

**Before
The Ohio Senate
Public Utilities Committee**

Testimony on Senate Bill 157

**Presented by Jeff Jacobson
Strategic Insight Group, Ltd.**

**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.

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 interested party and opponent testimony on S.B. 157, and am testifying today at the request of the bill sponsor. The bill sponsor has publicly advised that the proposed legislation is a starting point for the discussion about consumer protection from the reselling of utility services (known as submetering). The Ohio Consumers' Counsel appreciates that initiative to start the process for positive change.

You have often heard Consumers' Counsel Bruce Weston discuss the virtues (and challenges) of Ohio's competitive market for power plant generation. And, since passage of S.B. 3 in 1999, Ohio electric consumers have been free to select their electric supplier from among marketers licensed by the PUCO, in addition to having the utilities' standard offers as a good competitive option.

As you are aware, not all Ohioans are directly metered customers of electric utilities. For example, apartment dwellers often are not customers of the electric utilities. For some tenants, their landlord pays the electric bill and recovers utility service costs from the rent tenants pay. Other landlords submeter each of their tenants, and charge each tenant for the cost of the electricity that he or she consumes. Traditionally, a landlord would use submetering to allocate to each tenant his or her portion of the landlord's total utility bill based upon the tenant's actual or estimated consumption, with perhaps a small administrative fee for the cost preparing bills and collecting the receipts. Another example would be some condominium residents.

Just four years ago, Central Ohioans learned that some developers or owners of large apartment or condominium complexes were overcharging tenants by inflating the tenants' submetered utility bills. The developer or owner would charge tenants in excess of the developer's actual utility cost, which would also be higher than what tenants would pay if they were direct customers of an electric utility. These developers/owners also used corporate names that sounded like a regulated public utility or other known company. Residents were surprised to learn through the Columbus Dispatch that the electric and water bills that they had been paying were not from PUCO-authorized suppliers and were much higher than the rates available from their local public utility.

I personally was a customer of one of these developers/owners and submetering companies, Nationwide Energy Partners (NEP). I knew my electric bill was high for a small condominium that I had just purchased. It was higher than for my house, which was twice as big, but I had no idea why. Perhaps my usage was higher due to an inefficient furnace; perhaps I just was setting the thermostat wrong or it was broken. I could not compare usage because the NEP bill that I received only had two lines: x dollars for electricity; y dollars for water. There was not a breakdown of fees and rates. There was no indication of how many kwh I had consumed.

It was not until I read the Dispatch article in 2014 that I realized why my bill was so high. And I wasn't even a renter. I was a condominium owner in a building where the developer had given NEP the right to submeter and inflate our utility bills. But like other submetered tenants, I had no say in the choice of the electric supplier and was forced to pay whatever price the submeterer charged. Like many submetered tenants, I did not even realize how I was being disadvantaged.

This type of submetering service is wrong. Its victims have lacked the protection of the competitive marketplace and those consumer protections put in place by the Public Utilities Commission of Ohio under Ohio law. Submetering victims cannot compare prices and choose a different electric supplier, such as the utility's standard offer, if the victim believes that the submeterer's rates are too high or the service or product is inadequate—unlike other Ohioans. To add insult to injury, submetering companies do not have to provide basic consumer protections that other public utilities do, such as a protection against having your electric shut off for nonpayment in winter months, or the protection against unreasonable delay in restoring electric service after the tenant has paid an overdue bill, or protections from excessive fees and charges. Even the modest consumer protections that the PUCO requires before licensing a marketer are not required of a submetering company.

The Consumers' Counsel supports reform of this unfair practice that victimizes Ohioans who do not have access to the competitive market and who are not afforded the consumer protections of the PUCO and law. There are several ways that the Ohio General Assembly could protect consumers. You could close this loophole completely by prohibiting resale of electricity so that these companies could not buy service from the public utility or other supplier and resell it at a markup. You could mandate that the landlord allow tenants to shop for their electric service from the utility or a marketer. You could prevent the submetering

companies from taking advantage of their captive customers by limiting the charges that customers ultimately pay. Charges could be limited to the landlord's actual cost to provide the service. And there could be a cap on the rate so that in no event would the customer pay more than another similarly situated customer of a public utility, consuming the same amount of electricity. Additionally, the General Assembly could (and should) give these consumers the other protections enjoyed by direct customers of public utilities, as I referenced earlier.

This bill has chosen the third path (limiting charges), but as drafted falls short of its promise and does not adequately protect submetered customers. For that reason, we would oppose the bill in its current form. We are heartened, however, by the bill sponsor's goal of protecting Ohioans from submetering abuses and his openness to improving the proposed legislation.

Broadly speaking, we have several suggestions for improving the bill to ensure that it does accomplish the Senator's goal. And we look forward to the legislative process for providing more details about including consumer protections in the bill.

First, the bill needs to have clear protections for consumers from excessive charges for submetered utility services. Because submetered consumers do not have the right to shop around and choose the supplier (from the utility or marketer) that is best for them, they should not be forced to pay more for their utility service than what they would pay under the local public utility's regulated rates. For electric service, that limit could be the local public utility's standard service offer at most (though that rate may still be too much). As drafted, the rates, fees, and costs that consumers could be charged using any of the four pricing methods in the current legislation are problematic. The methods would not protect consumers from substantial mark-ups, by submeterers, on public utility services.

