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STATEMENT OF FACTS

This case arises out of account management and billing errors by Ohio Edison Company (“Ohio Edison”) that involved its failure to read and bill for usage on an Allied Erecting & Dismantling Co., Inc. (“Allied”) electric meter (the “’935 Meter”) for a 3 year period from January 2004 to January 2007. Prior to January 2004, the ’935 Meter, which served Allied’s Equipment and Repair Facility, was billed to Allied under Account number 110016974559 (the “’559 Account”). (See Ex. U; Tr. II:70-72.)¹ Starting in January 2004, the ’935 Meter ceased being billed to Allied under the ’559 Account (or any account) and was removed entirely from Ohio Edison’s billing system. (Tr. II:72-74.) The ’935 Meter did not start to be billed to Allied again until January 2007, when Allied received 3 years’ worth of bills for the ’935 Meter, all at one time, for the amount of \$97,492.37. (See Supp. 82-84 (Ex. J-A); Supp. 203-312 (Ex. 1.10); Tr. I:23.) These bills were labeled “Rebills” on the first page of every bill and were assigned a new account number, 110051207816. (Supp. 203-312 (Ex. 1.10).)

¹ Allied has prepared and filed a two volume Supplement to Merit Brief of Appellant Allied Erecting & Dismantling Co., Inc. (the “Supplement”).

Volume 1 of the Supplement includes certain exhibits admitted in the Public Utilities Commission of Ohio proceedings that Allied considers necessary to determine the issues presented in this appeal. Citations to such exhibits include both reference to the pages of the supplement and the exhibit designation used in the P.U.C.O. proceedings. Lettered exhibits refer to Allied Exhibits and numbered exhibits refer to Ohio Edison’s exhibits. Exhibits not provided in the Supplement are referred to herein using only the exhibit designation used in the P.U.C.O. proceedings.

Volume 2 of the Supplement includes certain transcript excerpts of the P.U.C.O. proceedings that Allied considers necessary to determine the issues presented in this appeal. Citations to the hearing transcript first designate the volume of the hearing transcript by use of roman numeral followed by the page(s) cited. Volume I refers to the hearing transcript for proceedings on April 16, 2008. Volume II refers to the hearing transcript for proceedings on April 17, 2008.

Ohio Edison admits that the mistaken removal of the '935 Meter from its billing system and the resultant failure to bill Allied for 3 years were its own errors. (Tr. II:26-27, 99-100; Supp. 48-49 (Ex. C, ¶¶ 2-3).) According to Ohio Edison, this occurred due to a paperwork error in processing a meter exchange that was necessitated by a car pole accident that damaged a separate Allied meter in December of 2003. (Tr. II:63; 91-98.) Ohio Edison states that the meter clerk responsible for updating Ohio Edison's electronic billing system mistakenly removed the '935 Meter from the billing system sometime in January 2004. (Supp. 155-56 (Ex. 1.0, p.5).) The damaged meter and its associated account number were final billed. (*Id.* at p. 13.) The replacement meter was errantly switched to the '935 Meter's account – the '559 Account – and was billed under that account from January 2004 until present. (Ex. T; Tr. II:73-74.) Allied continued to timely pay the '559 Account. Under cross-examination, Ohio Edison's Senior Account Manager in the Customer Support Department, Lisa Nentwick, admitted that Ohio Edison's internal records provided Ohio Edison with reason to know that the meter exchange needed to be investigated and reversed to put the '935 Meter back in the billing system. (Tr. II:117-18.)

As a result of Ohio Edison's error, the '935 Meter – which was located on a pole right off the berm of the road and fully accessible – was not read, reset or visited by Ohio Edison from December of 2003 to June of 2006. (*See* Supp. 49 (Ex. C, ¶5); Tr. II:241-43.) However, for a reason not apparent, an Ohio Edison meter reader “discovered” the '935 Meter in June of 2006. (Supp. 156 (Ex. 1.0, p. 6).) Not coincidentally, it was at this same time that Ohio Edison and Allied entered into a dispute concerning Ohio Edison's agreement to design, build, and procure electrical components for a substation Allied wanted to have built (the “Substation Dispute”). (Tr. I:26-28.)

According to Ohio Edison, the '935 Meter was fully functioning, and there was no evidence that it had been tampered with or altered. (Tr. II:243; See Supp. 48 (Ex. C, ¶2).) The meter reader who discovered the '935 Meter did not take a reading. He reported the meter back to his department, and subsequently Ohio Edison sent a meter reader, Dave Boulton, to take the first actual reading of the '935 Meter in 29 months. Mr. Boulton recorded a load/demand reading of 38.0 KW. (See Supp. 148 (Ex. Y); Supp. 42-45 (Ex. A).) Ohio Edison did not take another actual reading until the next month. (Id.)

On July 7, 2006, Ms. Nentwick and Jack Morgan visited Allied's location on Poland Avenue to verify the location of all meters on Allied's property. During this visit, Lisa Nentwick talked to Allied's President, John Ramun, who had approached Ms. Nentwick after seeing her on the Allied property. According to Ms. Nentwick, she told Mr. Ramun that Ohio Edison had found a meter that had not been in Ohio Edison's billing system. Ms. Nentwick said she also told Mr. Ramun that the meter had not been read for "quite some time – possibly years." (Supp. 149 (Ex. 1.0, p. 9).) Mr. Ramun disputes this and says that Ms. Nentwick said only that there was an issue with a meter not being billed and did not mention for how long the meter had not been read. (Tr. I:24-32.) However, it is undisputed that neither Ms. Nentwick nor anyone else from Ohio Edison explained at this time the nature of the error, the amount of the bill, or whether actual reads were available or whether estimates would be used for the calculation of any rebill. (Tr. II:156-58.) Indeed, Ohio Edison still was not certain of the situation because it visited Allied again on August 17, 2007 to verify the meters. (Id.) No one from Ohio Edison talked to Allied employees during the August 17th visit. (Id.)

No one from Ohio Edison talked to anyone at Allied again about the meter issue until December 19, 2006, when Ms. Nentwick was on the Allied premises in connection with the

delivery of two transformers for the substation Allied was having built. (Tr. II:160-163.)

Notably, Ms. Nentwick did not bring up the issue; John Ramun asked Ms. Nentwick “what’s going on with that meter” and Ms. Nentwick responded that she was “working” on the bill. (Id.) Nothing was said about the nature of the error, the amount of the bill, or whether actual reads were available or whether estimates would be used for the calculation of any rebill. (Id.)

Although Ohio Edison claims to have discovered the '935 Meter in June of 2006, it was not until January 23, 2007, over seven months later, that Ohio Edison finally sent the Rebills along with two letters to Allied (the “January 23rd Letters”). (See Supp. 116-117 (Allied Ex. M, Ex. A therein).) The two unsigned “form” letters mentioned Allied “being final billed in error” and Allied’s “meter being removed in error.” (Tr. II:163-64.) There was no detail as to the reason or basis for the error, or the basis for the calculation of the rebill (i.e., whether it was based on estimates or actual reads). (Id.)

