

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF GREAT AMERICAN  
POWER, LLC'S COMPLIANCE WITH THE  
OHIO ADMINISTRATIVE CODE  
REGARDING ITS MARKETING AND  
ENROLLMENT PRACTICES.

CASE NO. 19-1278-GE-UNC

## FINDING AND ORDER

Entered in the Journal on June 19, 2019

### I. SUMMARY

{¶ 1} The Commission finds that the joint stipulation and recommendation between Great American Power, LLC and Staff regarding Great American Power, LLC's marketing and enrollment practices is reasonable and should be adopted.

### II. DISCUSSION

{¶ 2} Great American Power, LLC (GAP or the Company) is an electric services company, as defined in R.C. 4928.01(A)(9), and a retail natural gas supplier, as defined in R.C. 4929.01(N), and, as such, is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and R.C. 4929.24.

{¶ 3} On October 25, 2018, Staff issued a notice of probable noncompliance (Notice Letter) to GAP alleging that the Company was in noncompliance with the Commission's marketing and enrollment regulations for competitive retail electric service and natural gas service providers. Staff stated that, over the prior several months, Staff had received complaints from customers disputing their enrollment with GAP. After an investigation of these complaints, Staff determined that GAP enrolled at least 21 customers without proper authorization or consent. As a result, Staff found that GAP was in probable noncompliance with Ohio Adm.Code 4901:1-21-03(A), 4901:1-21-05(C), 4901:1-21-06(C), 4901:1-21-06(D)(1)(a), 4901:1-21-06(D)(1)(h), 4901:1-29-03(A), 4901:1-29-05(D), 4901:1-29-06(B), 4901:1-29-06(D)(1), 4901:1-29-06(D)(6)(a), and 4901:1-29-06(D)(6)(b).

{¶ 4} In its Notice Letter, Staff proposed corrective action to address the issues of probable noncompliance and instructed GAP to: (1) ensure compliance with Ohio Adm.Code 4901:1-21-08 and 4901:1-29-08 for all complaints indicated in Staff's September 19, 2018 data request and provide Staff with documentation that these issues have been resolved, (2) review the third-party verification script being used to enroll customers, ensure compliance with Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06, and provide Staff with the updated script, and (3) audit all enrollments involving the agents associated with the above-referenced complaints, provide Staff with a list of customers enrolled in supply service by the agents identified during investigations, contact each customer to ensure affirmative consent was obtained at the time of enrollment, comply with Ohio Adm.Code 4901:1-21-08 and 4901:1-29-08 for each unauthorized enrollment, and provide a report of the results of the completed audit to Staff no later than November 8, 2018. Lastly, Staff proposed a forfeiture of \$64,700 against GAP for the alleged failures to comply with the above-cited requirements. GAP was instructed to respond to Staff by November 8, 2018, regarding its plan to come into compliance with the aforementioned rules and implement Staff's proposed corrective actions.

*A. Summary of the Stipulation*

{¶ 5} On May 31, 2019, Staff and GAP (Signatory Parties) filed a Joint Stipulation and Recommendation (Stipulation). Exhibit A to the Stipulation, which is Staff's October 25, 2018 Notice Letter, was filed on June 3, 2019. The Stipulation aims to resolve all of the issues identified in Staff's October 25, 2018 Notice Letter. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation:

- (1) GAP has remedied the issues identified in the Notice Letter regarding Ohio Adm.Code 4901:1-21-08 and 4901:1-29-08, and GAP will continue to ensure compliance with these code provisions for future complaints.

- (2) GAP has notified Staff and provided documentation that it has completed each of the corrective action items in the Notice Letter.
- (3) GAP will continually review its third-party verification scripts used to enroll customers and will ensure its compliance with Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06.
- (4) GAP has presented to Staff the compliance plan it will follow to ensure oversight of its door-to-door vendor and its agents.
- (5) GAP agrees to a forfeiture of \$35,000 upon approval of the Stipulation by the Commission and agrees to submit payment, within 30 days of the issuance of this Finding and Order, by certified check or money order made payable to “Treasurer, State of Ohio,” to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, Columbus, Ohio 43215-3793. Case number 19-1278-GE-UNC should be written on the face of the check or money order.

***B. Consideration of the Stipulation***

{¶ 6} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 7} The standard of review for considering the reasonableness of a stipulation has been discussed in several prior Commission proceedings. *See, e.g., In re Cincinnati Gas &*

*Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Res. Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re The Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 8} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 9} The Signatory Parties opine that the Stipulation is supported by the record, is the product of serious negotiations among knowledgeable parties, represents a just and reasonable resolution of the issues raised in this proceeding, and represents a reasonable compromise of varying interests. The Signatory Parties state that the Stipulation does not

necessarily reflect the position that any of the Signatory Parties would have adopted if this matter had been fully litigated. Upon review, we find that the first prong of the test is met.

{¶ 10} In regard to the second prong, the Signatory Parties aver that the Stipulation is in the public interest. Specifically, 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 Staff's Notice Letter when a reasonable and acceptable outcome can be achieved through settlement negotiations. Additionally, the Signatory Parties aver that the primary objective of the Stipulation is to avoid, to the extent possible, the potential for future customer complaints resulting from marketing, solicitation, and customer enrollment practices by GAP to customers. The Commission agrees and finds the Stipulation also satisfies the second prong of the test.

{¶ 11} Lastly, with respect to the third prong, the Signatory Parties state that the Stipulation violates no regulatory principle or precedent. The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice, and, therefore, the Stipulation meets the third criterion. Accordingly, the Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

### III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the Stipulation filed in this proceeding be approved and adopted. It is, further,

{¶ 14} ORDERED, That GAP take all necessary steps to carry out the terms of the Stipulation and this Finding and Order. It is, further,

{¶ 15} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation. It is, further,

{¶ 16} ORDERED, That a copy of this Finding and Order be served upon each party of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

LLA/ARW/hac

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Summary: Finding & Order that the Commission finds that the joint stipulation and recommendation between Great American Power, LLC and Staff regarding Great American Power, LLC's marketing and enrollment practices is reasonable and should be adopted.  
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