

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

The utility consumers whose protection is the subject of this case should be given the opportunity to have their concerns directly heard – in local public hearings – by the agency that is charged with making judgments for their protection. Accordingly, the Office of the Ohio Consumers’ Counsel (“OCC”), the Ohio Poverty Law Center, and Mark Whitt (collectively “Consumers”), move the Public Utilities Commission of Ohio (“PUCO”) to grant local hearings for the public to participate in their government’s process for addressing the unregulated reselling (submetering) of utility services. These issues include unregulated monopolization, overcharges, denial of competitive options, and avoidance of traditional consumer protections (including low-income assistance, service quality standards, disconnection procedures and more). At least one local hearing should be scheduled, with a location in central Ohio where submetering issues are particularly prevalent. The PUCO should schedule other local hearings as it finds appropriate.

The reasons for granting Consumers' Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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/s/ Terry L. Etter

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## I. INTRODUCTION

<sup>1</sup> The problems of submetering for consumers were brought to light in an investigation series by the Columbus Dispatch. *See, e.g.*, ‘Utilities attorney taking on ‘submeter’ companies after using service,” Columbus Dispatch (April 3, 2016), available at <http://www.dispatch.com/content/stories/business/2016/04/03/1-utility-owner-taking-on-submeter.html>; “Legislation to help Ohio ‘submeter’ consumers undermined by business interests,” Columbus Dispatch (April 3, 2016), available at <http://www.dispatch.com/content/stories/business/2016/04/03/1-legislation-aimed-at-helping-consumers-undermined.html>; “The dark side of water, electricity submetering,” Columbus Dispatch (April 10, 2016), available at <http://www.dispatch.com/content/stories/editorials/2016/04/10/1-the-dark-side-of-water-electricity-submetering.html>. These articles and a Dispatch series on submetering are attached to this Motion.

regulation of monopolies and competitive options. In addition to this case, there are complaints filed to protect consumers from submeterers.<sup>2</sup>

On December 16, 2015, the PUCO initiated this investigation into submetering in Ohio. The PUCO found that “an investigation should be initiated regarding the proper regulatory framework that should be applied to submetering and condominium associations in the state of Ohio.”<sup>3</sup> The PUCO referenced its general authority over public utilities and its power to “prescribe any rule or order that the Commission finds necessary for protection of the public safety.”<sup>4</sup>

## **II. RECOMMENDATION**

The customers whose protection is the subject of this case should be given the opportunity to be directly heard by their government, here the PUCO. Correspondingly, the PUCO will benefit from hearing the public’s views on this issue of such sufficient concern as to have caused the PUCO to investigate.

In this case the PUCO is considering, among other things, “[w]hat impacts to customers and stakeholders would there be if the Commission were to assert jurisdiction over submetering in the state of Ohio.”<sup>5</sup> The impacts consumers may encounter to date include unregulated monopolies, overcharges, denial of competitive options, and avoidance of traditional consumer protections (including low-income assistance, service quality requirements, disconnection protections, and more).

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<sup>2</sup> See *Mark A. Whitt v. Nationwide Energy Partners, LLC*, Case No. 15-697-EL-CSS, Complaint (April 10, 2015); *OCC v. Ohio Power Company*, Case No. 16-782-EL-CSS, Complaint (April 12, 2016).

<sup>3</sup> Case No. 15-1594-AU-COI, Entry (December 16, 2015), ¶1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*, ¶3(c).

The PUCO should grant at least one local public hearing in central Ohio – where submetering issues are particularly prevalent – and should schedule other local hearings as the PUCO finds appropriate. It has been estimated that there are 30,000 central Ohioans affected by submetering.<sup>6</sup> At least one hearing should be scheduled for after 5:00 p.m., at a downtown Columbus location, in order to maximize customers’ opportunity for participation.

The PUCO has often recognized the need for holding local public hearings on matters of vital importance to consumers. For example, in implementing rules the General Assembly had mandated for basic telephone service alternative regulation, the PUCO scheduled local public hearings in seven cities across the state, even though it had been given “a limited amount of time” to conduct the rulemaking.<sup>7</sup> The PUCO determined that “local hearings should be scheduled in order to allow consumers an opportunity to express their views” regarding the proposed rules.<sup>8</sup>

Local public hearings are an opportunity for consumers to bring their concerns and issues surrounding their utility service to the PUCO. In an Ohio American Water rate case, the PUCO discussed the public testimony enabled by the local public hearings. The PUCO stated:

As in the previous Ohio American rate cases, the local public hearings in Franklin County, specifically Groveport (January 25, 2010), Galloway (January 21, 2010), and Westerville January 28, 2010), were heavily attended with 38 witnesses testifying in Groveport, 14

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<sup>6</sup> “Legislation to help Ohio ‘submeter’ consumers undermined by business interests,” Columbus Dispatch (April 3, 2016), available at <http://www.dispatch.com/content/stories/business/2016/04/03/1-legislation-aimed-at-helping-consumers-undermined.html>.

<sup>7</sup> *In the Matter of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*, Case No. 05-1305-TP-ORD, Entry (December 21, 2005) at 2.

<sup>8</sup> *Id.*

witnesses testifying in Galloway, and 32 customers testifying in Westerville. These customers almost unanimously testified in opposition to the proposed rate increase. Many witnesses claimed that the water led to the premature replacement of water-using appliances and fixtures such as water heaters, dishwashers, faucets, and toilets. Also discussed were sediments suspended in the water and an orange residue and white chalky substance left behind by the water. Numerous witnesses at the Groveport hearing expressed frustration at having to bear the expense of privately softening the water while paying such high rates to Ohio American for water service. A few witnesses even expressed a belief that the water contributed to health concerns. Many witnesses claimed to be receiving inferior water quality while paying an outlandish rate. Several witnesses discussed the relatively high rates of Ohio American compared with nearby municipal water services. Additionally, as noted in the 2006 and 2008 hearings, customers are concerned about the impact of the frequent rate hikes on their neighborhoods that are populated by moderate and fixed-income families, and their ability to sell their homes given the relatively higher water and sewer rates compared to surrounding areas served by cheaper municipal water and sewer services. Many discussed the level of their rates as compared with wage and inflation levels, and expressed a desire to see justification for the proposed increase and to better understand the factors upon which their rates are determined.<sup>9</sup>

Local public hearings offer consumers the opportunity to raise concerns about rates, billing, and service quality.