Notably, it is clear on the face of the Rebills that Ohio Edison disregarded the actual demand/load reading obtained by Mr. Boulton during the first actual reading of '935 meter in 29 months (i.e., 38.0 KW) when it calculated and generated the Rebills. (Supp. 203-312 (Ex. 1.10); Tr. II:235-237.) Moreover, Ms. Nentwick testified that she arbitrarily chose certain historical data to include in her analysis (excluding three actual reads, at least one lower historical demand reading, and the historical data for the six months immediately prior to the billing and account management errors) and inconsistently employed different methods for estimated consumption and demand/load readings based on nothing but her purported sense of fairness and “eyeballing” the data. (Tr. II:221.) Only later were the estimates reconciled with the three actual reads obtained in June, July and August of 2007. (Tr. II:225.)

The Rebills were sent mere days after Allied sent a letter to Ohio Edison, dated January 16, 2007, relating to the Substation Dispute, explaining that Allied was not paying the full invoiced amount for the transformers, but was only paying the actual costs of the transformers due to Ohio Edison's breach of its agreement to design and build Allied's Substation. (See Supp. 145-147 (Excerpted from Ex. P).) Prior to Allied's January 16, 2007 letter, Allied had filed a complaint in the Mahoning County Court of Common Pleas, alleging, among other things, that Ohio Edison breached its contract with Allied to design Allied's substation and procure electrical components. (Tr. I:90-96.) Ohio Edison subsequently filed a counterclaim against Allied, alleging, among other things, that Allied had not paid the full amount for the transformers. Ms. Nentwick admitted that, as part of the litigation between Allied and Ohio Edison over the substation, "animosity" had developed between her and John Ramun. (Tr. II:180-81.) Emails indicate that rebilling decisions and even meter handling procedures regarding the '935 meter were funneled through abnormal corporate channels at Ohio Edison and decided based on the pending Substation Dispute. (See Tr. II:133, 139-40; Allied Ex. X.) For example, the '935 meter was not exchanged and tested upon rediscovery due to the "pending litigation." (See Tr. II:139-40; Ex. X at page after OE-16.) Ms. Nentwick, the Ohio Edison employee responsible for Allied's account and the investigation and rebill of Allied's '935 Meter, never called Allied to advise that the bill was being issued, to explain the details of the error or calculation, or to see if Allied had any questions. (Tr. II:162-63.)

Allied wrote a response to Ohio Edison on February 23, 2007, addressing the letter to Ohio Edison's Akron address, which is the address on the face of the January 23rd Letters and the address to which the bills themselves stated that written inquiries should be made. (See Supp. 86 (Ex. J-B); Supp. 203-312 (Ex. 1.10).) The uncontroverted evidence of record

established that Allied's February 23rd letter was received by Ohio Edison at 2:51 PM on February 26, 2007. (See Ex. R, S.) Allied, expressing its shock at such a large rebill, requested that Ohio Edison explain its bill in detail and clarify apparently conflicting statements in the two letters.

Allied never received a response from Ohio Edison to its letter. (Tr. I:41.)

After receiving the January 23rd Letters, the next time Allied heard anything from Ohio Edison is on May 2, 2008, when a "Sandy" from Ohio Edison called and left a voicemail stating that Allied electric service would be disconnected due to non-payment of its bill. (See Supp. 144 (Ex. N).) Ms. Nentwick, who was aware Allied had not paid its bill and that Sandy was providing this disconnection notice, still did not contact Allied or inquire if it had any questions or problems with the rebills. (Tr. II:178-180.) Consequently, Allied wrote Ohio Edison another letter again requesting an explanation of the rebills and informing Ohio Edison that Allied had initiated an informal complaint with the Public Utilities Commission of Ohio (the "Commission") (See Supp. 88-89 (Allied Ex. J-C).) Ohio Edison never responded to this letter as well. (Tr. I:48-49.) Ohio Edison submitted inaccurate and/or unclear information to the informal investigator, Kelley Tucker, leading her to conclude that that Rebills were based entirely on actual readings and that Jim Smith of Allied was told on July 7, 2006 that actual readings had been obtained for the '935 Meter. (Tr. II:194, 197.) As a result, Kelly Tucker issued a letter that "sustained" the rebills, at least in part, because the rebills were based on actual readings. (Tr. II:197-200, 204.)

Subsequently, and after Allied requested a meeting with Ohio Edison to discuss the rebills, Ohio Edison's lawyer, John Dellick, wrote Allied and stated the Ohio Edison refused to meet and considered the matter "fully determined." Mr. Dellick also threatened Allied that

collection efforts would ensue if Allied did not pay. Mr. Dellick also declared that Ohio Edison's offer of a payment plan was a "courtesy." (Tr. II:205; Supp. 94 (Ex. J-E).)

Ultimately, Allied was forced to file a formal complaint with the Commission, which it did on August 10, 2007. (Supp. 110-142 (Ex. M).) After this filing, Ohio Edison agreed to meet with Allied. This meeting took place at Allied's offices on August 29, 2007 (the "August Meeting"). (Tr. I:84-88.) At this meeting, Allied learned for the first time the nature and cause of the billing error and the basis for the calculation of the Rebills, which Lisa Nentwick explained were based on an averaging of the historical usage of Allied for the preceding two years before the '935 Meter was removed from Ohio Edison's billing system. (Tr. II:208-209) Lisa Nentwick said nothing about a low reading of 38 KW for June 2006 and whether Ohio Edison believed that was in error. She also said nothing about not utilizing actual meter reads for the '935 Meter from April 2003 to December 2003.

A hearing in this matter was held before the Honorable Kimberly W. Bojko, then a hearing examiner for the Commission, on April 16 and 17, 2008. The Commission entered its Opinion and Order on September 11, 2013, finding: (1) that Ohio Edison violated OAC 4901:1-10-05(I) by not obtaining actual readings of the '935 Meter at least once a year; and (2) that Allied did not meet its burden of proving that the estimates used to generate the Rebills were unlawful and unreliable. (Appx-16-18 (Opinion and Order pp. 5, 11-13).)² In so finding, the Commission opined that Allied presented no basis on which to find that Mr. Boulton's recorded actual reading of a load/demand of 38.0 KW accurately indicated the demand for the previous 28 months. The Commission disregarded evidence of this actual reading in favor of unsubstantiated testimony by Ms. Nentwick that Mr. Boulton's reading was likely a transcription error, and

² Documents comprising the Appendix attached hereto pursuant to S.Ct.Prac.R. 16.02(B)(5) are numbered and referred to as "Appx-____."

vague circumstantial evidence regarding Allied's electric usage between 2004 and 2006 that was neither specific to Allied's property serviced by the '935 meter or Allied's operations at that time. (Appx-15-16 (Opinion and Order, pp. 10-11).) In response to Allied's Application for Rehearing, the Commission again states that its basis for disregarding Mr. Boulton's recorded actual reading of a load/demand of 38.0 KW was evidence suggesting that the reading must have been inaccurate. (Appx-25-26 (Entry on Rehearing ¶¶ 13-14).) The Commission bases this finding on historical readings and Ms. Nentwick's testimony that the reading likely was a transcription error. (Id.)

