

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission's |) | |
| Investigation of Submetering |) | Case 15-1594-AU-COI |
| in the State of Ohio |) | |

COMMENTS OF GUARDIAN WATER & POWER, INC.

I. Introduction

Guardian Water & Power, Inc. (Guardian) is a Columbus-based company that has been in the business of installing submeters in its customers' multi-unit buildings and billing residents for their share of utility costs for the past 33 years. This straight forward business practice is known as "submetering" – allocating actual utility costs based on consumption *without any markups or profit* for a competitively derived administrative fee.

Submetering has never been regulated by the Commission, nor should it be. It is a service provided to multi-unit building owners that promotes transparency, accountability, and conservation – all aspirational public policy goals. If the Commission elects¹ to evolve its application of the *Shroyer* test in the context of this generic docket, it should do so in a manner that draws a very clear line. Specifically, it should be crystal clear that a submetering company that allocates and bills tenants for consumption at actual cost, plus a competitively derived administrative fee, is not a public utility.

¹ As proposed in the Utility Management and Conservation Association's (UMCA) reply comments in this docket (Guardian is a member of the UMCA), the Commission can and should address the valid customer protection rate and service issues caused by the business practices of Nationwide Energy Partners, LLC (NEP) and American Power and Light, LLC (APL), which are not traditional submetering companies, by enforcing existing electric distribution company (EDU) tariffs. Or, if deemed necessary, it can order the EDUs to adopt and enforce prospective tariff language tailored to address the narrow issues at hand. There is no need, however, for the Commission to interpret either R.C. 4905.02 or the *Shroyer* test in a manner that will needlessly expose the Commission to a legal challenge, as evidenced by the numerous legal errors raised in the applications for rehearing.

In its Finding and Order issued on December 7, 2016, the Commission directed interested parties to file comments “... regarding the reasonable threshold percentage to establish the rebuttable presumption ... [that] the provision of utility service is *not* ancillary to the landlord’s or other entity’s primary business” under the *Shroyer* test.² Guardian respectfully suggests that the threshold should be the actual cost of the utility service, not the Standard Service Offer (SSO) or any percentage above it.

II. The Commission’s Proposal Will Increase Charges For Utility Services

For purposes of administering the *Shroyer* test, the Commission proposes to set a “threshold percentage above the total bill charges for a similarly-situated customer service by the utility’s tariffed rates, an electric utility’s standard service offer, or a natural gas utility’s standard choice offer, then it will create a rebuttable presumption that the provision of utility service is *not* ancillary to the landlord’s or entity’s primary business.”³

Guardian bills tenants based on the actual cost of utilities directly used by that tenant in the multi-unit building, not by the SSO or an analog rate. For electric service, for example, the “actual cost” is the monthly charge from an EDU and third party Competitive Retail Electric Service (CRES) provider. Guardian further limits actual costs to only those charges that are under the direct control of the tenant. Thus, common area charges over which the tenant has no control are excluded from the tenant’s charges.

The cost baseline has the distinct advantage of enabling tenants to benefit from the economies of scale inherent in multi-unit buildings. The fixed costs embedded in the master public utility charges are driven down on a per unit basis as scale increases. This means that in many cases tenants will be charged less with a submetered bill than they would as a standalone

² Order at ¶22 (emphasis original).

³ Order at ¶16.

customer of the utility. Conversely, if the SSO becomes the baseline, tenants will be charged more than they would under an actual cost baseline and, in aggregate, will be billed more than the actual cost of utility service to the multi-unit building.⁴

Additionally, if the SSO becomes the baseline, Ohio renters currently billed on a cost basis can expect to see their billing shifted to the presumed threshold maximum as property owners begin to realize that the SSO basis will generate more revenue than the cost of utility service to the property. Thus, these Ohio renters will be denied the benefits of submetering that is billed at actual cost, which has been the prevailing practice in the industry since its inception.

III. Actual Cost Plus a Competitive Billing Fee Should Not Be Regulated

At Guardian, and many of its competitors, the billing fee charged is competitively derived from and reflects the actual costs incurred to provide billing services in accordance with the billing specifications set by its clients. For example, some property owners request only reading data because they are solely interested in monitoring usage and detecting leaks. Some property owners request data only because they do their own billing. Some property owners want Guardian to provide billing and call center services. Other property owners request all of these services plus payment processing and account reconciliation services. In addition, many properties are located in outlying areas requiring additional labor costs to obtain visual readings. Guardian costs these services out and proposes billing fees that our clients then compare with proposals of our competitors. Guardian's ability to retain clients is continually subject to competitive review by its clients. If Guardian's competitors can charge a lower fee, then they are likely to be awarded the contract.

For these reasons, the Commission should not regulate entities that bill at actual cost plus a competitively derived fee, as has been the case in Ohio for over 30 years. These entities are not

⁴ The Ohio EDUs recognize this point. *See* EDUs Joint Application for Rehearing at p. 7.

similarly situated to the companies who are the subject of the current investigation, and should not be regulated as such. If a billing entity installs, owns, and maintains utility infrastructure and by contract excludes competition (as is the case with the NEP and APL), and they bill more than actual cost, then those entities should be subject to the proposed “threshold percentage” regulation.

Focusing on only those companies that mark-up utility service charges above cost also has the benefit of reducing the Commission’s regulatory involvement in most of the submetering arrangements in Ohio. The cost plus competitively derived billing fee approach method used by Guardian is much more widely used throughout the state than the SSO markup method, which is confined to NEP and APL locations in central Ohio.

IV. Conclusion

Guardian uses the phrase “utility cost recovery” to describe its business and that of many of its competitors. Guardian does not collect more than a property’s actual cost for utility service. Therefore, Guardian asks the Commission to adopt actual cost, as opposed to the SSO or a percentage above it, as the baseline for any test it creates. Using actual cost will preserve consumers’ ability to directly control the utility charges they incur based on usage, and it will ultimately result in lower charges than under the SSO plus a percentage approach.

Additionally, in keeping with Ohio’s 30 year tradition, Guardian asks the Commission to limit the scope of any proposed regulation. With the exception of the two companies currently under investigation, the majority of the submetering entities bill at actual cost plus a competitively derived fee, which safeguards tenants from excessive fees.

Respectfully submitted,

/s/ Andrew Emerson

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CERTIFICATE OF SERVICE

I certify that I served a copy of Guardian Water & Power, Inc.'s comments on the persons stated below via electronic transmission this 13th day of January 2017.

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Summary: Comments Comments of Guardian Water & Power, Inc. electronically filed by Mr. Andrew Emerson on behalf of Guardian Water & Power, Inc.