

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Office of the Ohio Consumers' Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	Case No. 16-0782-EL-CSS
Ohio Power Company,	)	
	)	
Respondent.	)	
	)	

---

**MOTION FOR A MORATORIUM TO STOP AEP OHIO FROM PROVIDING  
NEW SERVICE TO THOSE WHO RESELL SERVICE TO SUBMETERED  
RESIDENTIAL CONSUMERS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

The Office of the Ohio Consumers' Counsel ("OCC") respectfully moves for a moratorium on Ohio Power Company's ("AEP Ohio" or "Utility") new provision of electric service to those who resell (submeter) utility-related services to residential consumers in apartments, condominiums and other housing.<sup>1</sup> This motion would protect consumers during the consideration of the complaint that OCC filed today against AEP Ohio to amend or enforce its tariffs to ban reselling of electric service to submetered residential consumers (other than by landlords).<sup>2</sup>

AEP Ohio sells and distributes electric service, under tariff, to submetering entities or third-party agents (who are not landlords) through master meters. Submetered consumers have been billed unreasonably high charges for electric service. And they have been denied significant consumer protections and market-based pricing that other Ohioans receive.

---

<sup>1</sup> Ohio Adm. Code 4901-1-12.

<sup>2</sup> Complaint by the Office of the Ohio Consumers' Counsel, Case No. 16-0782-EL-CSS (April 12, 2016) ("Complaint").

The grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record (0084199)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215

Telephone (Kern Direct): 614-466-9585

[kyle.kern@occ.ohio.gov](mailto:kyle.kern@occ.ohio.gov)

(Will accept service via email)

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

(Will accept service via email)

*Outside Counsel for the*

*Office of the Ohio Consumers' Counsel*

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Office of the Ohio Consumers' Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	Case No. 16-0782-EL-CSS
Ohio Power Company,	)	
	)	
Respondent.	)	

---

**MEMORANDUM IN SUPPORT**

---

**I. INTRODUCTION**

Ohioans need – and Ohio law requires – that they receive “adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric service.”<sup>3</sup> But for years, AEP Ohio’s tariffs have enabled or not prevented middlemen known as “submeterers” from reselling and redistributing electric service at higher prices with fewer protections to tens of thousands of Ohioans. The number of Ohioans harmed climbs as these middlemen expand their businesses throughout Ohio.

OCC has filed a Complaint seeking to amend AEP Ohio’s tariffs to expressly ban it from providing electric service to non-landlords who resell and redistribute electric service to residential consumers. In the alternative, to the extent that the PUCO determines that AEP Ohio’s currently approved tariffs are sufficient to prohibit the submetering practices complained of, OCC asked the PUCO to direct AEP Ohio to

---

<sup>3</sup> R.C. 4928.02(A).

enforce its tariffs to prohibit submetering. The PUCO should grant this motion to prevent even more Ohioans from being harmed while OCC's Complaint is being resolved.

To its credit, AEP Ohio acknowledges that some submetering entities deprive Ohioans of “critical protections and benefits” that are afforded AEP Ohio’s own customers.<sup>4</sup> The PUCO should exercise its authority, while OCC’s Complaint is pending, to prevent more Ohioans from paying unreasonable rates and receiving lesser service. This action is necessary to protect Ohioans from substantial and immediate harm.

## **II. ARGUMENT**

### **A. The PUCO should protect Ohioans in AEP Ohio’s service territory from the abusive practices of submeterers.**

Concerns over submetering in Ohio have existed for some time. In 2013, *The Columbus Dispatch* ran a special series on the submetering industry, which profiled customers who paid more than the regulated price for utility services billed under submetering arrangements.<sup>5</sup>

In April 2015, a residential condominium owner filed a complaint against a submetering entity (in AEP Ohio’s service territory) that billed the resident for electric, water, and sewer services.<sup>6</sup> The complaint alleged that the submetering entity was

---

<sup>4</sup> Initial Comments of Ohio Power Company and Duke Energy Ohio, Inc., Case No. 15-1594-AU-COI, at 2-16 (Jan. 21, 2016).

