



**Before
The Ohio House of Representatives
Public Utilities Committee**

**Testimony on Consumer Protections Related to Master-Metering, Submetering and Reselling
of Public Utility Services
House Bills 422, 545, 568, and 662**

**By
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December 2, 2014

Chairman Stautberg, Vice Chair Roegner, Ranking Member Williams, and members of the House Public Utilities Committee, I am Bruce Weston, the Ohio Consumers' Counsel. Thank you for this opportunity to testify with recommendations for consumer protection. The Office of the Ohio Consumers' Counsel is the state advocate for Ohioans regarding their residential electric, natural gas, telephone, and water services.

Our work on these issues includes my testimony on House Bill 483 in April of this year, when Representative Duffey proposed an amendment to bring balance between resellers of utility services and their consumers who were lacking needed protections. He and others saw that protection is needed for consumers who, in this niche market, lack the benefit of regulation or market forces that the General Assembly instituted for other utility consumers. I stand ready to assist the General Assembly with bringing the balance of consumer protections to the reselling of utility services.

There are four House Bills on the subject of master-metering, submetering, and reselling of public utility services. Those are House Bills 422, 545, 568, and 662.

My testimony will first cover some background on this niche in the market that has resulted in a need for consumer protection. I then will describe principles for consumer protection that should apply to legislation on this issue. Finally, I will discuss the pending bills in the context of the principles.

By way of background, in many of Ohio's apartments, condominiums, manufactured homes and other housing communities, the public utilities do not directly meter and bill individual residents for the utility services that they use. Instead, the utility services are provided through a master meter that registers combined usage for an entire building or property and is billed to the landlord. Ohioans in this situation do not have the protections of PUCO oversight and/or market forces that the General Assembly provided to customers of utilities under Ohio Revised Code Title 49. Providers of resold utility services are operating in this niche market that Ohioans enter for their housing needs.

In many instances, a landlord, park operator, or condominium owners association simply passes along the actual cost of utility service to residents without any markup. Or these entities include the projected utility service costs as part of the residents' rent. But in other situations, these entities resell the public utility service to tenants and residents. The problem for consumers is that this resale of utility service can result in higher, or much higher, bills than what customers would otherwise pay if those customers were billed directly by the utility (or other provider).

This consumer problem was highlighted last fall in newspaper articles. (The articles are attached to this testimony.) It was reported in those news articles that reselling has inflated customers' utility bills through added fees and charges by as much as 40 percent in some cases.

Representative Duffey commented on this reselling situation in his sponsor testimony for H.B. 662 (with Representative McGregor) before this Committee on November 19, 2014. He stated that "In comparison with other states, Ohio appears to be in the minority that do not offer consumer protections similar to the protections that exist with incumbent utilities."

What follows are the major principles that I recommend as guidance for legislation to solve this consumer problem. For purposes of brevity, there are other lesser protections that I will not address here.

First, there should be price protections for the customers of resold utility services. These customers should receive protections similar to the General Assembly's protections for customers of public utility services. The best consumer protection would be a two-pronged price cap approach. One cap would prevent a third-party reseller from charging more than the actual cost that it is paying for the utility service. And the second cap would prevent a reseller from charging more than the price that other residential customers in the same service area are paying for public utility service, such as the utility's standard service offer or a municipality's price for service.

Second, there should not be exceptions or loopholes to the consumer price protections. Legislators should not allow perpetuation of the niche that has resulted in the higher charges to consumers. For example, the Committee should reject proposals to allow exceptions to consumer protections for such

circumstances as a reseller acquiring its commodity using long-term contracts, a reseller's use of fixed-prices to sell the commodities to consumers, a reseller's use of contracts with consumers, and a reseller's mere disclosure of its rates no matter how high.

Third, these price protections and other consumer protections should apply to all utility commodities. These services include electric, gas and water.

Fourth, public utility services related to common areas and commonly used equipment should not be separately charged to consumers. Individual consumers do not control the use of utility services for common areas. Such charges should be limited to actual costs and included among other costs in the rent.

Fifth, legislation that offers protections for consumers of resold public utility services should have "teeth" for enforcement. Consumers should have the right to file civil actions in their local county and municipal courts, such as in small claims court, for damages and penalties. One point is that violations of the law should cost a violator more than what it might consider as a mere cost of doing business.

