BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

JOINT COMMENTS ON PROTECTING OHIOANS FROM EXCESSIVE CHARGES FROM UTILITY SUBMETERERS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND THE OHIO POVERTY LAW CENTER

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I. INTRODUCTION

Every day there are Ohioans who are charged too much by submeterers for utility service, including essential electric and water services. The Office of the Ohio Consumers' Counsel (OCC), on behalf of Ohio consumers, and the Ohio Poverty Law Center (OLPC), an advocate for the rights of low-income Ohioans, hereby propose that the Public Utilities Commission of Ohio ("Commission" or "PUCO") promptly protect Ohioans from these excessive charges.

The PUCO, by Entry dated December 16, 2015, requested input from stakeholders "regarding the proper regulatory framework that should be applied to submetering and condominium associations in the state of Ohio."[1] This Commission Ordered Investigation (COI) was prompted by a recent complaint case, *In re Whitt*, filed by a residential condominium owner against a submetering entity that billed the resident

[1] *In the Matter of the Commission's Investigation of Submetering in the state of Ohio*, Case No. 15-1594-AU-COI, Entry at 1 (December 16, 2015).

for electric, water, and sewer services.[2] The complaint alleged that the submetering entity was required to receive PUCO approval for the rates and services that it charged.[3] The complaint further alleged that the submetering entity's failure to receive PUCO approval to charge for its rates and services constituted a violation of several statutes granting regulatory authority to the PUCO to oversee the conduct of public utilities and competitive retail electric service providers.[4] OCC moved to intervene in the complaint proceeding to safeguard the interests of Ohio's residential customers; however, the PUCO denied intervention.[5] Nonetheless, the PUCO explained that it would be opening a COI to further investigate the topic of submetering.[6] The PUCO further explained that the COI would provide OCC and others "an opportunity to contribute to the full development and equitable resolution of the underlying legal issue."[7]

OCC and OPLC welcome the opportunity to address submetering in this COI proceeding. While *In re Whitt* may have elevated the profile of the submetering issue, concerns over submetering have existed for some time. In 2013, The Columbus Dispatch ran a special series on the submetering issue which profiled customers who paid more than the regulated price for utility services because they were billed pursuant to submetering arrangements.[8] In 2014, the General Assembly began looking at the issue

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[2] *In the Matter of the Complaint of Mark A. Whitt v. Nationwide Energy Partners, LLC*, Case No. 15-697-EL-CSS, Entry at 1 (December 18, 2015).

[3] Id.

[4] Id. at 1-2.

[5] Id. at 5.

[6] Id. at 6.

[7] Id. *In re Whitt* has been held in abeyance pending the outcome of this COI. Id. at 8.

[8] *Shocking cost of utility bills, Shocking cost investigation: Utility middle men charge renters inflated prices*, Columbus Dispatch (http://www.dispatch.com/content/topic/news/2013/shocking-cost.html).

by holding hearings, which led to the introduction of House Bill 662 that would have granted additional protections to customers subject to submetering arrangements.[9] OCC and OLPC participated in the legislative process and expressed their concerns about the harms posed to residential customers by submetering companies, including increased costs.[10]

OCC and OPLC appreciate the opportunity to address the concerns presented by submetering companies before the PUCO. The PUCO should exercise the full extent of its statutory authority to safeguard the interests of residential customers who, because of submetering arrangements, lack the protections of regulation or competition and, thus, are subject to paying higher prices for utility services.

II. INITIAL COMMENTS

The joint comments will be addressed in the order set forth in the PUCO's December 16, 2015 Entry.

A. Are condominium associations and similarly situated entities, including third-party agents of those entities, public utilities pursuant to the Shroyer test?

Submetering entities should be considered public utilities, to protect the public. The *Shroyer* test arose out of a complaint filed against the operator of a mobile home park that supplied its tenants with water sourced from the local municipality.[11] The

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[9] https://legiscan.com/OH/text/HB662/id/1056049/Ohio-2013-HB662-Comm_Sub.html ; see also *Bill would limit 'submeter' utilities charges in Ohio*, The Columbus Dispatch (November 13, 2014) (http://www.dispatch.com/content/stories/business/2014/11/13/bill-targets-submeter-companies.html).

[10] See, e.g., *Testimony by Bruce Weston on Behalf of the Office of Ohio Consumers' Counsel Addressing Consumer Protections Related to Master-Metering, Submetering and Reselling of Public Utility Services Before the Ohio House of Representatives Public Utilities Committee* (December 17, 2014) (http://www.occ.ohio.gov/lservices/testimony/2014-12-17.pdf).

[11] *In the Matter of the Complaints of Inscho, et al. v. Shroyer's Mobile Homes*, Case No. 90-182-WS-CSS, et al., Opinion and Order at 2 (February 27, 1992).

tenants argued that the operator's acts of supplying, metering, and billing for water usage made it a public utility subject to the PUCO's jurisdiction.[12] In analyzing the jurisdictional question, the Commission adopted the following test to evaluate whether the operator met the definition of a public utility:

1. 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?

2. Are the water services available to the general public rather than just to tenants residing in the manufactured home park?

3. Is the provision of water services ancillary to the primary business of operating a manufactured home park?[13]

As the PUCO stated in its Entry inviting comments on this COI, the *Shroyer* test has been applied outside of the waterworks context.[14] The question here is whether condominium associations and similarly-situated entities, including third parties of those entities, are public utilities under *Shroyer*.

Shroyer provided the starting point for the PUCO's analysis in *Brooks v. Toledo Edison Co.*, where the PUCO addressed the issue of resale of electric services by commercial landlords to their tenants.[15] *Brooks* has been applied to mean that resale of

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[12] Id.

[13] Id. at 4. A fourth factor inquiring into the reasonableness of the charge was considered but ultimately rejected. The Commission stated that this factor was not probative in determining its jurisdiction and further observed that any evaluation about the charge's reasonableness would be meaningful only after it was first established that the operator was subject to the Commission's jurisdiction. Id.

[14] Entry at 2 (collecting cases).

[15] *Brooks v. Toledo Edison Co.*, Case No. 94-1987-EL-CSS, Opinion and Order at 9 (May 8, 1996).

utility services by a landlord to a tenant are permissible if the "resale or redistribution takes place *only upon property owned by the landlord*, and if the landlord was not operating as a public utility."[16] This precedent strongly suggests that a condominium association or a submetering entity cannot engage in resale of utility services to a condominium owner because neither the condominium association nor the submetering entity enjoys an ownership interest in the residents' condominium property.

By statute, a "condominium" is a "form of real property ownership in which * * * each owner has an individual ownership interest * * *."[17] This "condominium ownership interest" takes the form of either a "fee simple estate or a ninety-nine-year leasehold estate, renewable forever, in a unit, together with an appurtenant undivided interest in the common elements."[18] A "unit owner" is the "person who owns a condominium ownership interest in a unit."[19] In contrast, tenants subject to residential lease agreements with their landlords enjoy no such ownership interest in their dwellings or apartments. The controlling statute defines a "tenant" as a "person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others."[20] This definition makes no mention of the tenant's ownership interest. Indeed, the definition of "residential premises" in the landlord/tenant context specifically excludes "[o]ccupancy by an owner of a condominium unit."[21]

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[16] See *FirstEnergy Corp. v. Pub. Util. Comm.*, 96 Ohio St.3d 371, 2002-Ohio-4847, ¶ 5 (quoting *In re FirstEnergy*, Case No. 99-1212-EL-ETP, et al., Entry at 2 (January 18, 2001) (emphasis added)).

[17] R.C. 5311.01(K).

[18] R.C. 5311.01(N).

[19] R.C. 5311.01(CC).

[20] R.C. 5321.01(A).

[21] R.C. 5321.01(C)(8).

Given the distinction between condominiums and apartments, the permission granted to landlords to resell utility services to their tenants under the conditions noted above should not be understood to apply in the condominium context because neither the condominium association nor the submetering entity enjoys an ownership interest in the residential owners' property. For this reason alone, the PUCO should determine that condominium associations and submetering entities are barred from reselling utility services to condominium residents under *Shroyer*.

If the allegations taken from *In re Whitt* are any guide, submetering entities exhibit characteristics often associated with public utilities. The first factor considers whether the entity has manifested an intent to avail itself of special benefits available to public utilities.[22] One benefit available to public utilities is the ability to appropriate any right or interest in buildings for the purpose of erecting, operating, or maintaining utility-related equipment.[23] The Columbus Dispatch has reported that one submetering entity has installed "its metering systems in newly built apartments."[24] The article also quotes a statement from the submetering entity's representative explaining that it "builds electrical-distribution systems for residential communities * * * ."[25] These activities are the hallmarks of public-utility activities. Indeed, the PUCO has held that "metering is a traditional function" performed by public utilities.[26] By installing, maintaining, and

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[22] *Shroyer* at 4.