<sup>5</sup> *Shocking cost investigation: Utility middle men charge renters inflated prices*, *Columbus Dispatch* (Oct. 20, 2013), available at <http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html>; *Shocking cost investigation: Pay electricity bills or face eviction*, *Columbus Dispatch* (Oct. 21, 2013), available at <http://www.dispatch.com/content/stories/business/2013/10/21/pay-electricity-bills-or-face-eviction.html>; *Shocking cost investigation: Lawmakers call for action on electricity markups*, *Columbus Dispatch* (Oct. 22, 2013), available at <http://www.dispatch.com/content/stories/business/2013/10/22/lawmakers-call-for-action-on-markups.html>.

<sup>6</sup> *In the Matter of the Complaint of Mark A. Whitt v. Nationwide Energy Partners, LLC*, Case No. 15-697-EL-CSS, Entry at 1 (Nov. 18, 2015).

required to receive PUCO approval for the rates and services that it charged.<sup>7</sup> The complaint also alleged that the submetering entity's failure to receive PUCO approval of its rates and services violated Ohio law.<sup>8</sup> OCC moved to intervene in that proceeding, but its intervention was denied even while AEP Ohio's intervention was granted.<sup>9</sup>

The *Whitt* complaint prompted the PUCO to open a Commission-Ordered Investigation ("COI") into submetering on December 16, 2015.<sup>10</sup> The PUCO requested input from stakeholders "regarding the proper regulatory framework that should be applied to submetering and condominium associations in the State of Ohio."<sup>11</sup> OCC has actively participated in the investigation case.<sup>12</sup>

AEP Ohio has also been actively involved in the investigation case.<sup>13</sup> Commendably, AEP Ohio recognizes the harm that submeterers and third-party agents inflict on the Ohioans that they serve. In its joint comments and reply comments with Duke Energy Ohio, Inc., AEP Ohio asserted that submetering deprives consumers of

---

<sup>7</sup> Id.

<sup>8</sup> Id. at 1-2.

<sup>9</sup> Id. at 5.

<sup>10</sup> *In the Matter of the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Entry at 2 (Dec. 16, 2015).

<sup>11</sup> Id. at 1.

<sup>12</sup> Joint Comments on Protecting Ohioans from Excessive Charges from Utility Submeterers by the OCC and the Ohio Poverty Law Center, Case No. 15-1594-AU-COI (Jan. 21, 2016); Joint Reply Comments on Protecting Ohioans from Excessive Charges From Utility Submeterers By The Office of the Ohio Consumers' Counsel and The Ohio Poverty Law Center, Case No. 15-1594-AU-COI (Feb. 5, 2016).

<sup>13</sup> Initial Comments of Ohio Power Company and Duke Energy Ohio, Inc., Case No. 15-1594-AU-COI (Jan. 21, 2016); Reply Comments of Ohio Power Company and Duke Energy Ohio, Inc., Case No. 15-1594-AU-COI (Feb. 5, 2016).

“critical protections and benefits” that are given to customers of regulated public utilities, including the right to choose an alternative supplier of electricity.<sup>14</sup> AEP Ohio even stated its preference for residential consumers to be directly connected to its meters instead of submeters.<sup>15</sup>

Unfortunately for Ohioans, the submetering problem still exists – and it is only getting larger. The *Columbus Dispatch* recently ran two more stories and published an editorial detailing the state of the submetering industry.<sup>16</sup> One article noted that the “[t]he model used by Nationwide Energy is most prevalent in central Ohio, and used by several companies, but it is *spreading to other parts of the state* and a few other states.”<sup>17</sup> The other article noted that submetering affected “an estimated 30,000 households, mainly in central Ohio”<sup>18</sup> which was up from the “estimated 18,000 to 20,000 housing units in the Columbus area” that the *Columbus Dispatch* observed in 2013.<sup>19</sup> Recognizing that

---

<sup>14</sup> Initial Comments of Ohio Power Company and Duke Energy Ohio, Inc., Case No. 15-1594-AU-COI at 2-16 (Jan. 21, 2016).

