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 AMERICAN POWER AND LIGHT, LLC

American Power and Light, LLC ("AP&L") submits these Reply Comments pursuant to the Public Utilities Commission of Ohio's ("Commission") Finding and Order of December 7, 2016. Of the initial comments submitted, AP&L responds to comments submitted by parties that argue the Commission's proposed threshold test should only be applied to residential tenant/unit owner scenarios and to the comments submitted by Ohio Power Company and Duke Energy Ohio, Inc. (collectively the "Utilities").

(1) The Commission cannot distinguish between commercial tenants and residential tenants if it believes it has jurisdiction over tenant submetering.

Certain commenters argue that the Commission should limit its application of the modified third prong of the *Shroyer* test to only residential tenant scenarios.[1] For example, the Industrial Energy Users-Ohio, Ohio Hospital Association and the Ohio Manufacturers' Association argue that the threshold the Commission proposes to adopt for the third prong of the *Shroyer* test should not apply to the "resale or redistribution of utility service" to commercial or industrial customers.[2] Those joint commenters state, in part, that "the complexity of commercial and industrial shared

[1] *See e.g.* January 13, 2017 joint initial comments of the Industrial Energy Users-Ohio, Ohio Hospital Association and Ohio Manufacturers' Association at page 3 and January 13, 2016 joint initial comments of the Building Owners and Managers Association of Greater Cleveland and the Building Owners and Managers Association of Ohio at page 5.

[2] January 13, 2017 joint initial comments of the Industrial Energy Users-Ohio, Ohio Hospital Association and Ohio Manufacturers' Association at pages 3-5.

services arrangements defies proper application of the [threshold]."[3] The commenters then state that "[t]hese complex agreements often provide for several services, which make the comparability of utility rates to the contract rates meaningless."[4]

AP&L concurs that agreements for submetering related services can provide for several services, but disagrees that any modification of the *Shroyer* test adopted by the Commission should only apply to residential tenant scenarios and not to commercial/industrial tenant scenarios. As recognized by the building management associations, commercial landlords "incur costs reading meters, obtaining information regarding local public utilities' rates, calculating tenants' charges based on usage and an allocation of infrastructure costs, and preparing invoices for tenants."[5] Residential landlords and condominium associations are no different, and must too perform similar tasks and incur the related costs.

The fact that a residential landlord or condominium association may utilize a third-party service provider for those services is no different than a commercial landlord that either provides those services itself or utilizes a third-party service provider. Likewise, all landlords – whether they have commercial tenants, residential tenants or a combination of both – must address costs of infrastructure, which can vary by the age of the complex and the size of the complex.

Accordingly, the argument that the modified third-prong of the *Shroyer* test is flawed is equally applicable to both commercial tenant and residential tenant scenarios. If the Commission believes it can classify landlords that submeter utilities to tenants as regulated "public utilities"

[3] Joint Comments of the Industrial Energy Users-Ohio, Ohio Hospital Association and Ohio Manufacturers' Association at page 4.

[4] *Id.*

[5] Joint Comments of the Building Owners and Managers Association of Greater Cleveland and the Building Owners and Managers Association of Ohio at pages 8-9.

(which it cannot), then it must apply that classification to all landlords, regardless whether their tenants are residential or commercial tenants.

(2) The Utilities continue to mischaracterize submetering and advocate for the Commission to regulate landlord/tenant contracts.

In their initial comments, the Utilities continue to make the claim that submetering provides no benefits "to customers" and that "all the benefits go to the submetering entities, whose very business model is to profit from the resale of utility service while escaping regulation as a public utility."[6] The Utilities go on to argue that any "submetering company that is operating for profit should result in 'game over' for that company" and that any administrative or internal "distribution costs" should be recovered through rent.[7] None of the Utilities' claims have merit, and their argument about "game over" simply underscores the Utilities' real strategy in this proceeding.

First, the Utilities' claim that submetering provides no benefits to "customers" is a continuation of the Utilities' misrepresentation of the nature of submetering to the Commission. The Utilities imply to the Commission that tenants are the "customers" of the third-party companies providing services related to submetering. To the contrary, apartment complex owners and condominium associations that elect to submeter their complexes are the customers of the third-party companies that provide services related to submetering.

Those third-party companies certainly provide valuable services to their customers. For example, as noted above, these services can include reading meters, obtaining information regarding local public utilities' rates, calculating tenants' charges and an allocation of the complex's infrastructure costs, and preparing invoices. These services can also include allocating charges based on usage as well as energy management services. The Utilities are simply wrong to imply to

[6] January 13, 2017 Initial Comments of Ohio Power Company and Duke Energy Ohio, Inc. at page 1.

[7] *Id.* at pages 3 and 7.

this Commission that submetering only benefits the third-party companies that provide services related to submetering and that "all the benefits go to the submetering entities[.]"[8]

Second, the Utilities' argument at page 3 of their initial comments that it is "game over" for any "submetering company" that operates "for profit" simply underscores the Utilities' strategy in this proceeding. That strategy is to stop companies from providing and landlords from using submetering services to allocate utility usage. The Utilities' end goal of that strategy is to add infrastructure back into distribution rate base and expand their customer base to absorb ever-increasing utility charges. That is why the Utilities are advocating that the Commission end submetering notwithstanding that utilities for years have sold their existing infrastructure to property owners to allow complexes to be submetered. Even more ironic is that the Utilities have indicated that they will charge ratepayers for any infrastructure purchases during any transition away from submetering complexes if they are successful in stopping submetering.[9]

Third and last, the Utilities continue to push this Commission to regulate landlord/tenant relationships to support their "game over" argument. The Utilities argue that the Commission should regulate any "submetering entity" that "marks-up" utility charges for administrative services and that instead of charging tenants separately, any administrative or internal "distribution costs" should be recovered through rent.[10] How a landlord elects to charge tenants, however, is not a matter for the Commission. *See e.g. Inscho v. Shroyer's Mobile Homes*, Case Nos. 90-182-WS-CSS, Opinion and Order (February 27, 1992) at 5 ("[w]e have neither the staff nor the statutory authority to insert ourselves into the landlord-tenant relationship as long as the landlord's actions

[8] *Id.* at page 1.

[9] *See* January 13, 2017 Joint Application for Rehearing of Ohio Power Company, Duke Energy Ohio, Inc., Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company at page 12 and February 3, 2017 Reply Comments of Ohio Power Company and Duke Energy Ohio Inc. at page 13.

[10] January 13, 2017 Initial Comments of Ohio Power Company and Duke Energy Ohio, Inc. at page 7-8.

are consistent with the tariffs of the regulated utility from which the service is obtained"). Unless the General Assembly states otherwise, commercial landlords, residential landlords and condominium associations should be allowed to structure submetering in their complexes according to their business needs. They should also be free to select a service provider to assist with operating their complexes.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

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