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

REPLY COMMENTS OF THE OHIO APARTMENT ASSOCIATION AND THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS

The Ohio Apartment Association (OAA) and the International Council of Shopping Centers (ICSC) maintain that residential and commercial landlords, whether they employ submetering practices or not, are not public utility companies as that term is currently defined by the Ohio Revised Code and as interpreted by the *Shroyer* test.[1] OAA and ICSC continue to assert, as supported by many of the other comments, including Mr. Whitt's,[2] and even under some of the Ohio Consumers' Counsel and the Ohio Poverty Law Center's suggested alternative tests[3] for determining whether an entity is a public utility, that the Commission does not have jurisdiction to regulate residential and commercial landlords as a public utilities.

Many of the state's existing multi-tenant residential and commercial buildings were not built such that they can provide a direct public utility connection to each individual leasable unit within a structure. In many cases to add a direct public connection to every unit would not only be financially impossible but also physically impossible. Thus, in many buildings across the

[1] *In re Inscho v. Shroyer's Mobile Homes*, Case No. 90-182-WS-CSS, et. al., Opinion and Order dated February 27, 1992; *In re Pledger*, Case No. 04-1059-WW-CSS, Entry dated October 6, 2004; *Pledger v. Pub. Util. Comm.,* 109 Ohio St.3d 463, 2006-Ohio-2989, 849 N.E.2d 14.
[2] Initial Comments of Mark Whitt, p. 7-8.
[3] Joint Comments on Protecting Ohioans from Excessive Charges from Utility Submeters by the Office of the Ohio Consumers' Counsel and the Ohio Poverty Law Center, p. 8.

State of Ohio, whether residential or commercial, the landlord is the consumer referred to in the pertinent definitions of Ohio Revised Code 4905.03. The landlord is the consumer that contracts with the public utility company and is responsible to the public utility company for payment for service. The Commission's jurisdiction as relates to these transactions therefore ends at the relationship between the public utility company and the landlord - it does not extend further into the contractual relationship between the landlord and the tenant and thus the Commission has no jurisdiction over things like the use of submetering arrangements or Ratio Utility Billing Systems (RUBS).

Under Ohio Revised Code 5321.04, a residential landlord must "[s]upply running water, reasonable amounts of hot water, and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection." Not only are residential landlords required to provide access to public utility service, they are forbidden to terminate public utility service against a tenant, even a tenant whose right to possession has terminated, outside of the legal eviction processes provided in Ohio Revised Code Chapters 1923, 5303 and 5321.[4] A residential landlord that unlawfully terminates public utility services is liable in a civil action for all damages caused together with reasonable attorneys fees.[5] While there is very little statutory law with regard to the rights and obligations of commercial landlords and tenants, as public utility service is crucial to running of any business, the provision of public utility service is generally a critical part of every commercial lease. The rental market is in fact a market -

[4] Ohio Revised Code 5321.15.
[5] Id.

there are legal protections for tenants and landlords but should either party overreach, the offended party may simply take their business elsewhere.

As noted above, landlords, in those cases where there is not a direct public utility connection to each unit, are instead consumers of public utility services. A landlord does not become a public utility company simply by taking steps to recover its utility costs. If some of the submitted comments are to be taken seriously, the Commission would have jurisdiction any time a consumer divided the costs of public utility service - from roommates splitting the electric bill to parents charging their adult child living at home a portion of the water bill. OAA and ICSC do not believe that was the General Assembly's intent in defining "public utility" and creating the Commission. OAA and ICSC believe that there are adequate existing remedies for addressing issues between landlords and tenants about the terms of their lease agreements without invoking the Commission's jurisdiction in this area. If there are concerns, the appropriate venue for addressing those concerns is the General Assembly.

OAA and ICSC respectfully request that the Commission deny jurisdiction as to landlords as they are not public utilities under the law.

Respectfully submitted,

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Summary: Reply Comments of the Ohio Apartment Association and the International Council of Shopping Centers electronically filed by Ms. Maryellen K. Corbett on behalf of Ohio Apartment Association and International Council of Shopping Centers