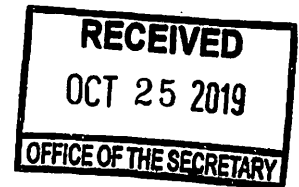


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-19419

In the Matter of  
  
ERHC Energy, Inc., *et al.*  
  
Respondents.

MOTION FOR LEAVE TO FILE MOTION  
FOR RULING ON THE PLEADINGS AND  
MOTION FOR RULING ON THE PLEADINGS  
AGAINST ERHC ENERGY, INC.

Motions

I. Motion for Leave to File Motion for Ruling on the Pleadings

The Division of Enforcement (“Division”), by undersigned counsel, pursuant to Securities and Exchange Commission (“Commission”) Rule of Practice (“Rules of Practice”) 154, respectfully moves for leave to file a Motion for Ruling on the Pleadings against ERHC Energy, Inc. (CIK No. 799235) (“ERHE”) pursuant to Rule of Practice 250(a), because the Division was not served with a copy of ERHE’s Answer, and was not aware of the Answer until on or about October 17, 2019.

II. Motion for Ruling on the Pleadings

Assuming leave is granted, the Division hereby moves, pursuant to Rule of Practice 250(a), for a ruling on the pleadings against ERHE and entry of an order revoking the Securities Exchange Act (“Exchange Act”) Section 12(g) registration of each class of ERHE’s registered securities because there is no genuine issue of material fact, and the Division is entitled to a ruling as a matter of law.

## Brief in Support

### **I. Motion for Leave to File Motion for Ruling on the Pleadings**

On September 5, 2019, the Commission issued an Order Instituting Administrative Proceedings and Notice of Hearing Pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”) (“OIP”) against Respondents ERHE Energy, Inc. (CIK 799235) (“ERHE”) and IDdriven, Inc. (CIK No. 1605024) (“IDDR”) alleging that both respondents are delinquent in their required periodic filings with the Commission. As shown in the Declaration of Gina Joyce, filed on September 11, 2019, the Secretary served ERHE by Priority Mail Express on September 7, 2019. Therefore, under the OIP, ERHE’s answer was due on September 20, 2019.<sup>1</sup> On September 26, 2019, ERHE filed an Answer in this proceeding. That answer contains no address, phone number, or email address for the company. It also did not include a Certificate of Service indicating service on the Division, nor was the Division ever served with the Answer. On October 3, 2019, the Division checked the Commission’s website for this proceeding, and ERHE’s answer was not on the website. On October 17, 2019, the Division again checked the Commission’s website and the answer was present on the website. In light of the fact that the Division was not served and was not aware of the Answer until October 17, 2019, the Division asks for leave to file its Motion for Ruling on the Pleadings notwithstanding the fact that it is more than fourteen days since the Answer was filed.

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<sup>1</sup>Pursuant to Rule of Practice 160(b), we have added three days to the response time because service was made by mail.

## **II. Motion for Ruling on the Pleadings as to ERHE**

### **A. Statement of Facts**

ERHE (CIK No. 799235) is a Colorado corporation located in Houston, Texas, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ERHE is delinquent in its periodic filings with the Commission, having not filed a periodic report since the period ended June 30, 2017. As of August 16, 2019, ERHE's common stock was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3). ERHE has failed to file its periodic reports for over a year.

ERHE's Answer concedes that its last periodic filing was for the period ended June 30, 2017, which it refers to as its "Last 10-Q," and further states that it had previously filed timely periodic reports for ten years. Answer at 2. It attributes its current delinquency to "debilitating, convoluted and resource-draining litigation by a U.S. based company group," which prevented ERHE from exploiting the rights to oil and gas exploration areas in Sao Tome & Principe. ERHE alleges that this litigation was dismissed in July 2019 and that it is now working with the government of Sao Tome & Principe to "monetize" the oil and gas production rights, which were tied up in the lawsuit. ERHE asks for a "reasonable time within which to resume its periodic filings and bring up-to-date, the arrears of filing." Answer at 4.

### **B. Argument**

This administrative proceeding was instituted under Section 12(j) of the Exchange Act. Section 12(j) empowers the Commission to either suspend (for a period not exceeding twelve months) or permanently revoke the registration of a class of securities if the respondent has failed to comply with any provision of the Exchange Act or the

rules and regulations thereunder. As discussed below, ERHE's registration should be revoked.