ARGUMENT

Proposition of Law No. 1

The Commission's Failure To Enforce Ohio Edison's Tariff and R.C. § 4905.22 Renders the Commission's Opinion and Order Unlawful and Unreasonable.

"A final order made by the public utilities commission may be reversed, vacated, or modified by the [S]upreme [C]ourt on appeal, if, upon consideration of the record, such [C]ourt is of the opinion that such order was unlawful and unreasonable." R.C. § 4903.13 (Appx-45).

The Ohio Annotated Code sets the following minimum standard for an electric distribution utilities' ("EDU") "Metering reading" practices:

(I) Meter reading. (1) The EDU shall obtain actual readings of its in-service customer meters at least once each calendar year. Every billing period, the EDU shall make reasonable attempts to obtain actual readings of its in-service customer meters, except where the customer and the EDU have agreed to other arrangements. Meter readings taken by electronic means shall be considered actual readings.

OAC 4901:1-10-05(I) (Appx-42)(emphasis added). The Ohio Annotated Code further states that "[a]n EDU may adopt or maintain tariffs providing superior standards of service . . . or greater protection for customers or consumers." OAC Ann. 4901:1-10-02(E) (Appx-38)(emphasis

added). Ohio Edison's tariff ("P.U.C.O. No. 11"), by its express terms, is a part of every service contract entered into by Ohio Edison. (Supp. 2, Art. I ¶ C.) Article VII, Paragraph (A) of P.U.C.O. No. 11 states:

Billing periods: Bills for electric service will be rendered monthly or at the Company's option at other regular intervals. Bills rendered monthly shall cover a period of approximately 30 days.

(Supp. 5.) Article VII, Paragraph (F) of P.U.C.O. No. 11 further states:

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. In such instances the Company will render an estimated bill based upon past use of service and estimated customer load characteristics. Where the customer has a load meter and the actual load reading when obtained is less than the estimated load used in billing, the account will be recalculated using the actual load reading. The recalculated amount will be compared with the amount originally billed and the customer will be billed the lesser of the two amounts.

(Supp. 7.)

The Ohio Revised Code requires that

"[a]ll charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission."

R.C. § 4905.22 (Appx-46). The Revised Code further provides that each day's continuance of a knowing violation and/or failure to comply with this requirement constitutes a separate offense.

R.C. § 4905.56 (Appx-47).

This entire dispute originated as the result of Ohio Edison's unexplainable failure to keep track of its own electric meters located on Allied's property. This fundamental failure purportedly led to Ohio Edison errantly "final billing" the account associated with the '935 Meter and

“remov[ing]” the '935 Meter from its billing system “in error.” (See Supp. 82-86 (Ex. J-A J-BZ).) Such errors were exacerbated by Ohio Edison’s utter inability to detect these blatant mistakes despite clear internal manifestations of account irregularities. As such, Ohio Edison possessed a reason to investigate such irregularities, but failed to do so for almost three years. (Tr. II:117-18.)

The removal of the '935 Meter (which was still in service and measuring electric consumption and demand) from Ohio Edison’s billing system also removed the '935 Meter from the hand-held processors utilized by Ohio Edison’s meter readers. Consequently, Ohio Edison admits that no actual readings were taken from the '935 Meter for almost two and one-half years. (Supp. 49 (Ex. C, at ¶5).) Moreover, no bills were generated between January 2004 and January 2007. (Supp. 49 (Ex. C, at ¶3).) These errors constitute prima facie violations of OAC 4901:1-10-05(I) (Appx-42) and Article VII, Paragraph (A) and (F) of P.U.C.O. No. 11 (Supp. 5, 7).

Ohio Edison also failed to make “reasonable attempts to obtain actual meter readings” of the '935 Meter. The removal of the '935 Meter from Ohio Edison’s billing system and the meter readers’ processors did not excuse Ohio Edison’s failure to make “reasonable attempts to obtain actual readings” from the '935 Meter when Ohio Edison did not take reasonable steps to address the glaring account irregularities discussed above. Rather than confirming the number of accounts on Allied’s property and sending an Ohio Edison representative to the Allied property to reconcile the corresponding meters in Ohio Edison’s billing system with the meters on site (all of which Ohio Edison ultimately did in July and August of 2006), Ohio Edison instead inexplicably failed to properly investigate. Ohio Edison’s failure to properly investigate the matter and maintain the accuracy of its own billing system did not excuse it from meeting minimum regulatory standards drafted to ensure that EDUs charge each customer a just and reasonable amount based on the electricity actually consumed. These failures constitute clear violations of OAC 4901:1-10-05(I)

(Appx-42). The Commission acknowledges these violations in its Opinion and Order. (Appx-16-18.)

However, the Commission's Opinion and Order failed to recognize that Ohio Edison's conduct, also violated Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7) and R.C. § 4905.22.

Ohio Edison maintains that the use of estimates to generate backbills and/or rebills for long periods of time is an acceptable and legally sanctioned practice. Indeed, the Ohio Supreme Court, in Norman v. Pub. Util. Comm., interprets O.R.C. 4905.32 & O.R.C. 4905.33 as generally allowing back-billing in cases where the back-billing estimation process is shown to be fair, reasonable and accurate. 62 Ohio St.2d 345, 353, 355, 406 N.E.2d 492, 497, 498 (Ohio 1980). However, the law and Ohio Edison's Tariff clearly prefer the transparency and certainty provided by obtaining actual meter readings. Moreover, Ms Nentwick even acknowledged during her deposition that it is "preferable" and "always better" to have an actual read as opposed to an estimated read "[b]ecause it's an actual read. Takes the guesswork out of trying to estimate [the reading]. That's what it is." (See Tr. II:33-34.) Doug Hull explained that "[e]stimates are inherently unreliable and their use should be limited to infrequent occasions when the meter is not accessible." (See e.g., Tr. II:215-222; Allied Ex. A at p. 6.) For this reason, as set forth above, Article VII, Paragraph (F) of P.U.C.O. No. 11 provides greater protection for Ohio Edison customers, stating:

Where the customer has a load meter and the actual load reading when obtained is less than the estimated load used in billing, the account will be recalculated using the actual load reading. The recalculated amount will be compared with the amount originally billed and the customer will be billed the lesser of the two amounts.

(Emphasis added.)

Mr. Hull testified that the '935 Meter is a load meter, explaining that it "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 scale. The demand pointer registers the highest demand for the billing period. The pusher arm has a clock and reset mechanism that resets the pusher arm each half-hour. However, the demand pointer only gets reset by Ohio Edison when it is read. This should typically occur once a month, when actual readings are taken.” (Supp. 37-38 (Ex. A at pp. 3-4); See Tr. I:207-208.) Ohio Edison records and the actual rebills indicate that no actual readings were taken from January 2004 until June 19, 2006. Supp. 148 (Ex. Y); Supp. 203-312 (Ex. 1.10).) On June 19, 2006, the first actual meter reading in 29 months revealed that the single high demand or load reading between January 2004 and June 19, 2006 was 38.0 KW. Per Mr. Hull’s testimony, this actual reading indicates that the load for each of the previous 28 months was equal to or less than 38.0 KW.

