

IN THE SUPREME COURT OF OHIO

FILED-DOCKETING DIV

On Appeal From the Public Utilities Commission of Ohio

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PUCO

07-0860

Elyria Foundry Company,)

Appellant,)

v.)

The Public Utilities Commission of Ohio,)

Appellee.)

Case No. _____

Appeal from the Public Utilities Commission of Ohio

Public Utilities Commission of Ohio: Case No 05-796-EL-CSS

NOTICE OF APPEAL OF APPELLANT, ELYRIA FOUNDRY COMPANY

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Counsel for Appellee, Public Utilities Commission of Ohio

FILED MAY 10 2007 MARCIA J. MENGEL, CLERK SUPREME COURT OF OHIO

NOTICE OF THE APPEAL OF APPELLANT, ELYRIA FOUNDRY COMPANY

Appellant, Elyria Foundry Company, pursuant to R.C. 4903.11, R.C. 4903.13, and S. Ct. Prac. R. II (3)(B) hereby gives notices to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio (“Appellee” or “Commission”) of this appeal to the Supreme Court of Ohio. The appeal is from Appellee’s Opinion and Order entered into its Journal on January 17, 2007, the Entry on Rehearing entered in its Journal on March 14, 2007, and its Second Entry on Rehearing entered into its Journal on May 2, 2007 in the above captioned case 05-796-EL-CSS before the Commission. The Case is entitled *In the Matter of the Complaint of Elyria Foundry Company v. Ohio Edison Company*.

Appellant, Elyria Foundry Company, was the complainant in this proceeding. On February 16, 2007, Appellant timely filed, pursuant to R.C. 4903.10, an Application for Rehearing from the Opinion and Order, dated January 17, 2007. The Appellant’s Application for Rehearing was denied with respect to the issues being raised in this appeal by an Entry on Rehearing entered in Appellee’s Journal on March 14, 2007. Appellant, on April 4, 2007, filed, pursuant to R.C. 4903.10, a Second Application for Rehearing from the Entry on Rehearing, dated March 14, 2007. The Appellant’s Second Application for Rehearing was denied with respect to the issue being raised in this appeal by the Second Entry on Rehearing entered in Appellee’s Journal on May 2, 2007.

Appellant files this Notice of Appeal, complaining and alleging that Appellee’s January 17, 2007 Opinion and Order, the March 14, 2007 Entry on Rehearing, and the May 2, 2007 Second Entry on Rehearing, result in a final order that is unlawful and unreasonable, and the Appellee erred as a matter of law, in the following respects as

raised by the Application for Rehearing and the Second Application for Rehearing:

1. The Commission erred by not finding that ORC Sec. 4909.18 required Ohio Edison to apply for and receive approval of its "2001 Policy" used to establish or modify a regulation or practice affecting Rider 75 rates. [O&O at 5] [EF App. Reh. No. 1]
2. The Commission erred by not finding that ORC Sec. 4905.30 required Ohio Edison to file as a schedule its "2001 Policy" as it contains the rules and regulations affecting Rider 75 rates. [O&O at 6] [EF App. Reh. No. 2]
3. The Commission erred by not finding that Ohio Edison's use of a single strike price resulted in undue or unreasonable prejudice or disadvantage under ORC Sec. 4905.35 because Elyria Foundry received the same service priority at higher rates for the same risks of interruptions as paid for by lower priced interruptible customers. [O&O at 7] [EF App. Reh. No. 3]
4. The Commission erred by finding that different strike prices applied to customers with different rate structures could be viewed as prejudicial. [O&O at 7] [EF App. Reh. No. 4]
5. The Commission erred by finding that a single strike price, based on Ohio Edison's incremental costs and resources, is reasonable in light of the wide variety of billing determinants and circumstances. [O&O at 7] [EF App. Reh. No. 5]
6. The Commission erred by finding that insufficient evidence was presented to convince it that Ohio Edison's approach in this circumstance is unlawful or discriminatory. [O&O at 7] [EF App. Reh. No. 6]
7. The Commission erred by rejecting Elyria Foundry's definition of incremental expenses upon which to notice economic interruptions under Rider 75 at page 6. [O&O at 8-10] [EF App. Reh. No. 7]
8. The Commission erred by rejecting Elyria Foundry's analysis to establish that Ohio Edison unreasonably and unlawfully noticed interruptions for a minimum of 623 hours during 2005, and caused a minimum of an additional \$94,555 in replacement power costs. [O&O at 8-10] [EF App. Reh. No. 8]
9. The Commission erred by not finding that Ohio Edison's incremental expense used as a basis for calling economic interruptions under Rider 75 at page 6 should have been determined before FES made competitive market sales. [O&O at 9-10] [EF App. Reh. No. 9]
10. The Commission erred by rejecting Elyria Foundry's assignment of incremental costs based upon FES' competitive market load being incremental to [coming after] Ohio Edison's retail interruptible load. [O&O at 9-10] [EF App. Reh. No. 10]