[23] R.C. 4933.15 and R.C. 4933.151.

[24] *Shocking cost investigation: Utility middle men charge renters inflated prices*, Columbus Dispatch (October 20, 2013) (http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html). See Attachment 1.

[25] Id.

[26] *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD, Second Entry on Rehearing at 19 (May 28, 2014) (*In re Chapter 4901:1-10 Rulemaking*).

operating metering and distribution systems on residential buildings, this submetering entity has availed itself of the right to appropriate an interest in the buildings it serves and availed itself of the benefits granted to public utilities by statute. By appropriating a right or interest in a building through the installation of metering or distribution equipment, a submetering entity or condominium association has availed itself of rights granted by statute. Where this is shown, the first factor under *Shroyer* would be easily met.

The second factor considers whether the services are made available to the general public rather just the building's residents.[27] An internet search shows that two submetering entities both provide spaces on their internet sites for prospective customers to sign up for and establish accounts.[28] Aside from the customary information that would be required to establish a customer relationship in virtually any commercial setting (i.e., name, address, phone number, email address, etc.), the sites do not appear to impose any unusual or onerous conditions on a person's ability to establish a retail relationship. Moreover, it appears that AEP Ohio has estimated that there are about 130 submetered apartment or condominium complexes in central Ohio, which would cover about 18,000 to 20,000 units.[29] Clearly, submetering entities like this are trying to capture broad market share in the residential-complex arena by targeting the public generally. Given the apparent ease in which any customer with an internet connection can sign up with at least two submetering entities, it is fair to infer that these submetering entities' interests

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[27] *Shroyer* at 4.

[28] See http://nationwideenergypartners.com/customers/residential/homeownertenant-agreement/ and https://www.electricapl.com/register.cfm.

[29] *Shocking cost investigation: Utility middle men charge renters inflated prices*, Columbus Dispatch (October 20, 2013) (http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html).

extend beyond those of just a few customers. In short, a submetering entity that exhibits these types of characteristics would easily meet the second *Shroyer* factor.

The third factor considers whether the provision of utility services is ancillary to the entity's operations.[30] Clearly, the sole purpose of a submetering entity such as the one described in the pending complaint case is to serve as the functional equivalent of a public utility by providing metering, billing, and distribution services to the customer. Ensuring that residential customers receive utility-related services is not ancillary to the submetering entities operations; it is the sine qua non of their existence. A representative of a submetering company has been quoted saying, "We do everything that a utility does except generate power."[31] This is not a close call, an entity that provides metering, billing, and distribution services cannot possibly maintain that the rendition of public-utility related services is ancillary to its operations. Where factors such as these are shown, the third factor would weigh comfortably in favor of a finding that the submetering entity is a public utility.

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 PUCO apply in those situations?

OCC and OPLC suggest that the *Shroyer* test should be recalibrated in a few respects. First, some of the considerations set forth in the first part of *Shroyer* should be revisited because they are not particularly probative of whether an entity is acting like a public utility. Second, *Shroyer* should be expanded to account for the abundance of Ohio Supreme Court case law outside of the reselling context that has addressed the question

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[30] *Shroyer* at 4.

[31] *Shocking cost investigation: Utility middle men charge renters inflated prices*, Columbus Dispatch (October 20, 2013) (http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html).

of what it means to be a public utility. Third, the PUCO should incorporate the "traditional function" doctrine, which it has applied from time to time in sorting out the dividing line between public utility and non-public utility functions. Each topic will be addressed in turn.

The first part of *Shroyer* asks whether the entity has manifested an intent to be a public utility by availing itself 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.[32] The problem with part of this inquiry is its circularity. It unfairly stacks the deck against the party asserting that a particular entity should be treated as a public utility: if an entity has accepted a franchised territory or a certificate of public convenience and necessity, it has necessarily agreed to be regulated as a public utility and thus there would be no reason to file a complaint case for the purpose of establishing that the entity should be treated like a public utility. For example, R.C. 4933.83 establishes certified territories for electric suppliers to furnish electric service and R.C. 4933.25 mandates that sewage disposal system companies and water-works companies must obtain a PUCO-issued certificate of public convenience and necessity before the facilities may be operated. Compliance with these provisions goes to show that the entity has met one of the necessary conditions to operate as a public utility. Contrary to what *Shroyer* seems to assume, the converse is not necessarily true. An entity could still be a public utility even without accepting a franchised territory or a certificate of public convenience and necessity.

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[32] *Shroyer* at 4.

This point is illustrated by the *In re Whitt* case. One of the motivations for why the complaint was filed in that case was due to the allegation that the submetering entity was furnishing utility services in the absence of both a certified territory and a certificate of public convenience and necessity. If a submetering entity could resist classification as a public utility simply by noting the absence of either a certified territory or a certificate of public convenience and necessity, it would give the submetering entity a veritable trump card over any competing argument raised by the complainant. The whole point of cases like *In re Whitt* is to show that the entity is behaving like a public utility while simultaneously bypassing all the conditions imposed by law that make the entity subject to the supervision of the PUCO. Given the circular nature of the first factor from *Shroyer*, it should be revised because it is not particularly probative in establishing an entity's status as a public utility.

The second recalibration the PUCO should make to *Shroyer* is to account for the Ohio Supreme Court case law outside of the reselling context that has addressed the question of whether an entity is a public utility. It is important to recall that *Shroyer* has its roots not in Ohio Supreme Court precedent, but in a test originally proposed by Staff.[33] Given that the question presented in this COI turns largely on what it means to be a public utility, it is rational to consult the Ohio Supreme Court's guidance on this issue. After all, it is the Ohio Supreme Court, not Staff, that has "revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law[.]"[34]

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[33] *Shroyer* at 4.

[34] Ohio Constitution, Article IV, Section 2(B)(2)(d).

The Ohio Supreme Court has observed that the "[d]etermination of whether a particular entity is a public utility is a mixed question of law and fact."[35] The inquiry must focus on "the character of the business in which [the entity] is engaged."[36] No factor is controlling in deciding whether an entity is a public utility, the case must be determined on its own facts and circumstances.[37] Nonetheless, the Court has identified two common attributes commonly associated with public utilities. The first is that they furnish "an essential good or service to the general public which has a legal right to demand or receive this good or service."[38] Services must be rendered generally and indiscriminately.[39] The second commonly associated attribute is that public utilities conduct their operations "in such a manner as to be a matter of public concern."[40] This attribute is grounded in the understanding that the "public utility occupies a monopolistic or oligopolistic position in the marketplace."[41]

Adoption of these principles, coupled with the *Shroyer* test, will provide the PUCO with a broad set of factors to consider when analyzing whether an entity qualifies as a public utility. In its current formulation, the *Shroyer* test is too narrowly drawn because it overlooks the Ohio Supreme Court's attention to whether the services rendered are essential. Consumers of residential dwellings must receive water, light, and heat for

[35] *St. Marys v. Auglaize Cty. Bd. of Commrs.*, 115 Ohio St.3d 387, 2007-Ohio-5026, ¶ 54.

[36] *Indus. Gas Co. v. Pub. Util. Comm.*, 135 Ohio St. 408, 21 N.E.2d 166, paragraph one of the syllabus (1939).

[37] *St. Marys*, 2007-Ohio-5026, ¶ 55.

[38] Id. at ¶ 56.

[39] *S. Ohio Power Co. v. Pub. Util. Comm.*, 110 Ohio St. 246, 143 N.E. 700, paragraph two of the syllabus (1924).

[40] *A&B Refuse Disposers, Inc. v. Ravenna Twp. Bd. of Trustees*, 64 Ohio St.3d 385, 388, 596 N.E.2d 423 (1992).

[41] Id.

bathing, cooking, cleaning, and various other essential life functions. As the *In re Whitt* case illustrates, utility submetering or reselling entities appear to be responsible in one way or another for ensuring that these essential services are delivered to residents. If a submetering or reselling entity were to arbitrarily or unreasonably terminate utility services it would cause a massive disruption to the resident by impairing his or her ability to carry out essential life functions. Just like the Ohio Supreme Court, the PUCO should weigh and consider the essentiality of the services rendered when making future evaluations about whether an entity qualifies as a public utility.

