

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INITIAL COMMENTS OF
AMERICAN POWER AND LIGHT, LLC**

American Power and Light, LLC ("AP&L") submits these Initial Comments pursuant to the Public Utilities Commission of Ohio's ("Commission") Finding and Order of December 7, 2016. AP&L responds to the Commission's request for 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).

AP&L is an energy management company that installs, maintains, and repairs underground electric systems. Additionally, AP&L offers energy management solutions, such as metering, reading, billing, and collection services to condominium communities, apartments and commercial developments. As a service provider to submetered condominium communities, apartments and commercial developments, AP&L is an interested party in this proceeding. Accordingly, AP&L respectfully submits the following points for the Commission's consideration in response to the request for comments:

- (1) The Commission lacks jurisdiction over landlords, lessors and condominium associations and claims against them.

As other parties in this proceeding have stated and indicated, including The Dayton and Power Light Company, the Commission does not have jurisdiction over condominium associations

or other entities that submeter utilities to tenants, lessees and condominium unit owners. Supreme Court precedent and the Commission's own precedent reinforce this point. *Pledger v. Pub. Util. Comm.*, 109 Ohio St.3d 463, at ¶ 39, 2006-Ohio-2989, 849 N.E.2d 14 (2006) (buying and reselling water and sewer services to tenants does not make the landlord a public utility); *Toledo Premium Yogurt, Inc., dba Freshens Yogurt v. The Toledo Edison Company*, Case No. 91-1528-EL-CSS, 1992 Ohio PUC LEXIS 850 at *8, Entry (Sept. 17, 1992) ("Pursuant to Section 4905.04 and 4905.05, Revised Code, we find that the Commission lacks jurisdiction over the landlords and the claims against them."). Thus, the Commission need not and should not adopt any formula for use in considering whether a landlord, condominium association or similar entity is a public utility by virtue of using submetering to allocate utility charges to tenants, lessees or condominium units.

- (2) If a threshold is applied, the Commission should focus on the metered usage and the charge for that utility usage.

If the Commission proceeds to adopt a threshold percentage, it should ensure that the percentage is applied only to the charges for the submetered utility as measured at the tenant's, lessee's or condominium unit owner's submeter. The percentage should not be applied to other charges that a landlord, condominium association or lessor may contractually assess, including charges for maintenance and lighting of common areas, charges to cover services such as meter reading and billing services, and other miscellaneous charges such as condominium association dues that may be collected along with utility charges. If the Commission is going to apply a threshold to create a rebuttable presumption that an entity using submetering is a public utility (which it should not), then it should ensure that the submetered utility charges used in the comparison be based only on the actual charge for that submetered utility usage.

AP&L appreciates the opportunity to submit the above points in this proceeding, and urges the Commission to consider these points as it determines whether to adopt a percentage threshold that can be applied to create a rebuttable presumption under the *Shroyer* test.

Respectfully submitted,

/s/ Michael J. Settineri

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CERTIFICATE OF SERVICE

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Summary: Comments Initial Comments of American Power and Light, LLC electronically filed by Mr. Michael J. Settineri on behalf of American Power and Light, LLC