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The PUCO also did not exercise the full extent of its statutory authority to safeguard residential consumers from submeterers or determine if a submeterer is operating as a public utility.

While OCC and OPLC appreciate the PUCO's expansion of the application of the *Shroyer* test to submeterers, the Order should have gone further. The PUCO did not consider additional factors or other means that would better address whether a submeterer should be considered a public utility, and thus subject to the PUCO's jurisdiction. Although the PUCO's Order is a positive step toward protecting consumers from submeterers, the PUCO in its Order should have given residential customers of submeterers all the protections afforded to consumers provided with regulated utility services.

Most importantly, the PUCO did not immediately address the existing risks residential consumers face under current submetering practices. Residential consumers are subjected to unreasonable disconnection processes, and excessive rates and fees. They also are unable to enjoy the benefits of many programs aimed at assisting low income consumers or consumers facing financial hardship. Excessive markups on rates only exacerbate this financial hardship.

Accordingly, the PUCO's Order was unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred in failing to find that certain submeterers are operating as public utilities in violation of Ohio law and leaving their residential customers without the protections that should be available to them under Ohio law and the PUCO's rules.

- A. The PUCO erred in failing to determine that certain submeterers are operating as public utilities because the resale or redistribution of public utility services to residential consumers is the submeterer's primary

business, is available to the general public, and the submeterer avails itself of special benefits of public utilities in violation of the PUCO's exclusive jurisdiction to regulate public utilities and the certified territory provisions of R.C. 4933.83.

- B. The PUCO erred in failing to determine that certain submeterers are operating as public utilities by not finding that those submeterers possess the attributes commonly associated with public utilities: furnishing an essential good or service to the general public which has a legal right to demand or receive this good or service and conducting their operations in such a manner as to be a matter of public concern. The PUCO violated Supreme Court of Ohio precedent.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred in unreasonably placing the burden on customers to raise the issue on a case-by-case basis as to whether submeterers are operating as public utilities.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred by not requiring Ohio's distribution utilities to adopt and enforce tariffs that prevent abuses of residential consumers arising from submetering arrangements.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred in failing to limit the applicability of its Order to those submeterers that resell and redistribute public utility service to residential consumers.

ASSIGNMENT OF ERROR NO. 5: The PUCO erred in establishing a rebuttable presumption threshold based on the total bill charges for a similarly-situated customer served by the public utility's default service.

ASSIGNMENT OF ERROR NO. 6: The PUCO erred in failing to protect the public interest by implementing consumer protections for residential consumers after a rebuttable presumption is created that a submeterer is operating as a public utility.

- A. The PUCO erred in failing to require submeterers that are operating as public utilities to implement proper disconnection procedures in order to terminate residential public utility service in violation of Ohio law.
- B. The PUCO erred in failing to require consumer disclosures of pricing, terms, and conditions of the public utility services provided by submeterers prior to the establishment of utility services to residential consumers.
- C. The PUCO erred in failing to impose a moratorium on the establishment of new residential submetering arrangements to prevent residential consumers from being subjected to future abusive submetering practices.

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate or modify its Finding and Order as request by OCC and OPLC.

Respectfully submitted,

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changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard to modify or abrogate the Order is met in this case.

III. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The PUCO erred in failing to find that certain submeterers are operating as public utilities in violation of Ohio law and leaving their residential customers without the protections that should be available to them under Ohio law and the PUCO’s rules.

The PUCO initiated this investigation to determine the proper regulatory framework applied to submeterers in Ohio.⁴ However, in its Order, the PUCO failed to find that certain submeterers are operating as public utilities in violation of Ohio law, and therefore, should be subject to the PUCO’s jurisdiction. Through this investigation, the PUCO should assert jurisdiction over submeterers who obviously do not meet the *Shroyer* test and enforce residential consumer protections established by the PUCO’s rules and regulations. The PUCO’s order is unjust, unreasonable, and in violation of Ohio law for not making such determinations.

