

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

In the Matter of Town Square Energy       :   Case No. 18-1785-EL-UNC  
East, LLC                                       :

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**JOINT STIPULATION AND RECOMMENDATION**

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This Joint Stipulation and Recommendation (“Stipulation”) sets forth the understanding of Town Square Energy East, LLC (“Town Square”) and the Staff of the Public Utilities Commission of Ohio (“Staff”), each of whom is a “Signatory Party” and together constitute the “Signatory Parties.” The Signatory Parties recommend that the Public Utilities Commission of Ohio (“Commission”) approve and adopt this Stipulation, which will resolve all of the issues identified by the Staff in its Notice of Probable Non-Compliance dated January 16, 2018 (“Notice Letter”).

Staff and Town Square have engaged in settlement discussions in an effort to reach a mutually acceptable resolution that would address the concerns raised by Staff’s Notice Letter. As a result of those negotiations, Staff and Town Square hereby enter into this Stipulation. The Stipulation is not an admission or finding of liability, and is entered into without prejudice to the positions the parties may have taken in the absence of the

Stipulation, or may take in the event the Commission does not approve this Stipulation. The Stipulation resolves all of the issues raised in the Staff's Notice Letter.

Ohio Adm. Code 4901-1-30 provides that two or more parties to a Commission proceeding may enter into a written stipulation concerning the issues presented in the proceeding.<sup>1</sup> Pursuant to said rule, the Signatory Parties hereby stipulate, agree, and recommend that the Commission adopt and approve this Stipulation.

Although the Signatory Parties recognize that this Stipulation is not binding upon the Commission, the Signatory Parties respectfully submit that the Stipulation is supported by the record, and that it represents a just and reasonable resolution of the issues involved, violates no regulatory principle or precedent, and is in the public interest. The Signatory Parties represent that the Stipulation is the product of serious negotiations among knowledgeable parties, and that the Stipulation represents a compromise involving a balancing of those interests, and does not necessarily reflect the position that any one of the Signatory Parties would have adopted if this matter had been fully litigated.

In joining in this Stipulation, the Signatory Parties recognize that it is not in the public interest to subject the Signatory Parties and the Commission to the burdens associated with litigating the issues raised in the Staff's Notice Letter when a reasonable and acceptable outcome can be achieved through settlement negotiations. The Signatory

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<sup>1</sup> Pursuant to Ohio Adm. Code 4901-1-10(C), the Staff is considered a party for purposes of Ohio Adm. Code 4901-1-30.

Parties agree that this Stipulation shall not be relied upon as precedent for or against any party to this proceeding in any subsequent proceeding, except as may be necessary to enforce the terms of this Stipulation or as part of the company's history of violations in determining the appropriate forfeiture or corrective action for any future violations.

The Signatory Parties believe that the Stipulation represents a reasonable compromise of varying interests. The Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission. Should the Commission reject or materially modify all or any part of this Stipulation, each Signatory Party shall have the right, within thirty (30) days of the Commission's order, to file an application for rehearing. Upon the Commission's issuance of an entry on rehearing that does not adopt the Stipulation in its entirety, without material modification, any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within thirty (30) days of the Commission's entry on rehearing. No Party shall oppose the termination and withdrawal from the Stipulation by any other Signatory Party.<sup>2</sup> Upon notice of termination or withdrawal by any Signatory Party pursuant to the above provisions, the Stipulation shall immediately become null and void. In such event, this matter shall proceed to hearing, and the Signatory Parties shall be afforded the full opportunity to file and present testimony and evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to brief all

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<sup>2</sup> The Parties recognize and agree that the determination of what constitutes a material modification is within the sole discretion of the Party exercising its right to file an application for rehearing and/or its right to terminate and withdraw from the Stipulation pursuant to this paragraph.

issues, which shall be decided based upon the record and briefs as if this Stipulation had never been executed.

The Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms found below.

WHEREAS, Town Square is a retail electric supplier as defined in R.C. 4928.01 and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16.

WHEREAS, on January 16, 2018, Staff issued the Notice Letter to Town Square regarding several issues identified therein, which is attached hereto as Exhibit A.

WHEREAS; Town Square and Staff met on numerous occasions to address the issues raised in Staff's Notice Letter and have reached a resolution of all issues.

NOW, THEREFORE, in consideration of the terms and mutual promises set forth herein, the Signatory Parties hereby agree, as follows:

1. Upon the approval of this Stipulation by the Commission, the Program, as defined below, shall be implemented within the timeframes set forth below to the extent the actions have not already been accomplished by Town Square as of the date of this Stipulation.
2. Town Square will work collaboratively with Staff to implement the following measures (the "Program"):

- A. Town Square will mail a letter to all current electricity customers who were enrolled via tabletop marketing in Ohio between August and November 2017. The Parties note that they have agreed upon the text of the letter. Once the letter has been sent, Town Square will submit to Staff a list of the customer names and mailing addresses where Town Square sent these letters. Town Square will also submit to Staff the number of customers who responded to the letter and the result of the customers' inquiries.
- B. Town Square has submitted to Staff and obtained Staff's approval of, a quality assurance/compliance plan that includes Town Square's staff training materials, sales contracts, sales scripts and practices, and enrollment documentation.
- C. Town Square agrees to notify and work with Staff to ensure compliance with current Commission rules and policies related to tabletop marketing in Ohio, including the following:
  - i. Prior to resuming tabletop marketing in Ohio, Town Square will submit to Staff for review, any updates to its quality assurance/compliance plans, training materials, sales contracts, sales scripts and practices, and enrollment documentation. In addition, and prior to resuming tabletop marketing, it will provide to Staff all training dates of its tabletop agents, any additional training materials,

along with information necessary for Staff to monitor and/or audit the compliance of Town Square's tabletop marketing.

