

**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
CHOOSE ENERGY, INC.**

Pursuant to Section 4903.10, Revised Code (“RC”), and Rule 4901-1-35, Ohio Administrative Code (“OAC”), Choose Energy, Inc. hereby respectfully requests rehearing of the December 15, 2021 Second Finding and Order (“Second Finding and Order”) issued by the Public Utilities Commission of Ohio (the “Commission”) in this proceeding. Choose Energy, Inc.’s sole assignment of error is that the Commission’s imposition of a forfeiture against Choose Energy, Inc. as set forth in paragraph 6 of the Second Finding and Order is unreasonable and should be reversed because Choose Energy, Inc.’s gas assessment payment, which was minimal, was slightly delayed due to an inadvertent error. Choose Energy, Inc. respectfully requests that the Commission grants its Application for Rehearing and rescind the civil forfeiture levied against Choose Energy, Inc. for the reasons set forth in more detail in the attached Memorandum in Support.

Respectfully Submitted,

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MEMORANDUM IN SUPPORT

I. Introduction

Choose Energy, Inc. (“Choose Energy”) 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 Choose Energy for not remitting its 2020 annual gas assessment by the November 2021 deadline,¹ as set forth in paragraph 6 of the Second Finding and Order. Choose Energy inadvertently delayed paying its gas assessment invoice while working to resolve a significant error in the Commission-issued electric assessment invoice. Choose Energy’s payment for its 2020 annual gas assessment was sent to the Commission via mail on or about November 29, 2021 and the PUCO Community now shows that invoice as paid in full. Notably, Choose Energy’s assessment payment was issued prior to the issuance of the Second Finding and Order. Although the payment of the gas assessment was slightly delayed beyond the November 15, 2021 payment due date, no harm has come from such short delay. Accordingly, under the circumstances, rehearing should be granted and the \$1,000 forfeiture against Choose Energy lifted.

II. Background

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*

¹ The Commission’s Second Finding and Order at paragraphs 5 and 6 indicates that the deadline was November 1, 2021. However, the invoice payment deadline was November 15, 2021.

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 Ohio Revised Code §§ 4905.10 and 4905.14.

Choose Energy personnel timely prepared and submitted annual reports for calendar year 2020 for both gas and electric. Several months later, the Commission sent both the gas and electric assessment invoices to Choose Energy and the assessment payments were due on November 15, 2021. The electric assessment invoice, however, had a significant error and while working on that issue, Choose Energy inadvertently failed to timely submit its \$100 payment for the annual gas assessment.

On December 15, 2021, the Commission (a) identified those 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. Second Finding and Order at ¶¶ 6-8 (December 15, 2021).

III. Argument

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.” As noted above, Choose Energy timely submitted its annual reports (gas and electric) to the Commission for 2020. The Commission calculated the gas assessment amount, but Choose Energy inadvertently delayed paying its gas invoice while it worked to resolve errors in its electric assessment invoice.

Choose Energy received, via e-mail, a past due notice with respect to its gas invoice from the Commission on November 15, 2021. That notice prompted Choose Energy to process the outstanding gas invoice. Payment of the gas assessment was sent via mail on or about November

29, 2021. As indicated from the screenshot below from the PUCO Community account, payment has been made in full for the gas assessment.

The screenshot displays the 'Invoice Details' section of a PUCO Community account. It includes a 'Back' button at the top right. The 'Invoice Details' section lists the following information:

Field	Value
Invoice #	21-00071760
Invoice Date	10/1/2021
Due Date	11/15/2021
Civil Forfeiture Case Number	
Invoice Amount	\$100.00
Payments Received	\$100.00
Credits Received	\$0.00
Balance Due	\$0.00

Below the 'Invoice Details' section is the 'Invoice Line Items' section, which contains a table with the following data:

Type	Description	Amount
Annual Assessment - Fall	2021 Annual Assessment - Fall	\$100.00

Choose Energy’s inadvertent error in not paying the gas invoice while it was resolving errors on its electric invoice caused it to be late on its payment of the gas invoice. Once it received the overdue notice, it processed the payment. This sequence of events establishes that Choose Energy self-corrected the situation and intended to comply in good faith and in substantial compliance with the Commission’s requirement.

In addition, there was no harm caused by the slight delay in receiving the gas assessment payment totaling \$100 from Choose Energy. The assessment payment was delayed only by a few weeks and it involved a minimal dollar amount. Under these circumstances, with the gas assessment having been paid in full, there is no harmful impact from the slight delay in receiving Choose Energy’s gas assessment payment.

The Commission has reversed forfeiture rulings in the past when submissions were not timely. For example, the Commission reversed a forfeiture ruling against ReallyObjective LLC (“ReallyObjective”), who had not provided services to customers and had abandoned its certificates prior to the Commission initiating the 2018 annual report requirements for fiscal

assessment. *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 at ¶ 6 (October 9, 2019). ReallyObjective did not initially submit its annual report, but submitted it late, and the Commission waived the forfeiture. *Id.* at ¶¶ 11, 14.

As a second example, the Commission reversed itself and concluded no forfeiture should be assessed against New Wave Energy Corporation (“New Wave”) for its failure to submit its 2018 electric annual report after an inadvertent error by an employee. *Id.* at ¶ 7. 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.* New Wave promptly submitted the missing annual report and the Commission waived the forfeiture. *Id.* at ¶¶ 11, 14.

These situations involved inadvertent mistakes causing delays and are similar to Choose Energy’s situation involving its delayed gas assessment payment. Accordingly, and for the reasons set forth above, Choose Energy submits that the circumstances do not warrant the forfeiture.

IV. Conclusion

Choose Energy’s lack of timely payment of its gas assessment was not intentional but rather a result of an inadvertent error: Choose Energy was engaged in resolving errors in its electric assessment, and, inadvertently, failed to timely pay its gas assessment. Upon receiving a past due notice from the Commission, Choose Energy submitted payment for the gas invoice on or about November 29, 2021. Given these circumstances, Choose Energy respectfully requests that the Commission grant rehearing and waive the forfeiture that was imposed on Choose Energy.

Respectfully Submitted,

/s/ Michael J. Settineri

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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 14th day of January 2021 upon all persons/entities listed below:

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Summary: App for Rehearing Application for Rehearing electronically filed by Mr.
Michael J. Settineri on behalf of Choose Energy, Inc.