

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

ALLIED ERECTING & DISMANTLING
CO., INC.,

Complainant,

v.

OHIO EDISON COMPANY,

Respondent.

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Case No. 07-905-EL-CSS

**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 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,


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Dated: October 9, 2013

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

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

[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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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