

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing of Annual	:	Case No. 14-01-AU-RPT
Reports for Calendar Year 2013 by	:	
all Regulated Entities.	:	

**APPLICATION FOR REHEARING AND
MOTION FOR SPECIAL ORDER OF STAY OF
ALPHA GAS & ELECTRIC, LLC**

Alpha Gas & Electric, LLC ("Alpha"), pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35(A), Ohio Administrative Code ("OAC"), hereby applies for rehearing from the Commission's December 10, 2014 finding and order in this docket, and, more specifically, from the Commission's determination that Alpha's Certificate (CRES Certificate No. 13-620E) should be revoked for Alpha's failure to file its 2013 Competitive Retail Electric Supplier ("CRES") annual report. As more fully discussed in the accompanying supporting Memorandum, Alpha submits that the Commission's finding and order is unreasonable and unlawful on the following grounds:

Where the failure of a regulated Competitive Retail Electric Supplier to file its 2013 Annual Report was obviously an oversight, and where the CRES in question had no customers or revenues in Ohio in 2013, and has since filed its 2013 CRES Annual Report, and when the CRES in question also holds a Certificate as a Competitive Retail Natural Gas Supplier ("CRNGS") and filed its 2013 CRNGS annual report and paid the minimum \$100 assessment applicable to CRES/CRNGSs, and revoking the CRES's certificate would result in irreparable harm to the CRES and in a disruption of service to its customers, the extraordinary sanction of revoking the entity's certificate is unreasonable and inappropriate. In addition, Alpha respectfully requests

that the civil forfeiture assessed against Alpha for failing to timely remit its annual report be waived.

Furthermore, to prevent disruption of service to its existing customers, Alpha hereby moves for a special order pursuant to Section 4903.10(B), Revised Code, staying the revocation of its certificate until such time as the Commission has an opportunity to consider its Application for Rehearing. If the Commission acts on the Application for Rehearing without first granting the requested stay, Alpha requests that its certificate be reinstated retroactively to the date of the December 10, 2014 Order.

WHEREFORE, Alpha Gas & Electric, LLC respectfully requests that the Commission grant its Application for Rehearing, reinstate its certificate and waive the civil forfeiture assessed against Alpha. Alpha further requests that the Commission stay the revocation of its certificate pending its ruling on this Application for Rehearing, or, if the Commission acts on the Application without first granting the requested stay, that the rehearing entry reinstate Alpha's certificate *nunc pro tunc*.

Respectfully submitted,


Kathy J. Kolich
Attorney Reg. No. 0038855
1521 Hightower Drive
Uniontown, OH 44685
T: 330-316-2378
E Mail: kjklaw@yahoo.com

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing of Annual : Case No. 14-01-AU-RPT
Reports for Calendar Year 2013 by :
all Regulated Entities. :

**MEMORANDUM IN SUPPORT
OF
APPLICATION FOR REHEARING
AND
MOTION FOR SPECIAL ORDER FOR STAY
OF
ALPHA GAS & ELECTRIC, LLC**

On August 20, 2014, the Public Utilities Commission of Ohio (“Commission”) identified certain regulated entities that failed to file their 2013 annual reports to the Commission in a timely manner as required by Section 4928.06, Revised Code. Alpha Gas & Electric, LLC (“Alpha”), which is both a Certified Retail Electric Supplier (“CRES”) and a Competitive Retail Natural Gas Supplier (“CRNGS”), was listed in the August 20, 2014 Order as one of the CRES entities that had not timely filed its 2013 CRES Annual Report.

Findings 7-9 of the August 20, 2014 Order directed all Companies listed on the attachment to the Order to file their 2013 annual reports by September 1, 2014 or show cause why its certificate of authority should not be revoked. In addition, each company was assessed a \$1000 civil forfeiture, in addition to any amounts owed to the Commission or to the OCC.

On December 10, 2014, the Commission issued an Order on Rehearing in this docket. The December 10, 2014 Order indicated that Alpha’s CRES certificate was revoked, and that Alpha must immediately cease providing regulated service in Ohio and notify its customers that Alpha is no longer permitted to operate in Ohio as a CRES.

