

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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

---

**MOTION TO HOLD THE CASE IN ABEYANCE  
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”) (collectively, “OAA/ICSC”) hereby move to hold this case in abeyance until *In the Matter of the Commission’s Investigation of Submetering in the state of Ohio*, Case No. 15-1594-AU-COI (“Submetering Investigation”) is resolved by the Commission. Since the Commission opened the Submetering Investigation almost five months ago, many interested stakeholders, including the parties in this case and OAA/ICSC, have offered extensive, substantive comments to the Commission concerning various submetering issues. The critical issues and concerns raised in the ongoing Submetering Investigation mirror those in this case.

As set forth more fully in the attached memorandum in support, the Commission should hold this case in abeyance pending resolution of the Submetering Investigation in order to thwart procedural efforts to improperly expedite resolution of the ongoing Submetering Investigation and in order to conserve administrative resources, prevent potentially inconsistent decisions,

relieve the parties and other interested stakeholders of the costs and vexation of parallel, duplicative proceedings, and promote an efficient administrative system.

Respectfully submitted,

/s/ Mark T. Keaney

Steven D. Lesser (0020242)

James F. Lang (0059668)

N. Trevor Alexander (0080713)

Mark T. Keaney (0095318)

CALFEE, HALTER & GRISWOLD LLP

41 S. High St.,

1200 Huntington Center

Columbus OH 43215

Telephone: (614) 621-1500

Email: slesser@calfee.com

Email: jlang@calfee.com

Email: talexander@calfee.com

*Will accept service via email*

ATTORNEYS FOR OAA/ICSC

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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

---

**MEMORANDUM IN SUPPORT OF THE MOTION TO HOLD THE CASE IN  
ABEYANCE  
OF THE OHIO APARTMENT ASSOCIATION AND THE INTERNATIONAL  
COUNCIL OF SHOPPING CENTERS**

---

**I. Introduction and Background**

In this proceeding, the Office of the Ohio Consumers' Counsel ("OCC") seeks an order from the Commission directing the Ohio Power Company ("AEP Ohio") to amend and/or enforce its existing tariffs to expressly prohibit the resale and redistribution of electric services to residential customers by submetering entities or third-party agents that are neither landlords nor consumers of utility service (the "Complaint"). On April 12, 2016, OCC filed this Complaint, as well as a Motion for Moratorium to Stop AEP Ohio From Providing New Service to Those Who Resell Service on Submetered Residential Consumers ("Motion for Moratorium").

Four months prior to the filing of OCC's Complaint in this case, the Commission opened an investigation on December 16, 2015, to determine the Commission's jurisdiction over submetering by condominium associations and similar entities in the State of Ohio. *See In the*

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

OAA/ICSC represent the interests of many of Ohio's residential and commercial landlords, many of whom routinely utilize submetering or employ third-party submetering entities to bill tenants for utility services; accordingly, as an interested stakeholder in the outcome of the Submetering Investigation, OAA/ICSC provided the Commission with its Initial and Reply Comments. The parties in the instant case, *i.e.*, OCC and AEP Ohio, also filed Initial and Reply Comments as interested stakeholders in the Commission's Submetering Investigation. To date, the Commission has yet to issue a decision to conclude its investigation.

As will be explained below, the issues in the Submetering Investigation substantially duplicate those raised in the instant case. The Commission should therefore grant OAA/ICSC's Motion to Hold the Case in Abeyance.

## **II. Argument**

### **A. The Commission Should Reject OCC's Procedural Attempts to Improperly Expedite The Ongoing Submetering Investigation and Hold The Case In Abeyance Until the Commission's Submetering Investigation Concludes.**

The issues raised in both the ongoing Submetering Investigation and OCC's Complaint are identical. In the Submetering Investigation, the Commission sought comments concerning the following issues: 1) the proper regulatory framework that should be applied to submetering and condominium associations in the State of Ohio; 2) the scope of the Commission's jurisdiction over submetering by condominium associations and similar entities; 3) the scope and application of the *Shroyer* test<sup>1</sup> to condominium associations and similarly situated entities; 4)

---

<sup>1</sup> The Commission applies the *Shroyer* test to determine if an entity is operating as a public utility, and, thus, falls within the scope of the Commission's exclusive jurisdiction in landlord/tenant and similar circumstances. In the Submetering Investigation, the Commission specifically asked for comments concerning whether the Commission can assert jurisdiction over submetering issues via the *Shroyer* test or some newly proposed test.

situations in which the *Shroyer* test cannot or should not be applied; and 5) the impact to customers and stakeholders if the Commission were to assert jurisdiction over submetering in the state of Ohio. In response, the Commission received extensive, substantive comments from many interested stakeholders, including the parties in this case and OAA/ICSC. But before the Commission could issue an order addressing the lengthy, substantive comments it received, OCC filed its Complaint.