Accordingly, per Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7), in addition to using the estimated loads, the Rebills for the '935 Meter should have also been recalculated using the actual load reading of 38 KW and Allied should have been billed the lesser of the amounts calculated. This tariff-mandated procedure did not occur. (See Tr. I:244, II:239-240; Supp. 148 (Ex. Y).) Ohio Edison used the actual load reading of 38 KW for the June 19, 2006 reading only, and disregarded this actual reading for the other 28 months. In its place, Ohio Edison estimated demands ranging between 77 to 100 KW for the other 28 months. (See Supp. 148 (Ex. Y).)

Ohio Edison insists that the actual load reading of 38 KW cannot be correct and speculates that this actual reading is the result of either tampering, resetting, or meter reader error. However, Ohio Edison presented absolutely no evidence to substantiate this claim. Ms. Nentwick admitted that Ohio Edison has no evidence of tampering or the demand pointer being reset. (See Tr. II:245.) Mr. Hull explained that tampering could have been detected, (See Tr. II:193.), however, Ohio

Edison conducted no such examination of the meter. Mr. Hull further explained that resetting was not a likely reason for a meter reading. (See Tr. I:225-226.)

With regard to Ohio Edison's assertion of employee error as a cause for the actual load reading of 38 KW, Ohio Edison did not call David Boulton, the meter reader who took the June 19th reading, to testify regarding the accuracy of this actual reading. Without such testimony or any supporting documentary or physical evidence, it would be improper to allow such speculation to justify Ohio Edison's artificial and blatant attempt to disregard the factual load reading as measured by Ohio Edison's own properly functioning meter. Mr. Hull further explained that, based on his experience working with Mr. Boulton, he doubted that Mr. Boulton would have transposed the digits in the demand reading, stating:

Dave Boulton was an employee in my meter department and Dave Boulton is one of our better employees at Ohio Edison when I was there. Dave was very meticulous. He was just a good fellow all the way around. Dave knew how to test meters. He knew how to tear them down, put them back together. He knew how to calibrate. He knew the workings of this meter. He also would have done exactly as I did and give it a visual scan. If anything looked out of absolutely normal, I'm sure he would have reported it. . .

(See Tr. I:226, 259.)

Regardless, this whole discussion disregards the express language of Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7), which is not conditioned on the accuracy of the actual reading. The Commission's finding that the 38 KW load/demand reading was inaccurate is both unsubstantiated and utterly irrelevant. Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7) is only conditioned on the use of a load meter and the existence of an actual load reading that is less than the estimated load used in billing. Both are the case here. As such, the Commission erred in stating that Allied must prove that the 38 KW load/demand reading was accurate to satisfy its burden of proving that Ohio Edison's calculation of the Rebills was improper. Allied need not

prove the accuracy or present an alternative methodology for recalculating the Rebills. The proper procedure and methodology are expressly set forth in Article VII, Paragraph (F) of P.U.C.O. No. 11. (Supp. 7.) The Commission clearly has the authority to enforce Ohio Edison's tariff and its failure to do so renders the Opinion and Order unlawful and unreasonable.

The Commission's finding that Mr. Hull is not credible due to his lack of billing experience and his high expectations of Ohio Edison's meter reading practices is not supported. Neither of these factors relates to the ultimate inquiries. Mr. Hull is highly experienced in the mechanical workings of OE's metering equipment. Mr. Hull's opinion relating to the impropriety of Ohio Edison's rebilling methodology is based in his expertise relating to the mechanical workings of the meter. It is Ohio Edison's disregard of the mechanics of the '935 meter and P.U.C.O. No. 11 that led to the improper Rebills. Accordingly, Mr. Hull's testimony should not have been discredited.

Article VII, Paragraph (F) of P.U.C.O. No. 11. (Supp. 7) is intended to provide greater protections for the customer. In this vein, Ohio Edison produced internal procedures that purport to apply to rebills and outline different requirements for several states. (Supp. 68-76 (Ex. G).) These procedures suggest that Ohio Edison should have limited the Rebill to one year.

Ohio Edison claims these procedures do not apply because the Allied situation involves a back bill, not a rebill. This argument is without merit. First, the Rebills refer to themselves as "rebills." (Supp. 203-312 (Ex. 1.10).) Second, Ms. Nentwick's charts explaining her method of averaging past historical usage (i.e., the basis upon which she billed Allied) refer to the data as rebills. (Supp. 42-45 (Exhibit A).) Ms. Nentwick also constantly referred to what she prepared for Allied as "rebills" at her deposition. (Tr II:39-43.) Third, the January 23, 2007 letters themselves refer to "makeup" billing, which corresponds to the procedures for rebills in the

documents submitted by Ohio Edison. (Supp. 83-84 (Ex. J-A). Fourth, the rebill procedures themselves say they apply to “Billing Errors” and where a “business partner hasn’t received a bill for 60 days or more.” (Supp. 71, 74 (Ex. G, OE 158, 161).) Here, clearly Allied had not received a bill for the ‘935 Meter for over 60 days; similarly, the billing error was that Allied continued to be billed for the replacement meter under the ‘935 Meter’s old account number, the ‘559 Account. If this is not a billing error, it is hard to think of what is.

The guidelines for rebilling are important in two respects. First, they are clear about making sure that the customer receives full and precise communication about the rebilling. The guidelines state that a GUI or Makeup letter must be sent out. In addition, where the rebilling is for more than \$150 or for more than 3 months, the utility must contact the customer by telephone. (Supp. 71 (Ex. G, OE 158).) The clear intent is to “ensure the account is documented thoroughly with specific reasons for the rebill, etc.” (*Id.*) In the present case, it is perfectly clear that none of this procedure was followed. Ohio Edison never made telephone contact with Allied in connection with the rebilling. If anything, Ms. Nentwick went out of her way – apparently because of the animosity that had developed – not to call Allied, even after Allied had written letters and the bill had not been paid for 4 months. Moreover, it cannot be denied that the two form January 23, 2007 letters do not in any manner document thoroughly the specific reasons for the rebill. The letters do not even refer to the account which Ohio Edison now says was “final billed in error” or why that happened; and the letters do not explain which meter was “removed in error,” what that meant, or why it happened. Finally, the letters are misleading as to extent to which actual readings were obtained, and say absolutely nothing about a method of estimating Allied’s bill based on an averaging of past historical usage.

