

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Reports for)	
Calendar Year 2020 for the Fiscal)	Case No. 21-01-TP-RPT
Assessment of All Regulated Entities.)	

**APPLICATION FOR REHEARING
OF
TALEN ENERGY MARKETING, LLC**

I. Introduction

Talen Energy Marketing, LLC (“Talen”) respectfully requests rehearing of the December 15, 2021 Second Finding and Order of the Public Utilities Commission of Ohio (“Commission”) and requests that the Commission reverse its decision to impose a \$1,000 forfeiture against Talen for not remitting its 2020 annual assessment by the November 2021 deadline,¹ as set forth in paragraph 6 of the Second Finding and Order. Talen’s sole assignment of error is:

The Commission’s assessment is unjust and unreasonable and should be reversed because Talen mistakenly believed the assessment had been timely remitted while the payment was actually delayed due to an inadvertent error.

Ohio Revised Code (“R.C.”) § 4903.10 provides that, on rehearing, if the “commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same.” Good cause exists for granting this application for hearing and for reversing the civil forfeiture order as to Talen. Talen did not remit the assessment payment by the due date due to an isolated and inadvertent administrative error. When notified about the Commission’s December 15, 2021 order, Talen personnel acted promptly to correct the situation. Talen submitted the outstanding assessment

¹ The Commission’s Second Finding and Order at paragraphs 5 and 6 indicates that the deadline was November 1, 2021. However, Talen’s account in the PUCO Community indicates that the deadline was November 15, 2021.

payment in full and its PUCO Community account reflects that the payment has been received, which demonstrates its good faith intention to comply. Although the payment was briefly delayed, no harm has come from the delay in receiving Talen's assessment payment. Under the circumstances, the Commission should conclude that good cause exists to grant rehearing as requested, and the Commission should reverse the forfeiture against Talen. Additional details and information are set forth below.

II. Background

Talen is certified to provide competitive retail electric services in Ohio under certificate number 13-693E. The certificate was most recently renewed in 2021. *In the Matter of the Application of Talen Energy Marketing LLC for a Certificate of Public Convenience and Necessity*, Case No. 13-894-EL-CRS.

By Entry issued in January 2021 in this docket, the Commission directed all regulated service providers in Ohio to submit an annual report to the Commission for calendar year 2020 and to do so through the Commission's web-based system called the PUCO Community. *In the Matter of the Annual Reports for Calendar Year 2020 for the Fiscal Assessment of All Regulated Entities*, Case No. 21-01-TP-RPT, Entry at ¶ 6 (January 27, 2021). The Commission uses the annual reports to calculate the annual assessment per R.C. §§ 4905.10 and 4905.14.

Talen personnel timely prepared and submitted the annual report for calendar year 2020. Several months later, the Commission sent an invoice to Talen and the assessment payment was due in November 2021. On December 15, 2021, the Commission (a) identified those regulated entities that did not remit their assessment payment by the November 2021 deadline; (b) assessed a \$1,000 civil forfeiture against those entities, but delayed the effectiveness to allow for

applications for rehearing; and (c) ordered those entities to pay their outstanding assessment by January 14, 2022. *Id.*, Second Finding and Order at ¶¶ 6-8 (December 15, 2021).

III. Argument

Talen has paid its assessment payments to the Commission in full. Talen, however, inadvertently did not remit the 2020 assessment payment to the Commission by the November 2021 due date because of an internal communication error. It did not intentionally fail to remit the assessment payment. Under the circumstances, the inadvertent and unintentional error establishes good cause for the Commission to reverse on rehearing its ruling assessing a forfeiture against Talen.

A. Talen mistakenly believed its personnel were timely remitting the assessment payment to the Commission.

Talen received the invoice from the Commission, and its personnel discussed making the payment. Different personnel thought the other was handling the payment and, as a result, it was inadvertently not sent to the Commission by the November 2021 deadline. Talen believed that its payment had been remitted, without realizing it actually had not. Talen did not realize that the payment had not been remitted until after the Commission's Second Finding and Order was issued on December 15, 2021.