**1. The Division is Entitled to a Ruling on the Pleadings Against ERHE for Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder**

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Section 13(a) is the cornerstone of the Exchange Act, establishing a system of periodically reporting core information about issuers of securities. The Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are "the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities." Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

*Gateway International Holdings, Inc.*, Securities Exchange Act Rel. No. 53907, 2006

SFC LEXIS 1288 at \*26 (May 31, 2006) (quoting *SEC v. Beisinger Indus. Corp.*, 552

F.2d 15, 18 (1st Cir. 1977)). As explained in the initial decision in the *St. George Metals,*

*Inc.* administrative proceeding:

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Rule 13a-1 requires issuers to submit annual reports, and Exchange Act Rule 13a-13 requires issuers to submit quarterly reports. No showing of scienter is

necessary to establish a violation of Section 13(a) or the rules thereunder.

*St. George Metals, Inc.*, Initial Decision Rel. No. 298, 2005 SEC LEXIS 2465, at \*26 (Sept. 29, 2005); *accord Gateway*, 2006 SEC LEXIS 1288 at \*18, \*22 n.28; *Stansbury Holdings Corp.*, Initial Decision Rel. No. 232, 2003 SEC LEXIS 1639, at \*15 (July 14, 2003); and *WSF Corp.*, Initial Decision Rel. No. 204, 2002 SEC LEXIS 1242 at \*14 (May 8, 2002).

ERHE concedes that it is delinquent in its filings. Answer at 2, Indeed, it had failed to file eight periodic reports at the institution of this proceeding. OIP at 1. ERHE has engaged in serial and serious violations of Exchange Act Sections 13(a)(1) and Rules 13a-1 and 13a-13 thereunder, and those violations warrant revocation.

2. **Revocation is the Appropriate Sanction for ERHE's Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder**

Exchange Act Section 12(j) provides that the Commission may revoke or suspend a registration of a class of an issuer's securities where it is "necessary or appropriate for the protection of investors." The Commission's determination of which sanction is appropriate "turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions on the other hand." *Gateway*, 2006 SEC LEXIS 1288, at \*19-\*20. In making this determination, the Commission has said it will consider, among other things: (1) the seriousness of the issuer's violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer's efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer's assurances against future violations. *Id.*; see also *Steadman v. SEC*, 603 F.2d 1126, 1140

(5th Cir. 1979) (setting forth the public interest factors that informed the Commission's *Gateway* decision).

Although no one factor is controlling, in *Stansbury*, 2003 SEC LEXIS 1639, at \*14-\*15; and in *WSF Corp.*, 2002 SEC LEXIS 1242 at \*5, \*18, the Commission has stated that it views the "recurrent failure to file periodic reports as so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, Exchange Act Rel. No. 57864, 2008 SEC LEXIS 1197 at \*27 (May 23, 2008). An analysis of the factors above confirms that revocation of ERHE's securities is appropriate.

a. **ERHE's violations are serious and egregious**

ERHE's failure to file two years' worth of periodic reports is serious and egregious. Given the central importance of the reporting requirements imposed by Section 13(a) and the rules thereunder, Administrative Law Judges have found violations of these provisions of the same and of less duration to be egregious, and ERHE's violations support an order of revocation for each class of its securities. *See Freedom Golf Corp.*, Initial Decision Release No. 227, 2003 SEC LEXIS 1178, at \*5 (May 15, 2003) (respondent's failure to file periodic reports for less than one year was egregious violation).

b. **ERHE's Violations Of Section 13(A) Have Been Not Just Recurrent, But Continuous**

ERHE's violations are not unique and singular, but continuous. ERHE has failed to file any of its periodic reports since the period ended June 30, 2017. The serial and continuous nature of ERHE's violations of Exchange Act Section 13(a) further supports the sanction of revocation here.

c. **ERHE's Degree of Culpability Supports Revocation**

In *Gateway*, the Commission stated that, in determining the appropriate sanction in connection with an Exchange Act Section 12(j) proceeding, one of the factors it will consider is "the degree of culpability involved." *Gateway*, at 10, 2006 SEC LEXIS 1288, at \*21. ERHE's Answer reveals that it was fully aware of its reporting obligations: in fact it boasts of ten years' worth of timely periodic reports prior to its current string of reporting violations. Answer at 2. ERHE attributes its delinquencies to litigation over mineral rights with a third party. This argument is unavailing. The Commission has repeatedly held that third party conduct does not excuse a company's failure to comply with its periodic reporting obligations. *Eagletech Communications, Inc.*, Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534 at \*6 (July 5, 2006) (third party criminal activity); *Cobalis Corporation*, Exchange Act Rel. No. 64813, 2011 SEC LEXIS 2313 at \*20 (July 6, 2011) (actions of shareholder in forcing involuntary bankruptcy proceeding and forcing issuance of stock did not excuse Exchange Act violations).

