

IN THE SUPREME COURT OF OHIO  
On Appeal From the Public Utilities Commission of Ohio

ALLIED ERECTING & DISMANTLING  
CO., INC.,

Appellant,

v.

OHIO EDISON COMPANY,

Appellee.

) Case No. 14-0008  
)  
)  
) Appeal from Public Utilities Commission  
) of Ohio Case No. 07-905-EL-CSS  
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NOTICE OF APPEAL OF  
ALLIED ERECTING & DISMANTLING CO., INC.

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**NOTICE OF APPEAL OF  
ALLIED ERECTING & DISMANTLING CO., INC.**

Appellant, Allied Erecting and Dismantling Co., Inc. (“Appellant” or “Allied”), pursuant to R.C. 4903.11 and 4903.13, and S. Ct. Prac. R. II (3)(B), hereby gives notice to the Supreme Court of Ohio, the Public Utilities Commission of Ohio (“PUCO”), and Ohio Edison Company (“Appellee” or “OE”) of this appeal to the Supreme Court of Ohio from the PUCO’s Opinion and Order entered in its Journal on September 11, 2013 (attached hereto as “Exhibit A”) and Entry on Rehearing entered in its Journal on November 6, 2013 (attached hereto as “Exhibit B”) in the above-captioned case.

On October 9, 2013, Appellant timely filed an Application for Rehearing from the September 11, 2013 Opinion and Order pursuant to R.C. 4903.10. Appellant’s Application for Rehearing was denied with respect to the issues raised in this appeal by an Entry on Rehearing entered in Appellee’s Journal on November 6, 2013.

Appellant complains and alleges that the PUCO’s September 11, 2013 Opinion and Order, the November 6, 2013 Entry on Rehearing are unlawful or unreasonable, and that the PUCO erred as a matter of law, in the following respects that were raised in Appellant’s Application for Rehearing:

1. The PUCO erred in finding that Allied failed to sustain its burden of proof that Ohio Edison improperly calculated Allied’s backbilling, especially in light of the Commission’s express finding that Ohio Edison violated Rule 4901:1-10-05(I), O.A.C. by not obtaining actual readings of its in-service customer meters at least once each year.

2. The PUCO erred in failing to enforce Article VII, paragraph (F) of Ohio Edison's tariff, requiring that the customer be billed the lesser of the billing amounts calculated using the estimated load or the actual load reading, especially in light of the Commission's express finding that Ohio Edison violated Rule 4901:1-10-05(I), O.A.C. by not obtaining actual readings of its in-service customer meters at least once each year.

3. The PUCO erred in finding that Ohio Edison did not violate Article VII, paragraph (F) of Ohio Edison's tariff by rendering estimated billings when obtaining actual readings was not impractical, especially in light of the Commission's express finding that Ohio Edison violated Rule 4901:1-10-05(I), O.A.C. by not obtaining actual readings of its in-service customer meters at least once each year.

4. The PUCO erred in finding that Allied failed to support its argument that the June 2006 meter read of 38 kW was accurate, especially in light of the Commission's express finding that Ohio Edison violated Rule 4901:1-10-05(I), O.A.C. by not obtaining actual readings of its in-service customer meters at least once each year.

5. The PUCO erred in finding that Allied failed to support its argument that Ohio Edison's estimated backbilling methodology is improper and flawed and that its billing estimates are unreliable.

6. The PUCO erred in finding that Allied has failed to sustain its burden of proof that Ohio Edison improperly calculated Allied's backbilling, especially in light of evidence that Ohio Edison arbitrarily chose historical data to use in its analysis and calculation of Allied's estimated electric consumption.

7. The PUCO erred in finding that Allied has failed to sustain its burden of proof that Ohio Edison improperly calculated Allied's backbilling, especially in light of evidence that

Ohio Edison arbitrarily discarded calculations yielding lower estimated reads in its analysis of Allied's estimated electric consumption.

8. The PUCO erred in finding that Allied failed to present an alternative methodology to estimate Allied's bills, as the Commission could have required Ohio Edison to recalculate Allied's estimated bill using the actual load read of 38 kW.

9. The PUCO erred in discrediting the testimony of Allied expert witness Douglas Hull regarding the mechanical workings of the precision meter based on his lack of billing, especially in light of the Commission's express finding that Ohio Edison violated Rule 4901:1-10-05(I), O.A.C. by not obtaining actual readings of its in-service customer meters at least once each year.

10. The PUCO erred by not requiring Ohio Edison to adjust Allied's Rebills to reflect just, reasonable, and accurate charges and provide a complete explanation of all calculations, especially in light of the Commission's express finding that Ohio Edison violated Rule 4901:1-10-05(I), O.A.C. by not obtaining actual readings of its in-service customer meters at least once each year.

**WHEREFORE**, Appellant respectfully submits that the Public Utility Commission's Opinion and Order entered in its Journal on September 11, 2013 and Entry on Rehearing entered in its Journal on November 6, 2013 are unreasonable or unlawful and should be reversed. This case should be remanded to the Public Utility Commission of Ohio with instructions to correct the errors complained of herein.

Respectfully submitted,



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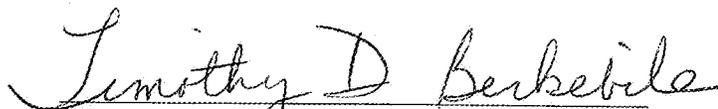
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Allied Erecting & Dismantling Co., Inc.

Dated: January 2, 2014

**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.



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**EXHIBIT A**

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Allied Erecting & Dismantling Co., Inc.	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 07-905-EL-CSS
	)	
Ohio Edison Company,	)	
	)	
Respondent.	)	

OPINION AND ORDER

The Commission, considering the complaint filed by Allied Electric & Dismantling Co., Inc. and the evidence admitted at the hearing, hereby issues its Opinion and Order.