For the reasons set forth below, Alpha respectfully requests that the Commission grant its Application for Rehearing and retroactively reinstate its CRES Certificate.

Alpha is a New York limited liability company headquartered in Pomona, New York. Effective June 16, 2013, Alpha was issued Certificates to operate as both a CRES and a CRNGS in the State of Ohio. Alpha did not have any electric or gas customers or related revenues in Ohio in 2013, and did not begin actively marketing its electric generation or gas service in Ohio until 2014. Alpha began serving electric customers in Ohio in 2014, and currently is providing its services to electric customers in Ohio.

On May 28, 2014, Alpha filed its Ohio CRNGS Annual Report. A copy of Alpha CRNGS Annual Report is attached hereto as Appendix 1. Alpha paid the minimum \$100 assessment due under R. C. 4905.10(A) on October 14, 2014. As a new market entrant in Ohio, Alpha was unfamiliar with the process for the filing of annual reports and remittances of annual assessments, but made its best efforts to fully comply with the Commission's requirements. It is apparent that Alpha mistakenly did not file a separate CRES annual report simultaneously with filing its CRNGS report, but Alpha was under the assumption that it had fulfilled its reporting and assessment obligations by filing its CRNGS report and paying the minimum \$100 assessment.

Alpha has no record of receiving notice from the Commission that it was delinquent in its 2013 annual CRES report obligation, and did not become aware of the delinquency until it was informed by a third party on December 11, 2014 that Alpha's CRES certificate had been revoked. Upon receiving this information, Alpha immediately obtained a copy of the Commission's December 10, 2014 Order from the Commission's website, and began investigating the situation.

Alpha is conducting an internal investigation to determine why its 2013 annual CRES report was not filed and why it was unaware of the delinquency until December 11, 2014. Alpha takes its compliance obligations very seriously, and will implement any necessary process adjustments to ensure that all annual reports are filed and all assessments are paid in a timely manner in the future. Alpha is also investigating whether the Commission's January 22, 2014 and August 20, 2014 Orders in this Docket were actually received by Alpha. In the meantime, Alpha has filed its 2013 CRES Annual Report, a copy of which is attached hereto as Appendix 2.

Alpha recognizes that regulated entities are expected to fully comply with the Commission's reporting and assessment regulations. However, Alpha believes that in this instance, the penalty of revoking its certificate is unreasonably disproportionate to the offense of failing to file an annual report, particularly when 1) the failure to file was inadvertent; 2) Alpha had zero revenue and zero customers to report in Ohio in 2013; 3) Alpha timely filed its 2013 CRNGS annual report; 4) Alpha has already paid the minimum \$100 assessment for entities that are both a CRES and a CRNGS; and 5) the question of whether Alpha actually received notice of the deficiency has not yet been resolved.

Furthermore, the revocation of Alpha's license would cause irrevocable harm to Alpha. Not only would the revocation of its certificate potentially cause Alpha to lose all its customers, it would also be extremely disruptive and confusing to the customers themselves, who would be put in a situation of having their electric supplier changed during the winter heating season. As the Ohio Supreme Court noted in *Adams v. Pub. Util. Comm.*, 141 Ohio St. 255,258 (1943), "(c)ertificates of public convenience and necessity are granted for the benefit of the public and not the recipients of the certificates. Anticipated benefits to the applicants or possible detriment to other certificate holders are only incidental and secondary." Here, the revocation of

Alpha's certificate would also directly penalize Alpha's customers, an outcome that is clearly contrary to sound public policy.

Furthermore, since the civil forfeiture assessed against Alpha was based solely on the untimely filing of its annual report, and since that annual report has been filed showing zero revenues for 2013, and since Alpha has paid the minimum \$100 assessment applicable to CRES/CRNGSs, Alpha respectfully requests, *nunc pro tunc*, a waiver of the \$1000 civil forfeiture which was assessed against Alpha.