Sixth, legislation should expressly not preempt other laws or regulations that provide additional consumer protections. State laws, local ordinances, PUCO regulations or other governmental actions that provide consumer protections for resold services should remain.

Seventh, resellers should provide consumers with disclosures about the resale of public utility services. Those disclosures should be made to consumers before they enter agreements that allow for

reselling utility services. But disclosure is **not** a substitute for price caps and other consumer protections.

Next, I will discuss some elements of the bills that are pending to address this reselling issue. I thank the Representatives who have been working to find a solution to these consumer protection issues.

H.B. 422 (Lines 74-81) and H.B. 568 (57-64) would limit charges to the actual cost of the services that the landlord paid for the utility services. Those bills would provide a significant protection for consumers, consistent with the first principle I recommended for consumer protection. H.B. 568 would allow consumers to be subjected to charges for an administrative fee, to be set by the PUCO (Lines 62-71). The charge for such a fee could be problematic, but the bill's use of regulation of the price of the fee is some protection for consumers.

H.B. 662 has the two-pronged price cap protection that I recommended earlier, set forth on lines 152-164. This protection is limited, however, to resold services that are not measured by a submeter. H.B. 662 lacks the consumer protection of a two-pronged price cap for submetered services. The pricing arrangement, where there is no submeter, is commonly known as a Ratio Utility Billing System (RUBS). Under the RUBS method the actual utility bill for the property is distributed to each resident based on a formula that can include number of occupants, square footage, etc.

H.B. 545 and H.B. 662 do not provide consumers with price protections on the resale of public utility services if the master-meter is served by municipal authorities or cooperatives (HB 545 Lines 47-48, HB 662 Lines 51-52). This exception for consumer price protection should be removed, so that Ohioans have price protection wherever they may reside.

H.B. 545 would allow an exception to price protection, if the consumer enters into a contract for a specifically stated price when the reseller uses distributed generation, renewable energy, or alternative energy (Lines 86-99). H.B. 545 could be significantly improved for consumers by eliminating this exception. The exception is not consistent with my second principle (i.e., no loopholes). Similarly, HB 662 (Lines 177-187) could be improved by eliminating an exception for a reseller's long-term contracts with a supplier.

My third recommended principle, as stated, is to provide consumer protections for resold services, regardless of commodity type. HB 545 does not (but should) provide price protections for consumers who purchase resold water. We understand that water is the commodity that is the most resold utility service to consumers.

The fourth principle I recommended is to prevent charging consumers for the costs related to common areas that consumers do not control. However, H.B. 545 (Lines 110-123) and H.B. 662 (Lines 256-269) do permit landlords, park operators, condominium associations and third party resellers to levy additional charges to consumers for common areas and commonly used equipment. In this regard, H.B. 662 (Lines 270-276) does provide consumer protection where customers may not be charged more than the price cap, including any administrative or late fees and charges for common areas.

HB 422 (Lines 98-114) and HB 662 (Lines 298-313) would make the law enforceable by Ohio consumers. That is consistent with my fifth recommended principle to make the consumer protection law enforceable.

The sixth principle I recommended is for the new law to not interfere with any other consumer protection laws, regulations or ordinances. H.B. 662 has some language (Lines 295-297) to accomplish this principle, which should be broadened. For example, the PUCO, under its authority, has approved tariffs that prevent the resale of natural gas services. Those decisions and the PUCO's authority for such decisions should remain undisturbed by a new law.

Finally, as stated above, my seventh recommended principle is for disclosure to consumers. Disclosure is an important consumer protection. Many consumers may not be aware when signing a lease for housing that they will be purchasing resold public utility services. Some of the bills contain significant disclosure requirements. **But I emphasize that disclosure alone will not adequately protect consumers.** Therefore, the key consumer protections include those already described, including the price protections.

In conclusion, I stand ready to work with you and your colleagues to protect consumers on these issues. House Bills 422, 568 and 662 all contain conceptual approaches that, with tweaking, I could support as a solution for consumer protection. Protection is needed for consumers who, in this niche market, lack the benefit of regulation or market forces that the General Assembly instituted for other utility consumers. Thank you again.



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At the Enclave at Albany Park, renter Rachelle Sexton pays 30 percent more for electricity than the regulated price.



By **Dan Gearino**

The Columbus Dispatch • Sunday October 20, 2013 5:50 AM

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Consumer protection for utility customers sometimes stops at the apartment door in Ohio.