- A. The PUCO erred in failing to determine that certain submeterers are operating as public utilities because the resale or redistribution of public utility services to residential consumers is the submeterer’s primary business, is available to the general public, and the submeterer avails itself of special benefits of public utilities in violation of the PUCO’s exclusive jurisdiction to regulate public utilities and the certified territory provisions of R.C. 4933.83.**

The PUCO has authority to determine its jurisdiction over submeterers. However, the PUCO has unreasonably failed to determine that certain submeterers are operating as public utilities and assert jurisdiction over them.

⁴ Order at ¶1.

For certain submeterers, the resale or redistribution of public utility services is their primary business. In one case, an Ohio submeterer advertised to the public on its publically available web page that it “specializes in the design, installation, operation and maintenance of private electric distribution systems for new multi-family housing communities. [It] also offers full service account management of electric and water utilities, including submetering systems, meter reading, billings and collections.”⁵ The submeterer makes no other claim to provide any other services. Based upon its own statements, design, installation, operation, and maintenance of electric distribution systems is its primary business.

Further, the same submeterer offers its services to the general public and does not require a consumer or owner of a property to be located in an area currently served by it. The submeterer provides its services “to real estate developers, property managers and property management companies.”⁶ The Supreme Court of Ohio has held that “[l]andlords are consumers of utility service, even though they resell that service to their tenants.”⁷ When submeterers offer their utility services to landlords or property owners/developers generally, they are offering the utility services to the general public.

⁵ See Nationwide Energy Partner’s website on October 6, 2007 available at <https://web.archive.org/web/20070106031944/http://www.nationwideenergypartners.com/about.html>. The web domain nationwideenergypartners.com was registered on May 10, 2002 by Nationwide Energy Partners, Ltd. It is noteworthy a subsidiary of NEP plans to sell electricity in Ohio. See <http://www.bizjournals.com/columbus/news/2017/01/04/nationwide-energy-partners-subsidiary-plans-to.html>

⁶ *Id.*

⁷ *Pledger v. Pub*, 109 Ohio St. 3d 463, 2006-Ohio-2989, 849 N.E.2d 14, ¶ 37.

Additionally, a submeterer who resells and delivers utility services to a condominium unit owner or landlord,⁸ is operating as a public utility because it does not own, or have rights to, the owner's property. The submeterer installs and maintains equipment, distribution facilities, and infrastructure on property owned by others, in a right of way, and/or easement. In such instances, the submeterer is availing itself of special benefits available to public utilities.

Public utilities have the ability to appropriate any right or interest in land, edifices, or buildings for the purposes of erecting, operating, or maintaining utility related equipment.⁹ Submeterers design, install, operate and maintain metering systems and private electric distribution systems for new multi-family housing communities”¹⁰ When a submeterer installs, maintains, or operates metering and distribution systems on the land, edifices, or buildings of another, or any part thereof, it is directly availing itself to special benefits exclusively available to public utilities. This advantage is a hallmark of operating of a public utility. As such, a submeterer who manifests the intent to avail itself of these special benefits should be classified as a public utility.

There clearly are submeterers who fail all three prongs of the *Shroyer* test. The PUCO's lack of action to assert jurisdiction over them is unjust, unreasonable, and unlawful. The PUCO should modify its Order accordingly.

⁸ See R.C. 5311.01(CC) (A “unit owner” is the “person who owns a condominium ownership interest in a unit.”).

⁹ R.C. 4933.16 and R.C. 4933.151.

¹⁰ See Nationwide Energy Partner's website on October 6, 2007 available at <https://web.archive.org/web/20070106031944/http://www.nationwideenergypartners.com/about.html>; see also *In the Matter of the Complaint of Whitt v. NEP*, Case No. 15-697-EL-CSS, Complaint (April 10, 2015) (“Whitt Complaint”); see also *Shocking cost investigation: Utility middle men charge renters inflated prices*, The Columbus Dispatch (<http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html>).

