

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Reports for)	
Calendar Year 2021 for the Fiscal)	Case No. 22-01-AU-RPT
Assessment of All Regulated Entities.)	

**APPLICATION FOR REHEARING
OF
LOWER WATT, LLC**

I. Introduction

Lower Watt, LLC (“Lower Watt”) respectfully requests rehearing of the Finding and Order issued in this proceeding on June 29, 2022, by the Public Utilities Commission of Ohio (“Commission”). Lower Watt requests that the Commission reverse its decision to impose two forfeitures totaling \$2,000 against Lower Watt for not remitting its 2021 Annual Reports by the April 2022 deadline. Lower Watt’s assignment of error is:

The Commission’s assessment is unjust and unreasonable and should be reversed because Lower Watt’s 2021 Annual Reports were delayed due to an inadvertent administrative error.

Ohio Revised Code (“R.C.”) § 4903.10 provides in part 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 – Lower Watt did not remit the 2021 Annual Reports by the due date because of inadvertent administrative error while an employee was on unexpected extended leave and overlooked them when the employee was transitioning back to work. However, Lower Watt promptly requested the reopening of its 2021 Annual Reports and promptly submitted them a few business days after the Commission’s June 29, 2022 Finding and Order. Lower Watt personnel investigated the situation and have taken steps to avoid this error from happening again. No harm has come from not receiving the 2021 Annual

Reports for the brief delay. Under the circumstances, the Commission should conclude that good cause exists to grant rehearing and reverse both \$1,000 forfeitures against Lower Watt.

II. Background

Lower Watt was certified to provide competitive retail electric services in Ohio under certificate number 17-1252E. The certificate was issued in *In the Matter of the Application of Lower Watt, LLC for a Certificate of Public Convenience and Necessity*, Case No. 17-1548-EL-AGG. Lower Watt was also certified to provide competitive retail natural gas services in Ohio under certificate number 17-615G. That certificate was issued in *In the Matter of the Application of Lower Watt, LLC for a Certificate of Public Convenience and Necessity*, Case No. 17-1549-GA-AGG.

By Entry issued in late January 2022 in this docket, the Commission directed all service providers that were regulated in Ohio in 2021 to submit an annual report to the Commission for calendar year 2021 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 2021 for the Fiscal Assessment of All Regulated Entities*, Case No. 22-01-AU-RPT, Entry at ¶¶ 4 and 14 (January 26, 2022).

On June 29, 2022, the Commission (a) identified those entities that did not remit their 2021 Annual Reports by the April 29, 2022 deadline; (b) ordered those entities to submit their outstanding 2021 Annual Reports by July 29, 2022; and (c) assessed a \$1,000 civil forfeiture against those entities for each outstanding annual report, but delayed the effectiveness to allow for applications for rehearing. *Id.*, Finding and Order at ¶¶ 7-9 (April 29, 2022).

Lower Watt personnel thereafter promptly prepared and submitted its annual reports for calendar year 2021. Those reports were promptly submitted only a few business days after the June 2022 Finding and Order was issued.

III. Argument

In Lower Watt’s situation, the employee who handles the annual report submissions was unexpectedly out on extended leave earlier this year and the reporting obligation was inadvertently overlooked when the employee was transitioning back to work. Unfortunately, there was an inadvertent administrative delay in submitting the reports. However, Lower Watt promptly acted upon learning of the Commission’s June 29, 2022 Finding and Order, and corrected the error by promptly submitting both 2021 Annual Reports earlier this month. In addition, Lower Watt has taken steps to ensure that this inadvertent error will not repeat itself. There has likely been no harm caused by the slight delay in receiving the annual reports from Lower Watt.

The Commission has reversed forfeiture rulings in the past when annual reports were late. For example, the Commission reversed a forfeiture ruling against Choose Energy Inc., after it inadvertently was unable to obtain access to its PUCO Community account and submitted its annual reports after the 2021 deadline. *In the Matter of the Annual Reports for Calendar Year 2020 for the Fiscal Assessment of All Regulated Entities*, Case No. 21-01-AU-RPT, Entry on Rehearing at ¶ 16 (September 23, 2021). As another 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 third 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 Lower Watt's situation involving its delayed 2021 Annual Reports. The Commission should follow its precedent and reverse the forfeiture ruling against Lower Watt, as it did for Choose Energy Inc., ReallyObjective and New Wave.

IV. Conclusion

As noted above, Lower Watt did not intentionally fail to submit the 2021 Annual Reports; nonetheless, it was delayed in remitting the 2021 Annual Reports due to administrative error. Lower Watt corrected the situation promptly and both reports were submitted earlier this month. There likely was no harm caused by the brief delay in receiving the reports from Lower Watt. A reversal of the \$2,000 forfeiture ruling is warranted given this inadvertent error and is similar to Commission precedent where the Commission lifted forfeiture orders. For all of these reasons, good cause exists to reverse the two \$1,000 forfeitures against Lower Watt.

Respectfully Submitted,

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci (0046608)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

Columbus, OH 43215

Telephone 614-464-5407

Facsimile 614-719-4793

glpetrucci@vorys.com

(Willing to accept service via e-mail)

Counsel for Lower Watt, LLC

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 19th day of July 2022 upon all persons/entities listed below:

John Jones
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
john.jones.@ohioattorneygeneral.gov
Counsel for Staff of the Public Utilities Commission of Ohio

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci

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7/19/2022 3:56:30 PM

in

Case No(s). 22-0001-AU-RPT

Summary: App for Rehearing - Application for Rehearing electronically filed by Mrs.
Gretchen L. Petrucci on behalf of Lower Watt, LLC