

**Before
The Ohio Senate
Public Utilities Committee**

**Testimony on Substitute Senate Bill 157
(Protecting Ohioans from Resellers of Utility Services)**

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**On Behalf of
Office of the Ohio Consumers' Counsel**

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Hello Chair Beagle, Vice Chair LaRose, Ranking Minority Member Williams, and members of the Committee. Thank you for this opportunity to testify.

My name is Jeff Jacobson. I am testifying on behalf of the Office of the Ohio Consumers' Counsel, the state's representative of four million residential utility consumers. I am providing opponent testimony on Substitute S.B. 157.

We are not happy to be in opposition to this bill, and we wish the bill had sufficient consumer protections for us to support it. We appreciate that the sponsor recognized that the bill, as introduced, needed work and did not contain sufficient consumer protections for us to be able to support it. And when he introduced the bill the sponsor kindly made a point to seek us out and to encourage our collaboration with him as he sought to improve it. He has had many discussions with interested parties, in which the Consumers' Counsel participated. The bill has gone through several drafts for which comments and proposed language have been solicited and given, and for that we are grateful.

But the "dash-5" bill version of Substitute S.B. 157 remains inadequate for protecting Ohioans from middlemen who resell utility services to residential consumers. We therefore oppose the bill and recommend that it be significantly improved or not enacted.

As you may recall, submetering consumers are denied both the regulatory protections that customers of utilities have and the price protections of the marketplace that other Ohioans have. Submetered consumers in Ohio today have little to no protections

regarding disconnection of service, prompt reconnection in winter if an unpaid bill that led to a shutoff has been paid, meter standards, and so on.

How can this be, when the bill has a provision that says submeterers shall adopt utility standards? (Lines 94-101) Because the bill says in lines 258-263 that a submeterer that charges only actual costs (a concept I will shortly discuss further) is not subject to anything in the bill.

Even assuming the submeterer chooses to charge something other than actual costs and thus is subject to the bill, the dispute resolution and enforcement provisions of the bill do not protect consumers.

Although the consumer may ask the PUCO to mediate any disputes with the submeterer (lines 295-300), the submeterer may refuse PUCO mediation (lines 301-302). The consumer would then be forced to sue in civil court, where courts have declined to interpret PUCO rules. The bill could leave consumers without protection by a court or the PUCO. Also, in court consumers could be at an even greater disadvantage to resellers who are lawyered-up for the judicial process. In this regard, the threshold of the amount in dispute (\$350) for the consumer to collect reasonable attorney's fees would leave many consumers without a means for hiring counsel for enforcement (lines 350-354). For many consumers, trying to collect less than \$350 through the courts may not be worth the expense or the effort.

Again, we are not just talking about going to court over a bill dispute. There could be a situation where the submetering company shuts off electricity in the middle of winter and the consumer pays the bill, but the submeterer refuses to turn the service back on. The consumer would have to use the dispute resolution provisions.

But imagine trying to mediate that dispute *and* having the submetering company refuse mediation under the bill, *then* trying to find a lawyer to take one's case to court or having to represent oneself in court, then waiting for a turn on the court docket. This whole process could take weeks or longer. Even getting an injunction to force the submeterer to continue providing service while the dispute resolution runs its course is expensive and time-consuming. All the while, the consumer's house is dark and cold because there is no electricity, with a risk to property, health or even life. The same issue for regular utility consumers could be resolved relatively quickly, instead of the months it could take for a submetering customer.

Worse yet, while the PUCO several months ago ordered the beginnings of some basic pricing protections for submetered customers, the bill takes away any PUCO jurisdiction for a submetering company that follows the provisions of the bill. (Lines 136-140)

And remember, if the submeterer charges actual cost, there are no provisions of the bill the submeterer could be violating, because the bill says that the bill doesn't apply to submeterers who charge actual cost. (Lines 258-263)

In sum, under Substitute S.B. 157 a submeterer that charges actual cost doesn't have to give any consumer protections, even against winter disconnection, and isn't subject to oversight by anyone.

Further, we are concerned that the bill's inadequate definition of actual costs would allow submeterers a way to gouge consumers. Under the bill, a submetering company doesn't have to buy electricity for its customers from the cheapest provider. It could instead buy from a high-priced provider and then pass along that "actual cost" to its customers and be exempt from the bill. It could do so and gain that exemption even if the expensive power it bought was sold to it by a company affiliated with the submeterer. So a submetering company could price-gouge consumers as long as the specific company that sells to the consumers is different from the one that inflated the prices.

The bill does say that a submeterer is prohibited from entering into an agreement that increases cost above the standard service offer "if the purpose was to inflate actual costs in order to make a profit from the resale of the utility service to a consumer." (Lines 267-269) On paper that might sound like a consumer protection, except in practice it's easy for a submeterer to come up with a different rationale for its charges. For example, the submeterer could say "We are buying electricity from our other company because we trust them or we like their customer service." And that might be enough of a different purpose to not violate the bill. Of course, any consumer who objects to the cost or believes that the submeterer's purpose was to price-gouge is still going to be disadvantaged by the lack of an effective enforcement mechanism in the bill.

But remember, even that meager enforcement mechanism goes away when the submeterer only charges actual costs. And it's not just enforcement that goes away. The provision we've just been discussing, the prohibition against a submeterer buying electricity above the market price for the purpose of making a profit, is null and void if the submeterer that bought the expensive electricity for that purpose only charges consumers what it paid. In this instance the submeterer's affiliate would make a profit, the consumers would pay more, and the bill would not apply to the submeterer.

In this regard, a submeterer could set up a new sister company to buy low-priced electricity and resell it at a higher price to the submeterer. And the submeterer would then be exempt from Substitute S.B. 157 so long as it doesn't charge consumers a penny more than it overpaid to its affiliate in the first place. These are just some of the many complicated details in the bill that could be a submeterer's dream for self-serving interpretations and anti-consumer litigation.

In conclusion, it is difficult to word-smith this bill to adequately protect consumers because a fundamentally different approach for consumer protection is most needed, such as House Bill 249. Or the reselling of utility services should be banned outright to protect consumers. But needed changes for consumer protection include removing Section 5325.15 (lines 258-263) from the bill. Similarly, Section 5325.04(D) (lines 136-140) should also be removed from the bill in order to enforce the consumer protections

afforded by the bill.

To give submetered consumers the same protections utility consumers have, the PUCO should be given jurisdiction over submeterers and their services to consumers, including jurisdiction over consumer complaints and remedies.

There should be a cap on any submeterer rate so that submetered customers who lack the ability to competitively choose their provider are not forced to pay more than what their neighbor on utility service can be charged for buying power from the utility: The standard service offer price.

To avoid the potential that actual costs (and charges to consumers) could be inflated by the submeterer, charges based on the submeterer's actual costs should be the *lesser* of actual costs or the public utility's "standard usage rate" (lines 48-49).

Consumers should be protected from excessive fees. Substitute S.B. 157 provides for add-on charges for service initiation and termination of service with automatic annual price increases. The bill allows resellers to charge consumers an account establishment fee (up to \$20) and a final bill fee (up to \$20) (lines 141-156). These fees may be increased annually by the resellers based on the consumer price index. Public utilities typically do not charge fees for initiating or terminating service. And public utility consumers are not typically subjected to automatic price increases. Public utilities are required to undergo rate proceedings in order to create a fee or increase existing tariffed charges.

For these reasons, we hope that this Committee will not support passage of Substitute Senate Bill 157. We look forward to working with Members of this Committee, the Bill sponsor, your colleagues in the Senate, and other stakeholders to protect Ohio consumers on these important issues. Thank you again.