



An AEP Company

BOUNDLESS ENERGY™

December 10, 2024
Before the Senate Energy and Public Utilities Committee
Opponent Testimony on Senate Bil 123

Chairman Reineke and Committee members, I am Steve Nourse, Vice President-Legal for AEP Ohio. Thank you for allowing me to provide opponent testimony on Senate Bill 123 (“SB 123”), which exempts submetering companies from regulation as public utilities by the Public Utilities Commission of Ohio (“PUCO”).

Although AEP Ohio appreciates the General Assembly’s interest in submetering companies, exempting them from PUCO regulation via SB 123 is not a solution to the pressing issues and concerns presented by such entities and their business practices. On the contrary, passage of SB 123 would undermine a considerable number of essential consumer protections that tenants of Ohio’s submetered apartment complexes should enjoy; would permit submetering companies to provide what amounts to unregulated public utility services within the certified territories of Ohio’s distribution utilities; and could interfere with a currently pending Ohio Supreme Court appeal from a lengthy and complex PUCO proceeding on this very topic.

Ohio’s landlords have long enjoyed a limited “landlord-tenant” exception to PUCO jurisdiction when providing utility services to their tenants and recovering their costs to do so. Indeed, the Ohio Supreme Court recognized the landlord-tenant exception nearly a century ago. But until recently, the typical landlord of an apartment complex in Ohio has not been *in the business of* – or making a substantial profit from – submetering essential utility services to his or her tenants. Instead, the typical landlord was just in the business of being a landlord.

More recently, though, as the Ohio Supreme Court recognized in its 2020 *Wingo* decision and the press noted even before then,¹ submetering utility services to tenants at apartment buildings has become a “big business.” The entities now engaged in that big business place themselves between the tenants (the ultimate consumers) and the landlords *to make a profit* – not to provide utility services at regulated rates; not to offer tenants the variety of prices and terms offered by competitive retail suppliers; nor to provide tenants the numerous customer protections that utilities must by law provide. And tenants in Ohio’s apartment complexes find themselves bound by expensive contracts between their landlords and the submetering companies, with the only option for unsatisfied tenants being to accept the rates forced upon them or move away.

¹ E.g., *The dark side of water, electricity submetering*, Columbus Dispatch (April 8, 2016), available at: <https://www.dispatch.com/story/opinion/editorials/2016/04/08/the-dark-side-water-electricity/23582696007/> (last visited Dec. 10, 2024).

The big- business submetering companies perform numerous services traditionally performed by public utilities like AEP Ohio, such as maintenance and repairs of electric meters, regular meter readings, and customer-service centers. Big-business submetering companies install significant distribution infrastructure at the apartment complexes they serve – the same type of equipment that AEP Ohio installs as a regulated utility to directly serve those same customers. They send monthly electric bills that look strikingly similar to AEP Ohio’s invoices. They also disconnect electric service to tenants – and frequently – but without the protections and regulations applicable to customers of regulated public utilities like AEP Ohio.

Because what walks and quacks like a duck should be treated as a duck, AEP Ohio filed a complaint case at the PUCO in September 2021, urging the Commission to address whether a big-business submetering company was, in fact, operating as an unregulated utility in AEP Ohio’s certified service territory, in violation of Ohio law and AEP Ohio’s tariff. That case, *Ohio Power Company v. Nationwide Energy Partners, LLC*, took a full two years for the Commission to decide, and AEP Ohio’s appeal to the Ohio Supreme Court has now been fully briefed and awaits the Court’s determination. That case, which generated thousands of pages of testimony, reflects the sheer complexity of the issues surrounding big-business submetering. Respectfully, these are issues that this General Assembly should not attempt to short-circuit via hastily conceived (and even more hastily considered)² legislation like SB 123.

In its still-pending appeal to the Ohio Supreme Court, for example, AEP Ohio explained how the big business of submetering eliminates a substantial number of consumer protections that the General Assembly (in legislation) and the PUCO (in its rules) wisely saw fit to impose on those providing utility services, including:

- access to the Percentage of Income Payment Plan (PIPP), a funded program created by the General Assembly to help low-income customers pay their utility bills; and
- the robust disconnection rules set forth in the Ohio Administrative Code.

And this is not just AEP Ohio’s litigation position. Ohio Partners for Affordable Energy, for example, submitted a brief as *amicus curiae* in support of AEP Ohio in the Supreme Court, explaining:

A low-income customer who rents their home or apartment served by AEP Ohio receives numerous protections and services meant to assist them in keeping their utility service active. These protections include payment plans, the percentage of income payment program, weatherization services, fuel fund and bill payment assistance programs, Commission oversight and minimum service requirements among others. However, a low-income tenant of a submetered housing complex loses many of these programs and protections because they are no longer customers of a public utility and no longer have the protections of Commission oversight.

² In the past, when submitting proponent or opponent testimony, my experience before the Committee has included lengthy question-and-answer sessions reflecting the Committee’s careful, reasoned consideration of testimony both for and against proposed legislation. The three-minute limit on testimony pertaining to SB 123 is a regrettable departure from the Committee’s prior practice.

Duke Energy Ohio, too, supports AEP Ohio's position in the pending Ohio Supreme Court appeal. It submitted an *amicus* brief describing the impact of unregulated, big-business submetering companies not only upon tenants, but also upon the rate-paying public at large:

From the standpoint of the impacted tenants, NEP undoubtedly looks like a public utility. It designs, constructs, and maintains the distribution system from the landlord's master meter to the individual apartments. It designs and issues tenant bills and communications. It offers a help desk to answer tenants' questions about their service. NEP is not just acting on behalf of the landlord; rather, NEP is separately and distinctly providing traditional utility services.

In addition to rights lost by the previous customers of electric utilities, the NEP business model results in impacts to the utility's remaining customers. When NEP converts existing electric distribution utility customers to master-metered tenants, the electric distribution utility stops serving those individual customers and the electric delivery facilities previously invested in by the utility largely become useless. As the total number of customers decreases, there are fewer customers to pay the overall costs of utility service, meaning that, at a high level, the cost each customer must bear increases.

OPAE and Duke Energy Ohio's arguments as *amici curiae* dovetail with AEP Ohio's concerns regarding SB 123. If enacted, SB 123 would give a green light to big-business submetering companies to gouge tenants with higher rates, without affording tenants the protections they are entitled to as customers of regulated utilities like AEP Ohio.

For the foregoing reasons, AEP Ohio respectfully but strongly opposes SB 123's proposed exemption of submetering companies from needed regulation by the PUCO.