Second, the guidelines for Ohio state that, with respect to a non-residential account, rebilling for a switched or mixed meter that results in a customer being undercharged is limited to 365 days if the condition was under the control of the utility. (Supp. 71 (Ex.G , OE 161).) There is no precise definition of a switched or mixed meter in the guidelines. While Ohio Edison unduly restricts the definition to suit its purposes (saying it would be limited to an apartment situation involving two different customers), there is nothing in the guideline to so limit this provision. Indeed, Ms. Nentwick, in an email to her billing colleague, stated that “we need to do some work on the accounts that were switched. Meter #68584436 is the new meter installed when the meter melted. This account should be 2100 ½ Poland Avenue. The account we are rebilling – Meter # 631014935 – should be 2100 Poland Avenue.” (Allied at Ex. V.) Ms. Nentwick admitted that a meter is equivalent to an account; Allied had one account for each meter. (Tr. II:73.) This clearly indicates that even Ohio Edison recognizes that its conduct in handling this matter is unjust and unreasonable.

Ohio Edison’s institutional failures and violations associated with ’935 account management and meter reading errors, described above, created the necessity for Ohio Edison’s reliance on estimates to generate rebills. Absent Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7), Ohio Edison’s sloppy and negligent business practices would put Allied in the position of having to accept “guesswork” as the basis of its bill. The truth is that the actual load for the subject period of time will never be known, but why should Allied have to accept a rebill that is based on guesswork? Fortunately, that is not what Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7) contemplates. There is no procedure, guideline, tariff provision, regulation, statute or any other basis that compels Allied to accept Ms. Nentwick’s rebill estimating methodology.

Ohio Edison should not be allowed to unilaterally disregard the actual load reading of 38 KW for the '935 . For all of the above mentioned reasons, Ohio Edison's disregard of the actual load reading of 38 KW is technically unsubstantiated and legally improper under the express terms of Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7) and R.C. § 4905.22 (Appx-46). By failing to calculate using both the estimated and actual the Rebills and billing Allies the lesser amount, Ohio Edison has issued invoices that are unjust, unreasonable, and in excess of the amount allowable under the terms of Ohio Edison's Tariff. Accordingly, the Commission erred by failing to enforce P.U.C.O. No. 11.

Proposition of Law No. 2

Article VII, Paragraph (F) of Ohio Edison's Tariff Does Not Provide Ohio Edison With A Legal Basis For Using Estimates To Generate the Rebills.

In its Answer to Allied's Complaint, Ohio Edison asserts that Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7) provides Ohio Edison's the legal basis for using estimates to generate the Rebills. (Supp. 49 (Ex. C at ¶ 7).) This position is disingenuous in two respects.

First, Lisa Nentwick testified that at the time she prepared Allied's estimated consumption and demand/load she was unaware of any written Ohio Edison policy governing the use of estimates for such a long period of time. Lisa Nentwick admitted that Allied's Rebill -- involving the rebilling of a customer for almost 3 years based on estimates and due to the error of the utility company -- was unusual, and that she had never any experience in rebilling a customer in a situation like Allied's. (Tr. II:125, 230-234.) Yet, the only basis for Ms. Nentwick's methodology of averaging the historical usage of Allied in preceding years and applying that to the unbilled period was Ms. Nentwick's past experience. (Tr. II:229.)

Further, she testified that she did not consult Ohio Edison's Tariff. Ms. Nentwick -- who stated she was not a "biller" - admitted that she never consulted anyone at Ohio Edison or obtained

any approval before submitting this rebill to Allied. (Tr. II:35, 234, 33.) She admitted there were no procedures or guidelines for rebilling a customer in this situation. (Tr. II:232.) She also admitted that she never consulted Ohio Edison's tariff in preparing her rebill. (Tr. II:229.)

Therefore, Allied is being asked to accept a rebill that is entirely based on what Ms. Nentwick pulled out of thin air; there simply is no sanction or support for billing a customer for an almost 3 year period based on estimates from averaging prior historical usage, particularly where the utility itself caused a perfectly functioning and accessible meter to not be read for such a long period of time. Ms. Nentwick's testimony reveals that Ohio Edison's reliance on Article VII, Paragraph (F) of P.U.C.O. No. 11 is a concocted, after-the-fact justification for its use of estimates in generating the Rebills.

Furthermore, Article VII, Paragraph (F) of P.U.C.O. No. 11 (Supp. 7) states that "[t]he Company attempts to read meters on a monthly basis but there are occasions when it is impractical or impossible to do so. In such instances the Company will render an estimated bill based upon past use of service and estimated customer load characteristics." (Emphasis added) Ohio Edison fails to acknowledge the significance of the underlined language. This section of Ohio Edison's Tariff only authorizes the use of estimates in instances where obtaining actual readings was "impractical or impossible." The evidence presented at trial does not support such a finding.

These provisions clearly represent to Ohio Edison's customers (and the Commission) that Ohio Edison maintains accuracy in its billing system by obtaining actual meter readings and billing on a monthly basis, except when "when it is impractical or impossible to do so." Ohio Edison did not produce any evidence that it was "impossible or impractical" to obtain actual readings (e.g., adverse weather or extreme geography). Allied expert, Douglas Hull, testified, based on his 32 years of experience working at Ohio Edison and his expertise, that Article VII,

Paragraph (F) of P.U.C.O No. 11 was drafted in the 1970's and 1980's to account for extreme weather that prevented Ohio Edison from physically accessing meter locations to obtain actual readings and reset loads registered, and was never intended to support or justify rebilling for long periods where the meter was entirely accessible. (See Tr. I:188-189, 221-22; Supp. 39-40 (Ex. A at pp. 5-6).) The record reflects that the '935 Meter was readily accessible to Ohio Edison's meter readers and that, prior to it being removed from the billing system in error, Ohio Edison did obtain actual readings from the '935 Meter on a monthly basis. (Tr. II:218-221; Supp. 39-40 (Ex. A at pp. 5-6).)

To the extent that the terms "impossible or impractical" as used in the Ohio Edison's Tariff, are deemed poorly defined or ambiguous, the Ohio Supreme Court has noted that "[t]he meaning and effect of particular [tariff] provisions are to be ascertained from the words employed and the connection in which they are used, the subject matter, and the evident purpose of such provisions." Saalfield Publishing Co. v. Pub. Util. Comm., 149 Ohio St. 114, 118, 77 N.E.2d at 914 (Ohio 1948). Furthermore, "where the meaning of a tariff is ambiguous, it is to be construed in favor of the consumer." Norman v. Pub. Util. Comm., 62 Ohio St.2d 345, 356, 406 N.E.2d 492, 499 (Ohio 1980)(Locher, Justice, concurring in part and dissenting in part)(citing Saalfield Publishing Co., 149 Ohio St. at 119, 77 N.E.2d at 917). Applying these rules of construction and relying on the plain meaning of the terms "impossible or impractical," it is clear that these terms should not encompass Ohio Edison's failure to obtain actual readings.

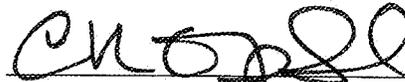
It is abundantly apparent that the only reason that Ohio Edison did not obtain actual readings from the '935 Meter was the errant removal of the '935 Meter from Ohio Edison's billing system and the meter readers' processors. Again, Ohio Edison's careless failure to maintain the accuracy of its own billing system should not excuse it from meeting the standards set by its Tariff.