11. The Commission erred by finding the purchase power adjustment formula at Exhibit A of the PSA were the true measure of Ohio Edison's incremental costs. [O&O at 9-10] [EF App. Reh. No. 11]
12. The Commission erred when finding under its Interruptible Guidelines that Ohio Edison may include all of the obligations of FES, including nearly 3,000 MW of competitive retail sales within MISO, when determining its incremental cost of serving interruptible retail customers, because the Guidelines intended to provide low costs energy options to help large consumers compete in the global market. [O&O at 9-10] [EF App. Reh. No. 12]
13. The Commission erred in relying on its Interruptible Guidelines (used to approve Rider 75) for the conclusion that the anticipated incremental expense of Ohio Edison to supply incremental service should include competitive market loads [non-PSA] expenses of FES. [O&O at 9-10] [EF App. Reh. No. 14]
14. The Commission erred by not finding that FES' incremental costs for competitive services were streamed through to retail interruptible customers because Ohio Edison failed to allocate expenses [costs] of purchased power as required by the PSA adjustment formula of Exhibit A before it determined whether those costs (after being allocated to Ohio Edison) exceeded the incremental revenues of Elyria Foundry upon which to notice economic interruptions under Rider 75 at page 6. [O&O at 8-10] [EF App. Reh. No. 16]
15. The Commission erred by not finding that FES' incremental costs for competitive services were streamed through to retail interruptible customers, because the full cost of energy purchased by FES was used as the proxy for anticipated incremental expenses, without Ohio Edison using the allocation procedure under the purchase power adjustment formula of Exhibit A of the PSA, before determining whether those costs exceeded the incremental revenues of Elyria Foundry prior to noticing economic interruptions under Rider 75 at page 6. [O&O at 8-10] [EF App. Reh. No. 17]
16. The Commission erred in finding that Ohio Edison noticed economic interruptions after allocating its incremental costs during 2005 under the purchase power adjustment formula of Exhibit A of the PSA. [O&O at 9-10] [EF App. Reh. No. 18]
17. The Commission erred in its Opinion and Order by failing to make the required allocation of those costs before finding that Ohio Edison reasonably and lawfully noticed economic interruptions of Elyria Foundry during 2005. [O&O at 8-10] [EF App. Reh. No. 19]
18. The Commission erred by approving Ohio Edison's definition of the term "anticipated incremental expense" by using at its proxy the unallocated "cost of energy obtained or generated by the Company on a best efforts basis at the lowest cost after all other prior obligations are met" under Rider 75 at page 7. [O&O at 9] [EF App. For Reh. 20]

19. The Commission erred in finding that Elyria Foundry had not provided sufficient evidence that Ohio Edison's charges, under its Rider 75, violated any applicable statute, regulation, or guideline, or that Ohio Edison failed to comply with any filing or notice requirement concerning its implementation of Rider 75. [O&O at 11] [EF App. Reh. No. 22]

