

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF THE
OHIO CONSUMERS' COUNSEL,**

COMPLAINANT,

v.

CASE NO. 16-782-EL-CSS

OHIO POWER COMPANY,

RESPONDENT.

ENTRY

Entered in the Journal on December 1, 2017

{¶ 1} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} Ohio Power Company, dba AEP Ohio, (AEP Ohio or Respondent) is public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On April 12, 2016, the Ohio Consumers' Counsel (OCC or Complainant) filed this complaint as the statutory representative pursuant to R.C. 4911.02(B) of residential consumers of submetered electric utility service within AEP Ohio's service territory. In its complaint, OCC requests that the Commission find that AEP Ohio's tariffs are unjust and unreasonable to the extent that such tariffs do not expressly prohibit the resale and redistribution of electric utility services to residential customers by submetering entities or third-party agents who are neither landlords, nor consumers of utility service in accordance with R.C. Chapter 49. Further, OCC seeks an order directing AEP Ohio to amend its tariffs to prohibit such submetering arrangements, and to enforce such amended tariffs. In addition to the complaint, OCC filed a motion requesting that the Commission impose a

moratorium to prohibit AEP Ohio from providing new master-meter electric service to submetering entities or third-party agents (who are not landlords) that intend to resell and redistribute the service to residents of apartment or condominium complexes.

{¶ 4} Subsequent to the filing of OCC's complaint, the Commission issued a Finding and Order in Case No. 15-1594-AU-COI (COI Order), which reviewed submetering of public utility service in Ohio under the Commission's traditional test for determining whether a company is acting as a public utility as was first established in *In re Inscho v. Shroyer's Mobile Homes*, Case No. 90-182-WS-CSS, et al., Opinion and Order (Feb. 27, 1992) (*Shroyer Test*). The COI Order clarified that failure of any one of the three prongs of the *Shroyer Test* is sufficient to demonstrate that an entity is unlawfully operating as a public utility. *In re the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Finding and Order (Dec. 7, 2016).

{¶ 5} On rehearing of the COI Order, the Commission held that a company that resells or redistributes a particular utility service to a submetered residential customer (Reseller), and charges an amount that is greater than what the submetered residential customer would have been charged through the local public utility's default service tariffs, a rebuttable presumption will exist that the Reseller is acting as a public utility under the third prong of the *Shroyer Test*. The rebuttable presumption can be overcome if the Reseller can prove that (1) the Reseller is simply passing through its annual costs of providing a utility service charged by a local public utility and competitive retail service provider (if applicable) to its submetered residents at a given premises; or (2) the Reseller's annual charges for a utility service to an individual submetered resident do not exceed what the resident would have paid the local public utility for equivalent annual usage, on a total bill basis, under the local public utility's default service tariffs. *In re the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Second Entry on Rehearing (Jun. 21, 2017) ¶40 at 15 (COI Entry on Rehearing).

{¶ 6} In light of the issuance of the COI Order and COI Entry on Rehearing in Case No. 15-1594-AU-COI, a prehearing conference will be scheduled for this case on Thursday, December 14, 2017, at 10:00 a.m. in Hearing Room 11-C at the Commission, 11th Floor, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 7} It is, therefore,

{¶ 8} ORDERED, That a prehearing conference be held on December 14, 2017, at 10:00 a.m. in Hearing Room 11-C at the offices of the Commission. It is, further,

{¶ 9} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Richard M. Bulgrin

By: Richard M. Bulgrin
Attorney Examiner

jrj/vrm

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Case No(s). 16-0782-EL-CSS

Summary: Attorney Examiner Entry scheduling a prehearing conference on December 14, 2017, at 10:00 a.m.; electronically filed by Vesta R Miller on behalf of Richard M. Bulgrin, Attorney Examiner, Public Utilities Commission of Ohio