Additionally, the *Shroyer* test is too narrow because it is inattentive to the monopolistic characteristics exhibited by submetering or reselling entities. A central impetus for establishing regulation over public utilities is to ensure that they do not extract monopoly profits from captive customers. Yet the *Shroyer* analysis does not inquire into whether the entity is behaving like a monopolist. For all intents and purposes, submetering or reselling entities occupy a monopoly position akin to that of a public utility. As far as the resident is concerned, the submetering entity is the sole vendor of all utility services (distribution, transmission, and generation services); the resident has no choice as to its supplier for these services, and therefore, must establish a relationship with the submetering entity because there are no other options. The only real exception to this comparison is that, unlike public utilities, there is no ceiling on the prices that submetering entities may charge. It appears that some submetering entities are taking full advantage of this regulatory loophole and extracting monopoly profits from

captive customers, sometimes by up to as much as 40% more than the regulated price.[42] The PUCO should follow the Ohio Supreme Court's guidance and evaluate whether the submetering entity exhibits monopoly characteristics. Such an evaluation will support a finding that some submetering entities are operating as public utilities.

Finally, the PUCO should incorporate its "traditional function" analysis into the *Shroyer* test. On previous occasions, when called upon to clarify the dividing line between public utility and non-public utility functions, the PUCO has looked to whether the function in question has been traditionally performed by the public utility. For example, the PUCO has noted that metering is a traditional public utility function.[43] The PUCO has also explained that, "the function of billing is a traditional function of the distribution utility."[44] Accounting for the full range of activities traditionally performed by public utilities—rather than just the narrow subset identified by *Shroyer*—will ensure that the PUCO exercises the maximum extent of it statutory jurisdiction over entities that seek to enjoy all the benefits granted to a public utility while evading the regulatory oversight that comes along with that status.

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[42] *Shocking cost investigation: Utility middle men charge renters inflated prices*, Columbus Dispatch (October 20, 2013) (http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html).

[43] *In re Chapter 4901:1-10 Rulemaking*, Second Entry on Rehearing at 19.

[44] *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Entry on Rehearing at 15 (May 21, 2014).

C. What impacts to customers and stakeholders would there be if the PUCO were to assert jurisdiction over submetering in the state of Ohio?

The PUCO's assertion of jurisdiction over submetering in the state of Ohio would profoundly benefit residential customers by ensuring that they have remedies and protections against entities that seek to charge monopoly prices for essential utility services. It is important to recall that:

> Public utilities * * * are subject to supervision, regulation and control by governmental agencies * * * to protect those served by the utilities with respect to the fairness of rates charged, adequacy of service and against discriminatory practices.[45]

Without adequate protections in place, customers in submetering arrangements are susceptible to being gouged by entities that, from the customers' perspective, are no different than the legacy utilities that have operated in this state for decades under the PUCO's supervision. As illustrated by the attachments to these initial comments,[46] it is difficult for customers to understand why it is that there is such a marked disparity between the rates they pay for utility services versus the rates that others pay to a regulated public utility for those exact same services. It is even more difficult for these customers to be told that there is nothing that can be done to address the problem or why it is that their bills keep increasing even though their usage remains the same. Some customers have even been billed for utility services that predated their occupancy; however, the PUCO is without the ability to implement consumer protections and protect consumers against the over-collection by the submetering entities.

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[45] *Shopping Centers Assn. v. Pub. Util. Comm.*, 3 Ohio St.2d 1, 3, 208 N.E.2d 923 (1965).

[46] See OCC/OPLC Attachment 2. The attachments were received by the OLPC and are being provided to the Commission to show the depth of customers' frustration as well as the harms inflicted on customers by submetering arrangements.

A finding that the PUCO can assert jurisdiction over entities that administer submetering arrangements would grant needed consumer protections and restore customers' trust with the submetering entities, as well as the PUCO. If the PUCO asserts jurisdiction over an entity administering a submetering arrangement, a customer would be authorized to file a complaint case before the PUCO pursuant to R.C. 4905.26 alleging, inter alia, that the rates or services rendered or charged by that entity are unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law in order to protect their interests.

Further, customers would receive protections from various statutes requiring public utilities to charge PUCO-approved rates.[47] This would be a major improvement over the current environment, where customers, with little to no bargaining power, are subject to little more than the profit-maximizing whims of submetering entities. Additionally, entities administering submetering arrangements would potentially be required to obtain certificates of public convenience and necessity, or, authority to operate in a certified territory as a public utility.[48]

Entities engaged in the provision of competitive retail electric services (CRES) would be required to be certified by the PUCO and must abide by certain consumer protections as well.[49] Moreover, to the extent that residential customers are unable to select utility services from a CRES supplier because of a submetering or reselling arrangement, they are being unlawfully deprived of the benefits of retail competition in

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[47] See, e.g., R.C. 4905.22 (unreasonable charge prohibited), R.C. 4905.32 (schedule rate collected), R.C. 4905.30 (printed schedules of rates must be filed), and 4909.18 (application to establish or change rate).

[48] R.C. 4933.25 (water and sewer service) and R.C. 4933.83 (electric service).

[49] R.C. 4928.08(B); Ohio Adm. Code 4901:1-21; Ohio Adm. Code 4901:1-24.

the state. Under R.C. 4928.02, it is the policy of the state to promote competitive options for consumers:

> (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
>
> (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
>
> (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
>
> (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;
>
> (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;
>
> (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;
>
> (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;
>
> (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any

> generation-related costs through distribution or transmission rates[.]

The General Assembly has granted authority to the PUCO to effectuate this policy, which, among other things, directs the PUCO to assess whether there is effective competition in the CRES market.[50] By foreclosing a customer's ability to choose alternative generation services and take service through a CRES supplier, the submetering entity has nullified the customer's rights granted by Ohio law, thereby thwarting competition. Unlike a submetering entity, a CRES supplier is subject to PUCO-adopted rules that prohibit "unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale" of CRES contracts.[51] Whereas customers subject to submetering arrangements have virtually no idea how their bills are calculated, customers that take service pursuant to a CRES contract are entitled to receive: price disclosures; information that enables the customer to recalculate the bill for accuracy; and a clear explanation of any changes in the rates, terms, and conditions of service.[52]

In sum, a finding that a submetering or reselling entity's conduct rises to the level of either a public utility or a CRES supplier would bring numerous consumer protections and facilitate competition as envisioned by Ohio law.

In addition to submetering abuses, mobile home park operators and landlords who are engaged in utility reselling often charge excessive or unfair rates to their park residents and tenants by overcharging or mis-allocating electric and water expenses when

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[50] R.C. 4928.06.

[51] R.C. 4928.10.

[52] R.C. 4928.10.

there is a master meter but no submeters for the individual units. Typically, these entities use – or claim to use – a Ratio Utility Billing System (RUBS), and they give their residents or tenants "utility bills" based on RUBS. Under a RUBS utility billing plan, the utility reseller allocates utility expenses according to some – often undisclosed – formula. The formula may be based on square footage, number of occupants, number of bathrooms, number of bedrooms, number of units in the complex, or some other basis.

Tenants and mobile home park residents have complained to tenant and utility consumer advocates – including OPLC and local legal aid programs – that their RUBS utility bills are grossly unfair, inaccurate, and/or arbitrary. These complaints include but are not limited to:

- Failure to disclose or misleading disclosures during lease negotiations regarding the RUBS billing system.
- Monthly cost to tenants or park residents for water, sewer and (less frequently) electric service that are significantly higher than that of a single-family home with additional consumption.
- Wide fluctuation of utility bills every month.
- Differences in billing charges between two identically situated tenants or park residents.
- No guidance or indication of billing methodology on the monthly bill.
- Refusal or failure of mobile home park operators or landlords to fix ongoing water leaks because they have no

incentive to fix the leaks and can simply bill the extraordinary water charges to their tenants or park residents.

In general, the major pitfall of RUBS utility reselling is that the utility bills fail to take into account the tenant's or resident's actual usage or even how much time the occupant is in the unit. For example, some tenants and park residents have been charged substantial water bills for months during which they were entirely absent from their residence. Likewise, seniors living alone in a two-bedroom apartment have been charged the same amount of utilities as a family of four living in a two-bedroom unit. RUBS utility bills do not reflect any savings when an occupant makes extra efforts to conserve water or energy. Moreover, it is easy for landlords and park operators who are utility resellers to overcharge tenants or residents because of the confusing and sometimes undisclosed RUBS billing methodology. Tenants and park residents who are low-income or living on a fixed budget are especially vulnerable because they do not know how much they will have to pay for their utility bills on top of their barely affordable monthly rent. Finally, RUB-based utility reselling diminishes (or eliminates) incentives for the utility reselling property owner to make timely repairs and, in particular, to install cost-effective plumbing fixtures, because their tenants or residents have to pay the unreasonably high utility bills.