This failure constitutes a clear violation of Article VII, Paragraph (F) of P.U.C.O. No. 11. Accordingly, pursuant to Article VII, Paragraph (F) of Ohio Edison's Tariff, P.U.C.O. No. 11, (Supp. 7), does not authorize Ohio Edison to utilize estimated billing under the facts in this case.

CONCLUSION

For all the forgoing reasons and authorities, Appellant Allied Erecting and Dismantling Co., Inc. respectfully submits that the Public Utility Commission of Ohio'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 and unlawful and should be reversed, and further requests that the case be remanded thereto with instruction to apply the terms of Ohio Edison Company's Tariff, P.U.C.O. No. 11.

Respectfully submitted



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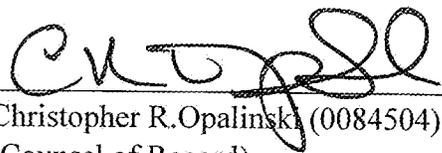
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Merit Brief of Appellant Allied Erecting & Dismantling Co., Inc.** and the accompanying **Supplement to Merit Brief of Appellant Allied Erecting & Dismantling Co., Inc.** was served by electronic mail and First Class United States Mail, postage prepaid, this 7th day of April, 2014, upon the following parties of record:

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Appendix

FILE

ORIGINAL

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

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(D), 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.

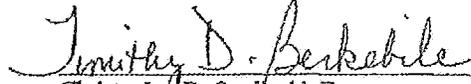
8. The PUCO erred in finding that Allied failed to present an alternative methodology to estimate Allied's bills, as the Commission could have required Ohio Edison to recalculate Allied's estimated bill using the actual load read of 38 kW.

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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Attorneys for Appellant
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.)

Ohio Edison Company,)

Respondent.)

Case No. 07-905-EL-CSS

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 Avenue¹. 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

¹ 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. (OB 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. (OB 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,

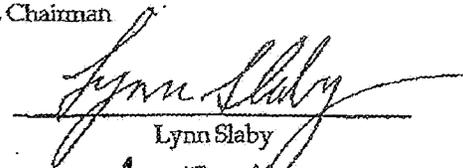
ORDERED, That OE establish a payment plan for Allied with no interest or late fees to be applied toward the bill of \$94,676.58. It is, further,

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

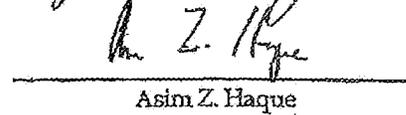
THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby


M. Beth Trombold


Asim Z. Haque

JIT/ec

Entered in the Journal

SEP 11 2013



Barcy F. McNeal
Secretary

EXHIBIT B

B E F O R E

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 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.

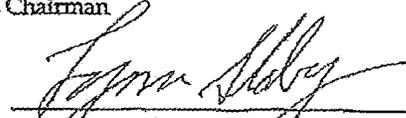
ORDERED, That a copy of this entry on rehearing be served upon each party of record and any other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman



Steven D. Lesser



Lynn Slaby



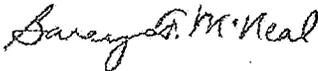
M. Beth Trombold



Asim Z. Haque

JJI/sc

Entered in the Journal
NOV 06 2013



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 2nd day of January, 2014, as follows:

Via Overnight Federal Express:

Office of the Clerk
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

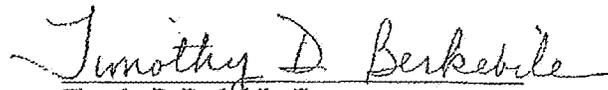
Public Utilities Commission of Ohio
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Allied Erecting & Dismantling Co., Inc.

(J1802970.1)

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

ALLIED ERECTING & DISMANTLING
CO., INC.

Complainant,

Case No. 07-905-EL-CSS

OHIO EDISON COMPANY,

Respondent.

APPLICATION FOR REHEARING AND
REQUEST FOR SPECIAL ORDER STAYING ENFORCEMENT

Complainant Allied Erecting and Dismantling Co., Inc. ("Allied"), by and through its attorneys, Eckert Seamans Cherin & Mellott, LLC, respectfully requests that the Commission grant rehearing with respect to certain matters addressed in the Commission's Opinion and Order entered upon the journal of the Commission at the above referenced case number on September 11, 2013 (collectively the "Order"). Allied further requests that the Commission issue a Special Order staying or otherwise postponing the enforcement of the Order as against Allied. Pursuant to Ohio Revised Code Chapter 4903.10, the specific grounds for rehearing are set forth below:

1. The Commission's finding that Allied has failed to sustain its burden of proof that Ohio Edison improperly calculated Allied's backbilling is unreasonable and unlawful, 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 Commission's failure 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, is unreasonable and unlawful, 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 Commission's 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 is unreasonable and unlawful, 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 Commission's finding that Allied failed to support its argument that the June 2006 meter read of 38 kW was accurate is unreasonable and unlawful, 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 Commission's findings 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 are unreasonable and unlawful.

6. The Commission's finding that Allied has failed to sustain its burden of proof that Ohio Edison improperly calculated Allied's backbilling is unreasonable and unlawful, 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 Commission's finding that Allied has failed to sustain its burden of proof that Ohio Edison improperly calculated Allied's backbilling is unreasonable and unlawful, 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 Commission's finding that Allied failed to present an alternative methodology to estimate Allied's bills is unreasonable and unlawful, as the Commission could have required Ohio Edison to recalculate Allied's estimated bill using the actual load read of 38 kW.

9. The Commission's findings discrediting the testimony of Allied expert witness Douglas Hull regarding the mechanical workings of the precision meter based on his lack of billing experience is unreasonable, 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 Commission's decision not to require Ohio Edison to adjust Allied's Rebills to reflect just, reasonable, and accurate charges and provide a complete explanation of all calculations is unreasonable and unlawful, 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.

Furthermore, Allied also requests that the Commission issue a Special Order staying or otherwise postponing the enforcement of the Order, as against Allied, until such time as either: (1) a Notice of Appeal to the Ohio Supreme Court is filed, if necessary, and the Ohio Supreme Court renders a decision on whether to allow a stay of enforcement pursuant to O.R.C. 4903.16; or (2) the time for filing a Notice of Appeal to the Ohio Supreme Court has passed without such notice being filed pursuant to O.R.C. 4903.11. In relevant part, the Order requires OE to establish a payment plan for Allied with no interest or late fees to be applied toward the disputed bill in the amount of \$94,676.58. (Order at p. 13.) On September 19, 2013, Ohio Edison issued a bill reflecting a "Consumption Inst[allment] Plan Amount" of \$2,618.00 per month, with the

first payment due on October 10, 2013. Out of an abundance of caution, Allied requests that enforcement of such a payment plan be stayed or otherwise postponed so that Allied may pursue its appellate rights. Such stay or postponement simply would act to maintain the status quo until such time as Allied is able to request a stay from the Ohio Supreme Court.

WHEREFORE, Complainant, Allied Erecting and Dismantling Co., Inc., respectfully requests that an order be entered granting rehearing with respect to the matters addressed in the Commission's Opinion and Order set forth above, and staying or otherwise postponing the enforcement of the Order.

