BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMMENTS
BY
COALITION ON HOMELESSNESS AND HOUSING IN OHIO,
LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC,
EDGEMONT NEIGHBORHOOD COALITION,
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, AND
OHIO POVERTY LAW CENTER

I. INTRODUCTION

Thousands of residential consumers have been victimized by certain entities reselling utility services, at excessive rates, without providing the basic consumer protections that customers of local public utilities receive. These consumer protections include, but are not limited to, reconnect /disconnect procedures, credit and collection practices, payment assistance plans, and low-income assistance.

The PUCO has initiated an investigation which is the first step in protecting consumers from submeterers' abusive practices, but more can be done. By treating the submeterers as public utilities, the PUCO can regulate to ensure that submetered customers are protected, just as customers of local public utilities are protected. This would mean that submetered customers' charges are just and reasonable, their service adequate, and consumers are protected when it comes to service quality, safety, and billing and collection practices. Without these protections, customers of certain submetering entities receive lesser service (and frequently pay more) than what Ohio law allows.

In a Finding and Order ("Order") issued in this case on December 7, 2016, the PUCO took some actions to protect residential consumers who are being overcharged for utility service by submeterers. In the Order, the PUCO established a rebuttable presumption that a submeterer is a public utility if it charges its customers a certain percentage above the total bill of similarly-situated customers of the local public utility serving the customers' area.[1] The PUCO sought comments on what should be the threshold percentage to establish the rebuttable presumption.[2]

As explained in the OCC/OPLC Application for Rehearing in this case, the PUCO's proposal compares apples to oranges.[3] By comparing the total bill of a residential customer served by a local 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 it might not incur. For example, submeterers might not pay distribution riders and charges authorized by the PUCO that are non-bypassable for residential consumers under the default tariff of 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 should not be allowed to collect money from residential customers for utility services that are not being charged to or provided by the submeterer. Instead, residential customers of submeterers should pay only those charges that are based on their submeterer's cost to serve them. So it is unreasonable to compare "the total bill

[1] Order at 9.

[2] *Id.* at 11.

[3] OCC/OPLC Application for Rehearing at 11-12.

charges" of consumers served by submeterers to the bills of customers served by the local public utility. The submeterer's cost to resell and redistribute utility service to residential consumers is not the same as the local public utility's cost to provide services directly to residential consumers.

And the bills rendered to a customer of a local public utility are not directly comparable to the bills rendered by a submeterer. No direct comparison can be made because residential consumers served by submeterers have fewer protections – and thus less service quality – than residential customers of the local public utility.

Residential consumers should not pay more for utility service simply because their landlord or condominium association has contracted with a submeterer to provide service. The PUCO should set the threshold percentage for the rebuttable presumption at zero percent for submeterers that are providing utility services to residential consumers. In fact, because submetered service lacks the consumer protections provided by a local public utility, the bill to submetered customers should be lower. At the very least, the PUCO should require submeterers to provide the same consumer protections that local public utilities are required to provide to their customers. Submeterers should also be required to defend their costs in a proceeding before the PUCO.[4]

The definition of public utility in Ohio law contains exceptions only for not-for-profit electric companies.[5] There is no exception for not-for-profit water companies. Thus, submeterers that charge residential customers more than the actual cost of

[4] Consumers should not have to file a complaint to have submeterers' charges examined by the PUCO. Instead, the PUCO should require certification or registration of submeterers, during which the PUCO can scrutinize submeterers' charges. *See* OCC/OPLC Application for Rehearing at 7-8.

[5] *See* R.C. 4905.02(A)(1); R.C. 4905.03(C).

providing the electric service – and all water submeterers – should be viewed as public utilities. This would be consistent with Ohio law and would protect Ohioans from being overcharged for utility service. It would also ensure that submeterers abide by Ohio law and rules, providing much needed protections to their customers.

II. RECOMMENDATIONS

A. The definition of "public utility" under Ohio law is broad, and thus the PUCO should construe the definition broadly to help protect residential consumers from being overcharged for utility service.

Ohio law defines "public utility" broadly. R.C. 4905.02(A) states, "As used in this chapter, 'public utility' includes every corporation, company, co-partnership, person, or association, the lessees, trustees, or receivers of the foregoing, defined in section 4905.03 of the Revised Code, including any public utility that operates its utility not for profit…." The law contains only one specific exception regarding electric utilities – for an electric light company that does not operate its utility for a profit.[6] The law also does not apply to utilities owned or operated by a municipal corporation.[7]

Under R.C. 4905.03(C)," any person, firm, co-partnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated" is an electric light company "when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state…." Similarly, under R.C. 4905.03(G), any person, firm, etc. is a water company "when engaged in the business of

[6] R.C. 4905.02(A)(1).

[7] R.C. 4905.02(A)(3). Other exceptions are for certain telephone companies and for railroads.

supplying water through pipes or tubing, or in a similar manner, to consumers within this state…."

Hence, if a submeterer is "engaged in the business" of supplying electricity for profit – or water, irrespective of its non-profit status – the submeterer is a public utility under Ohio law.

B. In the cases where the PUCO has addressed the issue of submetering, residential consumers were paying the residential rate of the public utility serving the area.