<sup>15</sup> Initial Comments of Ohio Power Company and Duke Energy Ohio, Inc., Case No. 15-1594-AU-COI at 26 (Jan. 21, 2016); *Shocking Cost Investigation: Utility middle men charge renters inflated prices*, *Columbus Dispatch* (Oct. 20, 2013), available at <http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html>.

<sup>16</sup> *Utilities attorney taking on ‘submeter’ companies after using service*, *Columbus Dispatch* (Apr. 3, 2016), available at <http://www.dispatch.com/content/stories/business/2016/04/03/1-utility-owner-taking-on-submeter.html>; *Legislation to help Ohio ‘submeter’ consumers undermined by business interests*, *Columbus Dispatch* (Apr. 3, 2016), available at <http://www.dispatch.com/content/stories/business/2016/04/03/1-legislation-aimed-at-helping-consumers-undermined.html>; *The dark side of water, electricity submetering*, *Columbus Dispatch* (Apr. 10, 2016), available at <http://www.dispatch.com/content/stories/editorials/2016/04/10/1-the-dark-side-of-water-electricity-submetering.html>.

<sup>17</sup> *Utilities attorney taking on ‘submeter’ companies after using service*, *Columbus Dispatch* (Apr. 3, 2016), available at <http://www.dispatch.com/content/stories/business/2016/04/03/1-utility-owner-taking-on-submeter.html> (emphasis added).

<sup>18</sup> *Legislation to help Ohio ‘submeter’ consumers undermined by business interest* (Apr. 3, 2016), available at <http://www.dispatch.com/content/stories/business/2016/04/03/1-legislation-aimed-at-helping-consumers-undermined.html>.

<sup>19</sup> *Shocking cost investigation: Utility middle men charge renters inflated prices* (Oct. 20, 2013), available at <http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html>.

nothing has been done to protect Ohioans from submetering entities that charge excessive rates since the problem was exposed in 2013, the editorial calls for immediate action, stating that “[a]ll that is needed is the will to help Ohioans who are being exploited.”<sup>20</sup>

This growth in submetering should not be a surprise. On their websites, submetering entities actively seek new business from business developers who are constructing new residential apartment and condominium complexes and from existing units. Nationwide Energy Partners explained its growth strategy clearly: “we’ll continue to follow our customers to the markets that they’re developing in. Since the financial markets have started to rebound we do see a significant increase in our pipeline of new construction, so we’re back to doing business with the customers that we were doing new construction with in addition to now doing infrastructure purchases from the utilities in our existing customers’ portfolios.”<sup>21</sup>

The PUCO should grant this motion to protect Ohioans.

**B. The PUCO has the authority to grant the requested relief.**

The PUCO has plenary jurisdiction regarding public utilities.<sup>22</sup> The PUCO has the statutory responsibility to ensure that every public utility furnishes “necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable.”<sup>23</sup> Additionally, the PUCO must ensure that “[a]ll charges

---

<sup>20</sup> *The dark side of water, electricity submetering*, *Columbus Dispatch* (Apr. 10, 2016), available at <http://www.dispatch.com/content/stories/editorials/2016/04/10/1-the-dark-side-of-water-electricity-submetering.html>. (Attachment A).

<sup>21</sup> LMS Capital plc Investor Morning at 3 (Sept. 9, 2010).