APPEARANCES:

Eckert Seamans Cherin & Mellott, LLC, by F. Timothy Grieco and Timothy D. Berkebile, U.S. Steel Tower, 600 Grant Street, 44th Floor, Pittsburgh, Pennsylvania 15219, on behalf of complainant Allied Electric & Dismantling Co., Inc.

Whitt Sturtevant LLP, by Mark A. Whitt, Key Bank Building, 88 East Broad Street, Columbus, Ohio 43215, and Mark A. Hayden, 76 South Main Street, Akron, Ohio 44308, on behalf of the Ohio Edison Company.

OPINION:

I. HISTORY OF THE PROCEEDING

On August 10, 2007, Allied Erecting & Dismantling Co., Inc. (Allied) filed a complaint against the Ohio Edison Company (OE). In its complaint, Allied questions the validity of charges in a backbilling by OE for electric usage during a three-year period from January 2004 through January 2007. Allied seeks an explanation as to why the billing error occurred, assurance as to the accuracy of the backbilling, and protection from being assessed interest and late fees on the backbilling, as well as an appropriate payment plan for those charges if such charges are ultimately owed to OE.

OE filed its answer to the complaint on September 4, 2007, denying the material allegations of the complaint.

A settlement conference was held on October 24, 2007; however, the parties were unable to resolve the matter. The evidentiary hearing commenced on April 16, 2008. Both parties filed post-hearing briefs on May 16, 2008, and reply briefs on May 29, 2008.

## II. BACKGROUND

Allied is an industrial contractor engaged in industrial dismantling and rigging work. Allied maintains a 250-acre industrial site, located on Poland Avenue in Youngstown, Ohio. Allied had six meters located on both the north and south sides of Poland Avenue. (OE Ex. 1 at 4.)

On December 22, 2003, a vehicle struck a pole, destroying a meter identified as the 667 meter, which served Allied's facility. OE received a customer call notification indicating that a car accident at 2100 Poland Avenue destroyed a meter. Work notifications were created for an OE field employee to replace the damaged meter with a new meter. One notification indicated the damaged meter was at 2100 Poland Avenue, while the other notification indicated the damaged meter was at 2100 ½ Poland Avenue<sup>1</sup>. However, both work notifications mistakenly listed the damaged meter as a meter identified as 935, which was not damaged and continued to operate at the Allied Poland Avenue facility.

The work notifications were sent to an OE customer accounting employee responsible for OE's electronic billing system. The employee noticed a discrepancy in addresses, and requested verification that a new meter was placed in service. According to OE, while a field staff representative confirmed that a new meter was in service, the employee failed to verify that the 935 meter was also still in service at the Poland Avenue facility. Consequently, the employee removed the 935 meter from OE's billing system, sometime in January 2004.

As a result of the error, the actual damaged meter (the 667 meter) and its associated account number were removed from OE's system and final billed. The new meter that replaced the damaged 667 meter was identified as the 436 meter. The new 436 meter was erroneously placed in the 935 meter's account, and was billed under

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<sup>1</sup> Allied maintains that there is no 2100 ½ Poland Avenue address, to which an OE witness stated that it was possible the 2100 ½ designation was an internal billing designation (April 17, 2008, Transcript at p. 80-82).

that account beginning in January 2004. Because there was no record of the 935 meter in OE's billing system, Allied was not billed for its electric usage for that meter beginning in February 2004.

In June 2006, an OE meter reader noticed that the 935 meter was located near his meter reading route. The reader notified his supervisor, and discovered that the meter was not in OE's billing system and was not being read. After the meter was discovered, OE obtained an actual load reading of the 935 meter of 38 kW in June 2006. Other OE employees measured actual load readings of 79 kW in July 2006, and 84 kW in August 2006. OE estimated readings for the 935 meter from September to December in 2006, and the meter was reinstated in the billing system by January 2007. After the 935 meter was reinstated in the billing system, an actual read of 92 kW was taken during the January 2007 billing cycle. In January 2007, Allied received a bill which included prior unbilled usage for the period from February 2004 through December 2006. The final bill amount was \$94,676.58.

The parties agree that some discussion about the 935 meter took place before Allied received the January 2007 bill. In July 2006, after OE discovered that the 935 meter had not been billed, Lisa Nentwick, senior account manager for OE, visited Allied's facility to verify the location of all the meters at that site. During the visit, Ms. Nentwick spoke with John Ramun, Allied's president, and informed him that one of the meters serving Allied had not been billed. In addition, Ms. Nentwick and Mr. Ramun briefly discussed the backbilling in December 2006. However, the parties dispute the details of the communications between Ms. Nentwick and Mr. Ramun.

In January 2007, OE backbilled Allied for its estimated and actual usage from February 2004 to January 2007. Actual reads were used to calculate the Allied bill for June, July, and August 2006, and Ms. Nentwick estimated the load and kilowatt hour consumption for the remaining months. OE asserts that the estimated bills were based on Allied's historical load consumption from billing records archived in OE's electronic billing database. OE explains that the estimate for the first twelve months was based on the lowest load and kilowatt hour reading for the corresponding month from Allied's two historical usage years. For the additional months, an average of the historical usage was used.

Allied explains that it received two letters from OE in January 2007. The first stated Allied was final billed in error and the second provided that the meter was removed in error. Allied asserts these were merely form letters, and it received no explanation or basis for the calculation. In February 2007, Allied wrote a letter to OE requesting an explanation of its bill. In May 2007, OE contacted Allied stating that

electric service would be disconnected due to non-payment of its bill. Subsequently, Allied wrote OE another letter requesting an explanation of the rebills and informing OE that Allied had initiated an informal complaint with the Commission.