20. The Commission erred by denying rehearing without complying with R.C. 4903.09 to provide the factual basis and reasoning used for agreeing with the Ohio Edison position. [Entry on Reh, par. 22 at pg. 7] [EF Second App. Reh. No. 1]

Wherefore, Appellant respectfully submits that Appellee's January 17, 2007 Opinion and Order, the March 14, 2007 Entry on Rehearing, and the May 2, 2007 Second Entry on Rehearing are unreasonable or unlawful and should be reversed. This case should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully submitted



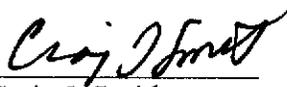
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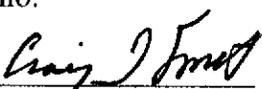
Certificate of Filing

I certify that a Notice of Appeal has been filed with the docketing division of the Public Utilities Commission in accordance with sections 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code.


Craig I. Smith
Counsel for Appellant,
Elyria Foundry Company

Certificate of Service

I hereby certify that on the 16th day of May 2007 a copy of the foregoing Notice of Appeal of Elyria Foundry was served upon the Appellee, the Public Utilities Commission of Ohio, and Ohio Edison Company, by ordinary U.S. Mail, postage pre-paid, to the mailing addresses shown, and, as required by section 4903.13, Ohio Revised Code, was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus, Ohio.


Craig I. Smith
Counsel for Appellant,
Elyria Foundry Company

Commission Representatives and Service List

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The Public Utilities Commission of Ohio

**IN THE SUPREME COURT OF OHIO
CASE INFORMATION STATEMENT**

Case Name:	Case No. :
Elyria Foundry Company v. Pub. Util. Comm.	PUCO Case No. 05-796-EL-CSS
I. Has this case previously been decided or remanded by this Court? Yes [] No [X]	
If so, please provide the Case Name: _____ Case No.: _____ Any Citation: _____	
II. Will the determination of this case involve the interpretation or application of any particular case decided by the Supreme Court of Ohio or the Supreme Court of the United States? Yes [X] No []	
If so, please provide the Case Name and Citation: SEE ATTACHED	
Will the determination of this case involve the interpretation or application of any particular Constitutional provision, statute, or rule of court? Yes [X] No []	
If so, please provide the appropriate citation to the constitutional provision, statute, or court rule, as follows:	
U.S. Constitution: Article____, Section____	Ohio Revised Code: R.C. SEE ATTACHED
Ohio Constitution: Article____, Section____	Court Rule: _____
United States Code: Title____, Section____	Ohio Adm. Code: O.A.C. ____-____-____
III. Indicate up to three primary areas or topics of law involved in this proceeding (e.g. jury instructions, UM/UIM, search and seizure, etc.):	
1) Use of a policy affecting rates that was not approved as required by R.C. 4909.18, and not publicly filed as required by R.C. 4905.30.	
2) Use of a policy that violated R.C. 4905.35 by resulting in undue or unreasonable prejudice or disadvantage to Elyria Foundry Company.	
3) Interpretation and application of an interruptible rate schedule used for rendering service.	
IV. Are you aware of any case now pending or about to be brought before this Court that involves an issue substantially the same as, similar to, or related to an issue in this case? Yes [] No [X]	
If so, please identify the Case Name: Case No.: Court where Currently Pending: Issue:	

Contact information for appellant or counsel:

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Address		Signature of appellant or counsel	
Cleveland	Ohio	44120	Counsel for: Elyria Foundry Company
City	State	Zip Code	

Attachment to Case Information Statement for Elyria Foundry Company

Cases:

Tongren v. Pub. Util. Comm. (1999), 85 Ohio St. 3d 87, 706 N.E. 2d 1255

Ohio Consumers' Counsel v. Pub. Util. Comm., 109 Ohio St. 3d 328, 2006-Ohio-2010

Statutes:

R.C. 4903.09

R.C. 4905.26

R.C. 4905.30

R.C. 4905.35

R.C. 4909.18