Therefore, the PUCO should assume jurisdiction and consider regulating or curtailing the use of RUBS utility billing. Specifically, the PUCO should consider adopting rules similar to the model ordinances adopted by the City of Cleveland and the Cleveland suburb of Warrensville, Ohio. See attachments for Cleveland City Code

Section 275.05 and Warrensville City Code Section 1378.02.

In short, the PUCO could have a considerable impact benefiting utility consumers by assuming jurisdiction of and adopting consumer protections for consumers subject to exorbitant submetering charges and fees or unreasonable RUBS utility bills. By evaluating the abusive practices of utility submetering companies and other utility reselling entities, the PUCO can more effectively fulfill its role of protecting Ohio's utility consumers.

III. CONCLUSION

OCC and OPLC appreciate the Commission's attention to this critically important issue and recommend that the considerations identified above be adopted by the Commission.

Respectfully submitted,

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Ohio Consumers' Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was submitted for electronic filing with the Commission's Docketing Division on January 21, 2016.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

OCC / OPLC
Attachment
1

Columbus, Ohio • Apr 07, 2014 • 52° Light Rain
The Columbus Dispatch

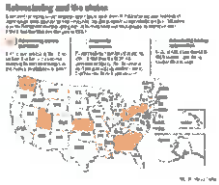
DISPATCH SERIES | DAY 1 OF 3

Shocking cost investigation: Utility middle men charge renters inflated prices

JABIN BOTSFORD | DISPATCH

At the Enclave at Albany Park, renter Rachelle Sexton pays 30 percent more for electricity than the regulated price.

View Larger



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By Dan Gearino

The Columbus Dispatch • Sunday October 20, 2013 5:50 AM

Consumer protection for utility customers sometimes stops at the apartment door in Ohio.

Unlike most states, Ohio allows unregulated, third-party "submeter" companies to make big profits by reselling electricity and water to residents of apartments and condominiums.

"They pretty much told me that I don't have a choice and this is how it is," said Rachelle Sexton, who rents at the Enclave at Albany Park in Westerville.

Her August bill was $176.24, which was 30 percent more than she would have paid for the same usage at regulated prices.

A 10-month investigation by *The Dispatch* found that residents pay markups of 5 percent to 40 percent when their landlords enter into contracts with certain submeter companies. If the customer fails to pay, the companies sometimes resort to collection tactics that would be illegal for regulated utilities, including shutting off heat in winter and even eviction.

The problems stem from an absence of regulation, a blind spot in Ohio law that affects an estimated 18,000 to 20,000 housing units in the Columbus area, and that has the potential to affect any of about 3 million Ohioans who live in apartments or condominiums.

"What it gets down to is the individual consumer," said Ohio Attorney General Mike DeWine in response to the *Dispatch* findings. "We made a public-policy decision years ago in this state that we were going to put in place certain protections for the individual utility consumer.

"It seems to be a problem when you have a small minority of consumers who do not have those protections. That, to me, would raise a lot of questions."

Yet no state agency has the authority to respond. That would require action by the Ohio legislature, DeWine said.

Here's how it works: A submeter company buys the utility meters and distribution system within an apartment complex. It then buys electricity or water, or both, from utilities and sells them to tenants, often at inflated prices and with fees.

In some cases, the submeter companies are owned by principal owners of the apartment complexes. And the submeter companies have names that sound like big, well-known businesses — names such as Nationwide Energy Partners and American Power & Light.

Complaints and questions about these companies are on the rise, with 5,137 inquiries to the Central Ohio Better Business Bureau about submeter companies since October 2012, up 33 percent from the year before.

The most-common complaints are about high bills and unresponsive customer service, said Joan Coughlin, a vice president in the office. "We had consumers state that they moved from a larger residence to a smaller apartment and had their utility costs increase," she said.

And, when a building is served by a submeter company, tenants are not eligible for money-saving programs available to most Ohioans. This includes the "choice" program, which allows customers to select a utility provider from among several. Instead, the submeter company is the only option.

THE BOTTOM LINE

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» Dublin police warn residents about tax scam

Submeter customers also are ineligible for PIPP Plus, a federally funded subsidy for low-income residents available to anyone served by a state-regulated utility. The program served 41,160 households in Franklin County last year.

"We're being victimized," said Dustin Flowers, who rents at Northpark on the Far North Side. His most-recent bill was 23 percent more than it would have been at the regulated price.

He said high bills have thrown off his budget and forced him to cut back on spending in other areas. "I've lost sleep over this."

In many other states, this type of utility resale is banned by law or rule. That leaves just a few other states where it is allowed: Alabama, Georgia, Kansas, Pennsylvania, South Carolina, Utah and Washington.

What those states do not have is evidence that companies are using gaps in the system on a large scale. In this way, Ohio is unique, with companies whose business models depend on the lack of rules.

"Allowing markups for submetering is just bad policy," said Janine Migden-Ostrander, the former Ohio Consumers' Counsel who is now a principal at the Regulatory Assistance Project, a national nonprofit group that advises regulators on utility policy. "They aren't providing the customer with any real service that they wouldn't otherwise get from the utility company. There is no value added for the customer."

Made in central Ohio

The *Dispatch* investigation focuses on two central Ohio companies: American Power & Light and Nationwide Energy Partners. They sell services to property owners, read meters and handle billing and collections.

By acting as intermediary between utility and resident, the businesses perform functions of a utility without regulation.

Both companies have close ties to large apartment owners in the region, serving their tenants and others. American Power is part of a group that includes Ardent Property Management, and Nationwide Energy was founded by the chief executive of Lifestyle Communities.

While there are many similarities, the companies have some big differences. Nationwide Energy provides a detailed explanation of its fees, and it has a call center to respond to customers. It also works to resolve complaints and help those unable to pay, customers said.

In contrast, American Power is less responsive to customers and consumer groups, and it is more aggressive in collections. It gets a grade of D from the Better Business Bureau, compared with a B- for Nationwide Energy.

"We are moving toward complete transparency with the residents and the developers," said Mike Palackdharry, Nationwide Energy's president, interviewed at the company's Arena District offices.

He said his company delivers value that justifies the costs, including the convenience of a combined bill for water and power, and helping consumers reduce energy use.

"We are trying to do things the right way and to bring a positive impact to our residents," he said.

When presented with examples of customers paying more than the regulated price, Palackdharry said it was not a fair comparison, because his company's bills include charges for electricity use in common areas, such as hallways. If the tenants were not served by his company, those costs would lead to higher rents, he said.

After not responding to requests for an interview, Bill Finissi, American Power's vice president, provided *The Dispatch* with emailed responses to questions.

"(A)ll tenants enter into agreements with our company with eyes wide open and with full knowledge of the leasing contract provisions," he said.

"Our costs also include a share of common-area electrical usage, and a charge for submetering and administration," he said. "This is our business model which prospective tenants have complete freedom to accept or not. By the way, if we didn't do it this way, these extra costs, which are essential costs of providing apartment housing, would need to be included in the rent."

Consumer advocates say they would prefer that such charges were included in rent to make it easier for tenants to see the true costs when they shop for housing, as opposed to being surprised by high utility bills.

While submetering is legal throughout Ohio, the large majority of consumer complaints are in the Columbus area. Why not in other places? Consumer advocates can only guess. They point to a lack of well-organized tenants'-rights groups and the fact that Nationwide Energy and American Power happen to be based in the area.

Ohio's unique regulatory structure means that the business model easily could spread across the state. The model also could spread to other states with a similar lack of rules.

"Columbus is absolutely ground zero for these rebilling schemes," said Spencer Wells, a former tenant-outreach coordinator for the Coalition on Homelessness and Housing in Ohio, an advocacy group.

If residents are late with payments, American Power will sometimes evict them, even if the consumer's rent is up to date and even though American Power is not the landlord.

"Once you enter this slippery slope, where a third party has the ability to order evictions, that's shocking," said Emily Crabtree, a lawyer with Columbus Legal Aid who has defended American Power customers.

American Power initiated 51 eviction cases last year, according to Franklin County Municipal Court records. The company has opened 159 of the cases since 2010. Nationwide Energy opened 278 such cases from 2002 to 2011, but none since.

No connection to AEP

Despite familiar-sounding names, Nationwide Energy and American Power are not affiliated with two of Columbus' most-prominent companies, Nationwide Insurance and American Electric Power.

Housing-rights advocates say American Power's name is confusing for tenants who think they are dealing with the local utility, AEP. It's not as much of an issue for Nationwide Energy because Nationwide Insurance doesn't sell electricity.

Many of their practices would be illegal if the provider was a state-regulated utility like FirstEnergy or AEP.