### III. APPLICABLE LAW

OE is a public utility by virtue of Section 4905.02, Revised Code, and an electric light company as defined by Section 4905.03(A)(3), Revised Code. OE is, therefore, subject to the jurisdiction of the Commission, pursuant to Sections 4905.04 and 4905.05, Revised Code.

Section 4905.22, Revised Code, requires, in part, that a public utility furnish necessary and adequate service and facilities. Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any regulation, measurement, or practice affecting or relating to any service furnished is unjust or unreasonable.

In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189. Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

Rule 4901:1-10-05(I), O.A.C., provides that an electric utility shall obtain actual readings of all its in-service customer meters at least once each calendar year. Every billing period, an electric utility shall make reasonable attempts to obtain accurate actual readings of the energy and demand, if applicable, delivered for the billing period, except where the customer and the electric utility have agreed to other arrangements. Further, the rule provides that meter readings taken by electronic means shall be considered actual readings.

### IV. DISCUSSION

#### A. Rule 4901:1-10-05(I), O.A.C.

Allied asserts that OE's failure to obtain actual meter readings from the 935 meter for 29 months is a violation of Rule 4901:1-10-05(I), O.A.C. In support of its assertion, Allied explains that OE failed to properly investigate the number of accounts on Allied's property or to reconcile the corresponding meters in OE's billing system with the meters on site until July 2006. Allied opines that OE's failure to properly investigate the number of accounts supports the conclusion that OE acted

unreasonably by failing to obtain actual readings, thus violating Rule 4901:1-10-05(I), O.A.C. Further, Allied explains the damaged 667 meter that was replaced was less than 100 yards from the 935 meter that was still in service. The 935 meter, Allied states, was located on a pole right off the berm of the road, and fully accessible (Allied Br. at 9-10.)

OE responds that it did not violate Rule 4901:1-10-05(I), O.A.C., because the 935 meter was not "in-service" in OE's billing system. According to OE, this is not a situation where OE deliberately chose not to read the meter because it was inconvenient or expensive, rather, OE did not read the meter because it was removed from service after an accident destroyed another meter used by Allied. When the issue was discovered, OE explains that it reinstated the meter in its billing service and began to regularly read the meter. OE points out that it regularly read the 935 meter prior to its removal from service. Thus, OE asserts, it complied with Rule 4901:1-10-05(I), O.A.C., at all times that the 935 meter was actually "in-service," (OE Br. at 8; OE Reply at 6; citing OE Exs. 1.8 and 1.11, Tr. II at 215-216, and Allied Br. at 11.)

The Commission finds OE's argument to be unpersuasive. The plain meaning of the term "in-service" refers to actively supplying electricity to the customer. Thus, "in-service" refers to any meter through which electricity is delivered to a customer, and is not broad enough to encompass an electric distribution utility's billing account. It is disingenuous for OE to state that there was no violation of the rule because Allied's meter was not in service, and then in turn backbill Allied for over \$94,000 for its electric usage. If Allied's meter was truly not in service this dispute would not be before the Commission. OE, as the electric distribution utility, bears responsibility for ensuring that any meter that is delivering electricity to a customer is included in OE's billing system. Therefore, the Commission finds the OE violated Rule 4901:1-10-05(I), O.A.C., by not obtaining actual readings of its in-service customer meters at least once each year.

Accordingly, the Commission orders OE to conduct a review of its internal practices, procedures, and policies relating to its billing operations for accounts with multiple meters. Specifically, OE should review its tariff provisions addressing its account and billing system for accuracy. We direct OE to fully review its tariff provisions and institute written guidelines and policies for employees to follow regarding any changes to accounts with multiple meters, specifically its obligation to ensure actual meter readings are occurring for accounts with multiple meters. OE shall file a report of its findings with the Commission within 90 days from the date of this Opinion and Order.

## B. Backbilling

OE contends that, even if it had violated Rule 4901:1-10-05(I), O.A.C., Allied fails to recognize that the remedy is not free electric service or a discounted electric bill. OE argues that Rule 4901:1-10-23(A), O.A.C., does not allow discounted electric service but instead dictates that OE allow Allied to repay the bill in monthly increments while forcing OE to refrain from collecting late fees or interest. OE notes that Rule 4901:1-10-23(A), O.A.C., specifically provides that the bill shall be calculated "based on the appropriate rates" approved by the Commission. OE asserts that it has complied with the rule in all respects pointing out that it has twice offered to place Allied on a payment plan and has not charged Allied any late fees or interest. (OE Br. at 16; OE Reply at 6-7, citing Tr. I at 141-142, OE Ex. 1 at 27, ¶78.)

Allied does not dispute that a nonresidential entity may be backbilled as a result of an electric utility under charging for a problem under the electric utility's control. However, Allied disagrees with the methodology upon which OE estimated Allied's bills, and asserts the backbilling is fundamentally flawed and unreliable. In support of its assertion, Allied claims the methodology OE used to estimate the bills is not authorized or supported by law or anywhere in OE's tariffs. Allied opines that OE's backbilling calculations are inherently unreliable and flawed, and are, therefore, unjust, unreasonable, and in excess of the amount allowable by law.

### 1. Allied's Position

Allied contends that OE unjustifiably disregarded the first actual reading obtained from the 935 meter in 29 months when calculating the estimated electrical consumption for the backbilling. Pointing to Mr. Hull's testimony, Allied reasons that, since the demand pointer for the 935 meter only gets reset when it is read, and, as the 935 meter was not read for 29 months, the demand reading of 38 kW taken on June 19, 2006, indicates that the load for each of the previous 28 months was equal to or less than 38 kW. Mr. Hull explained that the 935 meter is an electromechanical meter with a mechanical gear driven register. The kW load portion of the register operates a pusher arm that pushes the load or demand pointer up the scale. The pusher arm has a clock and reset mechanism that resets the pusher arm each half-hour. According to Mr. Hull, the demand pointer only gets reset when the meter is read. (Allied Ex. A at 3-4; Tr. I at 207-208.)