B. The PUCO erred in failing to determine that certain submeterers are operating as public utilities by not finding that those submeterers possess the attributes commonly associated with public utilities as those submeterers furnish an essential good or service to the general public which has a legal right to demand or receive this good or service and conduct their operations in such a manner as to be a matter of public concern in violation of Supreme Court of Ohio precedent.

The Order failed to clarify that the *Shroyer* test is merely a tool the PUCO uses to ascertain whether an entity is a public utility under R.C. 4905.03. The PUCO is not prohibited from considering other factors as well. The PUCO is an agency that has accumulated substantial expertise, and regularly interprets statutes. Due deference is given to the PUCO's statutory interpretation.¹¹ The Supreme Court of Ohio has held that “[w]hether a corporation is operating as a public utility is determined by the character of the business in which it is engaged.”¹² It also concluded:

[a] public utility cannot divest itself of its duties as such (1) by changing the purpose clause of its articles of incorporation, (2) by not exercising the right of eminent domain, (3) by not holding itself out to serve the public or any class of the public generally, or (4) by selling to select consumers by private contract only.¹³

The Court has stated that in addition to the *Shroyer* test, the PUCO should look at the character of the business in which an entity is engaged to determine if it is operating as a public utility. Accordingly, the PUCO should look at submeterers to determine whether the character of its business as a whole rises to the level of public utility.

¹¹ *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 17, 734 N.E.2d 775 (2000).

¹² *Indus. Gas Co. v. Pub. Util. Comm.*, 135 Ohio St. 408, 21 N.E.2d 166 (1939), paragraph one of the syllabus.

¹³ *Id.* at 409.

Here, certain submeterers provide essential goods or services – such as electric, water, and sewer utility services – to the general public.¹⁴ They occupy a monopolistic or oligopolistic position in the market place, as their customers are captive.¹⁵ Most submetered residents do not have a choice of their utility services provider. If they are unhappy with the utility service, their only option is to terminate their lease and move.

Lastly, the nature of their operations (i.e., providing essential public utility services) is a matter of public concern.¹⁶ Because submeterers contract with residential landlords and/or own the distribution infrastructure connected to the master meter owned by the submeterer or developer, residential consumers receiving services through the master meter have no choice in who provides their utility services. This captive and monopolistic nature of those submeterers who resell or redistribute essential public utility services to residential consumers, gives rise to the public concern.¹⁷ Additionally, as the PUCO recognized, when submeterers “charge unreasonably high rates or charges for the resale or redistribution of utility service, it becomes a matter of public concern.”¹⁸

Accordingly, certain submeterers should be deemed public utilities immediately and should be regulated as such. The PUCO’s Order which failed to make these findings was unjust, unreasonable, and unlawful. The Order should be modified on rehearing.

¹⁴ See *St. Marys v. Auglaize Cty. Bd. of Commrs.*, 115 Ohio St.3d 387, 2007-Ohio-5026, ¶56.

¹⁵ *A & B Refuse Disposers, Inc. v. Ravenna Twp. Bd. of Trustees*, 64 Ohio St.3d 385, 426, 1992-Ohio-23, 596 N.E.2d 423 (1992).

¹⁶ *Id.*

¹⁷ *A & B Refuse Disposers, Inc.* at 426, 427.

¹⁸ Order at ¶19.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred in unreasonably placing the burden on consumers to raise the issue on a case-by-case basis as to whether submeterers are operating as public utilities.

The PUCO's Order provides little direction as to the case by case review it ordered to determine if submeterers are operating as public utilities in violation of Ohio law, and will become subject to the PUCO's jurisdiction. On the face of the PUCO's Order, it appears that the PUCO places that burden on submetered consumers to file formal complaints that their submeterer is unlawfully operating as a public utility.