In central Ohio, AEP sells electricity to the submetered complexes. The difference is that it sells in bulk to the property owner or submeter company, instead of to the end user.

Although AEP does not directly serve submeter customers, the company still gets calls from confused residents. AEP would prefer it if those customers were hooked up to AEP meters, but the company understands that submeter companies are following Ohio law, said spokeswoman Terri Flora.

"As people make choices to rent in an apartment, they need to be fully aware of what that choice involves," she said of the possibility of paying higher prices with a submeter company. "It's a different environment than consumers are used to."

According to AEP, there are about 130 submetered apartment or condominium complexes in central Ohio. When asked to estimate how many units are in the complexes, AEP said it is likely 18,000 to 20,000.

The state regulatory system was developed early in the last century to stop utilities from abusing local monopolies over the meters, wires and other delivery systems. Submeter companies did not exist then.

"As a matter of policy, we want all customers to be treated fairly and equally," said Todd Snitchler, chairman of the Public Utilities Commission of Ohio, which regulates utilities and is the type of agency that oversees submetering in many states.

While that might be the aim of Ohio's regulation, his agency lacks jurisdiction over submeter companies. He said that the Ohio General Assembly would need to take action for the PUCO to assert authority.

"That's a policy call for them to make," he said.

Customer bills tell story

When a customer questions the rates of Nationwide Energy or American Power, the companies reply that the charges are the same as those charged by the local utility. But that's not accurate, based on a *Dispatch* analysis of bills from a wide variety of customers.

In each case, the bills are based on the equivalent rates that would be charged by regulated utilities, except with added fees. When you include fees, customers are paying an extra 5 to 40 percent.

At the same time, the bills do not give customers the benefit of bulk-buying discounts and other savings that the submeter companies use to make their wholesale cost much lower than the regulated price.

To illustrate this, *The Dispatch* looked at a hypothetical 100-unit apartment complex in which each tenant used 750 kilowatt-hours of electricity in a month, which experts say is typical. At AEP's central Ohio regulated price, each household would get a bill for $113.57, a figure confirmed by the utility.

However, if a submeter company bought the same amount of electricity for all 100 units, it would qualify for a commercial rate and it could also shop for a bulk-buying deal on Ohio's open market. Based on the commercial prices available in central Ohio, the complex could obtain the power for the equivalent of $70.93 per unit.

By reselling power to the tenant at the full AEP rate of $113.57, the submeter company's rate is 60 percent higher than its own wholesale power cost. And that doesn't include a host of submeter fees, which can easily exceed $30 a month.

When presented with this, Palackdharry said the example overstates the potential profit because it does not take into account seasonal factors and other technical issues.

His boss, Nationwide Energy founder and CEO Mike DeAscentis Jr., went into great detail about the business model in a 2010 presentation to investors. "How we make money is we buy power at a commercial rate and we resell it at the residential rate and there is arbitrage in the rate structure," he said, according to a transcript obtained by *The Dispatch*.

DeAscentis is also the CEO of Lifestyle Communities, an apartment developer. He is the son of that company's founder and chairman, Mike DeAscentis Sr. Nationwide Energy provides its services to Lifestyle Communities and other large property managers, such as Crawford Hoying, which is owned by Brent Crawford and former Ohio State football player Bob Hoying.

Property owners are willing to sign these contracts because submeter companies often cover costs of setting up meters. Also, the submeter company will bill customers for electricity and water used in common areas and pass the money to the property owner. A regulated utility will not handle such payments.

"Our philosophy here is we are a real-estate company," said Dave Carline, president of Crawford Hoying's apartment division, explaining why his company hired Nationwide Energy. "We really wanted to get out of any energy business. We wanted to allow energy companies to do their own thing and let customers deal directly with them."

Nationwide Energy began in 1999 by installing its metering systems in newly built apartments. It later expanded to also serve older properties, including some in which tenants previously had individual meters and billing from the utility, and had no choice but to switch to the new provider. The company has about 40 employees.

"NEP is the new utility," DeAscentis said in the 2010 presentation. "We do everything that a utility does except generate power. NEP builds electrical-distribution systems for residential communities, and we were very deliberate when we started the business 10 years ago to put it in a place where it was not regulated."

He spoke of plans to expand into Pennsylvania, New York and the Washington, D.C., area. The company is now active in Pennsylvania.

"Our business is very unique," he said. "As we went across the country and did management presentations of people who see 300 or 400 deals a year in the energy space, no one ever saw a business that had a model like ours and what we were doing."

American Power was founded in 2003 by developer Donald R. Kenney Sr. It shares office space with many of his other ventures, including Ardent Property Management, Village Communities and Metro Development. His companies have built more than 35,000 apartments or condominium units, according to the Metro website.

Outside the mainstream

There are reasons other companies have not tried this. It is illegal in most states, and established submeter companies say that such a model has a high risk of lawsuits, intervention by regulators and blowback from angry consumers.

The submeter industry has been around for decades and has customers across North America and Europe. Most of these companies make money by selling equipment and services, and they comply with industry standards that say it is unethical to charge a markup on the cost of electricity or water.

"When you start trying to get creative (with pricing), you create problems for the entire industry, and we don't want that," said Matt White, president of Meter Technology Works of Tampa, Fla. He sells meters to submeter companies and is past president of the national submeter trade group, the Utility Management and Conservation Association.

The current president, Arthur Blankenship, owner of Argen Billing, an Atlanta-area submeter company, said he is concerned by reports of "rogue companies" in Ohio.

"Our industry doesn't have anything to hide, and if there are companies out there doing something dubious, that needs to be addressed," he said.

Neither Nationwide Energy nor American Power is a member of the trade group. But another local submeter company, Guardian Water & Power of Grandview Heights, is a longtime member.

Founded in 1983, Guardian has customers in 30 states. For its Ohio customers, Guardian typically charges about a $3-per-month service fee for each apartment served, which the landlord can pay or pass along to the tenant. The company makes no profit from marking up water or power, and it has never evicted anybody.

Harry Apostolos, Guardian's co-founder and owner, declined to comment specifically about Nationwide Energy or American Power, which he said are competitors.

In general, he said, some companies have chosen business models that go against industry best practices, and they have "created a black eye for the industry in central Ohio."

Click here to read more about Guardian Water & Power's business practices

State officials no help

Consumers often do not know what is happening. When they find out, they are shocked that this is legal in Ohio.

"It was inexplicable," said Gabriel Santiago of Reynoldsburg, a former Nationwide Energy customer who moved out of his apartment this year because of what he saw as excessive electricity charges.

Guy Fulcher, a former American Power customer who now lives in Galena, was fed up with the response when he tried to file a complaint.

"The attorney general back then was Richard Cordray, and his office just rolled over and said, 'We don't regulate that,'" he said. "They said to go to PUCO. PUCO said, 'We don't regulate that.'"

Consumer advocates say that these extra charges, and the fact that they are legal in Ohio, should be a source of shame.

They would like to see the Ohio General Assembly or PUCO rein in the most-abusive of the practices. But first, they say, there must be awareness that a problem exists.

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@dispatchenergy

COMMENTS

SAMUEL RANDAZZO (RANDAZZOSC)

To the extent that the companies described in this article are for-profit and in the business of supplying electricity to consumers in Ohio, they may well be "public utilities" subject to regulation by the Public Utilities Commission of Ohio. Also, if the practices are not subject to supervision and regulation at the state level in Ohio, there

should be an opportunity in Ohio for these practices to be regulated and supervised at the local level. While tenants can and should make choices that do not put them in the position of being captive to excessive electric bills, Ohio's public officials may have more tools to address these problems than this article suggests.

2013-10-20 08:12:45.0

BOB POINTER (POINTER)

Time to get educated on a better way. Support and advocate for the advancement of Free/New Energy and the ban of harmful technology 1) Free Energy is a Reality not a Conspiracy https://www.youtube.com/watch?v=Dfj1O45qZ5U 2) Take Back Your Power documentary https://www.youtube.com/watch?v=2pcGAv4rTko 3) Stay informed, get involved, create a better future for all http://www.thrivemovement.com/take-back-your-power-documentary

2013-10-20 08:47:31.0

FREDERICK SHEEMAN (FREELOADER)

It is a SCAM for which the landlord feels no need to disclose. Why is it that companies associated with utilities (and utilities) feel that they have to force the regulation issue? Unregulated and competitive utilities are a great ideal - but there are those that will do everything possible to spoil the landscape for everybody.

2013-10-20 09:57:13.0

K W (KINETICS)

Welcome to unfettered capitalism. This activity is known as "rent seeking" in economic circles - making profit from manipulation of social/political environment with no wealth creation. It came with the deregulation binge that brought us Enron & the financial debacle. That is not to say free-market capitalism is bad, it just needs reasonable regulations to prevent excesses like this one.