Allied argues that, by ignoring the June 19, 2006, actual read, OE violated Article VII, paragraph (F) of its tariff. The tariff provision provides, in relevant part, that, when it is necessary for OE to estimate the bill for a customer with a load meter,

if the actual load reading that is obtained is less than the estimated load used in billing, the account will be recalculated using the actual load reading, and the customer will be billed the lesser of either the estimated bill or the recalculated bill. (Allied Br. 15-16.)

While Allied acknowledges OE's argument the actual read is inaccurate due to meter reader error, Allied believes that OE presents no evidence to substantiate this claim. Allied notes that OE believes the 935 meter functioned properly throughout the entire unbilled period. Further, Allied witness Hulls testified that it is unlikely that Mr. Boulton would have transposed the digits in the demand reading, as OE theorizes, as Mr. Boulton was very meticulous and skillful in his work. (Allied Br. at 17-18, citing Tr. I at 226, 259; Tr. II at 245; OE Ex. C.)

Allied further contends that Ms. Nentwick's actions in calculating Allied's estimated electrical usage rendered the estimates inherently defective and inconsistent, resulting in unreliable billing estimates. Allied claims that Ms. Nentwick's "patchwork calculations" lack transparency and fail to incorporate a significant period of historical usage that should have been included in the analysis. Allied states that while Ms. Nentwick's calculation yielded lower estimated reads for the first twelve month period, she arbitrarily used a different calculation for the remainder of the rebilling period. (Allied Br. at 18-19.)

According to Allied, Ms. Nentwick admitted that she initially prepared the estimated readings for the 935 meter without the benefit of the three actual reads obtained by OE in June, July, and August 2006, and she also did not utilize the actual reads for the eight months prior to the removal of the 935 meter from OE's billing system (April through November 2003). Allied notes OE's contention that the April through November 2003 reads were not available due to an overhaul of OE's billing system in late 2003 but argues that these reads should have been incorporated into the rebills as these reads would logically be better indicators of Allied's electric usage than the older historical data relied upon by Ms. Nentwick. Allied argues that the readings from the April through November 2003 time period were, in several cases, lower than the amounts used to calculate the estimated reads. Allied also questions OE's reliance on estimated reads for the last three billing periods in 2006, which were included in the rebills (Allied Br. at 18-19, citing Tr. II at 212-213, 225).

Further, Allied contends that OE's backbilling is unreasonable and should not be permitted because it violates OE's tariff by failing to use actual readings. Article VII, Paragraph (F) of OE's tariff states, in relevant part:

Estimated Bills: The Company attempts to read meters on a monthly basis but there are occasions when it is impractical or impossible to do so. On such instances the Company will render an estimated bill based on past use of service and estimated customer load characteristics.

Allied contends that OE has not produced evidence that it was impractical or impossible to read the 935 meter, such as adverse weather or extreme geography. Allied argues that the only reason OE failed to obtain actual reads from the 935 meter during the period in question was the fact that OE erroneously removed the meter from its billing system. Allied asserts that OE's failure to maintain the accuracy of its own billing system should not excuse it from meeting the standards set by its tariff. (Allied Br. at 11-12.)

Allied further argues that OE violated Article VII, Paragraph (A) of its tariff by failing to bill Allied for 34 months. This provision of OE's tariff requires that bills for electric service be rendered monthly or, at OE's option, at other regular intervals. (Allied Br. at 12.)

Finally, Allied maintains that the evidence presented in the hearing establishes that a previous dispute between Allied and OE influenced OE's backbilling calculation process. Specifically, Allied alleges that OE acted in bad faith by failing to advise Allied of issues concerning the meters and accounts as it conducted its investigation, and took no action in the matter until the rebills were sent to Allied. Allied opines that OE's retaliatory motivations should be taken into consideration when weighing the credibility of the billing estimates.

## 2. OE's Position

In support of its rebill calculation, OE explains that Allied's estimated bill was based on a combination of actual and historical usage. For the months of June, July, and August of 2006, Ms. Nentwick used actual reads to calculate Allied's bill. For the first thirteen months of Allied's estimates, from February 2004 to February 2005, Ms. Nentwick took the lowest load and kilowatt hour reading of the historic load and kilowatt hours consumed in the years 2001 to 2002 and 2002 to 2003. For the remaining months in the rebill, she used an average of the historic usage. In support of the switched methodology, Ms. Nentwick explained that in her 18 years of experience in recalculating bills, it was unlikely that Allied's electric usage during the unbilled time period would always equal the lowest historical usage (OE Br. at 10-12; Tr. Vol. II at 273.)

OE witness Nentwick testified that for the remaining 18 months of estimates, the approximate average of Allied's historical load was lower than the mathematical average, and for seven of the 18 months, the estimated load value was actually lower than the lowest historical load value in the preceding two years. This, Ms. Nentwick asserts, indicates that the bill estimate was not only accurate, but the methodology actually served to Allied's benefit. (OE Ex. 1 at 21; OE Br. at 10-12.)

