

**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

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
APPLICATION FOR REHEARING
FROM THE SECOND ENTRY ON REHEARING**

Pursuant to Ohio Revised Code ("R.C.") 4903.10, Ohio Partners for Affordable Energy ("OPAE") herein applies to the Public Utilities Commission of Ohio ("Commission") for rehearing from the Commission's June 21, 2017 Second Entry on Rehearing in the above-captioned Commission-ordered investigation of submetering in the State of Ohio. The Second Entry on Rehearing is unreasonable and unlawful in the following respects.

- 1) The Commission modified the *Shroyer* test to protect Ohio residential consumers trapped in submetered arrangements but such protection cannot be accomplished on a case-by-case basis but only if the Commission grants residential consumers in submetered arrangements the same rights and protections afforded to all other residential consumers pursuant to R.C. 4905.22, 4905.30, 4905.32, 4909.18, 4928.02, 4928.08(B), 4928.10, and 4929.02 and Ohio Administrative Code ("O.A.C.") 4901:1-18, 4901:1-21; 4901:1-24.
- 2) The Commission established a rebuttable presumption that a reseller is acting as a public utility if the reseller charges more for its service than the public utility's default service tariffs but this rebuttable presumption is inadequate to establish whether a reseller is acting as a public utility.

The Commission should grant rehearing and correct these errors in its Second Entry on Rehearing for the reasons set forth in the attached Memorandum in Support of this Application for Rehearing which is incorporated herein.

Respectfully submitted,

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING**

- 1) **The Commission modified the *Shroyer* test to protect Ohio residential consumers trapped in submetered arrangements but such protection cannot be accomplished on a case-by-case basis but only if the Commission grants residential consumers in submetered arrangements the same rights and protections afforded to all other residential consumers pursuant to R.C. 4905.22, 4905.30, 4905.32, 4909.18, 4928.02, 4928.08(B), 4928.10, and 4929.02 and Ohio Administrative Code ("O.A.C.") 4901:1-18, 4901:1-21; 4901:1-24.**

The Commission claimed that it was modifying the *Shroyer* test to protect Ohio residents in submetered arrangements, but the Commission's determination that this protection can be accomplished through its Second Entry on Rehearing is unreasonable and unlawful. Second Entry on Rehearing at 9. The Commission found that any consumer protections can apply only after a case-by-case determination that a particular reseller is operating as a public utility. *Id.* at 10. The Commission's claim that consumer protections can only apply after a case-by-case determination that a particular reseller is operating as a public utility is unlawful and unreasonable.

It is unlawful and unreasonable for the Commission to address protections for residential customers in submetering arrangements only on a case-by-case basis. The Commission unreasonably assumes that residential customers will be able to

bring their complaints about submetering arrangements before the Commission and successfully pursue the complaints to secure the statutory and administrative consumer protections granted by Ohio law. Residential consumers, and especially low-income residential consumers, may not realistically have the time and resources to pursue such complaints. In that case, the consumer protection that the Commission is assuming to create on a case-by-case basis is meaningless.

The Commission has unreasonably placed the burden on submetered customers to file formal complaints so that the Commission may consider them on a case-by-case basis. The Commission should have protected consumers from abusive and unlawful practices by placing the burden on resellers, as a condition of their ability to resell utility service, to establish that they are not acting as public utilities. If resellers were required to register with the Commission and become certified as resellers, the protection of residential customers would be meaningful and immediate.

The Commission should have agreed with the Residential Advocates in their Application for Rehearing that consumers living in submetered arrangements should be afforded the same statutory and administrative consumer protections as other residential customers. If the reseller possesses the attributes associated with a public utility in that the reseller furnishes an essential good or service to the general public, which has a legal right to demand or receive this good or service, the reseller conducts its operations in a manner of public concern. The reseller is availing itself of special benefits of public utilities in violation of the Commission's exclusive jurisdiction to regulate public utilities.

