

## Testimony of Mark A. Whitt

Mr. Chairman, members of the committee. Thank you for allowing me to testify. With me is Cynthia Wingo. I will share her story with you momentarily.

I am the managing partner of a 10 lawyer firm specializing in energy and utility regulation. I have appeared in courts and regulatory agencies throughout the United States. Never in my 20 years of practice have I encountered anything like the utility reselling phenomenon that has emerged in Central Ohio. I would like to share my perspective as both a regulatory lawyer and a former customer of a reseller.

In 2015, personal circumstances led me to move from Dublin to a condominium in Downtown Columbus. Like most homeowners, I did not give much thought to who my electric provider would be. Much to my surprise, as I sat at the closing table, I was presented with a customer enrollment form for Nationwide Energy Partners (NEP). Some of my utility bills exceeded \$400 per month. I am now renting that condo, and my tenant's bills have exceeded \$500 in some months. This is for a 2 bedroom, 2 bath condominium under 2000 square feet. And my tenant, like myself, is single and spends a good amount of time travelling.

I filed a complaint against NEP in April 2015 with the Public Utilities Commission of Ohio (PUCO). The *Dispatch* ran a story about my case, and soon I started hearing from other fed-up consumers. I eventually filed a civil complaint on behalf of some of these consumers, and I plan to seek class certification of that case in the near future. I also represent Ms. Wingo in two cases at the PUCO, involving service at both her former and current apartment.

My personal and professional experience has led me to some conclusions about who benefits and who suffers from utility reselling.

Who benefits? First and foremost, the resellers. As most of you probably know, there is an ongoing investigation of utility reselling at the PUCO. Information was filed in that proceeding showing how resellers can earn profit margins exceeding 40%. Regulated utilities are typically authorized to earn returns of around 10%.

Developers also benefit. They get paid by the reseller for access to communities. Sometimes they get a lump sum upfront, sometimes they get a share of what the reseller collects from consumers, and sometimes they get both.

Who is harmed by utility reselling? The very people that are forced to bestow a windfall on the reseller. Residents in reseller communities pay more and get less.

NEP and the other resellers claim that they charge the same rate as AEP—implying that a resident’s electric bill would be the same regardless of whether NEP or AEP issued the bill. That simply is not true. As NEP’s internal documents acknowledge: “NEP residents pay more under our billing service when compared to AEP.”

Even if reseller customers paid what customers of the host utility pay, they do not get what customers of the host utility get. Ms. Wingo is a case in point. She moved into the Gateway Lakes apartments in Grove City in the fall of 2013. NEP did not issue a utility bill until January 2014, and the first bill was around \$650. This immediately put Ms. Wingo behind the eight ball. She paid what she could, but because she couldn’t pay in full, she started to pay penalties and late fees. When she left Gateway Lakes in the summer of 2017, her final bill was over \$4,100, a large portion of which consisted of late fees. Her service was also disconnected four times, including twice during the winter.

If Ms. Wingo was an AEP customer, she would have been entitled to dispute her initial bill with the PUCO. She would have been entitled to enter a payment plan for what she legitimately owed. She would not have been charged penalties or late fees. And she would have been protected from disconnection during the winter under the PUCO’s winter disconnect and reconnection order. People like Ms. Wingo should not lose these protections just because a middleman pays to insert itself between the consumer and utility.

Taxpayers also lose under reselling. Utilities pay various taxes that other businesses do not. Resellers avoid paying these taxes—even though they charge rates that are intended to cover these taxes.

The tax avoidance issue illustrates the dishonesty of resellers who attempt to justify their practices by claiming to charge host utility rates. Host utility rates are based on the provider’s cost of service, and these costs include various taxes, funding for low income and payment assistance programs, smart grid technology,

energy efficiency programs, and roughly a dozen or so other types of costs. Resellers do not incur these costs, but they charge consumers as if they do.

Utility reselling provides no value to consumers. None. It only imposes higher costs, and the cost difference goes right into the reseller's pocket.

I am happy to answer your questions.

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