Section 4903.10(B), Revised Code, provides that, where the "application for rehearing has been filed before the effective date of the order as to which rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending the disposition of the matter by the commission or by operation of law." However, in this instance, the revocation of Alpha's certificate was effective as of the date of the December 10, 2014 Order. Thus, by the motion for stay coupled with the foregoing application for rehearing, Alpha seeks a special order from the Commission staying the revocation of its certificate until the Commission has the opportunity to consider its rehearing application. Special orders of this type are specifically contemplated by the following provision of Section 4903.10(B), Revised Code, which states that "In all other cases the making of such an application (for rehearing] shall not excuse any person from complying with the order, or operate to stay or postpone the order, without a special order of the Commission."

In view of the irreparable harm Alpha will suffer and the disruption of service its customers will experience if the certificate is not reinstated, Alpha respectfully requests that the Commission issue a special order staying the order revoking its certificate until the Commission has an opportunity to consider the application for rehearing. However, in the event

that the Commission elects to act on the Application for Rehearing without considering the Motion for a stay, Alpha urges the Commission to reinstate its certificate retroactive to the date of the Order so that Alpha will not be subject to additional penalties for continuing to serve its customers during the period its rehearing Application was pending.

WHEREFORE, Alpha respectfully requests that the Commission grant its Application for Rehearing and reinstate its certificate, and waive the previously assessed civil forfeiture. Alpha further requests that the Commission stay the revocation of its certificate pending its ruling on the Application for Rehearing, or, if the Commission acts on the Application without first granting the requested stay, that the rehearing entry reinstate its certificate *nunc pro tunc*.

Respectfully submitted,


Kathy J. Kolich
Attorney Reg. No. 0038855
1521 Hightower Drive
Uniontown, OH 44685
T: 330-316-2378
E Mail: kjklaw@yahoo.com

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Filing of Annual
Reports for Calendar Year 2013 by all
Regulated Entities

:
: CASE NO. 14-01-AU-RPT
:
:
: AFFIDAVIT OF DAVID WANOUNOU

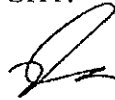
BEFORE ME, the undersigned authority, a Notary Public in and for the State of New York personally appeared David Wanounou who being duly sworn according to law, deposes and says:

1. I am employed as a Principal of Alpha Gas & Electric, LLC ("Alpha"). Alpha's principal place of business is at 971 Rt. 45, Suite 202, Pomona, NY 10970.

2. In my role as Principal, I am responsible for ensuring compliance with the rules and regulations of the Public Utilities Commission of Ohio with respect to Alpha's CRES and CRNGS certifications.

3. I hereby affirm that all factual statements made in the foregoing Application for Rehearing and Motion for Special Order and Supporting Memorandum of Law are true and correct to the best of my knowledge, information, and belief.

FURTHER, AFFIANT SAYETH NAUGHT.



David Wanounou Affiant

Sworn and subscribed before me, a Notary Public, this 14 day of December, 2014.



Notary Public,
State of New York

My Commission Expires: 5/18/18

APPENDIX 1



Public Utilities Commission

Annual Report to the Commission for Competitive Retail Natural Gas Service Providers

- ☒ RETAIL NATURAL GAS SUPPLIER
☐ RETAIL NATURAL GAS MARKETER
☐ RETAIL NATURAL GAS BROKER
☐ RETAIL NATURAL GAS AGGEGATOR
☐ OTHER :

Certification Number: 13-308G

PUCOID Number: 356885

Annual Report for the Year ending December 31, 2013 of Alpha Gas And Electric LLC

Address:

971 Route 45
Pomona, NY 10970

Website URL:

www.alphagasandelectric.com

Filed by:

Dina Freedman
(845) 810-0088

Changes: This company did not have any changes in name(s), principal address, legal status, ownership, corporate structure or operations during the 2011 reporting year or thereafter.