OCC's Complaint seeks an order from the Commission prohibiting the resale and redistribution of electric services to residential customers by submetering entities that are neither landlords nor consumers of utility service. OCC's Complaint is nothing more than a veiled (or not so veiled) attempt to force the Commission's hand to rule on submetering issues in a more expeditious, hasty manner. The Commission should reject this kind of gamesmanship and procedural posturing. Over the last five months of its Submetering Investigation, the Commission has obtained thorough, substantive comments by many interested stakeholders, comments which directly relate to or otherwise mirror the essential issues in this case. Accordingly, the Commission should grant OAA/ICSC's Motion to Hold the Case in Abeyance pending resolution of the Submetering Investigation.

**B. The Commission Should Hold The Case In Abeyance To Conserve Its Resources, Prevent Inconsistent Decisions, Relieve The Parties And Other Interested Stakeholders Of The Cost And Vexation of Parallel, Duplicative Proceedings, And Promote An Efficient Administrative System.**

If this case proceeds on the merits, an undue burden will be placed on the Commission and numerous interested stakeholders in the ongoing Submetering Investigation. Where two parallel, ongoing proceedings concerning the same issues remain before the same adjudicative body, there is a substantial risk of inconsistent decisions and wasting already scarce adjudicative resources. Similarly, allowing duplicative proceedings to move forward needlessly increases the

cost and vexation of parallel proceedings for the parties and other interested stakeholders.<sup>2</sup> The far more reasoned and economical approach would be to hold this case in abeyance until the Commission issues an order in the ongoing Submetering Investigation. Once the Commission does so, the remaining issues in this case will largely, if not completely, be disposed. Therefore, by holding the instant case in abeyance, the Commission will conserve its administrative resources, prevent potentially inconsistent decisions, relieve the parties and other interested stakeholders of the costs and vexation of parallel, duplicative proceedings, and promote an efficient administrative system. For these reasons, the Commission should grant OAA/ICSC's Motion to Hold the Case in Abeyance.

### **III. Conclusion**

WHEREFORE, OAA/ICSC respectfully request that the Commission grant this Motion to Hold the Case in Abeyance until the Commission concludes its ongoing, parallel Submetering Investigation.

---

<sup>2</sup> See *In the Matter of the Complaint of American Broadband and Telecommunications Company v. AT&T*, Case No. 12-996-TP-CSS, Opinion and Order, 2012 Ohio PUC LEXIS 641, p. 9 (June 27, 2012) (holding a proceeding in abeyance pending the conclusion of a dispute resolution process in order to foster "a more economical approach" that avoids "wast[ing] the efforts of the parties . . . [and] to preserve the investment of time, resources, and efforts of the parties").

Respectfully submitted,

/s/ Mark T. Keaney

Steven D. Lesser (0020242)

James F. Lang (0059668)

N. Trevor Alexander (0080713)

Mark T. Keaney (0095318)

CALFEE, HALTER & GRISWOLD LLP

41 S. High St.,

1200 Huntington Center

Columbus OH 43215

Telephone: (614) 621-1500

Email: slesser@calfee.com

Email: jlang@calfee.com

Email: talexander@calfee.com

*Will accept service via email*

ATTORNEYS FOR OAA/ICSC

**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 12th day of May, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney  
One of the Attorneys for OAA/ICSC



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

**Commission of Ohio Docketing Information System on**

**5/12/2016 12:51:32 PM**

**in**

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

Summary: Motion to Hold the Case In Abeyance and Memorandum In Support of the Ohio Apartment Association and the International Council of Shopping Centers electronically filed by Mr. Mark T Keaney on behalf of Ohio Apartment Association and International Council of Shopping Centers