<sup>22</sup> R.C. 4905.04, *et seq.*

<sup>23</sup> R.C. 4905.22.

made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission.”<sup>24</sup>

With regard to electric service, it is the policy of the state of Ohio to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.”<sup>25</sup> It is also the policy of the state to “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.”<sup>26</sup>

Furthermore, the PUCO has emergency powers it can use here, when it:

deems it necessary to prevent injury to the business or interests of the public or of any public utility of this state in case of any emergency to be judged by the [PUCO], it may temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules, or order relating to or affecting any public utility or part of any public utility in this state. Rates so made by the [PUCO] shall apply to one or more of the public utilities in this state, or to any portion thereof, as is directed by the [PUCO], and shall take effect at such time and remain in force for such length of time as the [PUCO] prescribes.<sup>27</sup>

The PUCO has the statutory authority: to amend AEP Ohio’s tariffs to expressly ban reselling to submeterers; to enforce its orders approving AEP Ohio’s existing tariffs; and to require AEP Ohio to enforce its approved tariff schedules to prohibit the resale and redistribution of electric service.<sup>28</sup> The PUCO also has the authority to require AEP Ohio

---

<sup>24</sup> Id.

<sup>25</sup> R.C. 4928.02(A).

<sup>26</sup> R.C. 4928.02(C); see also R.C. 4928.01 through R.C. 4928.10 and R.C. 4928.20.

<sup>27</sup> R.C. 4909.16.

<sup>28</sup> R.C. 4905.04; R.C. 4905.05; R.C. 4905.06; R.C. 4905.22; R.C. 4905.30; R.C. 4905.32, R.C. 4928.02(A).



to cease providing its electric service in a manner that is unlawful and inconsistent with its tariff schedules and the policy of the state of Ohio, including the elimination of customer choice for the supply of retail electric service.<sup>29</sup> For example, submetered customers are denied the opportunity to choose an alternative competitive supplier. The PUCO should act now, while OCC's Complaint is pending, to prevent more harm to Ohioans.<sup>30</sup>

### **III. CONCLUSION**

The PUCO should issue a moratorium to prevent the expansion of substantial harm to AEP Ohio's consumers. That harm is expanding as AEP Ohio is continuing to provide new master meter service to resellers/submeterers (other than landlords), for reselling to residential consumers in apartments, condominiums and other housing. The moratorium should protect consumers from these new master meter arrangements where they pay higher charges, while receiving fewer protections, to submetering entities and third-party agents (who are not landlords). The moratorium should be in effect while the Consumers' Counsel's Complaint is pending to obtain protections for submetered residential customers in apartments, condominiums, or other housing. Accordingly, the PUCO should grant this motion.

---

<sup>29</sup> Id.; see also R.C. 4928.02(C), R.C. 4928.01 through R.C. 4928.10, and R.C. 4928.20; Section 17 of AEP Ohio's Open Access Distribution Service Tariff, P.U.C.O. No. 20, 2<sup>nd</sup> Revised Sheet No. 103-13D; Section 17 of AEP Ohio's Standard Service Tariff, P.U.C.O. No. 20, 1<sup>st</sup> Revised Sheet No. 103-13.

<sup>30</sup> Ohio Adm. Code 4901-1-12.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record (0084199)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215

Telephone: 614.466.9585

[kyle.kern@occ.ohio.gov](mailto:kyle.kern@occ.ohio.gov)

(Will accept service via email)

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

(Will accept service via email)

*Outside Counsel for the  
Office of the Ohio Consumers' Counsel*

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion and Memorandum in Support were served by electronic mail to the persons listed below, on this 12th day of April, 2016.

/s/ Kyle L. Kern  
Kyle L. Kern  
Assistant Consumers' Counsel

## **SERVICE LIST**

William Wright  
Ohio Attorney General's Office  
Public Utilities Commission of Ohio  
180 E. Broad St., 6th Fl.  
Columbus, Ohio 43215  
[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us)

Steven T. Nourse  
AEP Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215-2373  
[stnourse@aep.com](mailto:stnourse@aep.com)

Columbus, Ohio • Apr 11, 2016 • 52° Overcast

# The Columbus Dispatch

» Hot Links:

## The dark side of water, electricity submetering

### LETTERS POLICY

*The Dispatch* welcomes letters to the editor from readers. Typed letters of 200 words or fewer are preferred; all might be edited. Each letter must include name, home address and daytime phone number. Dispatch.com also posts letters that don't make it to print in *The Dispatch*.