Respectfully submitted,



Christopher R. Opalinski, Esquire (0084504)

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Attorneys for Complainant

Allied Erecting & Dismantling Co., Inc.

Dated: October 9, 2013

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

ALLIED ERECTING & DISMANTLING
CO., INC.,

Complainant,

v.

OHIO EDISON COMPANY,

Respondent.

Case No. 07-905-EL-CSS

[PROPOSED] ORDER

AND NOW, this ___ day of October, 2013, it is hereby ORDERED, ADJUDGED and DECREED, that the Application For Rehearing And Request For Special Order Staying Enforcement is hereby GRANTED, and the Commission shall rehear the matters set forth therein. Furthermore, enforcement of the Order, as against Complainant, shall be stayed or postponed until such time as either: (1) a Notice of Appeal to the Ohio Supreme Court is filed, if necessary, and the Ohio Supreme Court renders a decision on whether to allow a stay of enforcement pursuant to O.R.C. 4903.16; or (2) the time for filing a Notice of Appeal to the Ohio Supreme Court has passed without such notice being filed pursuant to O.R.C. 4903.11.

THE PUBLIC UTILITIES COMMISSION OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application For Rehearing And Request For Special Order Staying Enforcement was served by email and First Class United States Mail, postage prepaid, this 9th day of October, 2013, as follows:

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

(11781622.1)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/9/2013 11:50:53 AM

in

Case No(s). 07-0905-EL-CSS

**Summary: App for Rehearing Application For Rehearing And Request For Special Order
Staying Enforcement electronically filed by Mr. Timothy D Berkebile on behalf of ALLIED
ERECTING & DISMANTLING**

Baldwin's Ohio Administrative Code Annotated
4901 Public Utilities Commission (Refs & Annos)
4901:1 Utilities (Refs & Annos)
Chapter 4901:1-10. Electric Service and Safety Standards (Refs & Annos)

OAC 4901:1-10-02

4901:1-10-02 Purpose and scope

Currentness

(A) The rules in this chapter:

- (1) Apply to investor-owned electric utilities, as defined in this chapter, and transmission owners.
- (2) Are intended to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices.

(B) The commission may, in addition to the rules in this chapter, require electric utilities and/or transmission owners to furnish other or additional service, equipment, and facilities upon:

- (1) The commission's own motion.
- (2) Formal or informal commission resolution of a complaint.
- (3) The application of any electric utility.

(C) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

(D) The rules in this chapter shall not relieve the electric utilities and/or transmission owners from:

- (1) Providing adequate service and facilities as prescribed by the commission.
- (2) Complying with the laws of this state.

(E) Except as set forth below, the rules of this chapter supersede any inconsistent provisions, terms, and conditions of the electric utility's tariffs. An electric utility may adopt or maintain tariffs providing superior standards of service, reliability or safety, or greater protection for customers or consumers. Further, an electric utility may adopt or maintain tariffs which are not inconsistent with the rules of this chapter.

(F) When an electric utility and/or transmission owner in a complaint proceeding under section 4905.26 of the Revised Code demonstrates compliance with the relevant service or performance standard of this chapter, excluding rule 4901:1-10-27 of the Administrative Code, a rebuttable presumption is created that the electric utility is providing adequate service regarding that standard. Such presumption applies solely to the specific standard addressed by the commission for the time period at issue in the complaint proceeding. No such presumption is created merely by compliance with any reporting requirement of this chapter. In addition, to the extent the service and performance standards in this chapter are based on system-wide data, no such rebuttable presumption is applicable to complaints regarding the adequacy of service provided either to individual customers or consumers or to any segment of the system of an electric utility and/or transmission owner.

(G) No tariff of an electric utility shall incorporate exculpatory clauses that purport to limit or eliminate liability on the part of the electric utility to its customers or others as a result of its own negligence when providing a regulated service. No electric utility tariff shall incorporate provisions which purport to establish liability on the part of the electric utility's customers for acts or failures to act involving an electric utility's facilities, which are beyond the control of the customer. Any contrary provisions in an electric utility's tariff now on file with the commission shall be eliminated.

Credits

HISTORY: 2008-09 OMR pam, #12 (A), eff. 6-29-09; 2003-04 OMR 1685 (R-E), eff. 1-1-04; 2000-2001 OMR 295 (A), eff. 9-18-00; 1998-99 OMR 1645 (E), eff. 7-1-99

RC 119.032 rule review date(s): 9-30-12; 11-26-08; 11-30-07; 9-30-02

Rules are complete and appendices are current through March 11, 2014

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~~4901:1-10-02~~, OH ADC ~~4901:1-10-02~~

Baldwin's Ohio Administrative Code Annotated
4901 Public Utilities Commission (Refs & Annos)
4901:1 Utilities (Refs & Annos)
Chapter 4901:1-10. Electric Service and Safety Standards (Refs & Annos)

OAC 4901:1-10-05

4901:1-10-05 Metering

Currentness

(A) Electric energy delivered to the customer shall be metered, except where it is impractical to meter the electric usage, such as in street lighting and temporary or special installations. The usage in such exceptions may be calculated or billed on a demand or connected load rate as provided in an approved tariff on file with the commission.

(B) A customer's electric usage shall be metered by commercially acceptable measuring devices that comply with "American National Standards Institute" (ANSI) standards. Meter accuracy shall comply with the 2001 ANSI C12.1 standards. No metering device shall be placed in service or knowingly allowed to remain in service if it does not comply with these standards.

(C) Electric utility employees or authorized agents of the electric utility shall have the right of access to the electric utility's metering equipment for the purpose of reading, replacing, repairing, or testing the meter, or determining that the installation of the metering equipment is in compliance with the electric utility's requirements.

(D) Meters that are not direct reading meters shall have the multiplier plainly marked on or adjacent to the meter. All charts taken from recording meters shall be marked with the date of the record, the meter number, the customer name, and the chart multiplier. The register ratio shall be marked on all meter registers. The watt-hour constant for the meter shall be placed on all watt-hour meters.

(E) The electric utility's meters shall be installed and removed by the electric utility's personnel or authorized agent. Before initial service to a service location is energized, the electric utility shall verify that the installation of the meter base and associated equipment has either been inspected and approved by the local inspection authority or, in any area where there is no local inspection authority, has been inspected by an electrician.

(F) Metering accuracy shall be the responsibility of the electric utility.

(1) Upon request by a customer, the electric utility shall test its meter to verify its compliance with the ANSI C12.1 standards within thirty business days after the date of the request.

(2) The customer or the customer's representative may be present when the meter test is performed at the customer's request.

(3) A written explanation of the test results shall be provided to the customer within ten business days of the completed test.

(4) If the accuracy of the meter is found to be within the tolerances specified in this rule:

(a) The first test at the customer's request shall be free of charge.

(b) The electric utility may charge the customer an approved tariffed fee for each succeeding test conducted less than thirty-six months after the last test requested by the customer. Each electric utility shall notify the customer of such charge prior to the test.