Notice for the hearing should be made by print newspapers and via social media.

The newspaper notice should include the following:

#### LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled a local public hearing in Case No. 15-1594-AU-COI, *In the Matter of the Commission's Investigation of Submetering in the State of Ohio*. This local hearing is scheduled for the purpose of providing an opportunity for interested members of the public to testify in these proceedings. The local hearing will be held at the following time and location: (Date), at 5:30 p.m., at [insert location].

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<sup>9</sup> *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 09-391-WS-AIR, Opinion and Order at 5 (May 5, 2010).

The PUCO initiated the investigation to determine whether and how to provide protection for Ohioans who are customers of submeterers. The PUCO is investigating to determine if the state regulations that protect customers of public utilities should be similarly available to those customers of submeterers. Consumer input on these issues is welcome and desired.

The major issues to be addressed should include (but are not limited to):

- Rates submeterers are charging consumers;

- The quality and reliability of service that submeterers are providing consumers;

- Consumer protection against disconnection of service by submeterers;

- Payment options that are provided to consumers receiving service from submeterers;

- What assistance should be provided to low-income customers of submeterers; and

- Use of utility service arrearages to constructively evict consumers from their submetered dwellings.

### **III. CONCLUSION**

In this case, the PUCO should hold at least one local public hearing for consumer testimony in Columbus, regarding the reselling (submetering) of utility services in Ohio. Additional hearings in other locations should be held as appropriate. Consumers' Joint Motion for Local Public Hearings should be granted.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Joint Motion for Local Public Hearing was served via electronic transmission to the persons listed below, on this 13<sup>th</sup> day of September, 2016.

*/s/ Terry L. Etter*

Terry L. Etter  
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By **Dan Gearino**

The Columbus Dispatch • Sunday April 3, 2016 8:37 AM

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Mark Whitt was signing papers to buy his condominium and the person across the table pulled out an unexpected disclosure.

The document said that the Arena District condo complex got its electricity and water billing from a company called Nationwide Energy Partners, instead of the regulated utilities. Nationwide Energy is a "submeter" company, which acts as middlemen between utility providers and end users.

Whitt signed the paper, but he felt in his gut that something was wrong.

Two years later, he has emerged as the leader of a push against so-called submeter companies such as Nationwide Energy, with a class-action lawsuit in Franklin County Common Pleas Court and a formal complaint before the Public Utilities Commission of Ohio. He says he is doing this because tens of thousands of consumers are hurting due to unfair charges, and elected officials and regulators have allowed it to happen.

"Everyone has been told, 'There's nothing we can do,'" he said, interviewed in his condo near a floor-to-ceiling window that looks out on the headquarters of a regulated electricity utility, American Electric Power. He finds this answer unacceptable because, based on his knowledge of utility law, there is plenty that can be done.

**>> Related story: Legislation to help Ohio 'submeter' consumers undermined by business interests**

Whitt, 47, is no ordinary consumer. He is a lawyer who specializes in utility regulatory issues and the managing partner of his firm. He has been successful enough to afford the condo in question, a \$526,000 unit at North Bank Park.

He thinks public officials have ignored the conduct of submeter companies. Part of this is because the issues are complicated, and he thinks some officials do not understand what is happening. Part of it is an imbalance of political power, as the advocates for maintaining the system are developers, a group that has much more influence than consumers.

Nationwide Energy, also called NEP, says it has done nothing wrong. The company is co-owned by Michael DeAscentis, who is the top executive of a prominent Columbus developer, Lifestyle Communities.



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Mark Whitt a Columbus attorney who is leading the push against submeter utility companies.

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"Mark Whitt is a tenant in one of our buildings, or one of our customers' buildings," said Gary Morsches, the CEO of Nationwide Energy. "He pays the same rate as everyone else in the building, which is the same rate AEP would charge him."

**>> Dispatch special report: Shocking cost of utility 'submeter' bills**

Nationwide Energy has argued in legal filings that its customer is the condo association, not Whitt. The condo association was set up by the North Bank Park's developer, Nationwide Realty Investors, which is part of Nationwide, the Columbus-based insurance company.

Despite the similar names, Nationwide Energy and Nationwide the insurance company do not share common ownership, although they frequently do business together. Whitt says that Nationwide Energy is an intentionally misleading name.

Joe Case, a Nationwide spokesman, had this comment: "We're carefully monitoring to protect our interests, and to date have not actively pursued trademark infringement."

Here are some of Whitt's arguments against Nationwide Energy:

n He lives in the service territory of AEP, and says this means he is entitled by Ohio law to receive service from the utility and all of the consumer protections that go along with that service. He does not receive those protections, which include standards for service reliability and rate oversight by state regulators.

n Nationwide Energy buys electricity in bulk for less than the regulated price for households, and then resells it at the utility's regulated price, making a profit off of the difference. Whitt says this model means that the company meets the legal definition of a public utility, which should trigger a number of state regulations.

n AEP customers have the option to shop for alternative suppliers for electricity generation, and there are offers available that are less expensive than AEP's regulated price. Nationwide Energy customers do not have the option to shop, which Whitt says is wrong on principle and is depriving him of savings.

n Nationwide Energy charges fees in addition to the base price, which would not be allowed in an AEP bill. This includes charges for utilities in a building's common areas, and late fees.

Nationwide Energy disagrees on each of these issues. The company, which has about 50 employees, describes itself as "an innovative energy service solutions company" and not a public utility.

"I'm proud of what we do," Morsches said. "I'm proud of the service we provide to tenants and to developers."

Whitt made his case in a formal complaint filed last year before the Public Utilities Commission of Ohio. That case led the panel to order a broader investigation of submetering, which is now in progress. The model used by Nationwide Energy is most prevalent in central Ohio, and used by several companies, but it is spreading to other parts of the state and a few other states.

He entered the complaint with few allies. Among them were consumer advocacy groups, such as the Office of the Ohio Consumers' Counsel, which filed briefs agreeing with his concerns.

But, as the case went on, the state's major utilities made it clear that they oppose Nationwide Energy's business model. AEP said consumers are being harmed and called for changes to rules to account for the models used by Nationwide Energy, American Power & Light and certain other submeter firms.

