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FILE

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

INITIAL COMMENTS OF NATIONWIDE ENERGY PARTNERS, LLC

Pursuant to the Public Utilities Commission of Ohio's ("Commission") Finding and Order of December 7, 2016, Nationwide Energy Partners, LLC ("NEP") submits these Initial Comments. The Commission has requested comments from interested stakeholders "regarding the reasonable threshold percentage to establish the rebuttable presumption for which the provision of utility service is *not* ancillary to the landlord's or other entity's primary business." Finding and Order at ¶ 22 (emphasis in original).[1]

NEP submits comments in response to the Finding and Order although it continues to assert that the Commission does not have jurisdiction over submetering and the relationships between landlords and tenants, condominium associations and unit owners, and similar entities. *See e.g. Pledger v. Pub. Util. Comm.*, 109 Ohio St.3d 463, 2006-Ohio-2989, 849 N.E.2d 14; *Jonas v. Swetland*, 119 Ohio St. 12 (1928); *Shopping Centers Ass'n v. Pub. Util. Comm.*, 3 Ohio St. 2d 1, 4, 208 N.E.2d 923 (1965); *Toledo Premium Yogurt, Inc., dba Freshens Yogurt v. The Toledo Edison Company*, Case No. 91-1528-EL-CSS, 1992 Ohio PUC LEXIS 850, Entry at *7 (Sept. 17, 1992); Entry on Rehearing, 1992 Ohio PUC LEXIS 984 at *4 (Nov 5. 1992).

[1] NEP provides energy-related support services to apartment and condominium properties as well as tools that help developers and property managers efficiently administer these services to tenants and unit owners. For these reasons, NEP is an interested stakeholder on the issue of submetering in Ohio.

While reserving all rights to dispute the Commission's jurisdiction over submetering, NEP submits the following comments.

A. Any percentage threshold should only be applied based on a comparison between the total bill charges for a similarly situated utility customer and the metered usage charges for the end-user of that specific utility service.

In the Finding and Order, the Commission proposed that, "if a landlord or other entity resells or redistributes utility services and charges an end use customer a threshold percentage above the total bill charges for a similarly situated customer served by the utility's tariffed rates, an electric utility's standard service offer, or a natural gas utility's standard choice offer, then it will create a rebuttable presumption that the provision of utility service is *not* ancillary to the landlord's or entity's primary business." Finding and Order at ¶16 (emphasis in original).

To the extent the Commission adopts a percentage threshold as part of the *Shroyer* test, it should only apply the percentage threshold based on a comparison between the total bill charges for a similarly situated utility customer and the metered usage charges for the end-user of that specific utility service. Charges such as trash service, lighting and maintenance of common areas and landscaping care should not be considered in the comparison. If the Commission is trying to determine whether a condominium association's landlord's or other entity's resale of utility service is not ancillary to its primary business, then it should only focus on the charges specific for the metered utility.

B. Utility service provided by municipalities and other entities not subject to Commission jurisdiction should not be subject to the rebuttal presumption percentage threshold.

If the Commission adopts a percentage threshold, it should only apply that threshold to create a rebuttable presumption to situations where the Commission has jurisdiction over the public utility providing service to the consumer's master meter. For example, if a complex owner

receives water service from a municipality, the Commission should not apply its rebuttable presumption threshold to any charges the complex owner assesses to end-users.

This approach would avoid the Commission from interfering with municipal services and attempting to interpret total bill charges of entities that it does not regulate. This would include entities expressly listed in R.C. 4905.02, which states in relevant part:

> (A) As used in this chapter, "public utility" includes every corporation, company, copartnership, person, or association, the lessees, trustees, or receivers of the foregoing, defined in section 4905.03 of the Revised Code, including any public utility that operates its utility not for profit, except the following:
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> (1) An electric light company that operates its utility not for profit;
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> (2) A public utility, other than a telephone company, that is owned and operated exclusively by and solely for the utility's customers, including any consumer or group of consumers purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas exclusively by and solely for the consumer's or consumers' own intended use as the end user or end users and not for profit;
>
> (3) A public utility that is owned or operated by any municipal corporation[.]

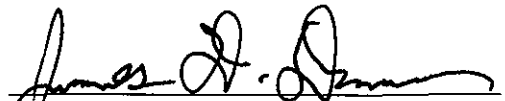
The Commission does not have oversight over these entities and thus cannot be in a position to understand and apply a rebuttal presumption threshold to the charges of a "similarly-situated customer." For example, the Commission would be forced to review, construe and apply municipal ordinances to develop the "charge to compare." This is not the role of the Commission and it certainly has not been given that authority by the General Assembly. Rather, the Commission's role and oversight applies only to those entities for which the General Assembly has given it express authorization to regulate. If the Commission expands the *Shroyer* test to adopt a rebuttable presumption percent threshold in this proceeding, then the expanded test

should only be applied to situations where the utility service in dispute is provided at the master meter by a Commission regulated public utility.

C. If the Commission decides to adopt a percentage threshold above the utility's residential tariffed rates that is directly attributed to metered usage charges for the end-user of that specific utility service, then NEP believes it should be zero percent.

As stated above, to the extent the Commission adopts a percentage threshold as part of the *Shroyer* test, it should only apply the percentage threshold based on a comparison between the total bill charges for a similarly situated utility customer and the metered usage charges for the end-user of that specific utility service. With that in mind, NEP believes the appropriate percentage is zero percent. On behalf of its property owner customers, NEP has consistently applied the utility's residential tariffed rates (i.e. electric standard service offer) to the metered usage charges for the end-users at their properties. Thus, NEP does not find it necessary for the Commission to adopt a percentage above the applicable utility's residential tariffed rate to metered usage charges attributable to the end-user.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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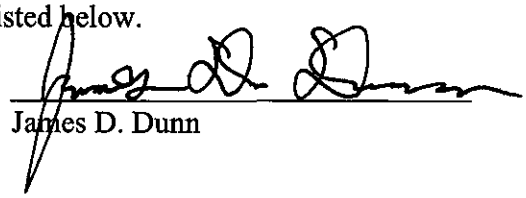

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