2013-10-20 12:04:55.0

LYNDA HOWARD (SHADBURN)

Free market? There is no end to the greed. Paying fair market rent is no longer enough. There should be some type of standard disclosures for tenants and laws to protect them from this. To further exploit tenants, some landlords of large complexes like the one we live in, also employ the use of additional billing services. You're told it's for water, sewer, trash and common electric but find out after you sign the lease that you also pay a set up fee for the billing service ($19.99), monthly administration fee ($8.99), pest control charge (was $7.95, just changed to 10.99%). In addition, all charges within one month increased by 38% to 77% with no explanation or notice. My husband and I hadn't rented for many years and have discovered after down-sizing that it's impossible for renters to compare fairly because of all these hidden fees. The lease is very vague and when asked for the previous 12 month history of charges, it's not available and there is no other disclosure. We've also discovered that the heat pumps don't run when the heat is on, so it's like running the emergency heat all the time. We can only conclude it's to lengthen the life of the already old heat pumps. We can't wait to see the electric bill. Fortunately, we aren't forced to use another electric provider- we hope our landlords don't get any ideas!

2013-10-20 12:53:47.0

A FREEMAN (NEWSWATCHER)

20,000 people affected in central Ohio. WHICH POLITICIAN WOULD LIKE TO STAND UP AND GET CREDIT for putting some caps on these charges? Renters need to know the most they will have to spend on utilities, before signing a lease. This situation causes hardship & is way overdue to be regulated.

2013-10-20 13:18:21.0

JODY DZURANIN (BYJODY)

A related issue that is not regulated by PUCO is electric service provided by City of Columbus. This is the utility that also provides electric for the streetlights and traffic signals. When renting space in Clintonville our electric bills were skyrocketing and upon receiving a bill for $560/month in space about 1,400 sqft. A complaint to the PUCO received this response: Thank you for contacting the Public Utilities Commission of Ohio regarding The City of Columbus Department of Public Utilities. Your City of Columbus government operates this utility. Under the Home Rule provisions of the Ohio Constitution, the PUCO has no authority to intervene. If you have not received a satisfactory answer from your utilities department, you may express your concern to the mayor's office or your county commissioners. A complaint to the utility itself recommended I take it up with Columbus City Council.

2013-10-20 15:59:37.0

TONYA EDGELL (TON32678)

I live at Remington Station Apartments part of Crawford Hoying Management Company in Westerville, OH and I too am one of the victims forced to use Nationwide Energy Partners as my energy and water provider with no say in the matter. I was told that it would be "cost effective and energy efficient"... LOL! JOKE! The following are this years bills I have received fluctuating erratically (who can make a budget and stick to it with this)?... : Jan: 107.10 Feb: 106.73 Mar: 113.57 Apr: 169.21 May: 232.74 Jun: 271.84 Jul: 225.94 Aug: 249.40 Sept: 235.73 Based on a spreadsheet of my NEP vs my AEP bills and the City of Columbus Water System online worksheet. I have determined that I believe that there water billing is accurate however I do not think that the electric billing is. I was being charged on an average with AEP 0.135 per kwh and with NEP it averages 0.149. Why such a difference? Please lets not forget their so called "Community Charge" that gets kicked back to our property owner as mentioned in this article that has ranged anywhere from $2-8.24 for water and $3-6.90 for electric and this is for each tenant! How is this determined and how can it fluctuate as it does? I have 76 apartments on my street alone and based on my charge last month at $14.35 that's $1090 dollars each month for my street! This guy is making a fortune on us and all they while he says it's keeping rent costs lower? LOL! JOKE again... My rent went up $68 dollars at my last signing (scared to see what happens next May)! And who has ever heard of your electric company evicting you? Glad to hear that this is not legal, however I'm sorry for those who do and have fell behind on their electric bill and live in one of these communities because they more than likely can't afford an attorney to fight it if they can't pay there ridiculous electric bill that keeps adding late fees for non payment! I too have just received a disconnect notice this past month before the new bill was even available. Thankfully I was able to pay my $272.90 bill which included $23.56 in late fees and 13.63 for that dang "Community Charge" without being evicted thank goodness! I think that it is time for someone to do something about this! If it is illegal in 29 other states why not work to make it illegal in Ohio?! Crawford Hoying owner Bret Crawford & Dave Carline President should consider their tenants before their own greed and at least drop this company and let us have AEP and Columbus City Water back. It's the least they could offer as their maintenance services here are very poor and huge issues are not being addressed properly.

2013-10-20 18:36:40.0

KATHLEEN MUNDY (KMUNDY52)

NEP have been gouging Gabriels Landing Condos for 6 years now. When I lived in Hilliard my water bill was $40 at the highest, here my lowest is $67 for the same number of people...and the electric is ridiculous. They offer no grace period, you pay your bill when it is due, if you are one day late you are charged a late fee. Get over 30 days behind and you are disconnected, no notice just disconnect. Then they charge an additional $50 to turn it back on. They do not work with customers that is a lie. The builder that hired them went bankrupt and left Ohio before finishing our development. We the condo owners have begged our management company to get us out of their contract that we had no say in from the beginning; we were told we had to pay $20,000 to break the contract plus give up our meters and purchase new ones. As a small struggling condo development with several people on disability and several single parent families we cannot afford to buy out. Some of our homeowners would qualify for assistance but we can't get it. They offer no budget and we often feel we are overcharged with our usage being exaggerated. Sept. I hardly used AC at all and still the bill was close to $290. Please we need our state representatives to offer us some protection from these companies. After being overcharged for 6 years our meters should belong to us and we should be able to purchase directly from AEP and Columbus City water. When there is a water break or downed line we cannot call NEP for help...all they do is rip us off from our money!

2013-10-20 20:26:46.0

KATHLEEN MUNDY (KMUNDY52)

Thank You Columbus Dispatch for bringing this to light...Ohio State Representatives please take notice and help us!

2013-10-20 20:37:00.0

MEGAN SMITH (OHIOCHIC123)

As most the most terrible things about NEP were listed in the article, I do want to point out their billing practice. In mailing their bills, they do so that it it almost impossible to not be late paying them. The most frustrating part about this company is the fact that it is legal for them to charge more than if another company were to provide services to the complex. Without any choice, residents are forced to pay much higher fees and get the added luxury of fees to be their customer. When the fee to use the company for water is more than my actual usage of water, one has to wonder how these practices are allowed.

2013-10-20 23:18:32.0

JOHN CONDO (HILTCONDO1)

this is good reporting

2013-10-21 09:30:12.0

OHIO GIRL (OHUGIRL13)

I am urging every person impacted by this situation to contact the Better Business Bureau, Attorney General, Senators and House Reps about this issue. It is very real and has created and continues to create hardship for good citizens who deserve to be assessed reasonable costs for basic needs like heat and water. It is important to note that the communities that use submetering practices also charge very substantial rent to residents. In contrast to the article written, NEP does NOT offer reasonable payment plans for large bills-unless you count $500 a month as 'reasonable.' Impact Change...Take Action!

2013-10-22 00:04:16.0

DON FOREMAN (DONFOREMAN)

Does this article represent all submetering companies? I know several that are truly passing along the rates as billed by the providing utility. Add to that the regulating bodies that control more than the billing process further. The NCUC has an approval process that prevents residents from being unjustly charged inflated rates. Plus, they do not allow for reads to be estimated. The TCEQ of Texas, has pages of regulations on how to bill residents, what can be billed to the residents, and billing fees are not allowed to be charged to tenants. Like Texas, Miami has similar protections for residents. California is starting to require units to be submetered, and does not allow for a billing fee to be charged. There are submetering companies out there that are taking the stance that the rates charged to the property should be applied to the residents, and they are striving to stay within the law. The two companies listed in this article are making the others look bad. I'm sorry that there residents subjected to their billing practices. As regulations come around, and allow, disallow, or control the process I hope that more submetering companies fall in line. Until then, I can only hope that ethical billing without regulation becomes the way to go in these hard times for the people that are struggling to survive. Which, unfortunately is most of us. I know I am.

2013-10-22 09:17:46.0

mike smalz

From: Janet Jeczen <jljeczen@yahoo.com>
Sent: Tuesday, March 04, 2014 6:25 PM
To: mike smalz
Subject: Water bills

Hello Mr. Smalz,

I am Jan Jeczen, I rent from Plaza Properties, when I signed my lease 12/2012, they told me my water bill would be about $20 a month. Needless to say, I have not had a bill under sixty dollars. I question them, checked for leaks, demanded to see the metered bill, since they told me my water was based off of my meter, and of course I was denied. I questioned why do I have a water bill from June and July 2013, since I went to Michigan for medical treatment, and no one was in my apartment. I could not get answers, just a run around.

