FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

ALLIED ERECTING & DISMANTLING, CO., INC.,	)	
Complainant,	)	**Case No. 07-905-EL-CSS**
v.	)	
OHIO EDISON COMPANY,	)	
Respondent.	)	

RESPONDENT OHIO EDISON COMPANY'S POST-HEARING REPLY BRIEF

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TABLE OF CONTENTS

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Respondent Ohio Edison Company ("Ohio Edison") hereby submits its post-hearing reply brief.

I. INTRODUCTION

In its Initial Brief, Ohio Edison demonstrated that Allied has failed to produce evidence that Ohio Edison violated any statute, rule, Commission order or tariff provision in issuing a back bill to Allied for approximately $95,000. Nothing in Allied's brief changes this conclusion. Allied, in fact, appears to acknowledge that it owes *something* for the 2 ½ years' worth of electricity it used and never paid for – just not what Ohio Edison claims is owed. Fatal to Allied's position is this simple fact: Allied does not dispute that it used *more* electricity during the time period of the back bill than during the historical usage years used to calculate the bill, thus making the back bill *less* than what Allied would have paid if it had been charged monthly for electric service. (Resp. Br., pp. 24-25.) Perhaps this explains why, despite all of its criticisms of Ohio Edison's methodology for calculating the back bill, Allied did not present evidence of an alternative calculation showing that a lower amount is owed.

Faced with evidence that Ohio Edison's calculation of the back bill is, if anything, more favorable to Allied than if the "935 Meter" had been read and billed monthly, Allied is left to argue that whatever Allied owes should be reduced by some unspecified amount because of Ohio Edison's "negligence" in failing to read the 935 Meter. This entire line of argument is patently irrelevant. Ohio Edison was not negligent. More importantly, as discussed in Ohio Edison's Initial Brief, Ohio law is clear that neither negligence, willful misrepresentation, nor any fault of a utility affects the utility's right and obligation to collect a back bill for electric service. (Resp. Br., pp. 4, 14-15, 17-19); *Norman v. Pub. Util. Comm'n* (1980), 62 Ohio St. 2d 345, 354-355 (citing R.C. §§ 4905.32, 4905.33); *Cincinnati Gas & Elec. Co. v. Joseph Chevrolet Co.* (Ohio App. 2003), 153 Ohio App. 3d 95, 103-105. Regardless of the reason why the 935 Meter was not read, if Allied does not pay for the electricity it consumed, all other ratepayers must pay for it.

Allied also claims that Ohio Edison violated both its tariff and the Ohio Administrative Code. These claims are based on a fundamental misunderstanding of the applicable tariff and Administrative Code regulations. The Ohio Administrative Code requires Ohio Edison to obtain an actual read of all meters that are "in-service" at least once annually. O.A.C. § 4901:1-10-05(I)(1) The undisputed evidence is that the 935 Meter was not "in-service" in Ohio Edison's billing system and therefore was not being read. When Ohio Edison discovered the problem, it corrected it by placing the meter in service and obtaining actual reads. The removal of the 935 Meter from the billing system also made it "impractical" to obtain an actual read as provided by Ohio Edison's tariff. Allied's interpretation of the tariff and Ohio Administrative Code would essentially impose a strict liability standard and preclude estimated billing, which is plainly inconsistent with Ohio law. *See, e.g., Norman*, 62 Ohio St. 2d at 354-355.

Allied's Initial Brief concludes by requesting the Commission to order Ohio Edison to do a number of things, including undertaking a "review" of "practices, procedures and policies" related to estimated billing; development of written guidelines for employees to follow to comply with tariffs and "Ohio law;" and the preparation and filing with the Commission a "report of such reviews of its procedure." There is no basis to require Ohio Edison to do any of these things. Nor is there any basis to "Vacate and/or adjust Complainant's Rebills" or "sanction and/or fine" Ohio Edison, as Allied requests, or to grant Allied any of the other relief that it seeks. The Complaint should therefore be dismissed.

II. ARGUMENT

Complainant Allied bears the burden of proving its allegations by a preponderance of the evidence, meaning the greater weight of the evidence. *Luntz Corp. v. Pub. Util. Comm'n* (1997), 79 Ohio St. 3d 509, 513-14; *Grossman v. Pumab. Util. Comm'n* (1966), 5 Ohio St. 2d 189. Allied has failed to meet its burden.