Unlike most states, Ohio allows unregulated, third-party "submeter" companies to make big profits by reselling electricity and water to residents of apartments and condominiums.

"They pretty much told me that I don't have a choice and this is how it is," said Rachelle Sexton, who rents at the Enclave at Albany Park in Westerville.

Her August bill was \$176.24, which was 30 percent more than she would have paid for the same usage at regulated prices.

A 10-month investigation by *The Dispatch* found that residents pay markups of 5 percent to 40 percent when their landlords enter into contracts with certain submeter companies. If the customer fails to pay, the companies sometimes resort to collection tactics that would be illegal for regulated utilities, including shutting off heat in winter and even eviction.

The problems stem from an absence of regulation, a blind spot in Ohio law that affects an estimated 18,000 to 20,000 housing units in the Columbus area, and that has the potential to affect any of about 3 million Ohioans who live in apartments or condominiums.

"What it gets down to is the individual consumer," said Ohio Attorney General Mike DeWine in response to the *Dispatch* findings. "We made a public-policy decision years ago in this state that we were going to put in place certain protections for the individual utility consumer."

"It seems to be a problem when you have a small minority of consumers who do not have those protections. That, to me, would raise a lot of questions."

Yet no state agency has the authority to respond. That would require action by the Ohio legislature, DeWine said.

Here's how it works: A submeter company buys the utility meters and distribution system within an apartment complex. It then buys electricity or water, or both, from utilities and sells them to tenants, often at inflated prices and with fees.

In some cases, the submeter companies are owned by principal owners of the apartment complexes. And the submeter companies have names that sound like big, well-known businesses — names such as Nationwide Energy Partners and American Power & Light.

Complaints and questions about these companies are on the rise, with 5,137 inquiries to the Central Ohio Better Business Bureau about submeter companies since October 2012, up 33 percent from the year before.

The most-common complaints are about high bills and unresponsive customer service, said Joan Coughlin, a vice president in the office. "We had consumers state that they moved from a larger residence to a smaller apartment and had their utility costs increase," she said.

And, when a building is served by a submeter company, tenants are not eligible for money-saving programs available to most Ohioans. This includes the "choice" program, which allows customers to select a utility provider from among several. Instead, the submeter company is the only option.



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Submeter customers also are ineligible for PIPP Plus, a federally funded subsidy for low-income residents available to anyone served by a state-regulated utility. The program served 41,160 households in Franklin County last year.

"We're being victimized," said Dustin Flowers, who rents at Northpark on the Far North Side. His most-recent bill was 23 percent more than it would have been at the regulated price.

He said high bills have thrown off his budget and forced him to cut back on spending in other areas. "I've lost sleep over this."

In many other states, this type of utility resale is banned by law or rule. That leaves just a few other states where it is allowed: Alabama, Georgia, Kansas, Pennsylvania, South Carolina, Utah and Washington.

What those states do not have is evidence that companies are using gaps in the system on a large scale. In this way, Ohio is unique, with companies whose business models depend on the lack of rules.

"Allowing markups for submetering is just bad policy," said Janine Migden-Ostrander, the former Ohio Consumers' Counsel who is now a principal at the Regulatory Assistance Project, a national nonprofit group that advises regulators on utility policy. "They aren't providing the customer with any real service that they wouldn't otherwise get from the utility company. There is no value added for the customer."

Made in central Ohio

The *Dispatch* investigation focuses on two central Ohio companies: American Power & Light and Nationwide Energy Partners. They sell services to property owners, read meters and handle billing and collections.

By acting as intermediary between utility and resident, the businesses perform functions of a utility without regulation.

Both companies have close ties to large apartment owners in the region, serving their tenants and others. American Power is part of a group that includes Ardent Property Management, and Nationwide Energy was founded by the chief executive of Lifestyle Communities.

While there are many similarities, the companies have some big differences. Nationwide Energy provides a detailed explanation of its fees, and it has a call center to respond to customers. It also works to resolve complaints and help those unable to pay, customers said.

In contrast, American Power is less responsive to customers and consumer groups, and it is more aggressive in collections. It gets a grade of D from the Better Business Bureau, compared with a B- for Nationwide Energy.

"We are moving toward complete transparency with the residents and the developers," said Mike Palackdharry, Nationwide Energy's president, interviewed at the company's Arena District offices.