B. Talen intended to comply with the Commission's assessment requirements.

Talen's discussions about timely making the payment illustrate that it intended to comply with the Commission's requirement. In addition, Talen worked promptly when it learned that the 2020 assessment payment was outstanding. Talen sent the payment in December 2021 to the Commission and its payment has been received in advance of the Commission's new deadline of

January 14, 2022. Talen's PUCO Community account verifies that the assessment payment has been made:

The screenshot shows the Ohio Public Utilities Commission website. At the top is the logo and a navigation bar with links: HOME, NOTICES, INVOICES, CERTIFICATES, MANDATORY REPORTS, CONTACTS, APPLICATIONS, and HELP. Below the navigation bar, the 'Open invoice items' section contains instructions on how to pay invoices and a link for questions. A 'Note' states that only one payment type can be used per transaction. Below this is a table with columns: Account Name, Invoice #, Civil Forfeiture Case Number, Type, Due Date, and Balance Due. A 'Payment Method' dropdown menu is set to 'Credit Card', and a 'Pay Selected Invoices' button is visible. The 'Invoice history' section provides instructions on how to view details and contains a table with columns: Account Name, Invoice #, Status, Due Date, and Payments Received. The table lists two invoices for Talen Energy Marketing LLC: one for \$950.95 due 6/15/2021, and another for \$11,925.57 due 11/15/2021. The second invoice is highlighted in yellow.

Account Name	Invoice #	Status	Due Date	Payments Received
Talen Energy Marketing LLC	21-00057908	Closed - Paid	6/15/2021	\$950.95
Talen Energy Marketing LLC	21-00072088	Closed - Paid	11/15/2021	\$11,925.57

Talen's actions demonstrate both its original desire to make the payment and to fix the error promptly. Talen intended to comply in good faith with the Commission's assessment requirements.

C. The brief delay in receiving the assessment payment caused no harm.

There was no harm caused by the slight delay in receiving the assessment payment from Talen. The assessment payment was delayed only by a few weeks (during which the Commission offices were closed and several holidays took place). Under these circumstances, the delay in receiving Talen's payment would cause zero harm or at most be *de minimus*.

D. Commission precedent supports a reversal of the forfeiture orders.

The Commission has reversed forfeiture rulings when there had been a good faith intent to comply but it did not happen timely. For example, the Commission reversed itself and concluded no forfeiture should be assessed against several companies for failing to submit their Annual Reports timely. *In the Matter of the Annual Reports for Calendar Year 2018 for the Fiscal*

Assessment of All Regulated Entities, Case No. 19-01-AU-RPT, Entry on Rehearing (October 9, 2019). In *Annual Reports*, the Commission assessed a forfeiture against New Wave Energy Corporation (“New Wave”) for its failure to submit its 2018 electric annual report. New Wave’s personnel mistakenly believed that both its electric and natural gas annual reports had been submitted timely, but discovered after the deadline that one report had not been submitted by the deadline. *Id.* at ¶¶ 7. New Wave promptly submitted the missing annual report and the Commission waived the forfeiture. *Id.* at ¶¶ 11, 14. In a second example, the Commission reversed a forfeiture ruling against Unity Electric Discount LLC (“Unity”), who had mistakenly failed to press the “submit” button in the PUCO Community, but submitted its missing annual report after a forfeiture order was issued. *Id.* at ¶¶ 5, 14.

In the Matter of the Annual Reports for Calendar Year 2019 for the Fiscal Assessment of All Regulated Entities, Case Nos. 20-01-AU-RPT et al., Entry on Rehearing (October 21, 2020), the Commission lifted a forfeiture against Ohio MSA LLC (“MSA”) when the notice of the annual report requirements was sent to personnel no longer employed by the company because the contact records had not been updated. The personnel remaining with the company were delayed in remitting the required reports, which occurred after the due date. *Id.* at Entry on Rehearing at ¶¶ 15, 16.

These situations involved inadvertent personnel mistakes and are similar to Talen’s situation involving its delayed assessment payment. The Commission should follow its precedent and, as it did for New Wave, Unity and MSA, should reverse the forfeiture ruling against Talen.

IV. Conclusion

As noted above, Talen believed that its personnel was remitting the assessment payment on time and did not intentionally fail to submit the payment. When the outstanding status of the

payment was discovered, Talen worked quickly to pay the assessment and there was no harm caused by the brief delay. A reversal of the forfeiture ruling is warranted given this inadvertent mistake. Recent Commission precedent also supports the lifting of the forfeiture in similar circumstances. For all of these reasons, good cause exists to reverse the forfeiture ruling against Talen.

Respectfully Submitted,

/s/ Gretchen L. Petrucci

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 12th day of January 2022 upon all persons/entities listed below:

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Summary: App for Rehearing Application for Rehearing electronically filed by Mrs.
Gretchen L. Petrucci on behalf of Talen Energy Marketing, LLC