In its Initial Brief, Allied does not (and cannot) dispute that Ohio Edison has already provided much of what Allied has asked for. Allied asks the Commission to: order Ohio Edison to refrain from imposing additional charges for interest, penalties, and/or late fees associated with the payment of the bill; order Ohio Edison to provide a complete explanation of all calculations used in arriving at the bill; and provide Allied with an appropriate payment plan. (Compl. Br., p. 25.) Ohio Edison has already done all of this. Ohio Edison has not charged late fees, penalties, or interest on the bill. Ohio Edison's Senior Account Manager, Lisa Nentwick, explained the calculations used in arriving at the bill at a meeting with Allied's Mr. Ramun prior to discovery in this case and in her testimony. And Ohio Edison twice offered Allied a payment

plan, which Allied rejected. (Resp. Br., pp. 2-3, 15-16.) There is no need for the Commission to order relief that has already been provided.

Allied also requests the Commission to do six additional things:

(1) order Ohio Edison to review its "practices, procedures and policies" regarding billing and estimated billing "to ensure its compliance with its tariffs, PUCO Rules, and Ohio law";

(2) order Ohio Edison to "review applicable tariff provisions addressing these matters and institute written guidelines and policies" for employees to follow;

(3) require Ohio Edison to file a report of such reviews of its procedures;

(4) vacate and/or adjust Allied's bill to reflect "just, reasonable, and accurate charges";

(5) sanction and/or fine Ohio Edison "as appropriate" pursuant to R.C. 4901:1-10-30 and "similar provisions" under Ohio law; and

(6) award Allied costs and attorney's fees.

The Commission should not consider Allied's additional requests for relief which were not raised in its complaint. *Cleveland Elec. Illuminating Co. v. Med. Center Co.*, No. 95-458-EL-UNC, Entry on Rehearing, ¶ 4 (Oct. 5, 1995) ("It would be inappropriate to consider additional allegations not raised in the original complaint."). To the extent that the Commission does consider requests for relief raised for the first time in Allied's Initial Brief, none of the newly-requested relief is warranted, as is explained in detail in Ohio Edison's Initial Brief and below.

A. Allied Has Failed to Demonstrate A Violation of Any Statute, Commission Rule, or Tariff Provision.

Allied's requests for the Commission to order a review and report of Ohio Edison's billing "practices, procedures, and policies" and "tariff provisions addressing these matters" are duplicative of what was done at hearing and are altogether unnecessary. During two full days of

hearing, and in Ms. Nentwick's prefiled testimony, Ohio Edison presented extensive evidence regarding its metering and billing practices and its methodology for calculating estimated bills. Allied has failed to articulate (and cannot articulate) what purpose would be served by re-treading the same ground that was covered at hearing.

Further, there is no basis for a review and report because Allied cannot point to any evidence that Ohio Edison's metering and billing practices are deficient or contrary to Commission rules or Ohio law. There is no evidence that the failure to read meters on a monthly basis is a problem at Ohio Edison. To the contrary, Ms. Nentwick testified that Ohio Edison attempts to read and bill each of its two million customer meters on a monthly basis, and is successful most of the time. (Tr. Vol. II, p. 151, lns. 4-11.) Indeed, Allied does not contest that Ohio Edison has always taken monthly readings of five of its six electric meters. The 935 Meter was not read monthly only because it was not in service in Ohio Edison's billing system due to confusing circumstances following a car-pole accident at Allied. In 21 years at Ohio Edison, Ms. Nentwick has never encountered another situation where a meter was removed from service in the billing system and not read. (*Id.*, p. 230, lns. 2-8.) When Ohio Edison discovered that the 935 Meter was not in service, it reinstated the meter in the system and resumed taking actual reads each month. (Resp. Br., p. 8; Resp. Ex. 1.11.)

Ohio Edison thus dealt with the situation at Allied in a prudent and responsible manner. There is no basis for *any* sanction that Allied has requested.

1. Ohio Edison Did Not Violate Ohio Administrative Code Section 4901:1-10-05.

Allied has failed to show that Ohio Edison violated Ohio Administrative Code Section 4901:1-10-05, which provides in part:

> 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.

O.A.C. § 4901:1-10-05(I)(1) (emphasis supplied).