OE argues that Allied fails to prove that OE's tariff requires the use of the June 2006 actual read in calculating the backbilling. Pointing out that it obtained actual reads for June, July, and August 2006 and used those reads to calculate the backbilling for those months, OE states that nothing in its tariff requires OE to use an actual read for any month other than the one in which it is taken. Further, during the historical usage years of 2002 and 2003, OE notes that the load never dropped below 70 kW, which was almost double the 38 kW load reading in June 2006. The last actual read before the 935 meter was removed from the billing system was 99 kW in January 2004. In addition, OE notes that the actual reading in July 2006 was 78 kW, and the actual reading in August 2006 was 84 kW. (OE Ex. 1 at 23-25; OE Br. at 22-25.)

Regarding the 38 kW reading in June 2006, OE argues that Allied's own witness's testimony supports the argument that the reading was inaccurate. OE states that Allied witness Ramun testified that Allied's operations that were served by the 935 meter actually increased during the last months of 2003 and throughout the remainder of the backbilling period. This, OE contends, indicates that more electricity was being used during the backbilling period than during the historical usage years that were used to calculate the bill. (Tr. I. at 147-152; OE Br. at 23-25.)

In response to Allied witness Hull's claims that the single high demand read for the 29 month period was 38 kW, OE notes that Mr. Hull admitted he was unaware of what Allied's actual load was at any point in time from 2004 and 2006. OE also points out that Mr. Hull could not provide any explanation as to why Allied's load increased from 38 kW in June 2006 to 79kW in July 2006. (OE Br. at 25-26.)

Finally, OE declares that Allied has not presented an alternative calculation or methodology that would indicate what Allied believes its backbilling should be. Further, OE states that the tariff does not limit the ability to render an estimated bill when reading the meter is impractical. OE witness Nentwick testified that it was impractical for OE to read the 935 meter because OE was unaware that the meter was not in the billing system or any meter reader's route. OE states that Allied has failed to show by a preponderance of the evidence that it owes anything less than the amount it was billed in January 2007. (*Id.*)

### C. Commission Conclusion

The Commission finds Allied's arguments that the backbilling was unreasonable and excessive are unpersuasive. While Allied witness Hull testified that the actual reading of 38 kW in June 2006 indicates the demand for the previous 28 months to be less than or equal to 38 kW, Allied and Mr. Hull failed to substantiate any basis to adopt this conclusion. Instead, Allied merely asserts that the questionable 38 kW reading shows that OE violated its tariff and overbilled Allied (Allied Ex. A at 4-6). Allied's assertions that OE miscalculated the backbilling based on the testimony of Mr. Hull is undercut by his admitted lack of experience in calculating customer bills. In the evidentiary hearing, Mr. Hull admitted that, while he had worked at OE for over thirty years, he was not responsible for calculating customer bills or calculating estimated bills, and had never worked in the customer support department (Tr. at 180-183). In addition, even if Mr. Hull had experience in customer billing, Mr. Hull's lack of knowledge on the Commission's requirements on estimated bills as well as his belief that OE read every single meter for every single OE customer for the thirty-two years he worked at OE, undermines Allied's credibility in relying on his conclusions to support its complaint. (*Id.* at 210-214.) Therefore, the Commission finds that it cannot afford much weight to Mr. Hull's testimony.

Although Allied challenges Ms. Nentwick's calculations in the backbilling, Allied failed to present any alternative methodology to estimate Allied's bills over the 29 month period. While we undoubtedly agree with Allied's assertion that actual reads are preferable to estimated reads when formulating a backbilling, this assertion alone is not sufficient for us to determine that OE's estimated backbilling methodology is improper or flawed. The focus of Allied's argument relies entirely on Mr. Hull's testimony which sets forth that the actual read was the result of a precision meter, and since the meter was not reset since 2004, the 38 kW was not only accurate, but reflects the highest amount of usage over the 28 month period. (Tr. I. at 208-09, 222-243.)

While Allied asserts that the 38 kW reading on its face is accurate, OE provides persuasive arguments challenging the accuracy of the meter reading to which Allied failed to rebut. Specifically, although OE witness Nentwick confirmed the actual read for the June 2006 bill was recorded as 38 kW, she testified that the reading was likely a transcription error, as transcription mistakes were not uncommon. (Tr. II at 237-244.) The Commission believes that the fact that the June 2006 reading is shown to be significantly less than any actual Allied load reading raises questions as to the number's reasonableness. The record established that the lowest load that was registered by the meter was 70 kW in 2003, and the last actual reading of the meter

during the January 2004 billing cycle (prior to the removal of the meter) was 99 kW. (Allied Ex. U.) Further, the next actual readings of the meter in July and August of 2006 were 78 and 84 kW, respectively. (OE Ex. 1 at 23-25.) The record clearly establishes that the 38 kW reading is an outlier based on other actual readings.

Further, Allied actually casts the accuracy of the June 2006 reading into more doubt. The testimony of Allied witness Ramun indicates that, while Allied faced serious economic hardships in 2003, requiring the company to significantly downsize its operations, beginning in 2004 and through 2006, Allied began to recover and "ramped up" operations. Mr. Ramun acknowledged that more electricity was being used as the company recovered from its economic hardships. (Tr. I at 147-152.) Although Mr. Ramun testified that he used external generators off and on throughout the years in question, Allied failed to establish when the usage of the generators occurred, and how their usage may have played a role in the 38 kW reading. Not only did OE present evidence that indicates that 38 kW reading was inaccurate, but also there was no evidence presented by Allied to rebut OE's claim or provide sufficient evidence to support the 38 kW reading other than the fact that the 38 kW was what was transcribed. Allied fails to support its argument that the June 2006 meter read of 38 kW was accurate.

