

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Robert Smith and Kathleen Smith,)	
)	
Complainants,)	
)	
v.)	Case No: 13-2109-EL-CSS
)	
Ohio Power Company,)	
)	
Respondent.)	

MEMORANDUM CONTRA COMPLAINANTS' APPLICATION FOR REHEARING

On January 2, 2015, Complainants filed an Application for Rehearing of the Public Utilities Commission of Ohio's ("Commission") December 3, 2014, Opinion and Order in this proceeding ("Order"). Pursuant to Ohio Administrative Code Rule 4901-1-35, Ohio Power Company d/b/a AEP Ohio ("Company") files this Memorandum Contra Complainants' Application for Rehearing. For the reasons discussed in the accompanying memorandum in support, Complainants' Application for Rehearing should be denied.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

According to Complainants, the Order is unlawful or unreasonable because the Commission “erred by ruling that Complainants are not exempt from paying taxes for the power line relocation.” (Complainants’ AFR at 1). Complainants make two arguments in support of their request for rehearing. First, they argue that because Paragraph 12 of the Company’s Terms and Conditions of Service does not specifically mention the word taxes, they should not have to pay them. (*Id.* at 4). Second, they argue they should be exempt from paying the taxes associated with their requested line relocation because “there is no tax consequence for AEP” as a result of the relocation. (*Id.* at 5). As discussed in more detail below, each of these arguments should be rejected. As the Commission correctly found in its Order, the uncontested evidence shows that taxes are a component of the Company’s standard overheads that are to be recovered pursuant to Paragraph 12 when work is performed on the Company’s facilities at the request of a customer. In addition, Complainants’ theory that there are no tax consequences for the Company as a result of the line relocation is misguided and unsupported. Therefore, Complainants’ Application for Rehearing should be denied.

II. ARGUMENT

Complainants argue that they should be exempt from paying the taxes associated with their requested line relocation because Paragraph 12 “fails to mention applicable taxes in the manner that Paragraph 10 had specifically mentioned the tax on premium services.” (Complainants’ AFR at 4). However, Complainants’ comparison of the language found in Paragraph 10 to the language found in Paragraph 12 is meaningless since Paragraph 10 does not control in this case. As the Commission found, “Complainants are requesting a power line

relocation [***] and such a request is for their benefit, *i.e.* to aid in future development of their land.” (Order at 8). Consequently, the Commission correctly concluded in its Order that “Paragraph 12 is applicable, and Complainants must pay to relocate the rest of the primary line to the public right-of-way.” (*Id.*)¹.

Although the word ‘taxes’ does not appear in Paragraph 12, Paragraph 12 does state that the cost of a customer requested line relocation shall include the Company’s standard overheads. In discussing this issue in its Order the Commission said:

“Regarding payment of taxes for power line relocation, Paragraph 12 of the AEP tariff states that the cost of relocation shall include the Company's standard overheads. AEP contends that taxes are a component of standard overhead; Complainants did not present evidence or testimony, or make assertions in their Initial Brief or Reply Brief, contradicting this. Indeed, while the parties agree that Complainants are not requesting a "premium service" under the Paragraph 10 of the AEP tariff, Complainants presented no evidence or testimony proving that by not requesting a "premium service" they are exempt from paying for standard overhead, which according to AEP includes taxes.”

¹ Paragraph 12 of the Company’s terms and conditions of service – titled “Work Performed on the Company’s Facilities at Customer’s Request” – provides:

Whenever, at the request of a customer and solely to suit the convenience of the customer, work is performed on the Company’s facilities or the Company’s facilities are relocated, the customer shall pay to the Company, in advance, the estimated total cost of such work. This cost shall be itemized by major categories and shall include the Company’s standard overheads and be credited with the net value of any salvageable material. The actual costs for the work performed will be determined after its completion and the appropriate additional charge or refund will be made to the customer.

(Order at 8-9) (Internal quotations and citations omitted). In their Application for Rehearing, Complainants have once again presented no evidence to support their contention that they should be exempt from paying the Company's standard overheads, including taxes, as part of the cost of their requested line relocation. Complainants simply conclude, without offering any legal support for their position, that "the mere absence of a specific reference to taxes [in Paragraph 12] is sufficient enough to show that taxes are not applicable." (Complainants' AFR at 4). Complainants' position should be rejected. Complainants would have the Commission ignore the plain language of a Commission-approved tariff and the uncontested evidence in this case showing that taxes are a component of the Company's standard overheads which are to be recovered pursuant to Paragraph 12 when work is performed on the Company's facilities at the request of a customer. As the Commission correctly concluded, Paragraph 12 controls in this case and Complainants must pay all costs associated with their requested line relocation.

For their second argument, Complainants state they should be exempt from paying the taxes associated with their requested line relocation because they believe "there is no tax consequence for AEP" as a result of the relocation. (Complainants' AFR at 5). To support their theory, Complainants rely on an IRS Code provision that has no application to the facts presented in this case. Specifically, Complainants cite to 26 U.S.C. §1031, which relates to the nonrecognition of gain or loss on the exchange of like kind property. (*Id.* at 4). However, if Complainants choose to go forward with their requested line relocation, the transaction would involve the payment of money for services performed; there would be no exchange of like kind property. Consequently, 26 U.S.C. §1031 does not apply in this case and Complainants' reliance on this IRS Code provision is misplaced. Complainants' theory that there are no tax

consequences for the Company as a result of their requested line relocation is misguided, unsupported, and should be rejected.

III. CONCLUSION

The Order is neither unlawful nor unreasonable, and Complainants' Application for Rehearing should be denied. Complainants have continually failed to offer any relevant evidence to support their positions. By contrast, the uncontested evidence that was produced demonstrates that taxes are a component of the Company's standard overheads that were appropriately included in the cost of Complainants' requested line relocation. Further, Complainants' theory that there are no tax consequences for the Company as a result of the relocation is unreasonable, unsupported, and should be rejected. The Commission correctly concluded that "Paragraph 12 is applicable, and Complainants must pay to relocate the rest of the primary line to the public right-of-way." (Order at 8). For the forgoing reasons, Complainants' Application for Rehearing should be denied.

Respectfully submitted,

/s/ Yazen Alami

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via electronic mail upon the individuals identified below on this 12th day of January, 2015.

/s/ Yazen Alami

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Summary: Memorandum Contra Complainants' Application for Rehearing electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company