When in Ohio, I spend only two weeks a month and go home. My neighbor, who has a husband, two kids leave in the building next store full time and their bills average $45 a month.

Emily wanted me to talk with you, I contacted her for another problem. When I came home in August 2013, my carpet was wet, and my home smelled of mildew. Plaza Properties insist that they fixed a condensation line. I have been asking for this problem to be fixed and it has fallen on death ears. In Feb 2014 I paid my rent via money orders, and gave them written notice of my intent of putting my rent into escrow, if the problem was not fixed. Today the money went into escrow. I am tired of keeping my heat on 80 degrees and keeping my fire place roaring, it is becoming costly to dry out the carpet. Not to mention the spider bites and cenipedes.

Lisa Scheer

I lived at HarbourRun Apartments in Mentor on the Lake, Ohio from 2006-2013. During my time at Harbour Run I paid for water and sewer to National Water and Power (NWP) PO Box 653178, Detroit Michigan, 48255-3178. (https://nwp.com/) While at Harbour Run, I lived in a 2BR apartment, later moved to a one bedroom unit. I did not have a business agreement with NWP and all that my lease said about my obligation was that I was responsible for water and sewer. The manager told me that I would be getting a bill.

My water and sewer bills steadily rose while I was living at Harbour Run and my bills were around $40-50/month when I moved out. My current residence is a single family house in Eastlake, Ohio where I also pay water and sewer charges that are directly metered. My current bills are about $58/quarter.

This is unfair--just like the Boston Tea Party. No accountability. There was only one water meter for each building. In addition to water and sewer charges, NWP charged me $3.25-$3.50/month service fee. When I asked National Water and Power how they allocated the water and sewer costs they told me it was based on the number of people in the unit, but that doesn't seem right since my bills did not go down when my daughter moved out and I moved into a smaller unit.

The people that I talked to at NWP were very rude when I called. It always seemed like they were laughing at me. They told me that they could do whatever they want and if I didn't like it I could move.

When I lived at Harbor One I also paid for cooking gas and electricity that was supplied by a public utility and directly metered. After I moved, I learned that the property owners went out of business (bankruptcy or foreclosure) and that new owners took over. I don't know if they are continuing to work with NWP.

See bills attached.

Christopher Tope, CPA
Tope CPA Firm LLC

Christopher Tope lived at Somerset at Deerfield in Mason Ohio until 11/11/13

Please find attached copies of the water bill that was billed to my apartment complex. At the time of this billing, Warren County had only billed Somerset at Deerfield through the end of October for water. I learned this based upon a conversation with the clerk at the Water Dept. I also attached copies of the bills I received from First Billing (I believe owned by the Connor Group. First Billing actually bills for the water. I have received water bills for November , December and the first 11 days of January even though they haven't received any invoices for the water that they billed me for.

I have never received any response to my repeated requests for documentation as to how the bill is computed, other than it is calculated under the RUBS system (Ratio Utility Billing System) and that it's a complex calculation that is in the computer, not available to be seen (even at their office) and it's based on square footage. I suspect that the water costs for the common areas and vacant apartments (including where the coin operated washers are) were allocated back to us in our bills from First Billing.

An allocation method of billing would mean there would have to be a bill to allocate, which is not the case. This complex has 500 units so if every resident was billed $35 each for the 2 months that water bills were not received by The Connor Group (TCG)- TCG, by my estimation, appears to be holding $35,000 of tenants money they are not entitled to.

My water bill increased close to fifty percent as did the majority of my neighbors. I suspect the misallocation of these bills adds an average of $10 monthly to each resident of any of the TCG properties. They current have 17,000 units in all of their properties so this equates to $175,000 monthly or $2,100,000 annually I suspect that residents are overcharged due to improper allocation methods. This doesn't include the other charges (pest control, common electric, mandatory cable, trash and gate fees) that are added to each bill.

Of course, without access to the records, it's impossible to know if there is fraud or the extent of the fraud. It's just a suspicion at this point. Since it's a low dollar amount per individual, most people can't afford or are unwilling to spend the time or money to fight this legally. However in total, I suspect the dollar amount is substantial, in the millions each year.

Also take a look at the complaints listed on the bbb website, the facebookgroup Tenants against Connor Group, rentn.org as well as the complaints on apartmentratings.com. While some of this is definitely over the top, it is amazing the hatred that many people have toward TCG and their business practices.

I moved into the complex on 7-1-14
I checked about water with some people
that lived here it was $22.00 per month
for 1 Bedroom which I have, I did not
ask Tina manager about it. I ~~assumed~~ thought it
would be the same as everyone else. I
asked about yearly rent raises. she said 2%.
2 week after I moved in. A neighbor ask
How much was my water was, I said I
have not got a bill yet. I ask Tina about
the water she said my water bill would
be appro $52.00. She said new people would pay
that, when new people signed a lease. the
other people would start paying xtra water
when they resigned a lease. my problem is
that the bill does not come from williamsburg
it comes from a third party. spectrum
solution from columbus. so now I will be
paying - the comple - williamsburg third party
I know I have to pay what I owe
but I should not have to pay for a third
party that has nothing to do with
local water & sewer, she said the water & sewer
bill here was ten thousand monthly? I ask
why not raise rent to offset the cost. she
said they could not for legal reasons, plus
some people could not afford if the high
rent. it is a way to get xtra money thought
the back door.

there is 54 units in the complex
8 of which is 2 bed Room with washer + Dryer
I do not want nothing Except what is Right.
I want to pay For what I owe.
but Living in the Comple For 22 days I see How they Run the place
there is several units with water Leaks. blue tarps on the Roofs
No building inspectors To check For mold. Health issues for over A Year
my building Has no Blue TARP. no LeAks As FAr As I Know

please check my LeAse And see what options I HAve if Any.

thAnk You

Kenneth King
121 Concord Square
Williamsburg Ohio 45176
phone # 937-798-0034

owner
Godrot Khambatta
San Diego
California

mAiling Address
Kenneth King
po Box 401
williAmsburg ohio 45176

please ReMAil when Done postAge pAid

ps. I Like the LocAtion And close to
my GrAnd child. I Hope to STAY Here

KK

CHAPTER 375 - LANDLORDS AND TENANTS

§ 375.01 Definitions

(a) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household.

(b) "Landlord" means the owner, lessor, or sublessor of residential premises, his or her agent, or any person authorized by him or her to manage the premises or to receive rent from a tenant under a rental agreement.

(c) "Rental agreement" means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one (1) of the parties.

(d) "Residential premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. "Residential premises" do not include any structures excluded from the definition found in RC 5321.01.

(e) "Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.

(Ord. No. 1844-A-99. Passed 7-18-01, eff. 7-26-01)

§ 375.02 Terms of Rental Agreements

(a) A landlord and tenant may include in a rental agreement any terms and conditions, including the term relating to rent, the duration of an agreement, and any other provisions governing the rights and obligations of the parties that are not inconsistent with or prohibited by this chapter, RC Chapter 5321, Chapter 240 regarding lead hazards, including Section 240.06 regarding disclosures regarding lead hazards in the lease of target housing, or with any other rule of law.

(b) In the event that a landlord and tenant have a rental agreement for a duration of six (6) months or more, and the rental agreement includes a provision for automatic renewal, the automatic renewal provision must be set forth in clear, unambiguous language and must be printed on the rental agreement in bold type that is at least twice the size of any other print on the page.

(c) If a rental agreement includes a provision that authorizes the landlord to assess the tenant a fee for late payment of the monthly rent, the total amount of that late payment fee for any month may not exceed the larger of: (i) twenty-five dollars ($25.00); or (ii) five

percent (5%) of the monthly contract rent. In addition, the total amount of that late payment fee for any amount may not exceed twenty-five percent (25%) of the portion of the monthly contract rent that the tenant is obligated to pay under the rental agreement.

(Ord. No. 1027-04. Passed 8-11-04, eff. 8-17-04)

§ 375.03 Terms Barred from Rental Agreements

(a) No provision of this chapter, Section 240.06 of the Codified Ordinances, or RC Chapter 5321 may be modified or waived by an oral or written agreement except as provided in division (f) of this section.

(b) No warrant of attorney to confess judgment shall be recognized in any rental agreement or in any other agreement between a landlord and tenant for the recovery of rent or damages to the residential premises.