(5) If the accuracy of the meter is found to be outside the tolerances specified in this rule, the electric utility:

(a) Shall not charge a fee or recover any testing expenses from the customer.

(b) Shall recalibrate the meter or provide a properly functioning meter that complies with the ANSI C12.1 standards without charge to the customer.

(c) Shall, within thirty days, pay or credit any overpayment to the customer, in accordance with one of the following billing adjustments:

(i) When the electric utility or customer has established the period of meter inaccuracy, the overcharge shall be computed on the basis of metered usage prior and/or subsequent to such period, consistent with the rates in effect during that period.

(ii) When the electric utility and customer cannot establish the period of meter inaccuracy, the overcharge period shall be determined to be: the period since the customer's "on" date or the period since the date of most recent meter test performed, whichever is shorter. The applicable rates shall be those in effect during the period of inaccuracy in order to determine the appropriate credit or refund.

Paragraph (F)(5) of this rule shall not apply to meter or metering inaccuracies caused by tampering with or unauthorized reconnection of the meter or metering equipment.

(G) Each electric utility shall identify, by company name and/or parent trademark name and serial or assigned meter numbers and/or letters, placed in a conspicuous position on the meter, each customer meter that it owns, operates, or maintains.

(H) Each electric utility shall maintain the following records regarding each meter that it owns, operates, or maintains, for the life of each such meter plus three years:

(1) Serial or assigned meter number.

- (2) Every location where the meter has been installed and removed, together with the dates of such installations and removals.
 - (3) Date of any customer request for a test of the meter.
 - (4) Date and reason for any test of the meter.
 - (5) Result of any test of the meter.
 - (6) Meter readings before and after each test of the meter.
 - (7) Accuracy of the meter found during each test, "as found" and "as left".
- (I) Each electric utility shall comply with the following requirements regarding meter reading:
- (1) The electric utility shall obtain actual readings of all its in-service customer meters at least once each calendar year. Every billing period, the 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. Meter readings taken by electronic means shall be considered actual readings.
 - (2) In addition to the requirements of paragraph (I)(1) of this rule, the electric utility shall provide, upon the customer's request, two actual meter readings, without charge, per calendar year. The customer may only request an actual meter read if usage has been estimated for more than two of the immediately preceding billing cycles consecutively or if the customer has reasonable grounds to believe that the meter is malfunctioning.
 - (3) An actual meter reading is required at the initiation and/or the termination of service, if the meter has not been read within the sixty calendar days immediately preceding initiation and/or termination of service and access to the meter is provided.
 - (4) If the meter has most recently been read within the thirty-three to fifty-nine calendar days immediately preceding the initiation and/or termination of service, the electric utility shall inform the customer, when the customer contacts the electric utility, of the option to have an actual meter read at no charge to the customer.
 - (5) If the meter has been read within the thirty-two calendar days immediately preceding the initiation and/or termination of service, the electric utility may estimate usage.

Credits

HISTORY: 2008-09 OMR pam. #12 (A), eff. 6-29-09; 2003-04 OMR 1687 (A), eff. 1-1-04; 2000-2001 OMR 297 (A), eff. 9-18-00; 1998-99 OMR 1645 (E), eff. 7-1-99

4901:1-10-05 Metering, OH ADC 4901:1-10-05

RC 119.032 rule review date(s): 9-30-12; 11-26-08; 11-30-07; 7-30-03; 9-30-02

Rules are complete and appendices are current through March 11, 2014

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4901:1-10-05, OH ADC 4901:1-10-05

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Baldwin's Ohio Administrative Code Annotated
4901 Public Utilities Commission (Refs & Annos)
4901:1 Utilities (Refs & Annos)
Chapter 4901:1-10. Electric Service and Safety Standards (Refs & Annos)

OAC 4901:1-10-23

4901:1-10-23 Billing adjustments

Currentness

(A) When an electric utility has undercharged any nonresidential customer as the result of a meter or metering inaccuracy, billing problem, or other continuing problem under the electric utility's control, unless the customer and the electric utility agree otherwise, the maximum portion of the undercharge that may be billed to the customer in any billing month, based upon the appropriate rates, shall be determined by dividing the amount of the undercharge by the number of months of undercharged service. Each electric utility shall state the total amount to be collected in the first bill under this rule. This rule shall not affect the electric utility's recovery of regular monthly charges.

(B) Billing adjustments for residential customers shall comply with section 4933.28 of the Revised Code.

(C) This rule shall not apply to tampering with or unauthorized reconnection of the meter, metering equipment, or electric utility's property which causes meter or metering inaccuracies or no measurement of service.

Credits

HISTORY: 2008-09 OMR pam. #12 (A), eff. 6-29-09; 2003-04 OMR 1700 (A), eff. 1-1-04; 1998-99 OMR 1655 (E), eff. 7-1-99

RC 119.032 rule review date(s): 9-30-12; 11-26-08; 11-30-07; 7-30-03; 9-30-02

Rules are complete and appendices are current through March 11, 2014

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4901:1-10-23, OH ADC 4901:1-10-23

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Baldwin's Ohio Revised Code Annotated
Title XLIX. Public Utilities
Chapter 4903. Public Utilities Commission--Hearings (Refs & Annos)
Appeals

R.C. § 4903.13

4903.13 Reversal of final order; notice of appeal

Currentness

A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable.

The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any interested party to intervene by cross-appeal.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 544, 545)

Notes of Decisions (151)

R.C. § 4903.13, OH ST § 4903.13

Current through Files 1 to 76 of the 130th GA (2013-2014).

End of Document

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4905.22 Service and facilities required; unreasonable charge prohibited, OH ST § 4905.22

Baldwin's Ohio Revised Code Annotated

Title XLIX. Public Utilities

Chapter 4905. Public Utilities Commission--General Powers (Refs & Annos)

Facilities and Services

R.C. § 4905.22

4905.22 Service and facilities required; unreasonable charge prohibited

Currentness

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 614-12, 614-13)

Notes of Decisions (55)

R.C. § 4905.22, OH ST § 4905.22

Current through Files 1 to 76 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated
Title XLIX. Public Utilities
Chapter 4905. Public Utilities Commission--General Powers (Refs & Annos)
Forfeitures and General Provisions

R.C. § 4905.56

4905.56 Violations

Currentness

No officer, agent, or employee in an official capacity of a public utility or railroad shall knowingly violate sections 4905.01 to 4905.07, inclusive, 4905.14 to 4905.19, inclusive, 4905.22 to 4905.51, inclusive, 4905.54 to 4905.57, inclusive, or 4905.60 to 4905.63, inclusive, of the Revised Code, or willfully fail to comply with any lawful order or direction of the public utilities commission made with respect to any public utility or railroad. Each day's continuance of such failure is a separate offense.

CREDIT(S)

(132 v H 1, eff. 2-21-67; 1953 H 1; GC 614-65)

Notes of Decisions (4)

R.C. § 4905.56, OH ST § 4905.56

Current through Files 1 to 76 of the 130th GA (2013-2014).

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