- ii. Town Square will provide quarterly reports to Staff for one year following approval of this Stipulation by the Commission, including summaries of complaints received (by channel, type and vendor), agent compliance, and the steps taken as a result of any audit(s).

3. Town Square agrees to a forfeiture of \$150,000 upon approval of this Stipulation by the Commission. Town Square agrees to submit payment, by certified check or money order made payable to "Treasurer, State of Ohio," to:

Public Utilities Commission of Ohio  
Attention: Fiscal Division  
180 E. Broad Street  
Columbus, OH 43215-3793

The payment shall be paid within 30 days of the entry approving this Stipulation and shall note the docket number assigned to this matter.

4. Upon execution of this Stipulation, Staff and Town Square agree to Town Square recommencing on-line marketing and enrollments in Ohio via the internet enrollment process.

WHEREFORE, the Signatory Parties agree and recommend this 30<sup>th</sup> day of November 2018 that the Commission find that the Stipulation represents a reasonable resolution of this matter, and that the Stipulation should be adopted and approved.

**On behalf of the Staff  
The Public Utilities Commission of  
Ohio:**

/s/ Jodi J. Bair

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Public Utilities Section  
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614.644.8599  
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**On behalf of Town Square  
Energy  
Energy East, LLC:**

/s/ Gretchen L. Petrucci

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Vorys, Sater, Seymour and  
Pease LLP  
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Columbus, Ohio 43215  
614.464.5407  
glpetrucci@vorys.com



January 16, 2018

Town Square Energy East, LLC  
[REDACTED]

3950 E. Riggs Road, Suite 1  
Chandler, AZ 85249

Dear [REDACTED]:

This letter is a notice of probable non-compliance to Town Square Energy, LLC (Town Square). Staff of the Public Utilities Commission of Ohio (PUCO or Commission) has conducted an investigation into the marketing and enrollment practices of Town Square and has concluded that Town Square is in probable non-compliance with certain sections of the Ohio Administrative Code (OAC).

Staff contacted [REDACTED], Town Square's regulatory contact, on August 3, 2017 and advised Town Square that it was staff's position that Town Square should cease marketing in Ohio pending staff's investigation into complaints that representatives of Town Square were using misleading and deceptive sales practices in Town Square's table top marketing campaign. Town Square cooperated with staff's requests. Town Square advised staff of the actions it had already completed to correct the violations, and submitted a remedial action, which included retraining all of Town Square's marketing vendors.

Additionally, Town Square provided staff with its training material, which staff reviewed. Town Square advised staff on August 10, 2017, that *"all agents have been retrained on TSE compliance Policy and Section 4901:1-21-05 of the Ohio Administrative Code\* \* \*."* Based on staff's review and Town Square's notification that all agents had been retrained, staff found no issues with Town Square's request to begin marketing again.

On November 3, 2017, staff received another complaint regarding Town Square's table top marketing practices. Staff investigated and again found Town Square's practices to be misleading and deceptive. In addition, staff found Town Square's contracts deficient because most items required by OAC 4901:1-21-12 were not included in the contracts, and the contracts were not provided to customers as required by OAC 4901:1-21-11. On the same day, November 3, 2017, Town Square verified that it had ceased marketing as of 5:30pm that day. During a meeting with staff on January 11, 2018, Town Square again verified that it had ceased all marketing in Ohio.

#### **Probable Non-Compliance Violations**

Therefore, staff finds that Town Square is in probable non-compliance with the following sections of the OAC:

1. OAC 4901:1-21-05(A), which states, in part, that "Each competitive retail electric service (CRES) provider that offers retail electric generation service to residential or small commercial customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make intelligent cost comparisons against offers they receive from other CRES providers."
2. OAC 4901:1-21-05(C), which states, in part, "No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES."

180 East Broad Street  
Columbus, Ohio 43215-3793

(614) 466-3016  
www.PUCO.ohio.gov



3. OAC 4901:1-21-06(D), which contains requirements on residential and small commercial enrollment and consent.
4. OAC 4901:1-21-11, which contains requirements regarding contract administration.
5. OAC 4901:1-21-12, which contains required CRES customer contract disclosures.

#### **Proposed Corrective Action**

To address these issues of probable non-compliance, PUCO staff proposes the following corrective actions:

1. Retrain all Town Square's representatives/agents on the pertinent rules contained in the OAC, including, but not limited to, sections 4901:1-21-05, 4901:1-21-06, 4901:1-21-11 and 4901:1-21-12.
2. Continue to suspend all marketing and enrollment operations until all representatives have been retrained.
3. Provide staff with training documents and evidence that training was completed.
4. Develop, submit to staff for staff's approval, and maintain an effective quality assurance program that will ensure compliance with the Commission's rules governing CRES providers.
5. Contact all customers enrolled through table top marketing campaign and advise them that they have the option to properly enroll with Town Square or be returned to the distribution utilities' default services.

#### **Proposed Forfeiture**

Finally, staff is proposing a forfeiture of \$290,000 against Town Square for the above mentioned failures to comply with the requirements found in the OAC.

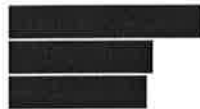
By January 31, 2018, please respond to the notice of probable non-compliance with Town Square's plan to come into compliance with the above mention rules and implement staff's proposed corrective actions.

Sincerely,



Barbara Bossart  
Chief, Reliability and Service Analysis Division  
Service Monitoring and Enforcement Dept.

Cc:



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/3/2018 12:29:16 PM**

**in**

**Case No(s). 18-1785-EL-UNC**

Summary: Stipulation Joint Stipulation and Recommendation electronically filed by Ms. Tonneta Scott on behalf of PUC