He said his company delivers value that justifies the costs, including the convenience of a combined bill for water and power, and helping consumers reduce energy use.

"We are trying to do things the right way and to bring a positive impact to our residents," he said.

When presented with examples of customers paying more than the regulated price, Palackdharry said it was not a fair comparison, because his company's bills include charges for electricity use in common areas, such as hallways. If the tenants were not served by his company, those costs would lead to higher rents, he said.

After not responding to requests for an interview, Bill Finissi, American Power's vice president, provided *The Dispatch* with emailed responses to questions.

"(A)ll tenants enter into agreements with our company with eyes wide open and with full knowledge of the leasing contract provisions," he said.

"Our costs also include a share of common-area electrical usage, and a charge for submetering and administration," he said. "This is our business model which prospective tenants have complete freedom to accept or not. By the way, if we didn't do it this way, these extra costs, which are essential costs of providing apartment housing, would need to be included in the rent."

Consumer advocates say they would prefer that such charges were included in rent to make it easier for tenants to see the true costs when they shop for housing, as opposed to being surprised by high utility bills.

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While submetering is legal throughout Ohio, the large majority of consumer complaints are in the Columbus area. Why not in other places? Consumer advocates can only guess. They point to a lack of well-organized tenants'-rights groups and the fact that Nationwide Energy and American Power happen to be based in the area.

Ohio's unique regulatory structure means that the business model easily could spread across the state. The model also could spread to other states with a similar lack of rules.

"Columbus is absolutely ground zero for these rebilling schemes," said Spencer Wells, a former tenant-outreach coordinator for the Coalition on Homelessness and Housing in Ohio, an advocacy group.

If residents are late with payments, American Power will sometimes evict them, even if the consumer's rent is up to date and even though American Power is not the landlord.

"Once you enter this slippery slope, where a third party has the ability to order evictions, that's shocking," said Emily Crabtree, a lawyer with Columbus Legal Aid who has defended American Power customers.

American Power initiated 51 eviction cases last year, according to Franklin County Municipal Court records. The company has opened 159 of the cases since 2010. Nationwide Energy opened 278 such cases from 2002 to 2011, but none since.

No connection to AEP

Despite familiar-sounding names, Nationwide Energy and American Power are not affiliated with two of Columbus' most-prominent companies, Nationwide Insurance and American Electric Power.

Housing-rights advocates say American Power's name is confusing for tenants who think they are dealing with the local utility, AEP. It's not as much of an issue for Nationwide Energy because Nationwide Insurance doesn't sell electricity.

Many of their practices would be illegal if the provider was a state-regulated utility like FirstEnergy or AEP.

In central Ohio, AEP sells electricity to the submetered complexes. The difference is that it sells in bulk to the property owner or submeter company, instead of to the end user.

Although AEP does not directly serve submeter customers, the company still gets calls from confused residents. AEP would prefer it if those customers were hooked up to AEP meters, but the company understands that submeter companies are following Ohio law, said spokeswoman Terri Flora.

"As people make choices to rent in an apartment, they need to be fully aware of what that choice involves," she said of the possibility of paying higher prices with a submeter company. "It's a different environment than consumers are used to."

According to AEP, there are about 130 submetered apartment or condominium complexes in central Ohio. When asked to estimate how many units are in the complexes, AEP said it is likely 18,000 to 20,000.

The state regulatory system was developed early in the last century to stop utilities from abusing local monopolies over the meters, wires and other delivery systems. Submeter companies did not exist then.

"As a matter of policy, we want all customers to be treated fairly and equally," said Todd Snitchler, chairman of the Public Utilities Commission of Ohio, which regulates utilities and is the type of agency that oversees submetering in many states.

While that might be the aim of Ohio's regulation, his agency lacks jurisdiction over submeter companies. He said that the Ohio General Assembly would need to take action for the PUCO to assert authority.

"That's a policy call for them to make," he said.

Customer bills tell story

When a customer questions the rates of Nationwide Energy or American Power, the companies reply that the charges are the same as those charged by the local utility. But that's not accurate, based on a *Dispatch* analysis of bills from a wide variety of customers.

In each case, the bills are based on the equivalent rates that would be charged by regulated utilities, except with added fees. When you include fees, customers are paying an extra 5 to 40 percent.

At the same time, the bills do not give customers the benefit of bulk-buying discounts and other savings that the submeter companies use to make their wholesale cost much lower than the regulated price.

