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21st District

**Ohio House Public Utilities Committee
HB 249 (Duffey) – Utility Reselling Reform
Sponsor Testimony – September 12, 2017**

Chairman Cupp, Vice Chair Carfagna, Ranking Member Ashford, members of the House Public Utilities committee, thank you for the opportunity to present sponsor testimony on HB 249, legislation to permit the Public Utilities Commission of Ohio (PUCO) to adopt rules governing residential utility reselling.

The question we must try to answer is this: should Ohioans, living in apartments or condominiums, generally be entitled to the same consumer protections the legislature affords single-family homeowners? These include the rates paid for electricity, a competitive market for generation, protections regarding reliability, fair marketing and various other protections the legislature has consistently enacted and defended.

And if the answer is yes, that generally, Ohioans living in apartments should have the same consumer protections as it relates to their utility service, then I would argue this bill is the only proposal currently pending that would achieve this result or help Ohioans attain this kind of fair treatment.

Imagine for just this moment that you are renting an apartment in Columbus today. After signing the lease, you remember it said you were responsible for paying your own electric bill, but didn't say anything about who would serve you or how they might price the service. You then discover that a company that isn't your local utility is charging you 40% more for the same electricity *and* you have to pay for the common areas, which is something most landlords consider their own responsibility. That makes your bill twice as much.

And what would you think if the price you paid included riders for programs like energy assistance or appliance disposal, but no matter how much you paid, you couldn't ever take advantage of those programs? Even if your electric service was about to get shut off, you couldn't apply for HEAP, even though that program exists for the sole purpose of making sure people can heat their homes in the winter.

Or imagine you live in a condominium, and you discover that your developer had entered into a long term, decades-long contract with a company they may own, or may have a relationship with, for a period of a decade, two decades, or longer, that binds you to pay this kind of pricing markup with no ability to renegotiate the rate or choose an alternative provider. Would that be fair?

I would contend that it is not fair, because the General Assembly has clearly indicated its intent to provide consumer protections to all customers on a universal basis. Yet, we have companies here in Ohio essentially operating as if these basic protections and utility taxes do not apply to them.

Now arguably, these practices are already illegal under the Ohio Revised Code, which seems to say anyone reselling a utility service is by definition a utility and must be regulated as such. But that is not what the PUCO has ruled. Instead, they have ham-handedly declared that they are applying a test to utility resellers to determine whether they are acting as utilities. The Shroyer test, as the commission recently explained, applies a price threshold test – basically, does the reseller charge more than the utility? If yes, then they are a utility and must be regulated as such.

If not, however, then the reseller can charge right up to the SSO for the utility, including for riders they don't collect or fund, and for common areas they add onto your bill without discussion. And because they can purchase electricity on the wholesale market, they can not only pay less than a homeowner could anyway, but they also tend to avoid some of the riders and fees, even though it is for residential use.

The discovery of these practices was made public in a Columbus Dispatch series published October 20, 2013, after a ten-month investigation by the newspaper revealed markups of 5 to 40 percent when landlords enter into submetering contracts. When a customer failed to pay a submetered utility bill, some companies were resorting to collection tactics that would ordinarily be considered illegal for regulated utilities, such as shutting off heat in the winter and even eviction.

Our state attorney general, Mike DeWine, expressed at the time: "It seems to be a problem when you have a small minority of consumers who do not have those [utility] protections." The article then stated, 'Yet no state agency has the authority to respond. That would require action by the legislature.'

In a recent meeting with a high-ranking PUCO official, I was told the commission would welcome the clear authority to regulate utility reselling, aka submetering, in the broadest sense. In other words, they would like to have consumer protection oversight, but they need the authority to do so. Now some attorneys might argue the PUCO has willfully ignored its existing authority, but if you give them the benefit of the doubt, then this bill gives the commission what it says it wants – the ability to apply consumer protections.

Interestingly, the "catch 22" of this mess is that, if the PUCO does not have exclusive jurisdiction, then municipal home rule government in Ohio retains the freedom to regulate submetering. In other words, if submetering companies are successful making the argument that the PUCO lacks authority to regulate submetering and their practice of utility reselling, then cities across Ohio will have an invitation to pass their own ordinances with as little or as much regulation as they see fit.

But I don't think that is what we want in Ohio. Rather, I think we want uniform standards applied statewide that are fair and consistent. That is what this legislation does. It puts to rest the argument about who has jurisdiction by saying, essentially, PUCO, you definitely have jurisdiction. Now, it is your job to provide the consumer protections we expect normally to all consumers, not just those served directly by the traditional public utility such as AEP or First Energy.

Upon passage of this legislation, the PUCO would have one year to adopt rules governing residential utility reselling. And if they do not do so, then utility reselling must be prohibited because the commission did not act to allow it.

In comparison with other states, Ohio appears to be in the minority that do not offer some regulatory framework for consumer protections to submetered customers.

But if the PUCO does act to adopt rules, as this bill allows, then they must meet the following standards:

1. Pricing may not exceed what the customer would have paid the direct utility. I would add that we should clarify this to include only generation and not allow resellers to charge for riders they do not collect and remit for program use.
2. Consumer protections must match or exceed those provided the direct utility.
3. Charges for common areas must be included in the rent, as the customer has no control over them. This is a core premise of most utility policy – choice and responsibility.

If these standards are met, then I believe we may be much closer to a fair situation. And we will have done so without banning submetering, if it is the desire of the legislature to keep this industry in business.

But lastly, consider this question... for what public policy reason should the State of Ohio encourage or allow utility reselling if our traditional public utilities (AEP, First Energy, Duke, etc.) are willing to serve submetering customers directly, at lower prices and with better consumer protections?

The conclusion by legislatures in other states has been, in some cases, to simply ban submetering reselling because it offers no public good. And if that happens in Ohio, it also relieves the PUCO of a significant regulatory burden of having to hear cases involving submetering companies.

Mr. Chairman, thank you for the opportunity to present testimony. I am happy to answer questions.

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