In January, Whitt was one of a group of attorneys that sued Nationwide Energy in Franklin County Common Pleas Court. The case, which plaintiffs hope to turn into a class action, remains in its early stages, and is separate from the PUCO complaint.

He moved into the condo in November 2014, following a divorce. Soon after, he got a notice from Nationwide Energy that he was being charged a 10 percent late fee and his utilities would be shut off without prompt payment.

This was when his relationship with Nationwide Energy went sour. He did not dispute that the payment was late. But he knew from his legal work that there was a process for late payments and shut-offs, and Nationwide appeared to have made up its own system.

In other words, the company had ticked off one of the few individual consumers with the knowledge and resources to fight back.

"NEP is going to have to make a decision about what it wants to be," he said. "Does it want to be a public utility and subject to PUCO regulations so that it is exempt from the claims made in the class-action lawsuit? Or does it not want to be a public utility, and, as a consequence, have to defend itself in the civil courts."

How does he think his cases will be resolved?

"The ultimate decision is above my pay grade," he said. "I would hope, at a minimum, that there is an understanding of what NEP does and its business model because I think that is sorely lacking." < /p>

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By **Dan Gearino**

*The Columbus Dispatch* • Sunday April 3, 2016 8:45 AM

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The word "submeter" entered the vocabulary of Ohio lawmakers three years ago, followed by proposals to rein in companies that mark up the cost of utilities at apartments and condominiums.

But nothing passed, and customers continue to pay the price.

"They chose to do nothing," said Carolyn Myers, 74, of Delaware, who is in one of an estimated 30,000 households, mainly in central Ohio, who are locked into this system.

"We're a captive audience," she said. "We have no choices."

**>> Related story: Utilities attorney taking on 'submeter' companies after using service**

Public records tell the behind-the-scenes story of how submeter companies — businesses that act as middlemen between utility providers and end users — managed to fend off attacks by hiring top lobbyists and following up with big campaign contributions. It helped to maintain a business model that would be illegal in most states.

At the same time, submeter firms have changed some of the practices that came to light in a 2013 Dispatch report. Notably, the companies no longer are evicting consumers who are behind on utility payments, according to municipal court records.

Nationwide Energy Partners, a Columbus submeter company, has eliminated some of the extra fees it used to charge, so its bills are often about the same as consumers would have paid to a regulated utility like American Electric Power.

The same is not true of American Power & Light, a Westerville submeter company, whose bills are often 30 percent more than regulated prices, based on recent bills submitted by customers.

How many people are affected? Right now, about 30,000 households in AEP Ohio territory are served by these types of submeter businesses, according to AEP. That is a leap from 2013, when the number of households was roughly 20,000, indicating that submeter companies are serving many newly built apartments and condominiums.



Carolyn Sue Myers next to her electricity meters.

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Any changes made by the companies have been voluntary because the Ohio General Assembly has been unable to agree on how to change the law.

"One way or another, companies can basically write bills, and they do," said Mike Smalz, an attorney for the Ohio Poverty Law Center. "Companies have a right to press their case. The problem is that it's not transparent."

## In the trenches

Lawmakers had three competing proposals in early 2014, each with different approaches.

Among them was a bill from Rep. Anne Gonzales, R-Westerville, who she said was inspired to take action because of consumers who reached out to her office with complaints about being overcharged by submeter companies.

However, the content of her bill raised red flags for consumer advocates such as the Ohio Poverty Law Center. The measure seemed to codify the submeter companies' business model, and provide meager benefits for consumers, advocates said.

Additionally, the presence of her bill, along with the two others, created enough congestion so that none of the measures could gain enough support to pass, according to legislators who were involved.

"Her bill was the worst, the least consumer-friendly and the most industry-friendly," said former Rep. Mike Foley, a Cleveland Democrat, who had a rival bill on the topic co-sponsored by Rep. Terry Blair, R-Washington Township.

A sponsor of a separate proposal, former Rep. Ross McGregor, R-Springfield, said, "Quite frankly, Anne's bill is what the industry came up with."

He wrote his bill in response to legislative staff members who told him that they were stuck paying inflated prices at their Columbus apartments. "I had people saying, 'Oh my god, I'm a victim of this,'" he said.

Gonzales disputes the idea that industry wrote her bill. "I legislate based on constituent concerns," she said.

However, public records obtained by the Dispatch show that McGregor and the other critics were on to something. A lobbyist connected to submeter companies had emailed Gonzales with suggested bill text, large passages of which ended up in her bill.

"As requested," said a March email containing the suggested language, sent by a colleague of lobbyist Matthew Kallner to a Gonzales staff member. "Please let me know if you have any questions. Have a great weekend!"

Gonzales submitted the text to legislative staff members to use as the basis of the bill. In April, when staff members had a list of questions about the bill's details, Gonzales forwarded to her assistant with this message: "Send to Matt Kallner."

Some background: Kallner's clients are some of the largest and most influential companies in central Ohio. That includes Lifestyle Communities, a Columbus-based developer of multi-family housing whose CEO is also co-owner of Nationwide Energy Partners.

Gonzales says her bill was the result of meetings with a variety of interested parties. At the conclusion of one of the meetings, Kallner volunteered to write a draft of what had been agreed upon, she said.

"Matt said, 'Why don't I just sum this up and I'll send this over to you,'" Gonzales said. "He had offered, 'Why don't I type up the talking points.'"

Asked about it late last month, Kallner said this:

"Members of the General Assembly, including Rep. Gonzales, have sought (Lifestyle Communities') input into drafting legislation around submetering," he said in an e-mail. "Lifestyle Communities chooses to use submetering because it offers cost effective investment surrounding utility equipment installation and provides opportunities for energy efficiency for its tenants." He added that the company supports "common sense regulations."

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## Additional influence

Kallner was just one of the submeter companies' well-connected supporters.

American Power & Light is part of a group of companies owned by Donald R. Kenney, a developer and donor to Republican candidates. The lobbyist for American Power & Light is Michael Gonidakis, who is also president of Ohio Right to Life.

Underscoring the prominence of Kenney and Gonidakis, both are consumer members of the Ohio Medical Board and appointed by Gov. John Kasich. The panel oversees the licensing of medical professionals.