Therefore, we must turn to the billing estimates of OE to determine if they are fair and reliable. We find that OE provided sufficient evidence to support its accuracy of the bill estimates. Specifically, the record establishes that Allied's backbilling estimates were based upon past use of service and average customer load characteristics. While Allied asserts that OE exercised bad faith and malice intent in calculating the estimates, OE established that the first twelve months of estimates were based on historical usage from the lowest meter reading recorded over a two year period in the corresponding month, and the remaining months were calculated based on an average of historical usage, as well as actual readings beginning in June 2006. (OE Ex. 1 at 20-22, Tr. II at 216-219.) Nowhere in the record does Allied provide the Commission with an alternate methodology to calculate the backbilling, nor does Allied provide an approximate estimate of what it believes its electric usage for the 29 month period should have been or what the dollar amount should have been in the backbilling. Without any relevant evidence for us to consider, we find that Allied did not sustain its burden of proof of showing that OE's billing estimates are unreliable. For these reasons, we find that Allied's complaint as to the billing estimates should be dismissed. Accordingly, we direct OE to establish a 36 month payment plan for Allied to pay for its usage from January 2004 to January 2007, with no interest or late fees to be applied toward the bill.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) OE is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) Allied filed a complaint on August 10, 2007, alleging OE violated Rules 4901:1-10-05(I)(1) and 4901:1-10-23, O.A.C., and questioning the accuracy of the backbill charges from January 2004 to January 2007.
- (3) An evidentiary hearing was held on April 16, 2008, and April 17, 2008.
- (4) Initial briefs were filed on May 16, 2008. Reply briefs were filed May 30, 2008.
- (5) In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189.
- (6) Based on the record in this proceeding, Allied has proven that OE violated Rule 4901:1-10-05(I), O.A.C., as OE failed obtain actual readings of all its in-service customer meters at least once each calendar year.
- (7) Based on the record in this proceeding, Allied has failed to sustain its burden of proof of showing the backbilling and estimated monthly bills were unreliable.

It is, therefore,

ORDERED, That, consistent with this Opinion and Order, OE conduct an internal review of its metering operations, practices, and policies. It is further,

ORDERED, That OE file a report of its findings of this review with the Commission within 90 days from the date of this Opinion and Order. It is, further,

ORDERED, That, consistent with this Opinion and Order, Allied has failed to sustain its burden of proof of that OE improperly calculated Allied's backbilling. It is, further,

ORDERED, That to the extent any arguments raised by Allied or remedies sought that are not addressed by this Opinion and Order are denied. It is, further,

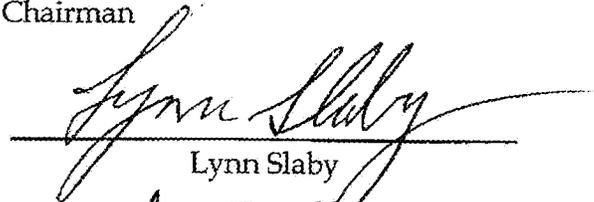
ORDERED, That OE establish a payment plan for Allied with no interest or late fees to be applied toward the bill of \$94,676.58. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

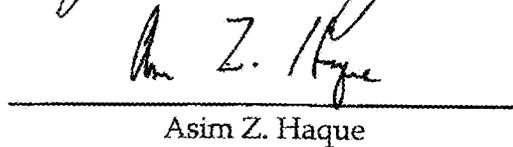
THE PUBLIC UTILITIES COMMISSION OF OHIO

\_\_\_\_\_  
Todd A. Snitchler, Chairman

  
\_\_\_\_\_  
Steven D. Lesser

  
\_\_\_\_\_  
Lynn Slaby

  
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M. Beth Trombold

  
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Asim Z. Haque

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Entered in the Journal

**SEP 11 2013**

  
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Barcy F. McNeal  
Secretary

**EXHIBIT B**

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )  
Allied Erecting & Dismantling Co., Inc. )  
 )  
Complainant, )  
 )  
v. ) Case No. 07-905-EL-CSS  
 )  
Ohio Edison Company, )  
 )  
Respondent. )

ENTRY ON REHEARING

The Commission finds:

- (1) On August 10, 2007, Allied Erecting & Dismantling, Co., Inc. (Allied) filed a complaint with the Commission against Ohio Edison Company (OE).
- (2) By opinion and order issued September 11, 2013, the Commission found that OE violated Rule 4901:1-10-05(I), Ohio Administrative Code (O.A.C.), by failing to obtain actual readings of all its in-service customer meters at least once each calendar year. However, after reviewing the record in the proceeding, the Commission determined that Allied did not meet its burden of proof of showing that OE's backbill estimates were unreliable.
- (3) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.
- (4) On October 9, 2013, Allied filed an application for rehearing, and a request for a special order staying enforcement of the Commission's opinion and order.
- (5) OE filed a memorandum contra Allied's application for rehearing and request for a special order on October 21, 2013. In its memorandum contra, OE asserts that Allied fails

to set forth, with specificity, the grounds on which it considers the Commission's order to be unreasonable or unlawful. OE points out that Section 4903.10, Revised Code, requires that an application for rehearing identify any problems associated with a Commission's decision, and *should not just recite that a particular finding of fact is unreasonable or unlawful.* OE explains that Allied's failure to assert a legal argument as to how the Commission erred falls drastically short of meeting the statutory requirements for an application for rehearing.

Further, OE posits that Allied's general view that the Commission should overturn its decision because OE violated Rule 4901:1-10-05(I), O.A.C., lacks merit. Specifically, OE contends that Allied simply does not like the fact that it needs to pay for the electricity it used, and while Allied may disagree with the outcome of the proceeding, Allied did not sustain its burden of proof. OE notes that Allied also failed to demonstrate that OE's calculation of the backbill was unreasonable. In addition, OE points out that the record reflects that the June 2006 demand reading of 38 kW was inaccurate based on historical data presented as well as the fact that Allied's own witness acknowledged that Allied was using more electricity during the time frame in question.