Allied argues that Ohio Edison violated this rule by not reading the 935 Meter between February 2004 and June 2006. Allied fails to consider, however, that the 935 Meter was not "in-service" in Ohio Edison's billing system. This is not a situation where Ohio Edison deliberately chose not to read the meter because it was inconvenient, expensive, or for some other reason. Indeed, Allied has never suggested that Ohio Edison failed to obtain actual, monthly reads on the other five meters at Allied's property. But Ohio Edison did not know to read or bill the 935 Meter because it was removed from service due after an accident destroyed one of Allied's several electric meters.[1] When the issue was discovered, Ohio Edison reinstated the meter in the billing system and read it every month. (Resp. Br., p. 8; Resp. Ex. 1.11.) Ohio Edison also had read the meter every month before it was removed from service. (Compl. Br., p. 11; Resp. Corrected Ex. 1.8; Tr. Vol. II, p. 215, ln. 23 – p. 216, ln. 9.) Ohio Edison at all times complied with Section 4901:1-10-05 when the 935 Meter was "in-service."

Even if Ohio Edison had violated O.A.C. 4901:10-05 (which it did not), Allied ignores that the remedy is not free electric service or a discounted bill. Ohio Administrative Code

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[1] Allied never told Ohio Edison that it was not receiving bills, even though the 935 Meter accounted for between 45 and 68 per cent of Allied's total electric bill for all of its meters. (*Id.*, p. 7, Resp. Ex. 1.6.)

Section 4901:1-10-23(A) provides the remedy when an electric distribution utility ("EDU") has undercharged a nonresidential customer. That section states:

> When an EDU has undercharged any nonresidential customer as the result of a meter or metering inaccuracy, billing, or other continuing problem under the EDU's control, unless the customer and the company 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 EDU shall state the total amount to be collected in the first bill under this rule. This rule shall not affect the EDU's recovery of regular monthly charges.

O.A.C. § 4901:1-10-23.

Section 4901:1-10-23 does not allow discounted electric service. Indeed, the rule specifically provides that the bill shall be calculated "based on the appropriate rates" approved by the Commission. *Id.* It limits a back bill to a commercial customer only in that the utility must not charge on a monthly basis more than the total amount of the bill divided by the number of months not billed. *Id.* In essence, it requires that Ohio Edison allow Allied to repay the bill in monthly increments and refrain from collecting late fees or interest. *Id.* Ohio Edison has complied with the rule in all respects. Ohio Edison offered to put Allied on a payment plan twice. (Resp. Br., p. 16; Tr. Vol. I, p 141, ln. 14 – p. 142, ln. 8.) Ohio Edison has not charged Allied late fees or interest.[2] (Resp. Br., p. 16; Resp. Ex. 1, p. 27, ¶ 78.)

Allied has not shown that Ohio Edison violated any Ohio Administrative Code provision. Allied's allegations to the contrary are wholly unsupported by any record evidence.

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[2] The Ohio legislature has limited back billing of residential customers to 365 days immediately prior to the date that the utility remedies the issue that resulted in the bill. O.A.C. § 4901:1-10-23(B); R.C. § 4933.28. The legislature has not placed a similar limitation on back billing to commercial customers of an electric utility.

2. Ohio Edison Did Not Violate Its Tariff.

Allied argues that Ohio Edison violated Article VII, Paragraph (F) of its tariff, which 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.

(PUCO No. 11, Art. VII, ¶ (F).)

Ohio Edison's tariff specifically allows estimates when reading the meter is "impractical," and does not limit the Company's ability to render an estimated bill based on accessibility of the meter. (PUCO No. 11, Art. VII, ¶ (F).) Ms. Nentwick testified that it was not practical to read the 935 Meter because Ohio Edison was not aware of the meter or that it was not being read. (Resp. Br., p. 20; Tr. Vol. II, p. 249, ln. 6 – p. 250, ln. 13.) In claiming that it was not impractical to read the meter, Allied fails to explain how Ohio Edison could have read it without knowing that it was not in the billing system or on any meter reader's route. (Compl. Br., pp. 10-12, 20.)

Allied also fails to show that the tariff requires Ohio Edison to use the June 2006 38 kW actual read to calculate the back bill from February 2004 to June 2006. (Compl. Br., pp. 16-18; Resp. Br., pp. 21-25.)