Nationwide Energy had its own lobbyists: Eric Weldele, a former chief of staff for the Public Utilities Commission of Ohio; and Shawn Kasych, a recent former legislative staff member who has since gone back to the staff and serves as policy director for Ohio House Speaker Cliff Rosenberger, R-Clarksville.

The combination of all this firepower meant that lawmakers faced a coordinated campaign that sought to downplay or refute criticism of the submeter industry, and promote the notion that submeter companies were business innovators.

Meanwhile, Gonzales received some big contributions from people connected to submetering. In 2014, her top individual donor was Kenney, with \$8,000, followed by Mike DeAscentis, top executive of Lifestyle Communities and co-owner of Nationwide Energy, with \$6,988.40, according to campaign finance records. The two men had given to her before, but never more than \$1,000 in any year.

Gonzales said there is no connection between the donations and her actions on the bill. "Don Kenney donates to me all the time. Has nothing to do with legislation," she said, adding, "I don't keep track of who donates to me."

Foley and McGregor are no longer in the House because of term limits. Blair died in office in June 2014.

The only current lawmaker, other than Gonzales, to show much of an interest in the topic is Rep. Mike Duffey, R-Worthington. He says he was upset that a strong bill did not pass in 2014, and he thinks the issue is a black eye for central Ohio, which is where most of this type of submetering is happening.

"I feel very strongly that for submetering to exist in Ohio at all, it must offer something of value to consumers beyond what they get from the traditional utility," he said. He is working on a bill on the subject.

Following lawmakers' inaction in 2014, critics of submeter companies have turned their attention to other venues, with a formal complaint before the Public Utilities Commission of Ohio and a proposed class-action lawsuit in Franklin County Common Pleas Court.

Gonzales says she remains engaged on the issue and hopes to find a way to protect consumers. When told about the findings of this story last week, she had this e-mailed response:

"Whether it be introducing legislation or voting on a proposed legislation my actions as a legislator are in no way guided or influenced by lobbyist or campaign contributions as such that has always been, and will continue to be, the way I conduct myself as a public official."

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In October of 2013, The Dispatch published a series about a pair of local companies whose business is based on reselling electricity and water to central Ohio apartment dwellers and gouging them with marked-up rates and fees. Unlike most other states, Ohio does not regulate such companies and apartment dwellers have no recourse but to pay these inflated utility bills or move.

In the wake of the series, a number of lawmakers and public officials said they were surprised to learn of the problem and intended to do something about it. For example, the Dispatch quoted Sen. Bill Seitz, R-Cincinnati, who said, "I didn't know this problem existed" and "This bears some degree of looking into and some degree of regulation."

But so far, the degree of regulation imposed by lawmakers is zero.

Though a number of legislators took a run at the problem, it appears that the utility resellers have deployed lobbyists and campaign donations to derail every effort to regulate them. Meanwhile, tens of thousands of central Ohioans remain at their mercy and there is nothing to prevent the practice from spreading statewide, potentially affecting many more of the state's 3 million renters.

Not all submetering companies engage in gouging. Most measure and bill for utility usage by apartment dwellers. They don't mark up the cost of the utilities and merely charge a service fee, typically a few dollars per bill.

But two central Ohio companies, Nationwide Energy Partners and American Power & Light, go far beyond this. The Dispatch investigation found that these companies were charging tenants amounts that ranged from 5 percent to 40 percent higher than charges paid by residential customers of conventional regulated utilities.

Since then, AP&L has made no apparent change to its pricing, while NEP has taken steps to eliminate some charges. But the companies have maintained the core of their business, which involves buying electricity at bulk rates and reselling it at a markup.

And while rates and fees charged by conventional utilities are subject to regulation by the Public Utilities Commission of Ohio, NEP and AP & L are not regulated. Not only that, but option afforded to customers of conventional utilities, such as the ability to shop for alternative suppliers, to appeal to the PUCO, and to take advantage of government utility subsidies for low-income families, are not available to customers of utility resellers.

In the absence of action from the legislature, Columbus lawyer Mark Whitt, who is an expert in utility regulation and owner of a condo subject to NEP utility services, has filed a complaint with PUCO and also has filed a lawsuit against NEP. Whitt's basic argument is that NEP is acting as a monopoly utility and should be regulated like one. His complaint to the PUCO has received a powerful boost from conventional utilities American Electric Power and Duke Energy.

The PUCO is conducting an investigation of the complaint, but there is no guarantee of action, though Gov. John Kasich could and should bring strong pressure to bear on the commission to act. Whitt's lawsuit is in its early stages and will be vigorously challenged by utility resellers.

The best solution lies with the legislature, where House Speaker Cliff Rosenberger, R-Clarksville, Senate President Keith Faber, R-Celina, or his likely successor, Larry Obhof, R-Medina, could quickly rein in these utility abuses. Since most states already prohibit such submetering practices, Ohio's legislative leaders have plenty of models to look to. All that is needed is the will to help Ohioans who are being exploited.

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## Shocking cost investigation: Utility middle men charge renters inflated prices



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At the Enclave at Albany Park, renter Rachelle Sexton pays 30 percent more for electricity than the regulated price.

By Dan Gearino

The Columbus Dispatch • Sunday October 20, 2013 12:58 PM

Consumer protection for utility customers sometimes stops at the apartment door in Ohio.

Unlike most states, Ohio allows unregulated, third-party “submeter” companies to make big profits by reselling electricity and water to residents of apartments and condominiums.

“They pretty much told me that I don’t have a choice and this is how it is,” said Rachelle Sexton, who rents at the Enclave at Albany Park in Westerville.

Her August bill was \$176.24, which was 30 percent more than she would have paid for the same usage at regulated prices.

>> More stories in our 'Shocking Cost' investigation

A 10-month investigation by *The Dispatch* found that residents pay markups of 5 percent to 40 percent when their landlords enter into contracts with certain submeter companies. If the customer fails to pay, the companies sometimes resort to collection tactics that would be illegal for regulated utilities, including shutting off heat in winter and even eviction.

The problems stem from an absence of regulation, a blind spot in Ohio law that affects an estimated 18,000 to 20,000 housing units in the Columbus area, and that has the potential to affect any of about 3 million Ohioans who live in apartments or condominiums.