Submetering causes substantial harm to residential customers by denying them critical protections, benefits, and choices afforded to customers of public utilities under Ohio law. The list of protections, benefits, and choices denied is quite long. R.C. 4905.22 protects consumers against unreasonable charges; R.C. 4905.30 requires that a printed schedule of rates be filed; R.C. 4905.32 requires that only the scheduled rates be collected; R.C. 4909.18 provides for applications to establish or change rates; R.C. 4928.02(A) provides the State's policy to promote competitive options for consumers to ensure the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably-priced retail electric service; R.C. 4928.02(B) provides the State's policy to ensure the availability of electric service that provides consumers with supplier, price, terms, conditions, and quality options consumers elect to meet their needs; R.C. 4928.02(C) provides the State's policy to ensure diversity of electric suppliers by giving consumers effective choices over the suppliers; R.C. 4928.08(B) provides for consumer protections in the provision of service by competitive retail electric service ("CRES") providers; R.C. 4928.10 prohibits unfair, deceptive, and unconscionable acts and practices in marketing and sales of CRES contracts and requires price disclosures and explanations of rates, terms, and conditions of CRES; R.C. 4929.02 sets forth the policy of the State that residential consumers served by natural gas utilities may choose alternate providers for the commodity portion of their service through a competitive supplier; O.A.C. 4901:1-18-02 provides disconnection procedures that must be followed by electric and natural gas utilities; and O.A.C. 4901:1-21 and 4901:1-24 provide rules to protect consumers of CRES providers.

Submetered rates and charges are hidden from customers and subject to no public oversight. Submetered customers often have no way of knowing what their utility charges will be because submetered rates are not set pursuant to public hearings and submetered public tariffs do not exist. Cost allocations can be based on square footage and include a share of common area costs. No due process exists for submetered residential customers to provide input into their utility rates and charges. There is no oversight of any kind and no opportunity for customers to be heard in the rate-setting process. Nothing stops a reseller from setting rates that are unjust, unreasonable or discriminatory. Resellers can hide the true cost of utility services to submetered premises. A landlord-reseller can entice tenants with a low monthly rent and then make up considerable additional revenues by charging high rates and charges for utility services that are hidden from customers and public oversight. If one tenant does not pay, other tenants may be forced to pick up that tenant's share.

The Commission's Second Entry on Rehearing failed to address how the charges of resellers are calculated and disclosed to residential customers. Resellers should disclose pricing, terms, and conditions to residential customers. A residential consumer who signs a lease for submetered housing becomes a captive customer of the reseller for the provision of utility services. Residents may be unable to gauge their monthly living expenses. The Commission failed to require resellers to disclose their rates, terms, and conditions of service to residential consumers.

Submetered service may be unreliable. Developers may attempt to save costs by installing equipment that would not meet reliability standards to which public

utilities are subject. Submetered customers lack the protection of O.A.C. Chapter 4901:1-10, the Electric Service and Safety Standards. When there is an outage, submetered customers may be unable to identify which entity to contact and whose equipment needs repair.

Submetered customers are denied the right to shop for competitive electric generation and natural gas commodity supply and cannot take advantage of government aggregation or competitive standard-service-offer procurement. This is at odds with the State policy at R.C. 4928.02(B) that ensures the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, and conditions they elect to meet their needs and R.C. 4928.02(C) that ensures diversity of electric supplies and suppliers by giving consumers effective choices over the selection of those supplies and suppliers. It is also at odds with R.C. 4929.02 that provides for natural gas commodity choice. Submetered consumers have no effective choices.

