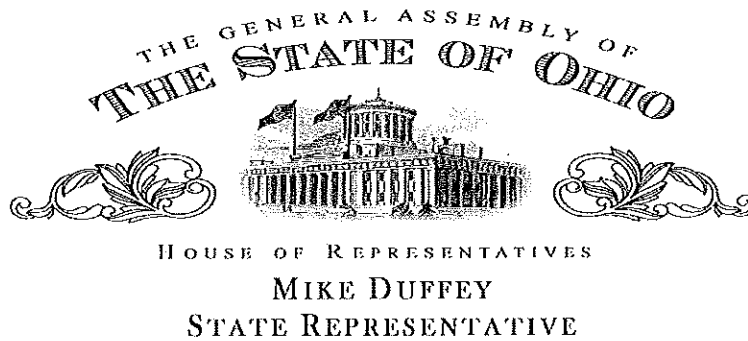


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Committees

Chairman, Higher Education
Chairman, JCARR
Finance, Higher Ed. Subcom.
Health

September 4, 2017

Dear Chairman Haque:

Both as chairman of the Joint Committee on Agency Rule Review and as a former member of the House Utilities committee, I write to notify you of the Public Utilities Commission's failure to follow Ohio Revised Code 111.15 - Adoption and filing of agency administrative code rules - with regard to commission order 15-1594-AU-COI regarding submetering.

Under O.R.C. 111.15 (A) (1), a "rule" is "any rule, regulation, bylaw, or standard having a general and uniform operation..." And under O.R.C. 111.15 (B) (1) (b), such a rule must be filed with the Joint Committee on Agency Rule Review.

Legal examples of existing PUCO rules that were filed first with JCARR before incorporation in the Ohio Administrative Code include utility tariffs, metering options, electric companies, termination of residential service, competitive retail electric service providers, et al.

Likely, the commission may argue O.R.C. 111.15 (A) (1) provides an exception for "any finding, any determination of a question of law or fact in a matter presented to an agency."

Substantively, the commission appears to fail this test because the order was entered as a result of independent investigation, rather than a case with a designated plaintiff. As such, there was no case or matter "presented to an agency." The rule is general and uniform.

Here, the commission appears to be applying rules that go beyond Shroyer, creating an enforcement penalty for submetering companies, where being defined as a utility is, in fact, the penalty. This is expressed in the commission's order to apply a certain percentage price test, which the commission later described as a zero-threshold price test.

It begs the question: if the commission again clarified the test to include consumer protections such as termination of service, would that be applying the Shroyer test or actually legislating - i.e. creating law that is required to undergo rulemaking?

Therefore, at some point in the near future, I may wish to call the commission to testify.

Warm regards,

Mike Duffey
Chairman, Joint Committee on Agency Rule Review