“What it gets down to is the individual consumer,” said Ohio Attorney General Mike DeWine in response to the *Dispatch* findings. “We made a public-policy decision years ago in this state that we were going to put in place certain protections for the individual utility consumer.

“It seems to be a problem when you have a small minority of consumers who do not have those protections. That, to me, would raise a lot of questions.”

Yet no state agency has the authority to respond. That would require action by the Ohio legislature, DeWine said.

Here’s how it works: A submeter company buys the utility meters and distribution system within an apartment complex. It then buys electricity or water, or both, from utilities and sells them to tenants, often at inflated prices and with fees.

In some cases, the submeter companies are owned by principal owners of the apartment complexes. And the submeter companies have names that sound like big, well-known businesses — names such as Nationwide Energy Partners and American Power & Light.

Complaints and questions about these companies are on the rise, with 5,137 inquiries to the Central Ohio Better Business Bureau about submeter companies since October 2012, up 33 percent from the year before.



**Paying extra**

On Tuesday, Rachelle Sexton, 32, was told by her landlord that her electricity bill was \$176.24 for August. She said she had never before paid more than \$100 a month for electricity. She said she had never before paid more than \$100 a month for electricity. She said she had never before paid more than \$100 a month for electricity.

**AMERICAN POWER & LIGHT (APL)**

Service	Rate	Usage	Amount
Electricity	\$0.12	1,500 kWh	\$180.00
Water	\$0.005	10,000 gal	\$50.00
Gas	\$0.005	10,000 gal	\$50.00
Other	\$0.005	10,000 gal	\$50.00
<b>Total</b>			<b>\$330.00</b>

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Submetering and the states



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apartment and had their utility costs increase," she said.

And, when a building is served by a submeter company, tenants are not eligible for money-saving programs available to most Ohioans. This includes the "choice" program, which allows customers to select a utility provider from among several. Instead, the submeter company is the only option.

Submeter customers also are ineligible for PIPP Plus, a federally funded subsidy for low-income residents available to anyone served by a state-regulated utility. The program served 41,160 households in Franklin County last year.

"We're being victimized," said Dustin Flowers, who rents at Northpark on the Far North Side. His most-recent bill was 23 percent more than it would have been at the regulated price.

He said high bills have thrown off his budget and forced him to cut back on spending in other areas. "I've lost sleep over this."

In many other states, this type of utility resale is banned by law or rule. That leaves just a few other states where it is allowed: Alabama, Georgia, Kansas, Pennsylvania, South Carolina, Utah and Washington.

What those states do not have is evidence that companies are using gaps in the system on a large scale. In this way, Ohio is unique, with companies whose business models depend on the lack of rules.

"Allowing markups for submetering is just bad policy," said Janine Migden-Ostrander, the former Ohio Consumers' Counsel who is now a principal at the Regulatory Assistance Project, a national nonprofit group that advises regulators on utility policy. "They aren't providing the customer with any real service that they wouldn't otherwise get from the utility company. There is no value added for the customer."

## Made in central Ohio

The *Dispatch* investigation focuses on two central Ohio companies: American Power & Light and Nationwide Energy Partners. They sell services to property owners, read meters and handle billing and collections.

By acting as intermediary between utility and resident, the businesses perform functions of a utility without regulation.

Both companies have close ties to large apartment owners in the region, serving their tenants and others. American Power is part of a group that includes Ardent Property Management, and Nationwide Energy was founded by the chief executive of Lifestyle Communities.

While there are many similarities, the companies have some big differences. Nationwide Energy provides a detailed explanation of its fees, and it has a call center to respond to customers. It also works to resolve complaints and help those unable to pay, customers said.

In contrast, American Power is less responsive to customers and consumer groups, and it is more aggressive in collections. It gets a grade of D from the Better Business Bureau, compared with a B- for Nationwide Energy.

"We are moving toward complete transparency with the residents and the developers," said Mike Palackdharry, Nationwide Energy's president, interviewed at the company's Arena District offices.

He said his company delivers value that justifies the costs, including the convenience of a combined bill for water and power, and helping consumers reduce energy use.

"We are trying to do things the right way and to bring a positive impact to our residents," he said.

When presented with examples of customers paying more than the regulated price, Palackdharry said it was not a fair comparison, because his company's bills include charges for electricity use in common areas, such as hallways. If the tenants were not served by his company, those costs would lead to higher rents, he said.

After not responding to requests for an interview, Bill Finissi, American Power's vice president, provided *The Dispatch* with emailed responses to questions.



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"Our costs also include a share of common-area electrical usage, and a charge for submetering and administration," he said. "This is our business model which prospective tenants have complete freedom to accept or not. By the way, if we didn't do it this way, these extra costs, which are essential costs of providing apartment housing, would need to be included in the rent."

Consumer advocates say they would prefer that such charges were included in rent to make it easier for tenants to see the true costs when they shop for housing, as opposed to being surprised by high utility bills.

While submetering is legal throughout Ohio, the large majority of consumer complaints are in the Columbus area. Why not in other places? Consumer advocates can only guess. They point to a lack of well-organized tenants'-rights groups and the fact that Nationwide Energy and American Power happen to be based in the area.

Ohio's unique regulatory structure means that the business model easily could spread across the state. The model also could spread to other states with a similar lack of rules.

"Columbus is absolutely ground zero for these rebilling schemes," said Spencer Wells, a former tenant-outreach coordinator for the Coalition on Homelessness and Housing in Ohio, an advocacy group.

If residents are late with payments, American Power will sometimes evict them, even if the consumer's rent is up to date and even though American Power is not the landlord.

"Once you enter this slippery slope, where a third party has the ability to order evictions, that's shocking," said Emily Crabtree, a lawyer with Columbus Legal Aid who has defended American Power customers.

American Power initiated 51 eviction cases last year, according to Franklin County Municipal Court records. The company has opened 159 of the cases since 2010. Nationwide Energy opened 278 such cases from 2002 to 2011, but none since.

### **No connection to AEP**

Despite familiar-sounding names, Nationwide Energy and American Power are not affiliated with two of Columbus' most-prominent companies, Nationwide Insurance and American Electric Power.