To illustrate this, *The Dispatch* looked at a hypothetical 100-unit apartment complex in which each tenant used 750 kilowatt-hours of electricity in a month, which experts say is typical. At AEP's central Ohio regulated price, each household would get a bill for \$113.57, a figure confirmed by the utility.

However, if a submeter company bought the same amount of electricity for all 100 units, it would qualify for a commercial rate and it could also shop for a bulk-buying deal on Ohio's open market. Based on the commercial prices available in central Ohio, the complex could obtain the power for the equivalent of \$70.93 per unit.

By reselling power to the tenant at the full AEP rate of \$113.57, the submeter company's rate is 60 percent higher than its own wholesale power cost. And that doesn't include a host of submeter fees, which can easily exceed \$30 a month.

When presented with this, Palackdharry said the example overstates the potential profit because it does not take into account seasonal factors and other technical issues.

His boss, Nationwide Energy founder and CEO Mike DeAscentis Jr., went into great detail about the business model in a 2010 presentation to investors. "How we make money is we buy power at a commercial rate and we resell it at the residential rate and there is arbitrage in the rate structure," he said, according to a transcript obtained by *The Dispatch*.

DeAscentis is also the CEO of Lifestyle Communities, an apartment developer. He is the son of that company's founder and chairman, Mike DeAscentis Sr. Nationwide Energy provides its services to Lifestyle Communities and other large property managers, such as Crawford Hoying, which is owned by Brent Crawford and former Ohio State football player Bob Hoying.

Property owners are willing to sign these contracts because submeter companies often cover costs of setting up meters. Also, the submeter company will bill customers for electricity and water used in common areas and pass the money to the property owner. A regulated utility will not handle such payments.

"Our philosophy here is we are a real-estate company," said Dave Carline, president of Crawford Hoying's apartment division, explaining why his company hired Nationwide Energy. "We really wanted to get out of any energy business. We wanted to allow energy companies to do their own thing and let customers deal directly with them."

Nationwide Energy began in 1999 by installing its metering systems in newly built apartments. It later expanded to also serve older properties, including some in which tenants previously had individual meters and billing from the utility, and had no choice but to switch to the new provider. The company has about 40 employees.

"NEP is the new utility," DeAscentis said in the 2010 presentation. "We do everything that a utility does except generate power. NEP builds electrical-distribution systems for residential communities, and we were very deliberate when we started the business 10 years ago to put it in a place where it was not regulated."

He spoke of plans to expand into Pennsylvania, New York and the Washington, D.C., area. The company is now active in Pennsylvania.

"Our business is very unique," he said. "As we went across the country and did management presentations of people who see 300 or 400 deals a year in the energy space, no one ever saw a business that had a model like ours and what we were doing."

American Power was founded in 2003 by developer Donald R. Kenney Sr. It shares office space with many of his other ventures, including Ardent Property Management, Village Communities and Metro Development. His companies have built more than 35,000 apartments or condominium units, according to the Metro website.

Outside the mainstream

There are reasons other companies have not tried this. It is illegal in most states, and established submeter companies say that such a model has a high risk of lawsuits, intervention by regulators and blowback from angry consumers.

The submeter industry has been around for decades and has customers across North America and Europe. Most of these companies make money by selling equipment and services, and they comply with industry standards that say it is unethical to charge a markup on the cost of electricity or water.

“When you start trying to get creative (with pricing), you create problems for the entire industry, and we don’t want that,” said Matt White, president of Meter Technology Works of Tampa, Fla. He sells meters to submeter companies and is past president of the national submeter trade group, the Utility Management and Conservation Association.

The current president, Arthur Blankenship, owner of Argen Billing, an Atlanta-area submeter company, said he is concerned by reports of “rogue companies” in Ohio.

“Our industry doesn’t have anything to hide, and if there are companies out there doing something dubious, that needs to be addressed,” he said.

Neither Nationwide Energy nor American Power is a member of the trade group. But another local submeter company, Guardian Water & Power of Grandview Heights, is a longtime member.

Founded in 1983, Guardian has customers in 30 states. For its Ohio customers, Guardian typically charges about a \$3-per-month service fee for each apartment served, which the landlord can pay or pass along to the tenant. The company makes no profit from marking up water or power, and it has never evicted anybody.

Harry Apostolos, Guardian’s co-founder and owner, declined to comment specifically about Nationwide Energy or American Power, which he said are competitors.