### SUBMIT YOUR LETTER ONLINE

Use our Letters Contact Form to send your letter to the editor.  
(No attachments, please)

### MAIL

Letters to the Editor  
The Dispatch  
62 E. Broad St.  
Columbus, OH. 43216

### FAX

614-461-8793

### ALSO IN OPINION

- Editorials
- Op-Ed Columns

### SUBSCRIBE TO THE DISPATCH



Sign up for home delivery of *The Columbus Dispatch* and find out What's In It for You.

**SUBSCRIBE**

Already a subscriber?  
Enroll in EZPay and get a free gift! Enroll now.

Sunday April 10, 2016 5:01 AM

In October of 2013, The Dispatch published a series about a pair of local companies whose business is based on reselling electricity and water to central Ohio apartment dwellers and gouging them with marked-up rates and fees. Unlike most other states, Ohio does not regulate such companies and apartment dwellers have no recourse but to pay these inflated utility bills or move.

In the wake of the series, a number of lawmakers and public officials said they were surprised to learn of the problem and intended to do something about it. For example, the Dispatch quoted Sen. Bill Seitz, R-Cincinnati, who said, "I didn't know this problem existed" and "This bears some degree of looking into and some degree of regulation."

But so far, the degree of regulation imposed by lawmakers is zero.

Though a number of legislators took a run at the problem, it appears that the utility resellers have deployed lobbyists and campaign donations to derail every effort to regulate them. Meanwhile, tens of thousands of central Ohioans remain at their mercy and there is nothing to prevent the practice from spreading statewide, potentially affecting many more of the state's 3 million renters.

Not all submetering companies engage in gouging. Most measure and bill for utility usage by apartment dwellers. They don't mark up the cost of the utilities and merely charge a service fee, typically a few dollars per bill.

But two central Ohio companies, Nationwide Energy Partners and American Power & Light, go far beyond this. The Dispatch investigation found that these companies were charging tenants amounts that ranged from 5 percent to 40 percent higher than charges paid by residential customers of conventional regulated utilities.

Since then, AP&L has made no apparent change to its pricing, while NEP has taken steps to eliminate some charges. But the companies have maintained the core of their business, which involves buying electricity at bulk rates and reselling it at a markup.

And while rates and fees charged by conventional utilities are subject to regulation by the Public Utilities Commission of Ohio, NEP and AP & L are not regulated. Not only that, but option afforded to customers of conventional utilities, such as the ability to shop for alternative suppliers, to appeal to the PUCO, and to take advantage of government utility subsidies for low-income families, are not available to customers of utility resellers.

In the absence of action from the legislature, Columbus lawyer Mark Whitt, who is an expert in utility regulation and owner of a condo subject to NEP utility services, has filed a complaint with PUCO and also has filed a lawsuit against NEP. Whitt's basic argument is that NEP is acting as a monopoly utility and should be regulated like one. His complaint to the PUCO has received a powerful boost from conventional utilities American Electric Power and Duke Energy.

The PUCO is conducting an investigation of the complaint, but there is no guarantee of action, though Gov. John Kasich could and should bring strong pressure to bear on the commission to act. Whitt's lawsuit is in its early stages and will be vigorously challenged by utility resellers.

## Attachment A

The best solution lies with the legislature, where House Speaker Cliff Rosenberger, R-Clarksville, Senate President Keith Faber, R-Celina, or his likely successor, Larry Obhof, R-Medina, could quickly rein in these utility abuses. Since most states already prohibit such submetering practices, Ohio's legislative leaders have plenty of models to look to. All that is needed is the will to help Ohioans who are being exploited.

---

[Favorite](#)   [Print Story](#)

---

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/12/2016 4:57:32 PM**

**in**

**Case No(s). 16-0782-EL-CSS**

Summary: Motion Motion for a Moratorium to Stop AEP Ohio From Providing New Service to Those who Resell Service to Submetered Residential Consumers by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kern, Kyle L.