Housing-rights advocates say American Power's name is confusing for tenants who think they are dealing with the local utility, AEP. It's not as much of an issue for Nationwide Energy because Nationwide Insurance doesn't sell electricity.

Many of their practices would be illegal if the provider was a state-regulated utility like FirstEnergy or AEP.

In central Ohio, AEP sells electricity to the submetered complexes. The difference is that it sells in bulk to the property owner or submeter company, instead of to the end user.

Although AEP does not directly serve submeter customers, the company still gets calls from confused residents. AEP would prefer it if those customers were hooked up to AEP meters, but the company understands that submeter companies are following Ohio law, said spokeswoman Terri Flora.

"As people make choices to rent in an apartment, they need to be fully aware of what that choice involves," she said of the possibility of paying higher prices with a submeter company. "It's a different environment than consumers are used to."

According to AEP, there are about 130 submetered apartment or condominium complexes in central Ohio. When asked to estimate how many units are in the complexes, AEP said it is likely 18,000 to 20,000.

The state regulatory system was developed early in the last century to stop utilities from abusing local monopolies over the meters, wires and other delivery systems. Submeter companies did not exist then.

"As a matter of policy, we want all customers to be treated fairly and equally," said Todd Snitchler, chairman of the Public Utilities Commission of Ohio, which regulates utilities and is the type of agency that oversees submetering in many states.

"That's a policy call for them to make," he said.

### **Customer bills tell story**

When a customer questions the rates of Nationwide Energy or American Power, the companies reply that the charges are the same as those charged by the local utility. But that's not accurate, based on a *Dispatch* analysis of bills from a wide variety of customers.

In each case, the bills are based on the equivalent rates that would be charged by regulated utilities, except with added fees. When you include fees, customers are paying an extra 5 to 40 percent.

At the same time, the bills do not give customers the benefit of bulk-buying discounts and other savings that the submeter companies use to make their wholesale cost much lower than the regulated price.

To illustrate this, *The Dispatch* looked at a hypothetical 100-unit apartment complex in which each tenant used 750 kilowatt-hours of electricity in a month, which experts say is typical. At AEP's central Ohio regulated price, each household would get a bill for \$113.57, a figure confirmed by the utility.

However, if a submeter company bought the same amount of electricity for all 100 units, it would qualify for a commercial rate and it could also shop for a bulk-buying deal on Ohio's open market. Based on the commercial prices available in central Ohio, the complex could obtain the power for the equivalent of \$70.93 per unit.

By reselling power to the tenant at the full AEP rate of \$113.57, the submeter company's rate is 60 percent higher than its own wholesale power cost. And that doesn't include a host of submeter fees, which can easily exceed \$30 a month.

When presented with this, Palackdharry said the example overstates the potential profit because it does not take into account seasonal factors and other technical issues.

His boss, Nationwide Energy founder and CEO Mike DeAscentis Jr., went into great detail about the business model in a 2010 presentation to investors. "How we make money is we buy power at a commercial rate and we resell it at the residential rate and there is arbitrage in the rate structure," he said, according to a transcript obtained by *The Dispatch*.

DeAscentis is also the CEO of Lifestyle Communities, an apartment developer. He is the son of that company's founder and chairman, Mike DeAscentis Sr. Nationwide Energy provides its services to Lifestyle Communities and other large property managers, such as Crawford Hoying, which is owned by Brent Crawford and former Ohio State football player Bob Hoying.

Property owners are willing to sign these contracts because submeter companies often cover costs of setting up meters. Also, the submeter company will bill customers for electricity and water used in common areas and pass the money to the property owner. A regulated utility will not handle such payments.

"Our philosophy here is we are a real-estate company," said Dave Carline, president of Crawford Hoying's apartment division, explaining why his company hired Nationwide Energy. "We really wanted to get out of any energy business. We wanted to allow energy companies to do their own thing and let customers deal directly with them."

Nationwide Energy began in 1999 by installing its metering systems in newly built apartments. It later expanded to also serve older properties, including some in which tenants previously had individual meters and billing from the utility, and had no choice but to switch to the new provider. The company has about 40 employees.

"NEP is the new utility," DeAscentis said in the 2010 presentation. "We do everything that a utility does except generate power. NEP builds electrical-distribution systems for residential communities, and we were very deliberate when we started the business 10 years ago to put it in a place where it was not regulated."

He spoke of plans to expand into Pennsylvania, New York and the Washington, D.C., area. The company is now active in Pennsylvania.

ours and what we were doing.”

American Power was founded in 2003 by developer Donald R. Kenney Sr. It shares office space with many of his other ventures, including Ardent Property Management, Village Communities and Metro Development. His companies have built more than 35,000 apartments or condominium units, according to the Metro website.

### **Outside the mainstream**

There are reasons other companies have not tried this. It is illegal in most states, and established submeter companies say that such a model has a high risk of lawsuits, intervention by regulators and blowback from angry consumers.

The submeter industry has been around for decades and has customers across North America and Europe. Most of these companies make money by selling equipment and services, and they comply with industry standards that say it is unethical to charge a markup on the cost of electricity or water.

“When you start trying to get creative (with pricing), you create problems for the entire industry, and we don’t want that,” said Matt White, president of Meter Technology Works of Tampa, Fla. He sells meters to submeter companies and is past president of the national submeter trade group, the Utility Management and Conservation Association.

The current president, Arthur Blankenship, owner of Argen Billing, an Atlanta-area submeter company, said he is concerned by reports of “rogue companies” in Ohio.

“Our industry doesn’t have anything to hide, and if there are companies out there doing something dubious, that needs to be addressed,” he said.

Neither Nationwide Energy nor American Power is a member of the trade group. But another local submeter company, Guardian Water & Power of Grandview Heights, is a longtime member.

Founded in 1983, Guardian has customers in 30 states. For its Ohio customers, Guardian typically charges about a \$3-per-month service fee for each apartment served, which the landlord can pay or pass along to the tenant. The company makes no profit from marking up water or power, and it has never evicted anybody.

Harry Apostolos, Guardian’s co-founder and owner, declined to comment specifically about Nationwide Energy or American Power, which he said are competitors.

In general, he said, some companies have chosen business models that go against industry best practices, and they have “created a black eye for the industry in central Ohio.”

[Click here to read more about Guardian Water & Power's business practices](#)

### **State officials no help**

Consumers often do not know what is happening. When they find out, they are shocked that this is legal in Ohio.

