



memorandum contra AP&L's application for rehearing.<sup>3</sup> AP&L's proposal would allow submetering entities to charge residential consumers five percent more for their public utility services while avoiding scrutiny as to whether the entity is a public utility. This would harm residential consumers.

The PUCO should deny AP&L's application for rehearing. In addition, the PUCO should grant the rehearing sought by OCC and OPLC.<sup>4</sup>

## II. RECOMMENDATIONS

- A. The PUCO should deny AP&L rehearing because the five percent threshold for the rebuttable presumption is arbitrary and raising the threshold would create an invalid assumption that a submetering entity is not charging consumers excessive rates for utility service.**

In the Second Entry on Rehearing, the PUCO set the threshold for the rebuttable presumption that a submetering entity is a public utility. The PUCO adopted a threshold of zero percent above what a submetered residential customer's total bill would have been if the customer took service under the local public utility's default service tariff.<sup>5</sup> AP&L urges the PUCO to change the threshold to five percent. AP&L claims a higher threshold is needed to account for fluctuations in the local utility's default rates that would be compared to the submetering entity's charges.<sup>6</sup> AP&L's argument is without merit.

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<sup>3</sup> OCC and the Ohio Poverty Law Center ("OPLC") filed a joint application for rehearing of the Second Entry on Rehearing. Other applications for rehearing were filed by: Ohio Power Company and Duke Energy Ohio, Inc.; Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company; Ohio Partners for Affordable Energy; and Mark A. Whitt. OCC does not address other parties' applications for rehearing in this memorandum contra.

<sup>4</sup> OCC/OPLC Second Application for Rehearing (July 21, 2017).

<sup>5</sup> Second Entry on Rehearing, ¶¶ 49-50.

<sup>6</sup> AP&L Application for Rehearing at 4-5.

AP&L's five percent proposal is arbitrary. AP&L does not provide empirical support for its proposed five percent threshold. Instead, AP&L seems to have picked a random number. The PUCO, however, must base its decisions on the record of the case.<sup>7</sup> The record of this case does not support a five percent threshold. It does, however, support a zero percent threshold.<sup>8</sup> The PUCO should not adopt an arbitrary threshold that could cause residential consumers to pay more for utility service and would allow submetering entities to avoid PUCO scrutiny.

In addition, increasing the threshold percentage, as AP&L recommends, creates an assumption that fluctuations in the local public utility's default service rates is the *only* reason a submetering entity would charge more than the local public utility. The PUCO should not validate that erroneous assumption. Even small differences between the submetering entity's charges and the local utility's charges could exist because of a variety of reasons, not the least of which may be the entity's markup above what it pays the utility for service. In such instances, the entity should be presumed to be a public utility, and under PUCO jurisdiction. By allowing submetering entities to charge more before the rebuttable presumption is invoked, a five percent threshold could deprive consumers of essential protections under the PUCO's rules.

AP&L's argument highlights the need for the PUCO to grant rehearing, as sought by OCC and OPLC, and remove from the comparison the costs the submetering entity does not incur.<sup>9</sup> AP&L noted that a local public utility customer's total bill may reflect base rate adjustments, rider adjustments, credits, refunds, and other items that might not apply to

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<sup>7</sup> R.C. 4903.09.

<sup>8</sup> See Second Entry on Rehearing, ¶¶ 42-50.

<sup>9</sup> OCC/OPLC Second Application for Rehearing at 2-5.

the submetering entity costs.<sup>10</sup> Thus, comparing a submetered residential utility bill to the total bill of a similarly situated local public utility customer would likely not be valid. Further, as already shown in this proceeding, there is approximately a 45% margin between the commercial rates submetering entities are charged by the local public electric utility and that utility's standard offer.<sup>11</sup> Much of that is due to riders that are in standard offer rates but not in commercial rates.<sup>12</sup>

To protect consumers from unreasonable utility charges, the PUCO should scrutinize the submetering entity's costs in comparing its charges to the local public utility's charges for similar residential service. If the submetering entity does not incur costs that are included in the public utility's charges for residential service, those costs should be removed from the local public utility customer's bill for comparison purposes in determining whether the submeterer meets the zero threshold.

**B. The PUCO should deny AP&L rehearing because raising the threshold to five percent lacks support and would merely increase the amount that submetering entities may charge consumers.**

To support raising the threshold to five percent, AP&L invents a scenario whereby a submetering entity may be determined to be a public utility because its charges were five dollars above the zero percent threshold (i.e., above the total bill of the local utility's default service).<sup>13</sup> The five percent threshold, according to AP&L, would give

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<sup>10</sup> AP&L Application for Rehearing at 4-5.

<sup>11</sup> Joint Application for Rehearing of Ohio Power Company, Duke Energy Ohio, Inc. and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (January 6, 2017) at 6-8.

<sup>12</sup> See OCC/OPLC Second Application for Rehearing at 5.

<sup>13</sup> AP&L Application for Rehearing at 6.

submetering entities a buffer zone to account for “minor differences” between their rates and the local public utility’s.<sup>14</sup> AP&L’s argument, however, doesn’t withstand scrutiny.

To show the effect of the five percent threshold, AP&L provides an example whereby submetering entities would have as much as a \$40 cushion on bills totaling \$800 of utility charges over a 12-month period.<sup>15</sup> This may certainly overcompensate submetering entities for “minor differences” in the rates. If a submetering entity exceeds the threshold by only five dollars, as AP&L posits, then the entity could reap an additional \$35 in revenue from each customer.

In addition, submetering entities could charge residential customers five percent more than the local public utility does, while avoiding PUCO scrutiny as to whether the entity is a public utility. This would give submetering entities an additional five percent in revenue at residential customers’ expense and without providing the consumer protections in Ohio public utility law and PUCO regulations, such as low income assistance, reliability, and disconnection and reconnection practices (including the PUCO’s Winter Reconnection Order), among others. This would be unfair to consumers.

Also, the five percent threshold proposed by AP&L might not solve the problem AP&L posed. In reality, there likely will be instances where a submetering entity’s charges would be higher than the local public utility’s residential charges by five percent plus five dollars. This would mean that a submetering entity could still have to rebut the presumption that it is a public utility because its charges were five dollars above the threshold. And no matter how high the PUCO may raise the threshold, a submetering entity could be considered a public utility because its charges were five dollars above the

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

threshold. The PUCO should not make consumers pay more for utility service simply because a submetering entity's charges *might* be above the threshold by a small amount.

AP&L has not justified raising the threshold. Further, raising the threshold could harm consumers. To protect consumers, the PUCO should maintain the threshold at zero percent.<sup>16</sup>

### **III. CONCLUSION**

There is no need for the PUCO to increase the threshold by an arbitrary percentage, as AP&L suggests. AP&L's arguments to raise the threshold percentage are without merit. The PUCO should deny AP&L's application for rehearing. And to protect consumers, the PUCO should grant rehearing as requested in the Second Application for Rehearing filed by OCC and OPLC on July 21, 2017.

Respectfully submitted,

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<sup>16</sup> AP&L also mischaracterizes the purpose of the threshold percentage. In the scenario discussed above, AP&L claims that five dollars could be the difference between a submetering entity "being a public utility and not being a public utility." *Id.* But the threshold percentage is not dispositive as to whether a submetering entity should be considered a public utility for regulatory purposes, as AP&L suggests. Instead, the threshold merely creates a rebuttable presumption that the entity may refute.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Memorandum Contra was served this 31<sup>st</sup> day of July 2017 by electronic mail upon the persons listed below.

/s/ Terry L. Etter

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