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October 15, 2025  
Before the House Energy Committee  
Opponent Testimony on Substitute House Bill 173

Chairman Holmes, Vice Chair Mathews, Ranking Member Rader and House Energy committee members, my name is Steve Nourse, VP-Legal for AEP Ohio. Thank you for allowing me to submit written testimony in opposition to Substitute House Bill 173 (Sub. HB 173).

Headquartered in Gahanna, AEP Ohio serves 1.5 million customers across 61 Ohio counties. With over 1,300 employees that live in the communities we serve, AEP Ohio is proactively working to redefine the future of energy in this state, in addition to developing innovative solutions that power communities and improve lives across Ohio.

Although AEP Ohio appreciates the General Assembly's interest in submetering companies, Sub. HB 173 unfortunately does little to adequately protect Ohioans who are submetered and could interfere with a currently pending Ohio Supreme Court appeal from a lengthy and complex PUCO proceeding on this very topic.

The new regulatory provisions proposed by the substitute bill would continue to allow the reselling of a regulated electric service without adequate consumer protections. For example, submetered customers would continue to be stripped of their right to shop for competitive generation supply and customers would be subject to misleading and insufficient disconnection procedures. Additionally, the bill's creation of a standard service offer rate cap creates a guaranteed markup profit for submetering companies at the expense of tenants. While the substitute bill adopts a new moniker of "behind the meter utility service" and seeks to justify a nominal regulatory approach for a competitive service, make no mistake: the captive customer-tenants of submetering companies have no choice and are receiving unregulated electric service without any meaningful consumer protections.

The bill then imposes very limited PUCO jurisdiction over these matters with no enforcement teeth, ensuring that these very real consumer issues will not be addressed. Equally concerning is the bill's broad waiver in newly enacted RC 4933.61 that would create an undefined ability for the PUCO to waive portions of the already limited consumer protections that bill is purportedly enacting – and this undefined waiver provision amounts to an unlawful delegation of legislative authority.

In stark contrast to this bill, AEP Ohio has taken affirmative steps to attempt to resolve this issue positively for submetered customers. As background, 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,<sup>1</sup> 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.

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, the General Assembly should not attempt to short-circuit this process by advancing Sub. HB 173 unless substantial amendments are made to the bill.

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<sup>1</sup> 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).