

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY COMMENTS OF GUARDIAN WATER & POWER, INC.

As noted in Guardian Water & Power, Inc.'s (Guardian) initial comments, if the Commission elects to adjust the *Shroyer* test to create a rebuttable presumption based on a threshold percentage to determine if an entity's provision of utility service is ancillary to its primary business, that threshold should be the actual cost of the utility service, not the Standard Service Offer (SSO) or any percentage above it. Several parties, including AEP Ohio and Duke, appear to agree that actual cost should be the benchmark. AEP Ohio and Duke, unfortunately, mischaracterize the competitively derived administrative fee that the overwhelming majority of submetering arrangements in Ohio allow.¹ This inaccurate information merits reply.

At page 7 of their combined Initial Comments, AEP Ohio and Duke state, "Insofar as submetering entities claim that they have 'administrative' or internal distribution costs that must be recovered, they should recover such costs – as with all other costs of operating a multiunit building – through *rent*, not by accessing a markup on utility charges." They continue, "Any submetering entity that marks up utility service – whether for profit or to recover alleged 'administrative charges' – is engaged in the business of providing utility service and should be regulated as a public utility."

¹ Any administrative fee charged by either Nationwide Energy Partners, LLC (NEP) or American Power and Light, LLC (APL) are not competitively derived because they are protected by the long term contracts they secure as consideration for building out the utility infrastructure for developers.

First, a submetering company that allocates and bills tenants for consumption of utility services at actual cost, plus a competitively derived administrative fee, is not “marking up” the utility service. The tenant is billed for the respective utility service at cost based on their consumption, which by definition is not a mark-up. The administrative fee, which the property owner authorizes for inclusion in the bill, is competitively based and is a result of cost factors unique to each submetering company. At Guardian, the following cost factors are the basis for its administrative fees in contracts throughout the state with apartment owners, condo associations, shopping centers, commercial and offices buildings, military housing properties and Section 8 housing:

- Onsite data collection – Guardian has a 33-year legacy of meters installed throughout Ohio that require monthly onsite meter reading services. Guardian employs a staff of full-time meter readers responsible for monthly reading routes that cover all major metropolitan areas in Ohio and many small towns, villages and rural areas. Meter reading cost factors include: labor costs, health insurance, pension plans and other benefits, liability and errors and omissions insurance coverage for all meter readers, vehicle maintenance, associated travel and mileage expenses and handheld electronic meter reading devices for manual input and wireless reception.
- Radio frequency data collection - Guardian supports Internet Protocol wireless submetering systems. These systems pull in meter readings in 42 states including Ohio. To support and maintain these systems, Guardian employ a staff of software engineers, programmers, and meter technicians.
- Rate Analysis - Guardian employs full time rate analysts who are responsible for monitoring tariffs for over 2,500+ communities in 42 states including Ohio. Rate analysts

ensure that bills sent to apartment and condominium communities, in aggregate, equal the property's utility costs.

- Bill Print and Fulfillment Services - Guardian maintains an in-house mail preparation service. In addition to our billing department staff, Guardian maintains processing equipment, high speed printers, mail folder and insertion equipment, and carrier route sorting software. Backup critical processing equipment is also maintained to ensure timely and accurate delivery of resident bills. All these items generate costs that are reflected in the monthly billing fee Guardian bids when it competes for a contract. The monthly billing services also generate significant fixed and variable postal service expenses.
- Property Management and Resident Billing Support Services - Guardian maintains state of the art call center telephonic equipment that provides the highest possible level of property management and resident support services. Its call center hours are 8:30 AM to 8:00 PM EST. Call center representatives are located at Guardian's Seattle and Columbus offices. Costs to support these services factored into a billing fee when Guardian competes for a new submetering contract.
- Payment Processing and Accounting Services - Guardian supports multiple resident payment channels including: ACH, mobile app, telepay, website portal, check or money order by mail, telepayment and credit card over the phone with live agent. Guardian provides its clients and their residents with online portal access for utility management purposes. We also provide property management with account reconciliation and utility analytics. Again, the cost to support these services, if the property owner elects to

purchase them, are factors in determining Guardian's billing fee when competing for business.

In sum, administrative billing fees are not "alleged." When Guardian competes for new business it quotes an administrative fee based on the cost factors identified above, depending on which services the property owner requires. If Guardian's administrative fee is too high, a competitor may get the contract.

Second, the Commission should reject AEP Ohio and Duke's suggestion that it should regulate submetering unless the costs for utility services or administrative billing charges are folded into rent. Burying utility service in rent reduces accountability and creates a disincentive for smart conservation practices. Further, it will increase housing costs to residents. The Ohio Apartment Association and the International Council of Shopping Centers accurately describe the pitfalls of baking utility services into rent at page 4 of their January 21, 2016 initial comments, and Guardian agrees with their observation that submetering "empower[s] tenants to control their own utility costs by having costs reflect usage."

Conclusion

Guardian reminds the Commission to appreciate the important differences between Guardian's and the NEP/APL service model, which is limited to Central Ohio and well outside the industry norm. If the Commission elects to alter the *Shroyer* to address the activities of NEP/APL, it should clarify that a submetering company which allocates and bills tenants for consumption at actual cost, plus a competitively derived administrative fee, is not a public utility.

Respectfully submitted,

/s/ Andrew Emerson

Andrew C. Emerson

PORTER WRIGHT MORRIS & ARTHUR LLP

41 South High Street

Columbus, Ohio 43215

Tel: (614) 227-2104

Email: aemerson@porterwright.com

Attorney for Guardian Water & Power, Inc.

CERTIFICATE OF SERVICE

I certify that I served a copy of Guardian's Reply Comments on the persons stated below via electronic transmission this 3rd day of February 2017.

/s/ Andrew Emerson
Andrew C. Emerson
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
Tel: (614) 227-2104
Email: aemerson@porterwright.com
Attorney for Guardian Water & Power, Inc.

SERVICE LIST

cmooney@ohiopartners.org
William.Wright@puc.state.oh.us
Kyle.kern@occ.ohio.gov
bojko@carpenterlipps.com
msmalz@ohiopovertylaw.org
stnourse@aep.com
msmckenzie@aep.com
amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com
Jennifer.spinosi@directenergy.com
joliker@igsenergy.com
mswhite@igsenergy.com
whitt@whitt-sturtevant.com
mjsettineri@vorys.com
glpetrucci@vorys.com
jbatikov@vorys.com
campbell@whitt-sturtevant.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
gkrassen@bricker.com
dstinson@bricker.com
slesser@calfee.com
mcorbett@calfee.com
randall.griffin@aes.com
rickcashman@yahoo.com
jljeczen@yahoo.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/3/2017 4:05:05 PM

in

Case No(s). 15-1594-AU-COI

Summary: Comments Reply Comments of Guardian Water & Power, Inc. electronically filed by Gretchen J Blazer on behalf of Emerson, Andrew C. Mr. and Guardain Water & Power, Inc.