In general, he said, some companies have chosen business models that go against industry best practices, and they have “created a black eye for the industry in central Ohio.”

[Click here to read more about Guardian Water & Power’s business practices](#)

State officials no help

Consumers often do not know what is happening. When they find out, they are shocked that this is legal in Ohio.

“It was inexplicable,” said Gabriel Santiago of Reynoldsburg, a former Nationwide Energy customer who moved out of his apartment this year because of what he saw as excessive electricity charges.

Guy Fulcher, a former American Power customer who now lives in Galena, was fed up with the response when he tried to file a complaint.

“The attorney general back then was Richard Cordray, and his office just rolled over and said, ‘We don’t regulate that,’” he said. “They said to go to PUCO. PUCO said, ‘We don’t regulate that.’”

Consumer advocates say that these extra charges, and the fact that they are legal in Ohio, should be a source of shame.

They would like to see the Ohio General Assembly or PUCO rein in the most-abusive of the practices. But first, they say, there must be awareness that a problem exists.

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COMMUNITY NEWS

By **Dan Gearino**

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Among the dozens of people who face eviction each morning in a Downtown courtroom, there are some who have made all of their rent payments.

Their mistake was a late utility bill.

While regulated utility companies do not evict customers, the same does not apply to "submeter" companies that handle electricity and water billing for some apartments and condominiums.

A *Dispatch* investigation shows that some submeter companies use a lack of regulation in Ohio to make substantial profits on the resale of utilities to a largely captive audience. They charge a premium of 5 to 40 percent compared with the regulated price of electricity, with little or no disclosure. This practice would be illegal in most states.

For these companies, threatening eviction is a tool to get customers to pay bills, some of which have been weighed down by above-market prices and a host of fees.

"It was a horrible experience and it threw me off track," said Simone Stevens, 26, who moved out of her Northeast Side apartment this year after receiving an eviction notice from a submeter company, American Power & Light.

The electricity bills in her small unit were sometimes more than \$200 per month, and she fell behind. Once the late fees began to accumulate, the monthly total rose to more than \$350.

"I didn't think the bills were going to be that high," she said.

In May, she hastily moved out ahead of an eviction, following two years at the address. Her court file is thick with paperwork from American Power documenting the charges, fees and late payments.

Consumer advocates look at cases like this and see a system that they think is out of control. While they acknowledge that tenants must take responsibility for their bills, the advocates place much of the blame on what they call predatory pricing and aggressive collection tactics.

"To me, it's not any different than if the landlord hired a lawn-care service, and a lawn-care service could evict people," said Emily Crabtree, a lawyer who represents low-income tenants for Columbus Legal Aid.



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Simone Stevens agreed in court to move out of her apartment to avoid eviction.

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Is this legal? Like so many aspects of the submeter industry in Ohio, there are no clear rules.

"I didn't think they could evict you," said a woman, in her 20s, who got an eviction notice this year from American Power. She was able to negotiate a payment plan and stay in her home. She asked that her name not be printed because she is concerned about retaliation by American Power.

"One minute, when I got the bill, it was \$200 and something dollars, and then it was \$500 and then it was \$1,000, and I was like, 'How is that possible?'" she said.

American Power initiated 51 eviction cases last year, according to Franklin County Municipal Court records. The company has filed 159 such cases since 2010, and has several current cases in the system.

Bill Finissi, American Power's vice president, would not agree to an interview. On Friday, he e-mailed the following statement:

"As a proportionate share of the utility costs are part of the tenant's monthly rental obligation, the landlord uses the eviction process in lieu of disconnection to enforce payment as well as all other terms and conditions in the mutually agreed-upon signed rental document. Prior to eviction proceedings, we work hand-in-hand with the individual tenants in order to assist with any difficult financial times. The eviction process is our last resort after attempting to work through the situation with the individual tenant."

Another submeter company, Nationwide Energy Partners, opened 278 of the cases from 2002 to 2011, but none since.

"We never will evict a customer because of late energy bills," said Mike Palackdharry, Nationwide Energy's president.

In Ohio, it is not unusual for a lease to say that the tenant must maintain payments for water and electricity. The contracts often say that failure to pay those bills can be grounds for eviction by the property owner or manager.

What is highly unusual about the American Power cases is that the property owner is not the one taking the action. The owner allows the electricity provider to initiate the process and file for a court order.