For starters, Ohio Edison obtained actual reads for June, July, and August 2006 and used them for those months. (Resp. Br., p. 22; Tr. Vol. II, p. 225, ln. 7 – p. 1116, ln. 3; Resp.

Corrected Ex. 1.7.) That is all the tariff requires. (PUCO No. 11, Art. VII, ¶ (F).) Nothing in the tariff requires Ohio Edison to use an actual read for any month other than the one in which it is taken. (*Id.*)

Further, the testimony of Allied's own witnesses establishes that the 38 kW reading is inaccurate, and should not have been used to calculate estimated usage for historical periods. (Resp. Br., pp. 22-25; Compl. Br. pp. 16-18); *see Norman*, 62 Ohio St. 2d at 352-353. Mr. Ramun testified that Allied's operations in the equipment repair building serviced by the 935 Meter steadily *increased* during the last months of 2003 and for the entire period of the back bill. (Resp. Br., p. 24; Tr. Vol. I, p. 147, ln. 5 – p. 149, ln. 9.) *More electricity* was being used during the time period of the bill than during the historical usage years 2002 and 2003 that were used to calculate the bill. (Resp. Br., pp. 24-25; Tr. Vol. I, p. 147, ln. 5 – p. 149, ln. 9; *Id.*, p. 150, ln. 16-p. 152, ln. 24.) Mr. Hull agreed that when a customer is using more electricity, load will always be *higher* than when the customer is using less electricity. (Resp. Br., p. 15; Tr. Vol. I, p. 214, lns. 3-13.) Load during the historical usage years 2002 to 2003 never dropped below 77 kW, which was *more than double* the 38 kW load reading in June 2006. (Resp. Br., pp. 22-23.) Thus, by Allied's own admission, the 38 kW load reading was not correct, and should not have been used for historical months.[3]

Allied's contention that Ohio Edison violated Article VII, Paragraph (A) of its tariff is equally meritless. That provision states:

> 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.

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[3] As discussed in Ohio Edison's Initial Brief, there are several potential explanations for the inaccurate 38 kW reading. (Resp. Br., p. 22 n. 18.) The most likely is that the employee who took that reading (who was not a meter reader) inadvertently transposed the "3" and the "8." (*Id.*)

(PUCO No. 11, Art. VII, ¶ (A).) As discussed above, Ohio Edison did not bill the 935 Meter monthly because it was unaware that the meter was not in the billing system. When it learned of the issue, Ohio Edison reinstated the meter in the system and submitted the bill to Allied in January 2007 for each of the months not billed. Thereafter, Allied received a separate bill for each billing cycle that covered a period of approximately 30 days. (Resp. Ex. 1.10.)

The record evidence thus establishes that Ohio Edison complied with all relevant provisions of its tariff. Allied's allegations to the contrary are, once again, wholly without record support.

3. Allied Is Not Otherwise Entitled To the Relief Requested.

Perhaps because Allied is unable to show that Ohio Edison violated any law, Commission rule, or tariff provision in issuing the bill to Allied, let alone that there is systematic failure at Ohio Edison to read meters on a monthly basis, Allied's Initial Brief attempts to paint a picture of Ohio Edison's supposed "negligence." None of Allied's arguments in this regard are relevant. (Resp. Br., pp. 4, 14-15, 17-19); *Norman*, 62 Ohio St. 2d at 354-355 (citing R.C. §§ 4905.32, 4905.33); *Cincinnati Gas & Elec. Co.*, 153 Ohio App. 3d at 103-105. Allied ignores that under Ohio law, an estimated bill may not be limited based on a claim that the utility was negligent or otherwise at fault. *Norman*, 62 Ohio St. 2d at 354-355 (citing R.C. §§ 4905.32, 4905.33); *see also Cincinnati Gas & Elec. Co.*, 153 Ohio App. 3d at 103-105. The reason is because the utility's customers will be forced to pay for the electricity that was used. This rule is particularly appropriate here, where Allied concedes using the electricity for which it was billed, and, in fact, admits that the bill is *lower* than it would have been if Allied had received electric bills on a monthly basis. (Resp. Br., pp. 24-25.)

Thus, for all of the reasons discussed, Allied is not entitled to an adjustment of the bill or any of the other relief it seeks, including a review and report of Ohio Edison's billing practices and procedures, sanctions, or attorneys' fees and costs. *See Casciato-Northrup v. Dominion East Ohio*, No. 03-2372-GA-CSS (Order of April 1, 2004) (holding that the Commission does not award attorneys' fees and costs). The Complaint should be dismissed.