Method 1 (Actual Rates): A submeterer may charge: "actual rates, fees, and costs of consumption as measured by a submeterer for the public utility service." However, there is lacking a needed definition for what constitutes "actual rates, fees, and costs." (Lines 68 – 70). Thus, the language does not adequately limit or cap charges.

Method 2 (Market-based Rates): A submeterer may charge rates which: "shall not exceed the residential rates, fees, or charges collected in the immediate service area from residential customers by public utilities for the same type and quantity of service on an annualized basis." However, there is no definition of "market-based rates, fees, and charges." And there is no explanation of which services are capped. For example, the submeterers might claim that generation is capped but not distribution fees and charges. (Lines 71-75). A clearly defined cap is lacking but needed. The General Assembly should avoid limiting merely some but not all charges to consumers, because submeterers could use the unlimited charges to continue the very problem that the legislation seeks to solve for consumers.

Method 3 (Fixed Rates): A submeterer may charge: a "fixed rate per unit of utility service" that "shall be set upon the commencement of the lease, rental agreement, or association

service agreement for the term of the lease, rental agreement, or association service agreement.” However, there is no cap for what consumers could be charged. There is merely disclosure of a potential excessive rate. Disclosure of an exorbitant, discretionary rate is not an adequate consumer protection. A cap is needed to protect consumers. (Lines 76 –80)

Method 4 (RUBS Rates): A submeterer may charge: “actual consumption as measured by a formula, including a ratio utility billing system” (RUBS). We agree that consumers should be charged only for the electricity (or other utility service such as water) they actually use. However, the bill doesn’t say anything about how much they could be charged or at what rate they would be charged. Again, a cap is needed to protect consumers. (Lines 81 – 83).

My second point is that, in addition to a rate cap, the bill needs to protect consumers from excessive administrative fees. The bill should not permit per-kwh-rates to be disguised as fees. The only fees allowable, if any, should be minimal and those associated with the administrative duties such as initiating or terminating service, the cost of monitoring and maintenance of submetering equipment, and bad check and late fees.

As explained earlier, an inadequate solution for consumers would be mere disclosure of the high costs or fees in advance. Consumers generally don’t have a handle on the amount of electricity they typically use or the fees they would be expected to pay on top of that to be able to form an estimate for their likely electric bill or to be able to gauge what their usage might be for a dwelling they haven’t lived in yet.

Third, the bill should protect consumers from being charged for common area usage. Common areas benefit everyone and the costs to serve the common areas with public utility services should be included in the rent or association dues. Nonetheless, if a separate common area charge is authorized, the bill needs (but lacks) adequate limits on the level of common area charges that can be charged to submetered customers.

Fourth, the bill lacks adequate enforcement that is needed to protect consumers: The bill lacks adequate and reasonable mechanisms for consumers to enforce the protections of the law. For one thing, consumers should have recourse at the PUCO. The bill seems to require consumers harmed by submeterers to hire an attorney and sue the submetering company in civil court.

Fifth, the bill lacks adequate definitions of various words and could result in submeterers being able to avoid the consumer protections of the bill and charge excessive rates and fees for submetered utility services.

Sixth, the bill does not adequately protect consumers of submetered utility services from termination of service. The bill states that “[a] proprietor or proprietor’s agent may terminate public utility service for nonpayment.” Such termination,...., shall be done in accordance with all rules for terminating public utility service for nonpayment established by the [PUCO] as such rules are applied to electric light companies or natural gas companies.” (Lines 165 –

171). But it is not clear how consumers will obtain a remedy from civil courts to apply the PUCO's rules.

Per the above comments on enforcement, it should be clarified that the PUCO has jurisdiction over submeterers and submetering services, and can enforce all laws and PUCO rules to protect consumers, including protections against improper disconnection of utility services. Those protections should include the special disconnection and reconnection procedures that are in place to protect Ohioans during Ohio's cold winter season. The above-referenced provision (applying the PUCO's rules for electric service and natural gas service) is also not clear about protecting water service and sewer service consumers from unreasonable disconnection. Water customers should have rate protections and other protections from reselling. Further, it is not clear if the submeterer may terminate a consumer's service for nonpayment of administrative fees and total utility charges, just total utility charges, or generation/natural gas only charges (i.e., commodity charges).

Seventh, in addition to lacking adequate rate protections, the bill needs to specifically provide submetered consumers the various protections available to consumers of public utility services under law and PUCO rules. Submetered consumers should have the protections that have been deemed appropriate for consumers of public utilities under law and PUCO rules, such as minimum service quality standards and understandability of monthly bills. The bill also lacks an adequate description of the responsibilities of a submeterer or submeterer's agent in connection with providing utility and billing services to consumers.

Eighth, the bill appears to only cover electric service (and possibly natural gas service as noted above). But the bill needs to include regulations regarding submetered water service to prevent submetering companies from inflating the cost of water as they do now.

As a final matter, I note that yesterday the PUCO issued its decision in its investigation of the reselling (submetering) of utility service to Ohioans. We are studying and assessing the details of the PUCO's plan for consumer protection. While we appreciate that the PUCO investigated this consumer protection issue, the PUCO's case does not replace the need for legislation to protect Ohio consumers.

Chairman Beagle, we are grateful that this Committee and the sponsor are looking to protect consumers from abusive practices by resellers of utility services. We look forward to working with the sponsor and members to make needed changes to the bill to accomplish its goal of protecting Ohio consumers from submetering abuses. I am happy to answer any questions that members of the Committee may have.