Consumers seek help from the Public Utilities Commission of Ohio and the attorney general's office, and they find that the agencies can't do anything because submeter companies are not regulated.

Many customers reach out to the Central Ohio Better Business Bureau, a nonprofit group with no legal authority, which has seen a sharp increase in inquiries about submeter companies in the past few years.

For someone who might be days away from eviction, there isn't much the BBB can do, said Joan Coughlin, a vice president in the office. "We would hear that by the time the complaint could be closed, the renter would be evicted," she said.

Crabtree, the legal-aid lawyer, has said in court filings that submeter companies do not have the legal authority to do evictions. When she made this argument in a July case against American Power, the company stopped trying to evict the customer.

An Ohio court has never ruled on the limits of eviction powers in situations like this.

Crabtree also questions the legality of another American Power practice: charging customers for court and attorney fees, even if the tenant's case is resolved before going to court. The extra charges can add up to several hundred dollars, on top of what the customer already owes.

"To charge someone for court costs when you haven't incurred the costs, that's unjust enrichment, and you can't do that," she said. "It's unconscionable."

The threat of eviction makes consumers less likely to fight utility charges that they see as excessive. This is what happened for a man at Northpark apartments on the Far North Side. He refused to pay an electricity bill while he waited for American Power to give him an explanation for some of the fees.

"They said, 'If you don't pay it, we'll evict you,'" said the man, who asked that his name not be used because he is still in the apartment and is concerned about retaliation.

Soon after, American Power posted an eviction notice on the outside of his door. He paid his bill.

Many of the people who face eviction are in apartment complexes that cater to low-income tenants. They did not budget for above-market electricity costs and sometimes cannot afford to pay.

If they are evicted, though, they lose their security deposit and they have a black mark that will show up on background checks. So, tenants will go to great lengths to avoid eviction, even if it means spending less on groceries, medication and other necessities, Crabtree said.

"You're asking tenants to make a choice they shouldn't have to make," she said.

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CLINTONVILLE MAN (1974CLINTONVILLE)

Franklin County Municipal Court records list plaintiff attorneys in these eviction cases as Charles T. Williams and Amy M. Milam, both of Williams and Strohm, LLC, Two Miranova Place suite 380.

2013-10-21 07:56:14.0

ELEANOR ARMENTROUT (EGA8@WOWWAY.COM)

I hope we see a list of the apartment and condo communities that are using these abominable utility companies. The average person probably does not realize that this practice exists. Thank you Dispatch for bringing this to the attention of the public!

2013-10-21 08:04:41.0

FREDERICK SHEEMAN (FREELOADER)

Just as with the home mortgage fiasco of recent years, find this out: can the plaintiffs (power suppliers, landlords, etc.) PROVE contractual rights to their assertions? Ask for that evidence when you get to court, and if they cannot produce proper written documentation and/or valid contracts - ask for a dismissal. Next, when you move (you likely will and should), ask the next landlord if they participate in such a scam.

2013-10-21 09:51:18.0

CLINTONVILLE MAN (1974CLINTONVILLE)

Court records show that plaintiff attorneys in Nationwide Energy Partners eviction actions included William L. Willis Jr, Dimitrios G. Hatzifotinos and Michael J. Cassone of Willis Law Firm, 141 E. Town St. Suite 200.

2013-10-21 10:28:08.0

SUSAN RILEY (SULEE)

Do some research to determine who the owners of these sub-metering companies are, and you may find the same name(s) as those appearing as owners of the apartment complexes. If there is the last name of "Kelly" anywhere, run like the wind.



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Rules protecting utility customers do not apply to thousands of apartment residents in Ohio, and that's a problem that should be fixed, according to a wide range of elected officials and regulators.

Over the past two days, a *Dispatch* investigation showed how some "submeter" companies use a lack of regulation to make a profit on the resale of electricity to apartment and condominium residents. The companies charge premiums that are 5 to 40 percent higher than regulated prices, often with little disclosure.

Submetering markups are legal in this state — although not in many others — but most state officials contacted were not aware of it.

They said the General Assembly should investigate.

"I didn't know this problem existed," said Sen. Bill Seitz, R-Cincinnati, chairman of the Ohio Senate Public Utilities Committee. "This bears some degree of looking into and some degree of regulation."