If this was the PUCO's intent, this would unreasonably place the burden on consumers to raise the issue on a case-by-case basis. Some consumers may be hesitant to file a formal complaint against their landlord, condominium association, or the sole provider of their utility service. A formal complaint process regarding each submeterer would also burden PUCO resources. For example, if a submeterer must be brought before the PUCO for each of its customers or for each multi-family dwelling that it serves, such a process would be quite onerous for consumers and the PUCO. This burden would be unjust and unreasonable.

As discussed above, the PUCO has information now to make an immediate determination regarding certain submeterers. OCC and OPLC request that the PUCO act to immediately protect consumers from the abusive practices, especially with regard to disconnection policies and procedures to prevent injury to residential consumers.

Alternatively, the PUCO should require submeterers (not consumers) to initiate a proceeding before the PUCO prior to providing utility services to residential consumers, or within ten days the PUCO's entry on rehearing, if the submeterer is already providing utility services. The submeterer should be required to register with the PUCO or apply for a certificate to operate as a submeterer. During the registration/application process,

the PUCO could determine whether the entity intends to or is operating as a public utility under Ohio law.

The burden to determine whether a submeterer is operating as a public utility should rest with the submeterer, not residential consumers. The submeterer is choosing to resell and redistribute public utility services to residential consumers. These are public utility services which have been historically provided by distribution utilities regulated by the PUCO. Captive residential customers should not bear the burden of proof when the PUCO is determining whether a submeterer is a public utility.

Therefore, the PUCO should modify its Order and require submeterers who resell or redistribute public utility services to residential consumers to appear before the PUCO to register and become certified.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred in failing to ban abusive submetering practices by requiring Ohio's distribution utilities to adopt and enforce tariffs that prevent abuses of residential consumers arising from submetering arrangements.

The PUCO may either directly regulate reselling by submeterers under its jurisdiction or indirectly through its regulation of jurisdictional public utilities.¹⁹ Submeterers, whose sole business is to submeter and resell and redistribute utility services to residential customers with an extremely high mark up,²⁰ should be deemed a

¹⁹ *In the Matter of the Complaint of Michael E. Brooks & Raoul J. Sartori, DBA Little Caesars Pizza, et al.*, Case No. 94-1987-EL-CSS (March 16, 1995) at 10.

²⁰ See *Shocking cost investigation: Utility middle men charge renters inflated prices*, The Columbus Dispatch (<http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html>); see also Whitt Complaint.

public utility. Any abusive practices of those submeterers should be addressed immediately and their customers should receive the consumer protections in the PUCO's rules and orders. The PUCO can put an end to abusive practices and protect consumer interests by requiring the public utilities to restrict the resale of their services (through their tariffs) and then enforce the tariffs..

Modifying the public utilities' tariffs (or requiring tariffs to be enforced) to ban abusive submetering practices will protect against future violations of Ohio law and will reduce the number of complaints before the PUCO. Public utilities are already supervised by the PUCO under its general supervisory powers.²¹ By requiring public utilities' tariffs to restrict the resale and redistribution of utility, these abusive practices would be mitigated. Restricting the resale of utility services will also eliminate the number of complaints filed over the status of a submeterer and actions brought against a submeterer for unreasonable, and unlawful practices. This will help conserve the PUCO's resources.

At the very least, if resale and redistribution is permitted through the public utilities' tariffs, it should only be permitted with no mark up from the cost charged to the submeterer. A modification to a public utility's tariffs could mitigate the abusive practice of markups on the resale or redistribution of public utility services.²² Captive residential consumers should not be revenue generators for submeterers and should be afforded the protections of the PUCO's oversight. The PUCO should modify its Order accordingly.

²¹ R.C. 4905.06.

²² See *Shocking cost investigation: Utility middle men charge renters inflated prices*, The Columbus Dispatch (<http://www.dispatch.com/content/stories/business/2013/10/20/shocking-cost.html>); see also Whitt Complaint.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred in failing to limit the applicability of its Order to those submeterers that resell and redistribute public utility services to residential consumers.