Annual Report filings and instructions are available at:

www.puco.ohio.gov/puco/docketing/

Schedule 1 is used for PUCO annual assessment purposes pursuant to Section 4905.10, Revised Code. The reporting company shall maintain supporting and/or subsidiary records to separately record revenues derived from total operations and from its Ohio intrastate operations. Information presented herein is subject to audit by the PUCO.

For the purpose of this report, sales of natural gas are deemed to occur at the meter of a retail customer.

SCHEDULE: 1

STATEMENT OF INTRASTATE SALES AND REVENUES *			
		Sales (Mcf)	Revenues (\$)
1	Choice Program Retail Sales	0	\$0
2	Choice Program Aggregation Sales	0	\$0
3	Total Natural Gas Sales (1 + 2)	0	\$0

* The information reported on this form should refer only to those sales and revenues for which certification pursuant to Section 4929.20, Revised Code, is required. Natural gas Standard Choice Offer (SCO) providers should include such sales and revenues as part of Choice Program Retail Sales.

IN ORDER TO ENSURE THAT PUCO CORRESPONDENCE IS DIRECTED TO THE APPROPRIATE
PERSON AT THE CORRECT ADDRESS, PLEASE COMPLETE THE FOLLOWING.

Docketing Contact Information

dina@alphagne.com

Email

Dina Freedman

Office Manager

Name

Title

971 Route 45 suite 202 Pomona, NY 10970

Address

(845) 810-0088

Phone Number (including Area Code)

Fiscal Contact Information

henry@alphagne.com

Email

Henry Bennett

Director of Operations

Name

Title

971 Route 45 Pomona, NY 10970

Address

(845) 810-0088

Phone Number (including Area Code)



**Public Utilities
Commission**

**Affidavit for the Filing of the
Annual Report of a Regulated
Entity**

REQUIRED VERIFICATION:

The Annual Report of a Regulated Entity to the Commission must be verified by an authorized officer of the Reporting Entity, pursuant to Ohio Revised Code Section 4905.14(A)(1).

State of: New York

County of: Rockland

Affiant's Name: David Wanounou

Affiant's Title: Prinipal

Reporting Entity: Alpha Gas and electric, LLC

OATH:

The undersigned, being duly sworn, states that s/he is authorized to file the foregoing Annual Report to the Public Utilities Commission of Ohio on behalf of the above-named Reporting Entity; that to the best of her/his knowledge, information, and belief, all statements of fact contained therein, including any supporting schedules, are true; and that said Annual Report is a correct statement of the business and affairs of the Reporting Entity in respect to each and every matter set forth during the reporting period identified therein.

If applicable, the employee, agent, accounting firm or other third party company indicated below is hereby authorized to electronically file said Annual Report on my behalf.

Filer's Name: Dina Freedman

Filer's Title: Office Manager

Filer's Company: Alpha Gas & Electric, LLC.

(Signature of Affiant)

Sworn and subscribed before me this 28th day of May, 2014.

Signature of Notary

Print name of Notary: Renee Levine

My commission expires on: 5/23/2017

RENEE LEVINE
Notary Public, State of New York
No. 02LE6127286
Qualified in Rockland County
Commission Expires May 23, 2017

DECLARATION OF FILER:

The above indicated Filer, if applicable, hereby verifies that the Annual Report being electronically filed with the Public Utilities Commission of Ohio on behalf of the above-named Reporting Entity accurately reflects all statements of fact as authorized by the above-named Affiant.

(Signature of Filer)

APPENDIX 2



Public Utilities Commission

Annual Report to the Commission for Competitive Retail Electric Service

- ☐ AGGREGATOR
GOVERNMENTAL AGGREGATOR
☒ POWER MARKETER

RETAIL ELECTRIC GENERATION PROVIDER
POWER BROKER

Certification Number: 13-701E

PUCOID Number: 356885

Annual Report for the Year ending December 31, 2013 of Alpha Gas And Electric LLC

Address:

971 Route 45, Ste 202
Pomona, NY 10970

Website URL:

www.alphagasandelectric.com

Filed by:

Dina Freedman
(845) 810-0088

Changes: This company did not have any changes in name(s), principal address, legal status, ownership, corporate structure or operations during the 2013 reporting year.