Ohio Attorney General Mike DeWine, who also learned of this issue from the newspaper report, said he would welcome action by the legislature to investigate and potentially regulate these practices.

"Really, the regulations that are in place for most consumers are not in place for a certain minority of consumers that fall into this category, and that's really no fault of their own. It's just by chance of where they live," he said.

He thinks the use of evictions by submeter companies also should be part of the discussion. One of the companies, American Power & Light, goes to court to evict some tenants who fall behind on their utility bills, a practice that consumer advocates say is unconscionable.

Rep. Mike Foley, D-Cleveland, was the only legislator interviewed who was familiar with submetering in Ohio. He is former executive director of a tenants-rights group in his city and has sponsored several bills that deal with water submetering.

"It's something that isn't too hard to fix," he said.

What might be difficult, he said, is raising awareness and concern about rental-housing issues among his colleagues. Such issues don't come up often at the Statehouse.



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Ohio Attorney General Mike DeWine said he would welcome action by the legislature to investigate and possibly regulate submetering.

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"It's not something that people have a high knowledge base on," he said.

That isn't the case elsewhere.

In 29 states, officials have addressed submetering, making illegal at least some aspects of the practices employed by submetering companies doing business in Ohio.

For example, George Jepsen, the Connecticut attorney general, helped to arrange refunds for tenants in his state. "Submetering of electricity is restricted by state law because it does not afford consumers the same protections the law provides for utility customers," he said in a statement in June.

Ohio lawmakers seeking a model to emulate could look to Texas, a state whose electricity market is structured much like Ohio's. Texas is different because the state offers additional protections for apartment residents.

In Texas, a submeter company must pass through its cost of electricity to tenants. So, if the company uses its bulk buying power to get a big discount, the customers must receive all of the benefit. To verify that this is happening, the landlord must disclose the wholesale electricity cost to tenants. Submeter companies there make their money from service fees, which the law caps at 10 percent of the electricity bill.

Unlike Ohio, in which no agency regulates submeter companies, the Texas utility commission will investigate complaints. Since 2002, the agency in Texas had received 583 complaints about submetering, according to records provided in response to a request from *The Dispatch*.

That works out to about 50 per year, not a huge number to investigate, said Carol Biedrzycki, executive director of Texas Ratepayers Organization to Save Energy, an advocacy group.

"On this narrow issue, I would say this is a good rule and it's been well-enforced," she said.

Concern about workload was one of the reasons that Ohio regulators at one point decided not to get involved in regulating submeter companies.

In 1992, the PUCO ruled that it would not intervene in a dispute between a landlord and tenant over water submetering in a mobile-home park. That 4-1 ruling has served as a precedent when similar issues have come up.

The dissenting vote was from Ashley Brown, who now works for an energy research group at Harvard's Kennedy School of Government. He is not surprised to learn that some companies have built businesses on the idea of unregulated utility markups.

"It's an abusive monopoly power," he said. "These guys are providing nothing but gouging people."

Neither the PUCO nor the General Assembly has revisited the issue in a substantial way since then. This is despite major changes in the state's electricity market that stem from the 1999 decision to let consumers choose their electricity provider.

The 1999 law is what allows landlords and submeter companies to shop for the best deal, and it has no requirement that residents receive any of the savings. So a system designed to provide options and savings has instead led to monopolies and high prices for a subset of consumers.

This outcome was not the intention of the lawmakers who wrote the 1999 law, said Priscilla Mead, an Upper Arlington Republican and former legislator who co-sponsored the measure.

"There's a void in the law. That's all there is to it," she said.

She thinks the remedy is clear.

"It's up to the legislature to step in and do something about it," she said.

If lawmakers want to look at the issue, the Office of the Ohio Consumers' Counsel wants to be part of the discussion, said spokesman Marty Berkowitz. His agency is the state's consumer advocate on utility issues.

"(W)e are troubled by what we've read in the *Dispatch* articles," he said. "We are assessing options for protecting these customers who lack the usual state oversight for their utility services."

The Ohio Poverty Law Center, an advocate for low-income consumers, also would like to be at the table.

“There should be some reasonable regulations about what kind of charges are reasonable as far as administrative costs and commodity costs,” said Joe Maskovyak, an attorney for the group.

For now, though, the best way to change the system is for renters to contact their legislators and ask for new rules, said Foley, the Cleveland lawmaker.

“Part of this is organizing within your own building,” he said.

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