default on the lease or rental agreement can be claimed.

(3) The tenants timely invoke the remedies provided in divisions (B)(1) and (B)(2) of section 5321.07 of the Revised Code, including but not limited to:

(a) Depositing all rent that is due and thereafter becomes due to the landlord, with the clerk of the municipal or county court having jurisdiction.

(b) Applying to the court for an order to use the rent deposited to remedy the condition or conditions specified in the tenant's notice to the landlord (including but not necessarily limited to payment to the utility company rendering the disconnection notice).

(F) Each utility company that delivers notice pursuant to paragraph (A) of this rule shall provide to each tenant, upon request, the procedures to avoid disconnection or to have service reconnected as described in appendix B to this rule. The forms referenced in appendix B to this rule shall be made available by the utility company and also will be available on the commission's website at <http://www.puc.ohio.gov/PUCO/rules> or by contacting the commission's call center at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays. Hearing or speech impaired customers may contact the commission via 7-1-1 (Ohio relay service). The utility company shall also identify for the tenant any resources in the community where he/she can obtain assistance in pursuing his/her claim, including but not limited to:

(1) The telephone number(s) of the local legal services program (in cities over one hundred thousand served by that utility company).

(2) The toll-free number(s) for the Ohio state legal services association.

(3) The toll-free number(s) of the office of consumers' counsel.

(4) The telephone number(s) of the local bar association.

(5) The telephone number(s) of the local tenant organization(s).

(G) If a utility company disconnects service to consumers whose utility services are included in rental payments or who are residing in master-metered premises, the utility company, upon inquiry, shall inform the consumer that service will be reconnected upon payment of the amount due for the current month's bill plus any reconnection charge if the payment is made within fourteen days of disconnection. The utility company shall continue service at the premises as long as the tenant's representative continues to pay for each month's service (based upon actual or estimated consumption) by the due date of the bill for that service. The utility company shall also reconnect service for those consumers who, within fourteen days of the disconnection of service, invoke the provisions of section 5321.07 of the Revised Code, as specified in paragraph (E) of this rule. If the consumers choose to have their service reconnected by paying the current month's bill and payment is not made by the due date each month, the utility company shall post the notice in a conspicuous location on the premises and make a good faith effort by mail or otherwise to notify each household unit of a multi-unit dwelling, or tenant receiving service in the master-metered premises, or tenant in a single-occupancy dwelling, of the impending service disconnection. The utility company is not required to reconnect service pursuant to this paragraph where the landlord resides on the premises.

(H) The utility company shall provide service to a master-metered premise only if the customer is the landlord/owner of the premises. Company acceptance of new applications for service to master-metered premises requires the landlord/owner to provide to the company an accurate list specifying the individual mailing addresses of each unit served at the master-metered premises.

(I) The utility company may charge the landlord/owner of the master-metered premises, or of a single-occupancy dwelling, a reasonable fee, as set forth in the utility company's tariffs, designed to pay the utility company's incurred cost for providing the notice to tenants required by paragraph (A) of this rule.

(J) The utility company has the burden of collecting from the landlord/owner any billed amounts unpaid at the next billing cycle.

(K) If a customer, who is a property owner, landlord, or the agent of a property owner, requests disconnection of service when residential tenants reside at the premises, the utility company shall perform both of the following actions:

- (1) Provide at least a ten-day notice prior to the disconnection of service by mail to the residential tenants or by posting the notice in conspicuous places on the premises.
- (2) Inform such customer of the customer's liability for all utility service consumed during the ten-day notice period.

(L) Notwithstanding any notice requirement for a utility company under paragraph (K) of this rule and paragraph (A)(3)(d) of rule 4901:1-18-06 of the Administrative Code, a utility company will not be found to have violated these rules if either the following occurs:

- (1) The utility company uses reasonable efforts to determine the status of the customer/consumer as either a property owner, landlord, the agent of a property owner, or a tenant.
- (2) The customer/consumer misrepresents the status of the customer/consumer as the property owner, the landlord, the agent of a property owner, or a tenant.

ACTION: Final

4901:1-18-08

AMENDED

Appendix
4901:1-18-08

DATE: 02/06/2012 4:24 PM

1

FORM A

NOTICE OF LANDLORD'S BREACH OF OBLIGATION

TO: _____ COPY TO: _____
(Landlord) (Utility company)

(Landlord's address) (Utility company's address)

(City) (Zip code) (City) (Zip code)

THIS NOTICE IS TO INFORM YOU THAT AS THE OWNER/AGENT OF THE DWELLING LOCATED AT THE ADDRESS(ES) LISTED BELOW YOU HAVE BREACHED YOUR OBLIGATIONS UNDER SECTION 5321.04 OF THE REVISED CODE AND/OR THE RENTAL AGREEMENT.

THE FOLLOWING CONDITIONS MUST BE CORRECTED:

1. THE _____ BILL HAS NOT 2. _____
(Gas/electric) _____
BEEN PAID AND THE 3. _____

HAS SENT NOTICE
(Name of utility company)
OF DISCONNECTING SERVICE.