(c) No agreement to pay the landlord's or tenant's attorneys' fees shall be recognized in any rental agreement for residential premises or in any other agreement between the landlord and tenant.

(d) No agreement by a tenant to the exculpation of limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or its related costs shall be recognized in any rental agreement or in any other agreement between a landlord and tenant.

(e) A rental agreement, or the assignment, conveyance, trust deed, or security instrument of the landlord's interest in the rental agreement may not permit the receipt of rent free of the obligation to comply with RC 5321.04.

(f) The landlord may agree to assume responsibility for fulfilling any duty or obligation imposed on a tenant by RC 5321.05, other than the obligation specified in division (A)(9) of that Section.

(g) A landlord who knowingly includes a provision in a lease that is prohibited by this section shall be liable for damages in favor of the tenant in an amount of not less than fifty dollars ($50.00) and not more than five hundred dollars ($500.00) for each violation, together with reasonable attorneys' fees.

(Ord. No. 1027-04. Passed 8-11-04, eff. 8-17-04)

§ 375.04 Rent Receipt Required

Upon a tenant's written request, the landlord shall provide the tenant with a signed receipt for the security deposit and all rental payments except for payments made by personal check of the tenant, at the time the security deposit or rental payments are made. The tenant may make this request for a receipt, relative to the security deposit and/or all rental payments, in one (1) written request. A tenant may bring an action for mandatory or injunctive relief to secure compliance with this section.

(Ord. No. 1844-A-99. Passed 7-18-01, eff. 7-26-01)

§ 375.05 Payment of Utilities

(a) A landlord who is a party to a rental agreement shall pay for the electric, gas, and water services for the tenant's dwelling unit unless:

(1) The applicable utility service is provided to the tenant's dwelling unit through an individual meter or submeter that measures usage only in the tenant's dwelling unit; and

(2) The rental agreement provides that, with respect to the applicable utility service, the tenant shall pay only for the cost of the utility service that is provided through the individual meter or submeter during the tenancy; and

(3) The rental agreement provides that the tenant shall have reasonable access at all times to the individual meter or submeter, for the purpose of reading the meter or submeter; and the landlord grants the tenant such access to the individual meter or submeter; and

(4) The provisions in the rental agreement that implement this section are stated in clear and unambiguous language.

(Ord. No. 1844-A-99. Passed 7-18-01, eff. 7-26-01)

From: 04/07/2004 08:29 #001 P.002

ORDINANCE NO. 2004-033

INTRODUCED BY: COUNCILWOMAN RUBY NELSON

ORDINANCE

AMENDING WARRENSVILLE HEIGHTS CODIFIED ORDINANCES TITLE SEVEN – HOUSING CODE TO INCLUDE CHAPTER 1378 (LANDLORDS AND TENANTS) AND DECLARING AN EMERGENCY

NOW, THEREFORE, BE IT ORDAINED by the Warrensville Heights City Council that:

SECTION 1. Title Seven – Housing Code of the Codified Ordinances of the City of Warrensville Heights, Ohio shall be, and hereby is, amended to include Chapter 1378. Landlords and Tenants, and will read as follows:

Chapter 1378
LANDLORDS AND TENANTS

1378.01 Definitions

(a) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(b) "Landlord" means the owner, lessor, or sublessor of residential premises, his agent, or any person authorized by him to manage the premises or to receive rent from a tenant under a rental agreement.

(c) "Rental agreement" means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.

(d) "Residential premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. "Residential premises" do not include any structures excluded from the definition found in Section 5321.01 of the Ohio Revised Code.

(e) "Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.

1378.02 Payment of Utilities

(a) A landlord who is a party to a rental agreement shall pay for the electric, gas, and water services for the tenant's dwelling unit unless:

(1) The applicable utility service is provided to the tenant's dwelling unit through an individual meter or sub-meter that measures usage only in the tenant's dwelling unit; and

(2) The rental agreement provides that, with respect to the applicable utility service, the tenant shall pay only for the cost of the utility service that is provided through the individual meter or sub-meter during the tenancy; and

(3) The rental agreement provides that the tenant shall have reasonable access, during normal business hours, to the individual meter or sub-meter, for the purpose of reading the meter or sub-meter; and the landlord grants the tenant such access to the individual meter or sub-meter; and

(4) The provisions in the rental agreement that implement this Section are stated in clear and unambiguous language.

(b) A tenant who is a party to a rental agreement shall pay for the electric, gas, and water services for the tenant's dwelling unit if the landlord meets all four (4) factors mentioned above in section (a).

(c) If a tenant is delinquent in the payment of a utility bill and the landlord is ultimately responsible for a late fee due to that delinquency, the landlord may bill the actual cost of any fees associated with the delinquency to the tenant.

1378.03 Right of Access

(a) A landlord who is a party to a rental agreement shall, except in the case of an emergency or if it is impracticable to do so, give the tenant reasonable notice of his intent to enter and enter only at reasonable times. Twenty-four (24) hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

(b) If a landlord makes an entry in violation of Section (a) hereof, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain judgment for reasonable attorney's fees, or may terminate the rental agreement.

(c) A tenant who is a party to a rental agreement shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(d) If the tenant violates Section (c) hereof, the landlord may recover any actual damages that result from the violation together with reasonable attorney's fees. This remedy is in addition to any right of the landlord to terminate the rental agreement, to maintain an action for the possession of the premises, or to obtain injunctive relief to compel access under Section (c).

1378.04 Abandonment of Dwelling Unit by Tenant; Landlord Remedies

(a) For the purposes of this Section, "abandonment" means the tenant has vacated the dwelling unit without notice to the landlord and does not intend to return, which intention may be evidenced by the combination of the tenant's removal of substantially all of the tenant's possessions and personal effects from the dwelling unit plus one of the following: (i) nonpayment of rent for at least two months, (ii) termination of the utilities to the dwelling unit at the request of the tenant, or (iii) an express statement by the tenant to the landlord that the tenant does not intend to occupy the dwelling unit after a specified date.

(b) If the tenant abandons the dwelling unit, the landlord may send notice to the tenant at the tenant's last-known address both by regular mail, postage prepaid, and by certified mail, return receipt requested, stating that (i) the landlord has reason to believe that the tenant has abandoned the dwelling unit, (ii) the landlord intends to reenter and take possession of the dwelling unit, (iii) if the tenant does not timely contact the landlord, the landlord intends to remove any possessions and personal effects remaining in the dwelling unit and to re-rent the premises, and (iv) if the tenant does not timely reclaim such possessions and personal effects, the landlord will dispose of them as permitted by this Section. The notice shall include a telephone number and a mailing address at which the landlord can be contacted. If the notice is returned as undeliverable, or the tenant fails to contact the landlord within a reasonable time, the landlord may reenter and take possession of the dwelling unit, at which time any rental agreement or lease still in effect shall be deemed to be terminated.

(c) The landlord shall not be required to serve a notice to vacate as provided in Section 1923.04 of the Ohio Revised Code or to bring a forcible entry and detainer action as provided in Chapter 1923 of the Ohio Revised Code to obtain possession or occupancy of a dwelling unit that, according to the provisions of this Section, the tenant has abandoned. Nothing in this Section shall relieve a landlord from complying with the provisions of Chapters 1923 and 5321 of the Ohio Revised Code, if the landlord knows, or reasonably should know, that the tenant has not abandoned the dwelling unit.

(d) If, within a reasonable time, the tenant does not claim any possessions and personal effects that are in the dwelling unit, then the landlord may dispose of them as the landlord deems appropriate.

(e) No action shall be brought under Section 5321.16 of the Ohio Revised Code against a landlord who takes action in compliance with the provisions of this Section.

1378.05 Severability

If any provision or clause of this Chapter or its application to any person or in any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or

From: 04/07/2004 08:31 #001 P.005

application, and to this end the provisions of this Chapter shall be severable.

SECTION 2. This Ordinance is being enacted in conformity with, and as a supplement to Ohio Revised Code Chapter 5321.

SECTION 3. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of said City and for further reason that it is necessary to protect the interests of all residents of Warrensville Heights. This Ordinance shall, therefore, take effect and be in force immediately upon its passage and approval by the Mayor.

PASSED April 6, 2004

Kimberly H. Edwards
President of Council

ATTEST: [signature]
Clerk of Council

APPROVED: 4/6/04

APPROVED AS TO FORM:

[signature]
Assistant Law Director

[signature]
Mayor Date

Summary: Comments Joint Comments On Protecting Ohioans From Excessive Charges From Utility Submeterers By The Office Of The Ohio Consumers' Counsel And The Ohio Poverty Law Center electronically filed by Mrs. Kimberly W. Bojko on behalf of The Ohio Consumers' Counsel