Annual Report filings and instructions are available at:

www.puco.ohio.gov/puco/docketing/

Customer Class	Sales (kWh)	Earnings(\$)
Residential	0	\$0
Commercial	0	\$0
Industrial	0	\$0
Other	0	\$0
Total	0	\$0

Instructions:

This information is used for PUCO annual assessment purposes pursuant to Section 4905.10, Revised Code. The reporting company shall report its intrastate gross earnings for the provision of retail services (e.g. Retail Electric Generation, Broker, Marketer, Governmental Aggregator) for which it is subject to certification by the PUCO under Section 4928, Revised Code. In addition, power providers please provide all corresponding sales of kilowatt hours of electricity. Sales of kilowatt hours of electricity are deemed to occur at the meter of the retail customer.

The reporting company shall maintain supporting and/or subsidiary records to separately record receipts and sales of electricity derived from operations other than in Ohio. Information presented herein is subject to audit by the PUCO.

IN ORDER TO ENSURE THAT PUCO CORRESPONDENCE IS DIRECTED TO THE APPROPRIATE
PERSON AT THE CORRECT ADDRESS, PLEASE COMPLETE THE FOLLOWING.

Docketing Contact Information

dina@alphagne.com

Email

Dina Freedman

Office Manager

Name

Title

971 Route 45 suite 202 Pomona, NY 10970

Address

(845) 810-0088

Phone Number (including Area Code)

Fiscal Contact Information

henry@alphagne.com

Email

Henry Bennett

Director Of Operations

Name

Title

971 Route 45 Pomona, NY 10970

Address

(845) 810-0088

Phone Number (including Area Code)



Public Utilities
Commission

Affidavit for the Filing of the
Annual Report of a Regulated
Entity

REQUIRED VERIFICATION:

The Annual Report of a Regulated Entity to the Commission must be verified by an authorized officer of the Reporting Entity, pursuant to Ohio Revised Code Section 4905.14(A)(1).

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County of: Rockland

Affiant's Name: David Wanounou

Affiant's Title: Prinipal

Reporting Entity: Alpha Gas and electric, LLC

OATH:

The undersigned, being duly sworn, states that s/he is authorized to file the foregoing Annual Report to the Public Utilities Commission of Ohio on behalf of the above-named Reporting Entity; that to the best of her/his knowledge, information, and belief, all statements of fact contained therein, including any supporting schedules, are true; and that said Annual Report is a correct statement of the business and affairs of the Reporting Entity in respect to each and every matter set forth during the reporting period identified therein.

If applicable, the employee, agent, accounting firm or other third party company indicated below is hereby authorized to electronically file said Annual Report on my behalf.

Filer's Name: Dina Freedman

Filer's Title: office Manager

Filer's Company: Alpha Gas & Electric, LLC.

(Signature of Affiant)

Sworn and subscribed before me this 28th day of May, 2014.

Signature of Notary

Print name of Notary: Renee Levine

My commission expires on: 5/23/2017

RENEE LEVINE
Notary Public, State of New York
No. 02LE6127285
Qualified in Rockland County
Commission Expires May 23, 2017

DECLARATION OF FILER:

The above indicated Filer, if applicable, hereby verifies that the Annual Report being electronically filed with the Public Utilities Commission of Ohio on behalf of the above-named Reporting Entity accurately reflects all statements of fact as authorized by the above-named Affiant.

(Signature of Filer)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing and Motion for Special Order of Stay and Memorandum in Support of Alpha Gas & Electric, was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 16th day of December, 2014.

/s/ Kathy J. Kolich

Kathy J. Kolich

Attorney for Applicant

Alpha Gas & Electric, LLC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/16/2014 6:09:00 PM

in

Case No(s). 14-0001-AU-RPT

Summary: Application for Rehearing and Motion for Special Order of Stay electronically filed by Ms. Kathy J Kolich on behalf of ALPHA GAS & ELECTRIC, LLC