B. Allied Has Otherwise Failed To Establish Inadequate Or Unreasonable Service.

In arguing that Ohio Edison was "negligent" and acted out of spite in issuing the back bill, Allied repeatedly misrepresents the record. These misrepresentations deserve correction.

Allied inexplicably argues that methodology used to calculate the back bill was not made "transparent" to Allied. (Compl. Br., p. 18.) But Allied has never suggested how the process could be more transparent. In fact, Allied admits that Ms. Nentwick explained to Mr. Ramun and his lawyers how she calculated the bill and provided her workpapers at a meeting in August 2007. (Resp. Br., pp. 13-14; Compl. Br., p. 8.) It is not surprising that Allied did not learn anything at that meeting — Mr. Ramun refused to listen to Ms. Nentwick's explanation. (Resp. Br., pp. 13-14.) Instead he told Ms. Nentwick that she was not allowed to talk anymore and made inappropriate hand gestures. (*Id.*)

Allied's claim that the bill was "concocted" on a "whim" out of "thin air" based on "admittedly unreliable estimates" and "guesswork" is flatly wrong. (Compl. Br., pp. 13, 18, 19, 20, 22, 24.) Allied bases this allegation on partial deposition testimony that Allied's counsel asked Ms. Nentwick to read into the record at hearing, where she said that actual reads eliminate "guesswork." (Tr. Vol. II, p. 32, ln. 24 – p. 32, ln. 9.) Allied conveniently ignores the very next lines of Ms. Nentwick's deposition, where she testified that although actual reads are preferable,

her estimates were not based on "guesswork," but rather were based on Allied's historical usage. (*Id.*, p. 254, lns. 9-24.)

Allied's assertion that Ms. Nentwick did not "properly investigate" the reasons for the bill is equally groundless. (Compl. Br., p. 10.) Ms. Nentwick calculated the bill after a thorough investigation that involved retrieving and reviewing records, interviewing Ohio Edison employees, and two visits to Allied's premises to verify the location and status of all of Allied's meters. (Resp. Ex. 1, pp. 7-12, ¶¶ 16-38.)

Contrary to Allied's characterizations, the back bill was calculated in a manner that was accurate and fair to Allied. (Resp. Br., pp. 10-12, 19-25.) The bill was calculated for June, July, and August 2006 using the actual reads that were available for those months. (*Id.*) Allied tries to create controversy where none exists by complaining that Ohio Edison's Karen Dewey, and not Ms. Nentwick, applied the actual reads to the bill. (Comp. Br., p. 14.) It is immaterial who applied the actual reads; the bill that was sent to Allied incorporated them. (Resp. Br., p. 10.) Ms. Nentwick estimated Allied's usage for the remainder of the bill based on 24 months of Allied's historical consumption. (Resp. Br., pp. 10-12, 19-25.) The historical usage was based entirely on *actual reads* of the 935 Meter. (*Id.*) Mr. Ramun admitted that Allied used *more* electricity during the period of the bill than during the historical usage years upon which Ms. Nentwick based her calculations.[4] (*Id.*)

Allied also complains that Ohio Edison failed to adequately communicate with Allied regarding the bill. (*See* Compl. Br., pp. 5-8.) The record reveals otherwise. In July 2006,

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[4] Allied complains that Ms. Nentwick did not use billing history from June to December 2003 to calculate the bill (that history was not available because Ohio Edison had switched from a CIS billing system to an SAP billing system in June 2003). (Compl. Br., p. 19; Tr. Vol. II, p. 250, ln. 1 – p. 251, ln. 7.) However, Allied has not shown that the bill would be any less if Ms. Nentwick had used that history. In fact, Allied has never attempted to calculate what it thinks it owes.

Ms. Nentwick told Allied's Mr. Ramun that the 935 Meter had not been billed "possibly for years." (Resp. Br., pp. 8-10; Resp. Ex. 1.3.) She told him about the meter again in December 2006 and said she would soon send a bill. (Resp. Br., p. 9.) The bill was in fact sent to Allied the next month. (*Id.*, p. 12.)

