

July 8, 2015

PUBLIC UTILITIES COMMISSION OF OHIO
180 East Broad Street
Columbus, Ohio 43215

Re: **MOTION FOR REHEARING**
U.S. POWER TRADE LLC

To Whom It May Concern:

Enclosed please find a **MOTION FOR REHEARING** for our client, **U.S. POWER TRADE LLC**. This document is being E-Filed with the authorization of Michael R. Donaldson, Attorney-at-Law (#0029927).

Thank you,

Shayna Desai
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | |
|-----------------------------------------------|-----------------------|
| In the Matter of the Annual Reports for) | |
| Fiscal Assessment of all Regulated Entities) | Case No. 14-01-AU-RPT |
| For Calendar Year 2013 and 2014.) | Case No. 15-01-AU-RPT |

APPLICATION FOR REHEARING AND
MOTION FOR SPECIAL ORDER FOR STAY OF
U.S. POWER TRADE, LLC

Now comes U.S. Power Trade, LLC (“U.S. Power”), by and through the undersigned counsel, and, 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 May 13, 2015, finding and order in this docket, and more specifically, from the Commission’s determination that U.S. Power’s Certificate (CRES Certificate No. 13-627E) should be revoked for U.S. Power’s failure to pay the 2014 annual fiscal assessments owed to the commission. U.S. Power hereby submits that the Commission’s May 13, 2015, Finding and Order is unreasonable for the reasons as set forth in the accompanying Memorandum in Support.

In addition, to prevent disruption of service to customers, U.S. Power hereby moves for a special order, pursuant to O.R.C. Section 4902.10(B), staying revocation of its Certificate No. 13-627E until such a time as the Commission has an opportunity to consider and decide this Application for Rehearing. Should the Commission act on the Application for Rehearing without first granting the requested motion for stay, U.S. Power requests that its Certificate No. 13-627E be reinstated retroactive to May 13, 2015.

WHEREFORE, U.S. Power respectfully requests the Commission grant it’s Application for Rehearing and reinstate its Certificate No. 13-627E. U.S. Power further requests that the Commission stay the revocation of Certificate No. 13-627E pending its ruling on the Application for Rehearing, or, if the

Commission acts on the rehearing application without first granting the requested stay, that the rehearing entry reinstate Certificate No. 13-627E retroactive to May 13, 2015.

RESPECTFULLY SUBMITTED,

/Michael R. Donaldson/

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MEMORANDUM IN SUPPORT

By Entry of April 8, 2015 in Case No. 15-01-AU-RPT (the “15-01 Assessment Entry”), the Commission identified certain regulated entities that were required to remit payment of the 2014 PUCO assessment, as required by O.R.C. Section 4905.10. U.S. Power was identified in an attachment to the 15-01 Assessment Entry as one of the non-compliant entities as concerns the payment of the 2014 PUCO assessment. As pertinent here, each non-complying entity was directed to pay its respective PUCO assessment by April 30, 2015. The 15-01 Assessment Entry was served on U.S. Power on April 13, 2015, identifying that U.S. Power owed the sum of \$4,489.01. Believing this amount was an error, based on the low numbers reported in its 2013 annual report, U.S. Power contacted the Commission for an updated invoice. Upon receipt of an old invoice which indicated a \$100 assessment fee, U.S. Power, through clerical error, mistakenly believed this had already been paid. The circumstances surrounding these events lent support to U.S. Power’s belief that it had complied with the Commission’s Orders in Case No. 15-01-AU-RPT. Any noncompliance by U.S. Power is the result of excusable neglect.

By its May 13 Entry, the Commission revoked U.S. Power’s certification to provide aggregation and power broker services within the State of Ohio (Certificate No. 13-627E) for failure to timely pay its 2014 PUCO assessment. Upon its receipt of the May 13 Entry, U.S. Power became aware for the first time that it was not in compliance with all Orders issued by the Commission in Case No. 15-01-AU-RPT. Immediately upon learning of this non-compliance, the Company paid the \$100 assessment in full. To the best of the Company’s knowledge and belief, there are no outstanding non-compliances on the part of

U.S. Power, and but for the May 13 Entry, U.S. Power would be authorized to provide services pursuant to Certificate No. 13-627E.

U.S. Power recognizes and acknowledges that regulated entities are expected to fully comply with the reporting requirements of the Commission. Here, however, U.S. Power submits that the penalty of revocation of its Certificate No. 13-627E is unreasonably disproportionate to the offense of failing to timely pay its 2014 PUCO assessment. This is particularly true when the failure was due to the confusing nature of these proceedings, the clerical errors made on both sides and separation of the notice of the assessment from the annual report filing requirement. U.S. Power has demonstrated a history of full compliance in all prior years of certification, and the 2014 PUCO assessment has been paid in full.

O.R.C. Section 4903.10(B) provides where an application for rehearing has been filed before the effective date of the order from 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 rehearing application. Here, however, the May 13 Entry made revocation of Certificate No. 13-627E effective immediately. As a result, U.S. Power moves for a special order from the Commission staying the revocation of Certificate No. 13-627E until the Commission has the opportunity to consider and decide its rehearing application. Special orders of this type are specifically contemplated under O.R.C. Section 4903.10(B), which states, in pertinent part: “In all other cases the making of such an application [for rehearing] shall not excuse any person from complying with the order, or operate or stay or postpone the enforcement thereof, without a special order of the commission.”

Considering the irreparable harm U.S. Power will suffer and the disruption of service its customers will experience if Certificate No. 13-627E is not reinstated, U.S. Power respectfully requests that the Commission issue a special order staying the order revoking its Certificate No. 13-627E until the Commission has an opportunity to consider and decide its application for rehearing. Should the Commission elect to act on the application for rehearing without considering this motion to stay, U.S. Power urges the Commission to reinstate Certificate No. 13-627E retroactive to May 13, 2015, so U.S.

Power will not be subject to additional penalties for continuing to service its customers during the period its rehearing request is pending.

WHEREFORE, U.S. Power respectfully requests the Public Utilities Commission of Ohio grant its Application for Rehearing and reinstate Certificate No. 13-627E, accept the Company's payment of the 2014 PUCO assessment as tendered, and waive any civil forfeiture(s) assessed as to events preceding this Application for Rehearing. U.S. Power further requests that the Commission stay revocation of Certificate No. 13-627E pending a ruling on the Application for Rehearing, or, should the Commission act on the Application for Rehearing without first granting the requested stay, that the rehearing entry reinstate Certificate No. 13-627E retroactive to May 13, 2015.

RESPECTFULLY SUBMITTED,

/Michael R. Donaldson/

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/8/2015 2:59:32 PM

in

Case No(s). 15-0001-AU-RPT, 14-0001-AU-RPT

Summary: Motion Application for Rehearing and Motion for Special Order for Stay electronically filed with authorization from Mr. Michael R. Donaldson on behalf of U.S. Power Trade LLC electronically filed by Shayna Desai on behalf of U.S. Power Trade LLC