

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's )  
Investigation of Submetering in the state of ) Case No. 15-1594-AU-COI  
Ohio. )

ENTRY

The Commission finds:

- (1) The Commission finds that an investigation should be initiated regarding the proper regulatory framework that should be applied to submetering and condominium associations in the state of Ohio. Pursuant to R.C. 4905.06, the Commission has general supervision over all public utilities within its jurisdiction and may examine such public utilities and keep informed as to their general condition, to their properties, to the adequacy of their service, to the safety and security of the public and their employees, and to their compliance with all laws, orders of the Commission, franchises, and charter requirements. Further, the power to inspect includes the power to prescribe any rule or order that the Commission finds necessary for protection of the public safety.
- (2) The Commission has historically applied a three-part test to determine if an entity is operating as a public utility and falls within the scope of the Commission's exclusive jurisdiction in landlord/tenant and similar circumstances. The three-part test, first adopted by this Commission in *Shroyer*, and affirmed by the Supreme Court in *Pledger*, is as follows:
  - (a) Have the manufactured home park owners manifested an intent to be a public utility by availing themselves of special benefits available to public utilities such as accepting a grant of a franchised territory, a certificate of public convenience and necessity, the use of eminent domain, or use of the public right of way for utility purposes?

- (b) Are the water services available to the general public rather than just to tenants residing in the manufacture home park?
- (c) Is the provision of water services ancillary to the primary business of operating a manufactured home park?

While we applied the test in *Shroyer* and *Pledger* to waterworks companies, it may be applied to the provision of any public utility service. *In re Inscho v. Shroyer's Mobile Homes*, Case No. 90-182-WS-CSS, et al., Opinion and Order (Feb. 27, 1992); *In re Pledger*, Case No. 04-1059-WW-CSS, Entry (Oct. 6, 2004); *Pledger v. PUC*, 109 Ohio St.3d 463, 2006-Ohio-2989, 849 N.E.2d 14, ¶18; see *In re Dumeney & Felix v. Aquameter, Inc.*, Case No. 96-397-WW-CSS, Opinion and Order (Jan. 1, 2001); see also *In re Brooks*, Case No. 94-1987-EL-ATA, Opinion and Order (May 8, 1996); *In re FirstEnergy*, Case No. 99-1212-EL-ETP, et al., Entry (Nov. 21, 2000); *FirstEnergy Corp. v. PUC*, 96 Ohio St.3d 371, 2002-Ohio-4847, 775 N.E.2d 485, ¶10, 18 ("\* \* \* office buildings, apartment houses, and shopping centers are 'consumers' of electricity even though these consumers may resell, redistribute, or submeter part of the electric energy to their tenants."); *Jonas v. Swetland Co.* (1928), 119 Ohio St. 12, 6 Ohio Law Abs. 357, 162 N.E. 45; *Shopping Centers Assn. v. Pub. Util. Comm.* (1965), 3 Ohio St.2d 1, 32 Ohio Op.2d 1, 208 N.E.2d 923.

- (3) The Commission finds that a Commission-Ordered Investigation (COI) should be opened to determine the scope of the Commission's jurisdiction over submetering by condominium associations and similar entities in the state of Ohio. The Commission notes that, on April 10, 2015, a complaint was filed in Case No. 15-697-EL-CSS regarding unfair and unreasonable business practices in the provision of commodities typically provided through public utility service. *In re Whitt*, Case No. 15-697-EL-CSS, Complaint (Apr. 10, 2015). While the Commission has a long history of applying the *Shroyer* test to determine the scope of its jurisdiction, the Commission requests comments on the following questions:
  - (a) Are condominium associations and similarly situated entities, including third-party agents of those entities, public utilities pursuant to the *Shroyer* test;

- (b) Are there certain situations in which the *Shroyer* test cannot or should not be applied. If the *Shroyer* test cannot or should not be applied, what test should the Commission apply in those situations;
- (c) What impacts to customers and stakeholders would there be if the Commission were to assert jurisdiction over submetering in the state of Ohio.
- (4) The Commission finds that interested stakeholders should file comments in this case by January 21, 2016, and reply comments by February 5, 2016.

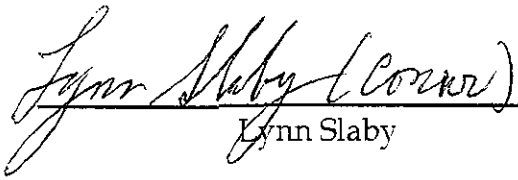
It is, therefore,

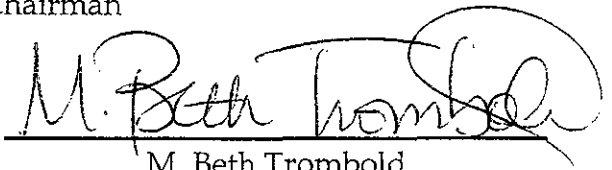
ORDERED, That interested stakeholders file comments in this case by January 21, 2016, and reply comments by February 5, 2016. It is, further,


ORDERED, That notice of this Entry be served upon all electric utilities, all certified competitive retail electric service providers, all governmental aggregators providing retail electric service, all regulated waterworks and sewage disposal utilities in the state of Ohio, the Commission's electric-energy industry service list, the Commission's Water industry service list, the Ohio EDI Working Group list serve, and all other interested parties.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Andre T. Porter, Chairman

  
Lynn Slaby

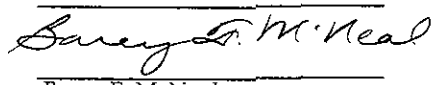
  
M. Beth Trombold

  
Asim Z. Haque

  
Thomas W. Johnson

BAM/sc

Entered in the Journal **DEC 16 2015**

  
Barcy F. McNeal  
Secretary

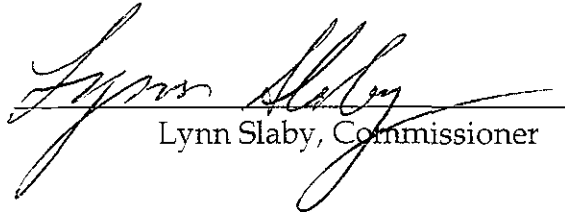
BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's )  
Investigation of Submetering in the state ) Case No. 15-1594-AU-COI  
of Ohio. )

CONCURRING OPINION OF COMMISSIONER LYNN SLABY

Notwithstanding that I dissented in Case No. 15-697-EL-CSS, I concur in this case. I believe that this proceeding would not be necessary had the original complaint case been dismissed. Nonetheless, the original complaint case is still pending. Therefore, further inquiry may clarify our statutory jurisdiction.

  
Lynn Slaby, Commissioner

LS/sc

Entered in the Journal

**DEC 16 2015**



Barcy F. McNeal  
Secretary