Regulated utilities are permitted to disconnect service only for certain expressly enumerated reasons. O.A.C. 4901:1-18-03. Regulated utilities are required by statute to provide reasonable prior notice of disconnection. R.C. 4933.122(A). For residential customers, the Commission requires that utilities provide at least fourteen days' written notice prior to disconnection and a personal visit to the premises. O.A.C. 4901:1-18-06(A). There are specific requirements for the information contained in a disconnection notice and requirements as to when disconnection may occur. Residential customers receiving utility service through resellers lack these protections. Submetered customers also lack medical

certification protection to avoid disconnection. There are no rules on when reconnection of service must occur. Submetered customers lack any ability to enter into Commission-mandated payment plans. They lack the ability to enter into income-adjusted payment plans. They are unable to qualify for the Percentage of Income Payment Plan and the Home Energy Assistance Program. The Commission's Second Entry on Rehearing did not find that the disconnection policies afforded to all Ohio citizens in the provision of public utility service must be provided by resellers, and this is inconsistent with Ohio law. The Commission has not addressed the disconnection rules and the winter reconnection orders.

The Commission should have acted to secure real protections for customers in submetered arrangements by requiring resellers to register and seek certification from the Commission to resell utility service. The burden should be placed on resellers to show that they are not acting as public utilities if resellers seek to continue to resell utility service. The burden should not be placed on residential customers to bring complaints about resellers on a case-by-case basis. In the alternative, the Commission should have ordered utilities to adopt tariffs that prevent abuses of residential consumers arising from submetering practices. Such tariffs should guarantee customers in submetering arrangements proper disconnection procedures and disclosures of pricing, terms and conditions prior to the establishment of service. Utility tariffs that ban abusive submetering practices would protect customers. The Commission should have acted to protect residential consumers trapped in submetering arrangements, but failed to do so. This is unreasonable and unlawful.

- 2) **The Commission established a rebuttable presumption that a reseller is acting as a public utility if the reseller charges more for its service than the public utility's default service tariffs but this rebuttable presumption is inadequate to establish whether a reseller is acting as a public utility.**

The Commission's finding of a rebuttable presumption that a reseller is acting as a public utility if the reseller charges more for its service than the public utility's default service tariffs is inadequate to protect residential consumers. It is unreasonable and unlawful that the Commission did not establish an adequate test.

By comparing the total bill of a default-service residential customer supplied by a public utility with a submetered residential customer's total bill, the Commission will not check abusive practices of resellers. The reseller may not pay residential service distribution rates, customer charges, and riders that default-service residential customers pay. In this case, the total bill of the reseller is not comparable to the default tariffs. The reseller's charges are not fair because they do not reflect the cost of the reseller's service. Resellers should not be allowed to collect amounts from residential customers related to services the reseller does not provide.

Unlike regulated public utilities, there is no supervision of what the resellers provide or charge. A reseller may issue bills to all residents belonging to a condominium association for electric, water, and sewer service on a monthly basis. The reseller may assess a customer charge unrelated to a particular service provided by a distribution utility. The reseller may have a "customer charge" for its reselling service that is not comparable to a particular distribution utility's customer charge. The Commission's rebuttable presumption comparison with a utility's default service customer charge may be inadequate to identify abusive practices or

to determine if the reseller is acting as a public utility. If a reseller is performing various functions at residential premises, the reseller's customer charge will not be comparable but must still be considered if abusive practices are addressed and utility service is identified.

Thus, it is inadequate to compare the total bill charges of customers served by resellers to the total bill of the default service from a distribution utility to determine if the reseller is acting as a public utility. The cost of a reseller to resell utility service to residential consumers is not comparable to the cost of a utility's default service. The Commission should be concerned that its presumption is comparing apples to oranges. It was unreasonable and unlawful for the Commission to establish an inadequate test for its rebuttable presumption that a reseller is acting as a utility and thus limit the ability of residential consumers trapped in submetering arrangements to obtain the customer protections afforded to all other residential customers by statutory and administrative law.

Conclusion

In conclusion, the Commission should grant this Application for Rehearing and correct the errors in its Second Entry on Rehearing as discussed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of this Application for Rehearing will be served by the Commission's Docketing Division on electronically subscribed persons via electronic transmission this 21st day of July 2017.

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Summary: Application for Rehearing and Memorandum in Support electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy