

**Before  
The Ohio Senate  
Energy and Public Utilities Committee**

**Testimony on Consumer Protections Related to Master-Metering, Submetering,  
and Reselling of Utility Services  
Senate Bill 86**

**By  
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Hello Chair Wilson, Vice Chair McColley, Ranking Member Williams, and members of the Committee. I am Jeff Jacobson of Strategic Insight Group, testifying on behalf of the Office of the Ohio Consumers' Counsel, the state's representative of four million residential utility consumers. Consumers' Counsel Weston thanks you and the Bill sponsor, Senator Maharath, for this opportunity to testify in favor of this important legislation for consumer protection.

Joining in this testimony today are the following consumer groups. The Coalition on Homelessness and Housing in Ohio is COHHIO is a coalition of organizations and individuals committed to ending homelessness and to promoting decent, safe, fair, affordable housing for all, with a focus on assisting low-income and special needs populations. HARCATUS Tri-County C.A.O., Inc, is a private non-profit corporation which serves Harrison, Carroll, and Tuscarawas Counties and contracts with federal, state, and local governments to develop, manage, and deliver human and social

services for the betterment of our communities. The Ohio Poverty Law Center's mission is to reduce poverty and increase justice by protecting the and expanding the legal rights of Ohioans living, working, and raising their families in poverty. Pro Seniors, Inc. is a non-profit legal service provider located in Cincinnati, Ohio that works to expand economic opportunities and improve the quality of life for senior residents of Ohio.

The need for consumer protection from resellers of utility services was brought to light in a series of investigative stories by the Columbus Dispatch in October 2013. (See Attachment) Senate Bill 86 would create much needed balance between consumers of resold utility services and providers of those services.

There is a growing class of Ohioans who lack the regulatory protections that you and your predecessors have enacted over the decades to ensure fairness for consumers of utility services. Providers of resold utility services are exploiting a niche in Ohio law where the usual consumer protections provided by regulation and the competitive market are missing. These resellers have acted as monopolies, impacting consumers with higher bills and fewer service protections than traditional utility monopolies. This loss of consumer protections includes, among other things, the absence of the usual PUCO prohibition against unreasonable disconnection of utility service, especially during Ohio's cold winters.

Some utilities (AEP and Duke) have recommended that reselling should be prohibited "to the greatest extent possible..."<sup>1</sup> The consumer groups agree. However, we also support the general approach of SB 86 (albeit with some improvements) that

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<sup>1</sup> AEP and Duke Reply Comments at 1, PUCO Case No. 15-1594-AU-COI (February 3, 2017).

would require the PUCO to implement more protective rules for consumers of resold utility service than is the PUCO's current approach.

Submetered Ohio consumers lack, but need, the basic price and service protections that are available to other Ohioans who buy utility services directly from their local public utilities and other providers. Beginning in 2014, the Consumers' Counsel and other consumer groups provided testimony in the Senate and the House describing important protections needed for submetered customers. The needed consumer protections include: prevention of excessive pricing; barring charges (except in rent) to consumers for utility service in a building's common areas; equalizing service protections for submetered customers with protections for utility customers; teeth for enforcement and penalties against submeterers; refunds to consumers for improper charges; and deference to local or other state regulations that provide greater consumer protections.

We applaud SB 86 for addressing some of these important consumer protections. And we will be working with the Bill sponsor and others toward adding additional protections for consumers.

As background, in late 2016 and 2017, the PUCO established some oversight of resellers. But legislation is needed because the PUCO's approach is not an adequate response from government for protection of submetered consumers.

One deficiency is that the PUCO's approach does not give submetered consumers the service protections available to other utility consumers, such as protection from unreasonable disconnection. Another deficiency is that the PUCO's approach lacks adequate consumer protection against excessive prices.

Regarding excessive prices, the PUCO's approach burdens consumers with the complicated challenge of determining whether their reseller/provider is exceeding state price limits. And, if it appears to the consumer that price limits are exceeded, then the individual consumer would have to file a complaint for a remedy at the PUCO.<sup>2</sup> In the complaint, the consumer would likely bear the burden of proof against the reseller who could be lawyered-up for the litigation. Ohioans have too many priorities in their lives to bear a burden of deciphering regulatory formulas for excessive prices and then litigating their own complaint for protection against reseller price gouging. Legislation such as SB 86, which requires the state regulator to regulate, is the far better solution for Ohioans.

Furthermore, the PUCO appears to have the concern that it lacks the jurisdiction under current law to impose service protections for consumers unless the reseller is first deemed a public utility. The PUCO's approach creates a rebuttable presumption that a reseller is acting as a public utility if its price of resold services exceeds the local utility's price for the service. In other words, the PUCO is not requiring all utility resellers to provide to their consumers the important non-price service protections that public utilities are required to provide. Those service protections include the offering of bill payment assistance to low-income Ohioans and the prohibition against unreasonable disconnections. SB 86 attempts to solve this problem for submetered consumers by investing the PUCO with the power and jurisdiction to supervise and regulate resellers (Bill lines 69-70). But the Bill's authority for the PUCO should be expanded to expressly

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<sup>2</sup> Second Entry on Rehearing at ¶31, PUCO Case No. 15-1594-AU-COI (June 21, 2017).

provide submetered consumers with other non-price protections afforded to consumers of public utilities.

The following list is a summary of additional consumer protections that should be amended into the Bill:

1. The Bill should vest the PUCO with the power to give submetered consumers service protections that are equal to the protections enjoyed by other utility consumers (e.g., protections against unreasonable disconnection).
2. SB 86 should protect all Ohioans from submetering, including consumers in areas served by utilities, municipalities and co-ops.
3. SB 86 should include in its new regulatory processes the right of the Ohio Consumers' Counsel to participate in any and all cases on behalf of submetered residential consumers.
4. SB 86 should ban charging consumers for utility service to common areas that are not within the consumer's actual dwelling. Also, for setting regulatory pricing limits, submeterers should be barred from charging their consumers the equivalent of the so-called riders that utilities charge when the submeterers do not offer the programs or bear the costs that are the basis of the utilities' riders.
5. SB 86 should be amended to include adequate "teeth" for enforcement and remedies for consumers: The dispute resolution and enforcement provisions of the Bill do not protect consumers. The Bill should afford submetered consumers the opportunity to collect reasonable attorney's fees and treble damages if the reseller is found to be in violation of the law or PUCO rules. Also, the Bill should ensure that refunds to submetered consumers are required for any improper charges. More generally, the Bill should fix the current hole in Ohio law where utility consumers have been denied many millions of dollars in refunds for improper utility charges. Just since 2009, Ohio electric utility consumers have been denied more than a billion dollars in refunds of PUCO-approved charges that the Ohio Supreme Court found to be improper.
6. To protect submetered consumers, additional terms should be defined in the Bill. For example, "standard service offer," "standard choice offer" and "standard rate or offer" on lines 13, 17, and 21 should be replaced with more clear terminology.

In conclusion, we thank you and the Bill sponsor for your consideration.