No one from Allied ever contacted Ms. Nentwick to ask for additional information about the bill, even though Mr. Ramun had both her business and cell phone numbers, and had called her at home in the past. (Tr. Vol. I, p. 131, ln. 17 – p. 132, ln. 21.) And although Allied protests that Ms. Nentwick should have called Allied to discuss the bill when it was sent, Allied fails to mention that Ms. Nentwick was unexpectedly *in the hospital* shortly after the bill was sent. (Tr. Vol. II, p. 134, ln. 24 – p. 136, ln. 28.)

Allied further complains that Ohio Edison declined a meeting with Allied to discuss the bill. (Compl. Br., p. 7.) Allied neglects to mention that the meeting was requested for the sole purpose of locating the meters on Allied's property. Ohio Edison declined the meeting because Allied's Jim Smith already knew where all of Allied's meters were located. (Tr. Vol. II, p. 205, lns. 5-18.) Indeed, he showed Ms. Nentwick the location of the meters in July 2006, the same day that Ms. Nentwick told Mr. Ramun that the 935 Meter had not been read for a long period. (Resp. Br., pp. 8-9.)

Allied's argument that Ohio Edison deliberately mislead the PUCO investigator who looked into Allied's informal PUCO complaint is particularly disingenuous. (Compl. Br., pp. 7, 14.) Ms. Nentwick provided the investigator with workpapers showing that the majority of the bill was estimated based on Allied's historical usage. (Tr. Vol. II, p. 195, ln. 10 – p. 200, ln. 23.) Why the investigator thought the bill was calculated using actual reads is anyone's guess. The only "evidence" that Allied can muster to suggest that Ohio Edison misled the investigator is

Allied's counsel's improper testimony to that end. The Attorney Examiner ruled at hearing that Allied could not possibly know what the investigator understood, and excluded all evidence to that effect. (Tr. Vol. I, p. 51, lns. 6-22; *Id.* p. 58, ln. 10 – p. 59, ln. 20.)

Allied also claims that the bill was issued in "bad faith" and was retaliation for a common pleas case that Allied filed against Ohio Edison in September 2006. (Resp. Br., p. 17.) But Ms. Nentwick testified that the bill was not retaliatory and was not motivated by animosity over the litigation. (*Id.*) What Allied neglects to acknowledge is that Ms. Nentwick told Mr. Ramun about the unbilled meter in July 2006, well before the litigation was filed. (*Id.*, p. 3.) Allied also ignores the fact that Ms. Nentwick did not see a January 19, 2007 letter about the litigation before the bill was sent because she was in the hospital. (Tr. Vol. II, p. 255, lns. 4-24; Compl. Ex. P.5.)

Allied also fails to establish that Ohio Edison should have limited the back bill based on internal procedures for submitting estimated bills to customers under certain circumstances. (Compl. Br., pp. 21-23.) The procedures produced in this case pursuant to Allied's discovery requests simply do not apply to Allied's situation. (Tr. Vol. II, p. 49, ln. 10 – p. 50, ln. 7; *Id.* p. 67, lns. 10-13; *Id.* p. 173, ln. 15 – p. 174, ln. 10; *Id.* p. 223, ln. 20 – p. 225, ln. 6; *Id.* p. 230, ln. 24 – p. 231, ln. 7.) Allied presented no evidence to the contrary.

Notwithstanding its *ad hoc* blend of "negligence" and "bad faith" accusations, Allied cannot avoid the central issue in this case: whether Allied used electricity from 2004 through 2006, and in what amount. Although it does not have the burden of proof, Ohio Edison has answered these questions. It has presented a good faith, conservative and reasonable estimate of Allied's usage. Allied has responded with irrelevant legal theories and factual statements that stretch the evidence past its breaking point. These are distractions from the central questions, not

an answer to them. Allied has failed to show that Ohio Edison's estimate does not reasonably reflect Allied's usage. It has failed to meet its burden. Its Complaint must be dismissed.

III. CONCLUSION

For the reasons set forth in Ohio Edison's Initial Brief and herein, Allied has failed to meet its burden to show that Ohio Edison violated any statute, Commission rule, or tariff provision, or that Allied is otherwise entitled to any of the relief sought. Therefore, the Complaint should be dismissed.

Respectfully submitted,

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I hereby certify that the foregoing Ohio Edison Company's Post-Hearing Reply Brief was served on the following counsel via e-mail and U.S. mail this 29th day of May, 2008:

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