In trying to determine what percentage above residential rates should trigger the rebuttable presumption, it is useful to look at PUCO precedent. While the PUCO has not issued decisions concerning submetered residential electric service, it has decided at least two cases involving submetered residential water and sewage service. The PUCO did not take jurisdiction over the submeterers in those cases because they were landlords. Nevertheless, the facts of the cases are informative.

In *Shroyer*, residential consumers were not charged more than the local public utility's residential rate for water and sewage service. The evidence showed that Shroyer – a manufactured home park owner – metered only a few of its tenants that it considered water "abusers."[8] Shroyer received the utility service from the city at a commercial rate and charged these tenants the city utility's residential rate.[9] Hence, the metered tenants did not pay more for utility service from their landlord than they would have paid for residential service directly from the city.

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[8] *In re Inscho v. Shroyer's Mobile Homes*, Case No. 90-182-WS-CSS, et al., Opinion and Order (February 27, 1992) ("*Shroyer*"), 1992 Ohio PUC LEXIS 137 at [*3]. Water and sewer service for the rest of Shroyer's tenants were included in their rent. *Id.*

[9] *Id.*

In *Pledger*,[10] the owner of a residential apartment complex charged its tenants for water and sewer service that was provided by local government bodies.[11] The property owner charged its tenants the amount of their usage plus a ten percent "administrative fee."[12] The PUCO did not address whether the administrative fee was reasonable. The PUCO determined it did not have jurisdiction because the landlord was reselling the utility service.[13]

Nevertheless, ten percent is too high for the threshold for establishing a rebuttable presumption as to whether a submeterer is a public utility. Submeterers that are not landlords do not have the obligations that landlords have under the law. As far as utilities are concerned, landlords must "[s]upply running water, reasonable amounts of hot water, and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection."[14] Submeterers that are not landlords have none of the expenses that might be associated with this obligation. Further, landlords should have these expenses as part of their rent.

[10]*Pledger v. Capital Property Management, Ltd.*, Case No. 04-1059-WW-CSS.

[11]*Id.*, Entry (October 6, 2007) at 2.

[12]*See id.*, Respondent's Answer (July 13, 2004) at 2-3, 3-4.

[13]*Id.*, Entry at 3-4.

[14] R.C. 5321.04(A)(6). Condominiums are not "residential premises" under Ohio law. R.C. 5321.01(C)(8). Condominium associations may, but are not required to, regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium property, including common areas and units. R.C. 5311.081(B)(4) and (5).

So the charges for submetered residential utility service should closely align with the submeterer's cost of providing the service. The threshold for the rebuttable presumption should be low.

For purposes of establishing the threshold for a rebuttable presumption, it is also useful to examine the limitations on submetering by public utility commissions in other states. The Connecticut Public Utilities Regulatory Authority prohibits including the owner's costs for submetering (e.g., third-party meter reading, meter testing, and billing) in the tenant's electric bill.[15] Tenants are billed based on their usage multiplied by the average rate per kWh for the building. The average rate per kWh for the building is the total monthly bill for the master meter divided by the number of kWh on the bill.

By tariff, the New Jersey Board of Public Utilities prohibits the resale of water or energy for profit.[16] In Oklahoma, the applicable rate for submetered electricity is the applicable commercial rate without block billing or similar type billing.[17]

The PUCO should follow these examples. The PUCO should set the threshold at the rate a residential customer of the distribution utility would pay for generation, transmission, and distribution for the same usage, excluding any riders not charged to the submeterer.

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[15] *PURA Generic Investigation of Electric Submetering*, No. 13-01-26, Interim Decision (August 6, 2014) at 10. PURA allows for a $5.00 late fee for balances more than 30 days in arrears.

[16] *See In the Matter of the Petition of the New Jersey Apartment Assoc. for an Order Authorizing the Use of Water Sub-metering to Advance Water Conservation in New Residential Apartment Buildings*, N.J. Bd. of Public Utilities, No. WO11060381, Order Approving Submetering (August 19, 2011); *In the Matter of a Pilot Program Allowing Sub-Metering (Formerly Check-Metering) in Residential Properties Regulated by the New Jersey Housing & Mortgage Finance Agency*, N.J. Bd. of Public Utilities, No. AO05080734 (September 14, 2005).

[17] Okla. Admin. Code § 165:35-13-7 (1991).

III. CONCLUSION

Ohioans need to be protected from abusive practices by submeterers serving residential customers. Companies that are engaged in the business of providing electric service to residential consumers for a profit, and all submeterers of water service, should be deemed to be public utilities. And the PUCO should require submeterers to extend the same consumer protections to their customers that local public utilities are required to provide. Otherwise, customers of submeterers fall prey to receiving a lesser service than the law requires.

The PUCO's rebuttable presumption should not compare the total bill charges of similarly-situated customers of the local public utility to the total bill charges of customers of submeterers, because submeterers likely will not be charged for all the riders that the public utility's residential customers pay. However, the PUCO should set any threshold at the rate a residential customer of the local public utility would pay for generation, transmission, and distribution for the same usage, excluding any riders not charged to the submeterer.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served via electronic transmission to the persons listed below, on this 13th day of January 2017.

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Summary: Comments Comments by The Coalition on Homelessness and Housing in Ohio, Legal Aid Society of Southwest Ohio, LLC, Edgemont Neighborhood Coalition, The Office of the Ohio Consumers' Counsel and Ohio Poverty Law Center electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.