“It was inexplicable,” said Gabriel Santiago of Reynoldsburg, a former Nationwide Energy customer who moved out of his apartment this year because of what he saw as excessive electricity charges.

Guy Fulcher, a former American Power customer who now lives in Galena, was fed up with the response when he tried to file a complaint.

“The attorney general back then was Richard Cordray, and his office just rolled over and said, ‘We don’t regulate that,’” he said. “They said to go to PUCO. PUCO said, ‘We don’t regulate that.’”

Consumer advocates say that these extra charges, and the fact that they are legal in Ohio, should be a source of shame.

They would like to see the Ohio General Assembly or PUCO rein in the most-abusive of the practices. But first, they say, there must be awareness that a problem exists.

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By Dan Gearino

The Columbus Dispatch • Monday October 21, 2013 1:07 PM

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Among the dozens of people who face eviction each morning in a Downtown courtroom, there are some who have made all of their rent payments.

Their mistake was a late utility bill.

While regulated utility companies do not evict customers, the same does not apply to "submeter" companies that handle electricity and water billing for some apartments and condominiums.

A *Dispatch* investigation shows that some submeter companies use a lack of regulation in Ohio to make substantial profits on the resale of utilities to a largely captive audience. They charge a premium of 5 to 40 percent compared with the regulated price of electricity, with little or no disclosure. This practice would be illegal in most states.

Simone Stevens agreed in court to move out of her apartment to avoid eviction.



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For these companies, threatening eviction is a tool to get customers to pay bills, some of which have been weighed down by above-market prices and a host of fees.

"It was a horrible experience and it threw me off track," said Simone Stevens, 26, who moved out of her Northeast Side apartment this year after receiving an eviction notice from a submeter company, American Power & Light.

The electricity bills in her small unit were sometimes more than \$200 per month, and she fell behind. Once the late fees began to accumulate, the monthly total rose to more than \$350.

"I didn't think the bills were going to be that high," she said.

In May, she hastily moved out ahead of an eviction, following two years at the address. Her court file is thick with paperwork from American Power documenting the charges, fees and late payments.

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what they call predatory pricing and aggressive collection tactics.

"To me, it's not any different than if the landlord hired a lawn-care service, and a lawn-care service could evict people," said Emily Crabtree, a lawyer who represents low-income tenants for Columbus Legal Aid.

Is this legal? Like so many aspects of the submeter industry in Ohio, there are no clear rules.

"I didn't think they could evict you," said a woman, in her 20s, who got an eviction notice this year from American Power. She was able to negotiate a payment plan and stay in her home. She asked that her name not be printed because she is concerned about retaliation by American Power.

"One minute, when I got the bill, it was \$200 and something dollars, and then it was \$500 and then it was \$1,000, and I was like, 'How is that possible?'" she said.

American Power initiated 51 eviction cases last year, according to Franklin County Municipal Court records. The company has filed 159 such cases since 2010, and has several current cases in the system.

Bill Finissi, American Power's vice president, would not agree to an interview. On Friday, he e-mailed the following statement:

"As a proportionate share of the utility costs are part of the tenant's monthly rental obligation, the landlord uses the eviction process in lieu of disconnection to enforce payment as well as all other terms and conditions in the mutually agreed-upon signed rental document. Prior to eviction proceedings, we work hand-in-hand with the individual tenants in order to assist with any difficult financial times. The eviction process is our last resort after attempting to work through the situation with the individual tenant."

Another submeter company, Nationwide Energy Partners, opened 278 of the cases from 2002 to 2011, but none since.

"We never will evict a customer because of late energy bills," said Mike Palackdharry, Nationwide Energy's president.

In Ohio, it is not unusual for a lease to say that the tenant must maintain payments for water and electricity. The contracts often say that failure to pay those bills can be grounds for eviction by the property owner or manager.

What is highly unusual about the American Power cases is that the property owner is not the one taking the action. The owner allows the electricity provider to initiate the process and file for a court order.

Consumers seek help from the Public Utilities Commission of Ohio and the attorney general's office, and they find that the agencies can't do anything because submeter companies are not regulated.

Many customers reach out to the Central Ohio Better Business Bureau, a nonprofit group with no legal authority, which has seen a sharp increase in inquiries about submeter companies in the past few years.

For someone who might be days away from eviction, there isn't much the BBB can do, said Joan Coughlin, a vice president in the office. "We would hear that by the time the complaint could be closed, the renter would be evicted," she said.

Crabtree, the legal-aid lawyer, has said in court filings that submeter companies do not have the legal authority to do evictions. When she made this argument in a July case against American Power, the company stopped trying to evict the customer.

An Ohio court has never ruled on the limits of eviction powers in situations like this.

Crabtree also questions the legality of another American Power practice: charging customers for court and attorney fees, even if the tenant's case is resolved before going to court. The extra charges can add up to several hundred dollars, on top of what the customer already owes.

"To charge someone for court costs when you haven't incurred the costs, that's unjust enrichment, and you can't do that," she said. "It's unconscionable."

But while he waited for American Power to give him an explanation for some of the fees.

"They said, 'If you don't pay it, we'll evict you,'" said the man, who asked that his name not be used because he is still in the apartment and is concerned about retaliation.

Soon after, American Power posted an eviction notice on the outside of his door. He paid his bill.

Many of the people who face eviction are in apartment complexes that cater to low-income tenants. They did not budget for above-market electricity costs and sometimes cannot afford to pay.

If they are evicted, though, they lose their security deposit and they have a black mark that will show up on background checks. So, tenants will go to great lengths to avoid eviction, even if it means spending less on groceries, medication and other necessities, Crabtree said.

"You're asking tenants to make a choice they shouldn't have to make," she said.

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By **Dan Gearino**

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Rules protecting utility customers do not apply to thousands of apartment residents in Ohio, and that's a problem that should be fixed, according to a wide range of elected officials and regulators.

Over the past two days, a *Dispatch* investigation showed how some "submeter" companies use a lack of regulation to make a profit on the resale of electricity to apartment and condominium residents. The companies charge premiums that are 5 to 40 percent higher than regulated prices, often with little disclosure.

Submetering markups are legal in this state — although not in many others — but most state officials contacted were not aware of it.