IF THE NECESSARY STEPS ARE NOT TAKEN TO CORRECT THE ABOVE CONDITIONS IN A REASONABLE TIME AS REQUIRED BY LAW, WE THE TENANT(S) AT THE ADDRESS(ES) BELOW WILL FILE AN APPLICATION WITH THE COURT TO DEPOSIT RENT WITH THE CLERK OF COURTS UNTIL THE CONDITIONS ARE CORRECTED AND TAKE SUCH OTHER ACTION AS PERMITTED BY SECTION 5321.07 OF THE REVISED CODE.

THE TOTAL NUMBER OF APARTMENTS OCCUPIED IN THE BUILDING(S) IS _____. WE THE TENANTS HAVE OBTAINED SIGNATURES FROM AT LEAST 50% OF THE OCCUPIED APARTMENTS IN OUR BUILDING(S), (OR THE TENANT IN A SINGLE-OCCUPANCY DWELLING, IF APPLICABLE).

<u>NAME</u>	<u>ADDRESS</u>	<u>APT #</u>	<u>DATE RENT DUE OR PAST-DUE</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DATE RENT
DUE OR
PAST-DUE

NAME _____

ADDRESS

APT #This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(Date mailed to or delivered to landlord)

(Date mailed or delivered to utility company)

IN THE _____ COURT _____
 _____ COUNTY, OHIO

FORM B

IN RE:

 (Your name)_____
 (Street address)_____
 (City) (Zip code)

VS.

 (Landlord's name)_____
 (Address)_____
 (City) (Zip code)

APP. NO. _____

APPLICATION FOR ESCROW OF RENT

Applicant hereby petitions the court for the right to place his/her rent in escrow with the court because of the following violation(s) by the landlord: (R.C. 5321.07)

1. FAILURE TO PAY BILL 3. _____
 (Gas/electric)

2. _____ 4. _____

Tenants in 50% of the occupied apartments (or the tenant in a single-occupancy dwelling, if applicable) including myself, have given notice informing the landlord of his or her breach of obligation pursuant to Rule 4901:1-18-08(E)(1) of the Administrative Code and Section 5321.07 of the Revised Code.

DO NOT WRITE BELOW THIS LINE.NOTICE TO LANDLORD OR AGENT

The above applicant has applied to have his/her rent deposited with the _____ Court pursuant to Section 5321.07 of the Revised Code.

On _____ AT _____, ROOM _____
 (Date) (Time) (Room number)

_____, a hearing shall be held to
 (Location of hearing)

determine whether the court shall permit deposit of the tenant's rent. You may appear at that time and present objections. If you do not appear, the rent shall be accepted.

 Name of Clerk_____
 Court_____
 Name of County

Section: 5321.07 ORC
 5321.08 ORC

BY: _____
 Deputy Clerk

IN THE _____ COURT _____
_____ COUNTY, OHIO

FORM C

IN RE: _____
(Your name)

(Street address)

(City) (Zip code)

VS.

(Landlord's name) Defendant

(Address)

(City) (Zip code)

CASE NO. _____

JUDGE _____

TENANT'S APPLICATION FOR ORDER
TO COMPEL LANDLORD TO: PAY
UTILITY BILL, RELEASE RENT TO PAY
UTILITY BILL, AND OTHER RELIEF

This is an application to the court for:

- () Order to compel landlord to pay utility bill.
- () Order to release rent deposited in court to pay utility bill.
- () Other relief _____

STATEMENT OF CLAIM

Tenant, _____, the

(Your first name, middle initial, last name)

reside at the address above and claim that the Landlord-Defendant of the premises where I live has failed to fulfill its responsibilities under Section 5321.04 of Revised Code and/or our rental agreement. My present rent under the agreement is \$_____ per month.
(Amount)

IN SUPPORT OF THIS CLAIM, I STATE THE FOLLOWING FACTS:

- (1) That I am current in payment of my rent; and
- (2) That my landlord is obligated to pay the _____ bill
(Name of utility)

in accordance with my rental agreement and/or Section 5321.04 of the Revised Code. My landlord has not made these payments. Therefore, service is now subject to disconnection for nonpayment; and

(3) That the tenants in 50% of the occupied apartments (or the tenant in a single-occupancy dwelling, if applicable) have given the landlord notice informing him/her of his/her breach of obligation pursuant to Rule 4901:1-18-08(E)(1) of the Administrative Code and Section 5321.07 of the Revised Code; and

(4) That I was one of the tenants who notified the landlord as described in paragraph (3) above.

(List any other facts which you feel may be helpful to support your claim for utility service.)

WHEREFORE, I request the Court to order: (Check the appropriate box[es])

- ☐ The Clerk of Courts release to _____ from the rent money
(Name of utility company)
paid to the Clerk, the amount needed to pay the utility bill and keeping the utility bill current.
- ☐ The landlord to pay or arrange to pay the balance of the utility bill not covered by the rent release.
- ☐ The landlord to do all things necessary to continue to provide gas/electric service, including keeping the utility bill current.
- ☐ Any other relief sought by the tenant.

(Signature of tenant)

(Street address)

(City)

(Zip code)

(Phone number of tenant)