The OCC, the OPLC, and others, explained in their comments that reported abusive submetering practices are largely an issue for residential consumers who are most vulnerable and lack sufficient bargaining power. Commercial and industrial customers have far more bargaining power than most residential consumers and are less susceptible to abusive submetering arrangements. Further, certain consumer protections afforded to residential consumers by public utilities are not available to commercial and industrial consumers.

Because residential consumers are uniquely vulnerable to the abusive practices addressed in this investigation, the PUCO should have limited the application of its Order to those submeterers that resell and redistribute public utility service to residential consumers. Otherwise, the PUCO's focus is distracted on the multitude of questions that commercial and industrial customers bring to bear in this proceeding. That could equate to delaying the resolution of these issues for residential customers who face immediate harm. For this reason, the PUCO's Order should be modified to only apply to submeterers that provide utility services to residential consumers.

ASSIGNMENT OF ERROR NO. 5: The PUCO erred in establishing a rebuttable presumption threshold based on the total bill charges for a similarly-situated customer served by the public utility's default service.

In its Order, the PUCO proposed a "rebuttable presumption that the provision of utility service is *not* ancillary to the landlord's or other entity's primary business if the landlord or other entity charges the end use customer a certain percentage . . . above the total bill charges for a similarly-situated customer served by the utility's tariff rates, an

electric utility's standard service offer, or a natural gas utility's standard choice offer."²³

The PUCO's proposal is unreasonable because it compares apples to oranges.

By comparing the total bill of a standard service offer residential customer or residential customer supplied by a public utility with a submetered residential customer's total bill, the PUCO is incorrectly allowing the submeterer to charge its residential consumers for costs that the submeterer might not incur. For example, submeterers might not pay distribution riders and charges that are authorized as non-bypassable charges for residential consumers under the default tariff by public utilities in certified territories. These charges may include riders for energy efficiency programs, distribution modernization, distribution investment, low-income programs, regulatory compliance, and others.

Submeterers likely do not have these same distribution costs because they probably are reselling or redistributing utility service obtained from a public utility at a commercial (non-residential) rate. Submeterers should not be allowed to collect amounts from residential customers related to services the submeterer does not provide. The comparison proposed by the PUCO in the Order would allow submeterers to collect too much from customers.

Furthermore, submetered residential consumers could end up paying for programs and services offered by the public utility that they do not benefit from.. For example, under the PUCO's comparison proposal, submetered residential consumers would be paying costs associated with energy efficiency programs, low income programs, distribution modernization, distribution investment, and regulatory compliance. However,

²³ Order at ¶18.

submetered consumers could not receive the benefits of these programs or services offered by the distribution utility.

It is unreasonable to compare “the total bill charges” of customers served by submeterers to the total bill under the distribution utility’s tariffs. For example, a standard service offer residential customer’s electric bill reflects distribution (regulated), transmission (regulated), and generation services (unregulated and competitively sourced) billed by the distribution utility. This residential consumer total bill is not comparable to the total bill of a submetered residential consumer for distribution (unregulated), transmission (unregulated), and generation services (unregulated and not competitively sourced) provided by a submeterer. The costs of a submeterer to resell and redistribute utility service to residential consumers from a regulated distribution utility is not likely the same as the cost of providing the regulated utility services to residential consumers directly by a distribution utility.

It is important to note that residential consumers served by natural gas and electric public utilities may choose alternate providers for the commodity portion of their utility services through a competitive supplier. Submetered residential consumers cannot shop. The lack of choice for electric service for submetered residential consumers conflicts with the Ohio Legislature’s intent to promote competitive options for residential consumers.²⁴ By foreclosing residential customers’ ability to choose their source of energy supply, the submeterer has thwarted the statutory rights of residential consumers and frustrated the policy of the State of Ohio.

For these reasons, the PUCO’s Order should be modified.