They said the General Assembly should investigate.

"I didn't know this problem existed," said Sen. Bill Seitz, R-Cincinnati, chairman of the Ohio Senate Public Utilities Committee. "This bears some degree of looking into and some degree of regulation."

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Ohio Attorney General Mike DeWine, who also learned of this issue from the newspaper report, said he would welcome action by the legislature to investigate and potentially regulate these practices.

"Really, the regulations that are in place for most consumers are not in place for a certain minority of consumers that fall into this category, and that's really no fault of their own. It's just by chance of where they live," he said.

He thinks the use of evictions by submeter companies also should be part of the discussion. One of the companies, American Power & Light, goes to court to evict some tenants who fall behind on their utility bills, a practice that consumer advocates say is unconscionable.

Rep. Mike Foley, D-Cleveland, was the only legislator interviewed who was familiar with submetering in Ohio. He is former executive director of a tenants-rights group in his city and has sponsored several bills that deal with water submetering.



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what might be difficult, he said, is raising awareness and concern about rental-housing issues among his colleagues. Such issues don't come up often at the Statehouse.

"It's not something that people have a high knowledge base on," he said.

That isn't the case elsewhere.

In 29 states, officials have addressed submetering, making illegal at least some aspects of the practices employed by submetering companies doing business in Ohio.

For example, George Jepsen, the Connecticut attorney general, helped to arrange refunds for tenants in his state. "Submetering of electricity is restricted by state law because it does not afford consumers the same protections the law provides for utility customers," he said in a statement in June.

Ohio lawmakers seeking a model to emulate could look to Texas, a state whose electricity market is structured much like Ohio's. Texas is different because the state offers additional protections for apartment residents.

In Texas, a submeter company must pass through its cost of electricity to tenants. So, if the company uses its bulk buying power to get a big discount, the customers must receive all of the benefit. To verify that this is happening, the landlord must disclose the wholesale electricity cost to tenants. Submeter companies there make their money from service fees, which the law caps at 10 percent of the electricity bill.

Unlike Ohio, in which no agency regulates submeter companies, the Texas utility commission will investigate complaints. Since 2002, the agency in Texas had received 583 complaints about submetering, according to records provided in response to a request from *The Dispatch*.

That works out to about 50 per year, not a huge number to investigate, said Carol Biedrzycki, executive director of Texas Ratepayers Organization to Save Energy, an advocacy group.

"On this narrow issue, I would say this is a good rule and it's been well-enforced," she said.

Concern about workload was one of the reasons that Ohio regulators at one point decided not to get involved in regulating submeter companies.

In 1992, the PUCO ruled that it would not intervene in a dispute between a landlord and tenant over water submetering in a mobile-home park. That 4-1 ruling has served as a precedent when similar issues have come up.

The dissenting vote was from Ashley Brown, who now works for an energy research group at Harvard's Kennedy School of Government. He is not surprised to learn that some companies have built businesses on the idea of unregulated utility markups.

"It's an abusive monopoly power," he said. "These guys are providing nothing but gouging people."

Neither the PUCO nor the General Assembly has revisited the issue in a substantial way since then. This is despite major changes in the state's electricity market that stem from the 1999 decision to let consumers choose their electricity provider.

The 1999 law is what allows landlords and submeter companies to shop for the best deal, and it has no requirement that residents receive any of the savings. So a system designed to provide options and savings has instead led to monopolies and high prices for a subset of consumers.

This outcome was not the intention of the lawmakers who wrote the 1999 law, said Priscilla Mead, an Upper Arlington Republican and former legislator who co-sponsored the measure.

"There's a void in the law. That's all there is to it," she said.

She thinks the remedy is clear.

"It's up to the legislature to step in and do something about it," she said.

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“(W)e are troubled by what we’ve read in the *Dispatch* articles,” he said. “We are assessing options for protecting these customers who lack the usual state oversight for their utility services.”

The Ohio Poverty Law Center, an advocate for low-income consumers, also would like to be at the table.

“There should be some reasonable regulations about what kind of charges are reasonable as far as administrative costs and commodity costs,” said Joe Maskovyak, an attorney for the group.

For now, though, the best way to change the system is for renters to contact their legislators and ask for new rules, said Foley, the Cleveland lawmaker.

“Part of this is organizing within your own building,” he said.

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### Bottom line

At one time, apartment rent included just about every utility except the telephone. Gradually, property owners have switched to having tenants pay separate bills for the services. This often means the tenant has individual meters with electricity, natural gas and water companies. Sometimes, however, the property owner hires a "submeter" company to install meters in each unit and handle billing. For the tenants, the submeter company functions much like a utility.

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### What we found:

- Lack of regulation allows Ohio submeter companies to charge residents more for electricity than the customers would pay to a regulated utility — currently 5 percent to 40 percent more.
  - One local submeter company, American Power & Light, uses evictions as a tool to help with collections, going far beyond the methods available to regulate utilities.
  - No Ohio agency, including the Public Utilities Commission of Ohio and the Ohio attorney general's office, has any authority over submetering. The agencies often refer calls to the Better Business Bureau, which has seen a dramatic increase in inquiries about the companies.
  - This submeter business model is legal only in the following other states: Alabama, Georgia, Kansas, Pennsylvania, South Carolina, Utah and Washington. There is no evidence that similar companies are using the model on a large scale in any of those states.
  - The national trade group for submeter companies said some Ohio companies are outside the industry mainstream and pushing the envelope with their business practices. The Ohio companies are not members of the group.
- ### How we did it:
- *The Dispatch* interviewed residents at apartment and condominium complexes across the region and analyzed their bills and reviewed their claims of unfair treatment. State officials, consumer advocates and energy-company executives also were interviewed.
  - The bill analysis was done with the assistance of Riverside Energy of Dublin, a company that advises businesses on how to manage energy costs. American Electric Power also reviewed and confirmed the figures. The source documents were customers' bills and AEP's rate schedules.
  - The information about state laws is based on interviews with officials in each state, with assistance from the Utility Management and Conservation Association, a national trade group for submeter companies.

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Summary: Motion Joint Motion for Local Public Hearings by the Office of the Ohio Consumers' Counsel, the Ohio Poverty Law Center and Mark Whitt electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.