Finally, OE responds that Allied fails to demonstrate that it can satisfy the standard for a stay of the Commission's order. OE states that Allied has not shown that it could prevail on the merits of either an application for rehearing or an appeal. Not only that, but OE maintains that Allied ignores the harm that a delay in paying over \$94,000 will cause to OE, which has been saddled with the debt for electricity that Allied has used but not paid for. OE provides that Allied's request also fails to address how delaying the payment for electricity it used is in the public interest. Therefore, OE requests that Allied's application for rehearing and a stay of enforcement should be denied.

- (6) The Commission has reviewed and considered all of the arguments on rehearing. Any arguments on rehearing not specifically addressed herein have been thoroughly and adequately considered by the Commission and are being

denied. In considering the arguments raised, the Commission will address the merits of the assignments of error in the order in which Allied presented them in its application for rehearing.

- (7) In its first assignment of error, Allied claims that the Commission unreasonably determined that Allied did not sustain its burden of proof. Allied asserts that this is improper in light of the fact that the Commission determined that Ohio Edison violated Rule 4901:1-10-05(I), O.A.C. (Allied App. at 1.)

Turning to Allied's first assignment of error, the Commission finds that Allied fails to present any new arguments for our consideration. Allied does not point to any nexus as to how OE's violation of Rule 4901:1-10-05(I), O.A.C., should lead us to the conclusion that Allied sustained its burden of proof of showing that OE improperly calculated OE's backbill. To the contrary, the record reflects that OE utilized historical averages to Allied's benefit in estimating the backbill amount, to which Allied provided no alternative methodology or estimate as to what its electric usage could have been for the time period in question. (Order at 10-11.) Accordingly, Allied's assignment of error should be rejected.

- (8) Next, Allied contends that the Commission failed to enforce Article VII, paragraph (F) of OE's tariff. Allied explains that OE's tariff provision provides that a customer should be billed the lesser of the billing amounts calculated using the estimated load or the actual load reading. Again, Allied states that in light of the fact the Commission found that OE violated Rule 4901:1-10-05(I), O.A.C., the Commission's order was unreasonable and unlawful. (Allied App. at 1-2.)

Regarding Allied's second assignment of error, the Commission notes that there is no indication as to how the order is in any way unreasonable or unlawful. While Allied claims that the Commission failed to enforce Article VII paragraph (F) of OE's tariff, its assignment of error does not mention what action the Commission should have taken, nor does it make any cite or reference to the opinion and order. We remind Allied that OE's tariff provision provides that on

instances where the company cannot read meters on a monthly basis, OE should render an estimated bill based on past usage of service and estimated customer load characteristics. OE estimated Allied's backbill based on Allied's past usage of service and estimated customer load characteristics. (Order at 7-8, 10-11.) As Allied did not to present any arguments that its backbill was not based on past use of service and estimated customer load characteristics, its assignment of error should be dismissed.

- (9) In its third assignment of error, Allied argues that the Commission's determination that OE did not violate its tariff was improper, noting that it was not impractical to obtain actual meter readings. Allied contends that this finding conflicts with the Commission's express finding that OE violated Rule 4901:1-10-05(I), O.A.C. (Allied App. at 2.)

We find Allied's third assignment of error should be rejected. Again, we reiterate that OE did not violate its tariff provisions, nor did Allied point to any evidence in the record that support its conclusory assignment of error. Further, Allied fails to persuade us that OE's violation of Rule 4901:1-10-05(I), O.A.C., should lead us to the conclusion that OE violated its tariff.

- (10) In its fourth assignment of error, Allied believes that the Commission's order was unreasonable and unlawful by determining that the June 2006 meter read of 38 kilowatts (kW) was inaccurate. (Allied App. at 2.)

The Commission again finds that Allied fails to present any new arguments for our consideration. The Commission provided rationale in support of our finding that the meter reading of 38 kW was inaccurate, noting that the record established that the lowest load ever registered by the meter was 70 kW, coupled with the fact that the next meter reads reflected actual usage of 79 and 84 kW, respectively. The record supports our conclusion that the 38 kW read was not correct. (Order at 10-11.) Allied's assignment of error should be rejected.

- (11) Allied, in its fifth assignment of error, disputes the Commission's determination that OE's backbilling methodology was proper. (Allied App. at 2.)

Similarly, Allied's fifth assignment of error presents a conclusory assertion with no arguments or citations to the record. Allied does not provide any evidence to support its conclusion that OE's estimated backbilling methodology was improper; therefore, we find its assignment of error should be dismissed.

- (12) In its sixth assignment of error, Allied repeats that OE's backbilling was improper. Allied alleges that OE arbitrarily chose the historical data it wanted to use in its calculation of Allied's estimated electric consumption. Also, in its seventh assignment of error, Allied contends that OE's backbilling calculation was improper in light of the fact that OE discarded calculations yielding lower estimated reads in its analysis of Allied's estimated electric consumption. (Allied App. at 2.)

We disagree with Allied's sixth assignment and seventh assignments of error that OE arbitrarily chose historical data in calculating Allied's backbill and disregarded calculations yielding lower estimates for Allied. The record reflects that the first twelve months of estimates were actually based on the lowest meter reading recorded over a two year period in the corresponding month, a factor which we believe was not only fair but also likely worked to Allied's benefit. Further, the remaining months in question were also calculated appropriately, as OE used the average historical usage of Allied's past bills from a two year period, precisely what OE's tariff requires when rendering and estimated bill. (Order at 8, 11.) Allied does not dispute this in its assignment of error, and as such, we find it should be rejected.

- (13) Allied contests the Commission's finding that it failed to present an alternative methodology to estimate Allied's bills, arguing that the Commission could have required OE to recalculate Allied's estimated bill based on the load reading of 38 kW. (Allied App. at 3.)