²⁴ See R.C. 4928.02 and R.C. 4929.02.

ASSIGNMENT OF ERROR NO. 6: The PUCO erred in failing to protect the public interest by implementing consumer protections for residential consumers after a rebuttable presumption is created that a submeterer is operating as a public utility.

Even assuming the PUCO's application of the *Shroyer Test* would be sufficient to rein in the abusive practices of submeterers, it still fails to protect residential consumers. The PUCO has not ruled that the protective disconnection policies and procedures afforded to all Ohio citizens in the provision of public utility services must be provided by submeterers. For the reasons stated below, the PUCO's Order is unjust, unreasonable, and inconsistent with Ohio law.

A. The PUCO erred in failing to require submeterers that are operating as public utilities to implement proper disconnection procedures in order to terminate residential public utility service. This violates Ohio law.

Residential utility disconnection procedures provided in Ohio Adm. Code Chapter 4901:1-18 are designed to protect residential consumers from unreasonable and potentially life threatening disconnection of their utility services. Such procedures are necessary to prevent injury to the public interest. They should be available to residential customers of submeterers.

But the PUCO's Order failed to expressly address the application of the disconnection rules in its Order to submeterers. Ohio Adm. Code 4901:1-18-02 provides that "[t]he rules in this chapter apply to all electric, gas, and natural gas utility companies that provide service to residential customers, including residential consumers in master-metered premises, and residential consumers whose utility services are included in rental payments." However, without expressly subjecting submeterers to the same disconnection rules as other electric and gas utility companies, the PUCO's Order permits submeterers to avoid these essential rules. Therefore, the PUCO should modify its Order

and require submeterers to follow the disconnection procedures set forth in Ohio Adm. Code 4901:1-18-02.

Further, the PUCO has recognized for decades, in its annual winter reconnection orders, that it is imperative that vulnerable residential consumers be protected from utility disconnections during the winter heating season to prevent injury.²⁵ The PUCO has recognized the limited financial resources of certain residential consumers and has expressed concern for those who have received disconnection notices because they are unable to pay their utility bills.²⁶

The procedures established in the Winter Reconnection Order should apply equally to submeterers so that the residential consumers they serve are protected from harm, including death.²⁷ Notwithstanding the PUCO's long-held practice of issuing a winter reconnection order, the PUCO's Order here still leaves residential consumers vulnerable to submeterers disconnecting essential utility services during this frigid winter season.

In its Order, the PUCO even agreed that it "should exercise the full extent of its statutory authority to safeguard the interests of customers who, because of submetering arrangements, are subject to paying higher prices for utility services."²⁸ The PUCO also stated that when submeterers "charge unreasonably high rates or charges for the resale or

²⁵ *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2016-2017 Winter Heating Season*, Case No. 16-1782-GE-UNC at ¶5, ¶7 (September 14, 2016) ("Winter Reconnection Order").

²⁶ *Id.* at ¶5.

²⁷ *Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, PUCO Complaint and Attachment Hamilton County Complaint (February 6, 2015) (alleging, inter alia, that the deaths of two individuals from hypothermia are attributable to Duke's improper disconnection of utility services to the individuals' residence) (formerly, *Lykins v. Duke Energy Ohio, Inc.*) ("*Pitzer* Complaint").

²⁸ Order at ¶19.

redistribution of utility service, it becomes a matter of public concern and the [PUCO] will exercise its authority to protect the public interest.”²⁹ Submeterers’ practice of charging unreasonable high rates only exacerbates the frequency, risk, and harm of winter utility disconnection to residential consumers. And, it can be said that the loss of a residential consumers’ heat, electricity, or both, during freezing winter months is even a greater public concern than unreasonably high rates. Yet the PUCO’s Order is silent. This grave public concern should not be overlooked.

The PUCO should exercise such authority to prevent injury to residential consumers who receive their utility services from submeterers at unreasonably high rates and are threatened with disconnection of those utility services during the winter heating season.³⁰ It should modify its Order to expressly apply the disconnection rules and the Winter Reconnection Order to submeterers.