d. **ERHE's Has Not Made Any Credible Assurances Against Future Violations**

ERHE's assurances against future violations are not credible. They are being made after two years of ongoing delinquency and are wholly unsupported by any dates or times as to when it will obtain the funds or bring itself current. Such vague assurances especially viewed in the context of its violations lack credibility. In any case, a Commission administrative proceeding "is not an extension of time to file delinquent reports or correct filing deficiencies as sometimes occurs during the normal filing process." *Citizens Capital Corp.*, Initial Dec. Rel. No. 433, 2011 SEC LEXIS 3307, at \*18 (September 23, 2011).

e. **Revocation is the Appropriate Remedy for ERHE**

As discussed above, a full analysis of the *Gateway* factors establishes that revocation is the appropriate remedy for ERHE's violations of the periodic reporting requirements. The Company's recurrent failures to file its periodic reports have not been outweighed by "a strongly compelling showing with respect to the other factors" which "would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, 2008 SEC LEXIS 1197 at \*27. A lesser sanction would also diminish the deterrent power of Exchange Act Section 12(j) proceedings. As the Commission has held:

Dismissal [] would reward those issuers who fail to file required periodic reports when due over an extended period of time, become the subject of Exchange Act Section 12(j) revocation proceedings, and then, on the eve of hearings before the law judge or, in this case, oral argument on appeal, make last-minute filings in an effort to bring themselves current with their reporting obligations, while prolonging indefinitely the period during which public investors would be without accurate, complete, and timely reports (that comply with the requirements of the Exchange Act and its rules and regulations) to make informed investment decisions.

*Nature's Sunshine Products, Inc.*, Exchange Act Rel. No. 59268, 2009 SEC LEXIS 81, at \*33-\*34 (January 21, 2009)(footnote omitted).

Moreover, revocation will not be overly harmful to whatever business operations, finances, or shareholders ERHE may have. See *Eagletech Communications, Inc.*, Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534, at \*9 (July 5, 2006) (revocation would lessen, but not eliminate, shareholders' ability to transfer their securities).

Revocation will not only protect current and future investors in the Company, who presently lack the necessary information about ERHE because of the issuer's failure to make Exchange Act filings; it will also deter other similar companies from becoming lax in their reporting obligations.



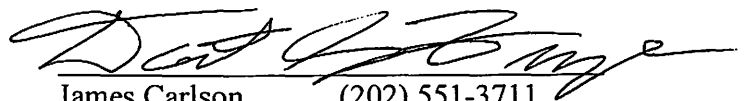
A new registration process will place all investors on an even playing field. All current investors will still own the same amount of shares in ERHE that they did before, though their shares will no longer be devalued because of the company's delinquent status. All investors, current and future alike, will also benefit from the legitimacy, reliability, and transparency of a company in compliance. The period of revocation will protect the status quo, and will give ERHE the opportunity to come into full compliance, to calmly and thoroughly work through all of ERHE's issues with its attorney, consultants, auditors, and management, and to complete its financial statements in compliance with Regulations S-K and S-X.

**Conclusion**

For the reasons set forth above, the Division respectfully requests that the Commission grant the Division's motion for leave to file its motion for ruling on the pleadings and, if granted, grant its motion for ruling on the pleadings and revoke the registration of each class of ERHE's securities registered under Exchange Act Section 12.

Dated: October 25, 2019

Respectfully submitted,



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COUNSEL FOR  
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**CERTIFICATE OF SERVICE**

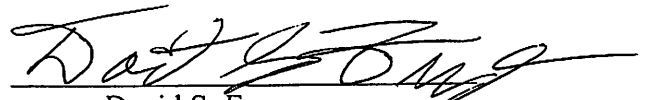
I hereby certify that I caused true copies of the Division of Enforcement's Motion for Leave to File Motion for Ruling on the Pleadings and Motion for Ruling on the Pleadings Against ERHC Energy, Inc. to be served on the following on this 25<sup>th</sup> day of October, 2019, in the manner indicated below:

By Email:

[Apfilings@sec.gov](mailto:Apfilings@sec.gov)

By United Parcel Service:

ERHC Energy, Inc.  
5444 Westheimer Road, Suite 1440  
Houston, TX 77056

  
David S. Frye