Upon review of Allied's eighth assignment of error, we are confident that the record accurately reflects that the meter read of 38 kW was inaccurate. The record confirms that, based on historical data, Allied's usage had never dropped below 70 kW, and includes testimony from Allied's own witness who testified that Allied's operations began to increase during the last months of 2003 and throughout the remainder of the backbilling period. This evidence, as well as the testimony of OE's witness indicating that transcription errors are not uncommon during actual meter reads, supports the Commission's finding that the 38 kW read was unreliable. (Order at 9-11.) Allied's assignment of error should be rejected.

- (14) In its ninth assignment of error, Allied insists that the Commission erred by determining that Allied witness Hull's testimony was unreliable based on his lack of billing experience. Allied believes that this mistake was compounded in light of the Commission's finding that OE violated Rule 4901:1-10-05(I), O.A.C. (Allied App. at 3.)

In Allied's ninth assignment of error, Allied again relies on the Commission's finding that OE violated Rule 4901:1-10-05(I), O.A.C., as a basis for arguing that the Commission erred in determining that the testimony of Allied witness Douglas Hull was unreliable. Initially, we note that the witness was unaware of Allied's load characteristics from 2004 through 2006, and could not explain why Allied's load more than doubled from 38 kW in June 2006 to 79 kW in July 2006. Further, Allied does not cite to any evidence in the record for us to reconsider our conclusion, nor does Allied direct us as to how the violation of Rule 4901:1-10-05(I), O.A.C., makes the testimony of its witness reliable. Allied's assignment of error should be rejected.

- (15) In its tenth and final assignment of error, Allied alleges that the Commission failed to require OE to adjust Allied's rebills to reflect just, reasonable, and accurate charges. Allied contends that the Commission should have required OE to provide a complete explanation of all calculations. (Allied App. at 3.)

We reject Allied's tenth assignment of error. While Allied contends that the Commission's decision results in Allied receiving backbills that do not reflect just, reasonable, and accurate charges, Allied does not indicate what is unjust, unreasonable, or inaccurate. Allied does not direct us towards any specific reference in the order, nor does Allied point us to any evidence in the record that supports its contention. We also disagree with Allied's belief that it did not receive a complete explanation of all calculations, particularly in light of the fact that it not only cross-examined the OE witness who calculated the bills, but also the Commission's thirteen page order provides rationale and analysis in support of our adoption of OE's backbill calculations. Therefore, Allied's assignment of error is rejected.

- (16) Furthermore, we note that Allied's application for rehearing contains an attachment titled "proposed order" seeking Commission authorization for a stay of enforcement of our order. Allied does note in its application for rehearing that it has received a bill from OE, and states that "out of an abundance of caution, the enforcement of such a payment plan should be stayed or postponed so that Allied may pursue its appellate rights." (Allied App. at 3-4.)

The Commission finds that Allied fails to demonstrate that any irreparable harm would occur absent our approval of a stay of enforcement of this order, nor has Allied given us any indication that an appeal could prevail on the merits. Allied's request falls well short of Commission precedent, which also calls for the consideration of any harm that may be inflicted onto other parties as a result of the stay, and as well as consideration of the public interest. See *Northeast Ohio Public Energy Council v. Ohio Edison Co.*, Case No. 09-423-EL-CSS, Entry (July 8, 2009.) While Allied has failed to demonstrate that a stay of enforcement is appropriate, we note that, consistent with our opinion and order, Allied's backbill provides for a 36 month payment plan with no interest or late fees to be applied to the bill. Accordingly, as Allied provides no justification in support of its request for a stay, we find Allied's request should be denied.

It is, therefore,

ORDERED, That the application for rehearing filed by Allied should be denied.  
It is, further,

ORDERED, Allied's request for a stay of enforcement of the Commission's order is denied.

ORDERED, That a copy of this entry on rehearing be served upon each party of record and any other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

\_\_\_\_\_  
Todd A. Snitchler, Chairman

\_\_\_\_\_  
Steven D. Lesser

\_\_\_\_\_  
M. Beth Trombold

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Lynn Slaby

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Asim Z. Haque

JJT/sc

Entered in the Journal

NOV 06 2013

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Barcy F. McNeal

Barcy F. McNeal  
Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal of Allied Erecting and Dismantling Co., Inc. was served upon the Chairman of the Public Utilities Commission of Ohio or, in his absence, upon any public utilities commissioner, or by leaving a copy at the offices of the Commission at Columbus; and upon the Supreme Court of Ohio, The Public Utilities Commission of Ohio and all parties of record this 2<sup>nd</sup> day of January, 2014, as follows:

**Via Overnight Federal Express:**

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Supreme Court of Ohio  
65 South Front Street, 8th Floor  
Columbus, Ohio 43215-3431

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, Ohio 43215-3793

Commissioner Todd A. Snitchler, Chairman  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215-3793

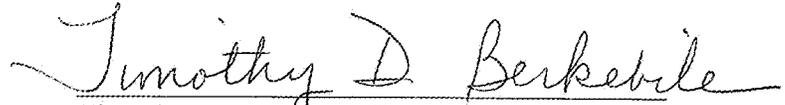
Public Utilities Commission of Ohio  
180 East Broad Street  
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A handwritten signature in cursive script that reads "Timothy D. Berkebile". The signature is written in black ink and is positioned above a horizontal line.

Timothy D. Berkebile, Esq.

Eckert Seamans Cherin & Mellott, LLC  
44<sup>th</sup> Floor, 600 Grant Street  
Pittsburgh, PA 15219

Attorneys for Appellant  
Allied Erecting & Dismantling Co., Inc.

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