B. The PUCO erred in failing to require disclosures to submetered customers of pricing, terms, and conditions prior to the establishment of utility services to residential consumers.

The basis of how submeterers’ charges are calculated is often undisclosed to residential consumers. But the PUCO Order fails to prescribe any rules to require consumer disclosures. Submeterers should disclose the pricing, terms, and conditions of their public utility services to residential consumers at all times – prior to and while providing those utility services.

A residential consumer who signs a lease for submetered housing or purchases a submetered condominium unit becomes a captive consumer of the submeterer for the

²⁹ *Id.*

³⁰ See e.g., *Cynthia Wingo vs. Nationwide Energy Partners, LLC*, Case No. 16-2401-EL-CSS, Complaint (December 15, 2016) (“Wingo Complaint”); see also *The Office of the Ohio Consumers’ Counsel vs. Ohio Power Company*, Case No. 16-0782-EL-CSS, Complaint (April 12, 2016) (“OCC Complaint”).

provision of utility services. This often happens without disclosing to the customer the submeterers' rates and terms and conditions of service. Further, by failing to disclose how submetering charges are calculated, landlords/property owners can advertise low rent or purchase payments but recover those lost gains from marking up utility services. If utility rates are not disclosed to residential consumers prior to entering into a lease or purchase, residents cannot accurately gauge their monthly living expenses or the cost of the property.

This practice is exemplified in the Whitt Complaint , which gave rise to this investigation.³¹ In his complaint, Mr. Whitt describes how it was only after he closed on a condominium in the North Bank building in Columbus Ohio that he was told he must execute a service agreement with the submeterer, NEP to receive electric, water, and sewer service.³² Mr. Whitt had no way of knowing what his true utility costs would be until after closing.

Because the PUCO Order fails to require submeterers to disclose their rates and terms and conditions of service to residential consumers, the Order is unjust, unreasonable, and unlawful, and should, therefore, be modified.

³¹ December 16, 2015 Entry at ¶3.

³² Whitt Complaint at ¶6.

C. The PUCO erred in failing to impose a moratorium on the establishment of new residential submetering arrangements to prevent residential consumers from being subjected to future abusive submetering practices.

The PUCO's Order fails to address existing abusive submetering practices or the ongoing harm those practices are causing. What the PUCO has effectively proposed in its Order is for captive residential consumers to bring formal PUCO complaints against each submeterer for its abusive submetering practices. The PUCO's Order also fails to clarify that once a submetering entity is found to be a public utility subject to the PUCO's jurisdiction, in one complaint case the same submeterer will be considered a public utility in *all* cases, for *all* residential consumers it serves. Certainly, it was the PUCO's intent to only have to rule once that the submeterer is a public utility.

Further, residential consumers cannot afford to wait until one or more complaints are filed against each submeterer to first determine if it the submeterer is a public utility under the PUCO's jurisdiction. And residential customers should not wait even longer for the complaint process to run its course -- a process without a discrete timeline. The PUCO should act now and order an immediate halt to new residential submetering arrangements that enable abusive practices described in OCC and OPLC's comments and reply comments, in addition to those by other intervenors. A moratorium on such existing and new submetering arrangements will protect residential consumers during this investigation and implementation of necessary consumer protection measures.

It is unreasonable for the PUCO to not place a moratorium on new submetering arrangements to prevent future abusive submetering practices that will harm residential consumers. The PUCO's Order should be modified accordingly.

IV. CONCLUSION

The PUCO should grant rehearing on these claims of error and modify or abrogate its December 7, 2016 Finding and Order. Granting rehearing is necessary to immediately stop certain submeterers' abusive practices which cause great harm to residential consumers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served by electronic mail to the persons listed below, on this 6th day of January 2017.

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel and the Ohio Poverty Law Center electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.