

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of SmartEnergy Holdings,        )   Case No. 19-1590-EL-UNC  
LLC    )

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JOINT STIPULATION AND RECOMMENDATION

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Ohio Adm.Code 4901-1-30 provides that two or more parties to a Public Utilities Commission of Ohio (“Commission”) proceeding may enter into a written stipulation concerning the issues presented in the proceeding.<sup>1</sup> This Joint Stipulation and Recommendation (“Stipulation”) sets forth the understanding of SmartEnergy Holdings, LLC (“SmartEnergy”) and the staff of the Commission (“Staff”), each of whom is a “Signatory Party” and together constitute the “Signatory Parties.” The Signatory Parties recommend that the 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 July 13, 2018 (“Notice Letter”), attached hereto as Exhibit A.

The Signatory Parties agree that this Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in this proceeding; violates no regulatory principle or precedent; as a package, benefits customers and the public interest; and is the product of serious bargaining among knowledgeable and capable parties to resolve these issues. The Signatory Parties represent that the Stipulation does not necessarily

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

reflect the position that any one of the Signatory Parties would have adopted if this matter had been fully litigated. SmartEnergy's agreement to this Stipulation is not an admission of any allegations in the Notice Letter or any other violation of law. While the Stipulation is not binding on the Commission, the Parties submit that it is entitled to careful consideration by the Commission.

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. The Signatory 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.

This Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification. 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. If the Commission issues 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. In such event, no Signatory 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

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<sup>2</sup> The Signatory Parties recognize and agree that the determination of what constitutes a material modification is within the sole discretion of the Signatory 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.

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

Pursuant to said rule, the Signatory Parties hereby stipulate, agree, and recommend that the Commission make the following findings and issue its Opinion and Order in this case approving this Stipulation in accordance with the following:

**Findings:**

1. SmartEnergy provides competitive retail electric service, as that term is defined in R.C. 4928.01 and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16.
2. On July 13, 2018, Staff issued the Notice Letter to SmartEnergy regarding several issues identified therein, which is attached hereto as Exhibit A.
3. SmartEnergy and Staff engaged in numerous discussions 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. In the Notice Letter, Staff included a statement that SmartEnergy did not agree to change its processes after Staff reached out to company representatives. The Staff and SmartEnergy agree that this was a mischaracterization of the events. SmartEnergy responded appropriately to Staff at that time.

2. SmartEnergy has implemented all of the corrective actions proposed in the Staff's Notice Letter. Specifically, both parties recognize that, to the best of its knowledge, SmartEnergy has performed the following:

- a. Reviewed all complaints brought to SmartEnergy's attention by Staff and resolved the complaints to Staff's satisfaction, including rerating customers.
- b. Provided Staff with the contracts, welcome letters, standard communications, scripts, and marketing materials related to the current marketing offer and agreed with all of Staff's recommended changes to this material.
- c. Ceased marketing and enrollments using the sweepstakes marketing offers that Staff believes to be out of compliance with applicable Ohio Administrative Code provisions.

3. SmartEnergy agrees to a forfeiture of \$19,000 upon approval of this Stipulation by the Commission. SmartEnergy 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 thirty (30) days of the entry approving this Stipulation and shall note the docket number assigned to this matter.

WHEREFORE, the Signatory Parties agree and recommend this 16th day of August 2019 that the Commission find that the Stipulation represents a reasonable resolution of this matter, and that the Stipulation should be adopted and approved.

<p>On behalf of the Staff of the Public Utilities Commission of Ohio:</p> <p><u>/s/ Robert Eubanks</u>  <b>Robert Eubanks</b>  Assistant Attorney General  Public Utilities Section 30 East Broad Street, 16<sup>th</sup> Floor  Columbus, Ohio 43215  614.644.8669  <a href="mailto:Robert.eubanks@ohioattorneygeneral.gov">Robert.eubanks@ohioattorneygeneral.gov</a></p> <p>Counsel for Staff</p>	<p>On behalf of SmartEnergy Holdings, LLC</p> <p><u>/s/ Mark A. Whitt</u>  <b>Mark A. Whitt</b>  Whitt Sturtevant LLP  The KeyBank Building  88 E. Broad Street, Suite 1590  Columbus, Ohio 43215  614.224.3911 (direct)  614.804.6034 (mobile)  <a href="mailto:whitt@whitt-sturtevant.com">whitt@whitt-sturtevant.com</a></p> <p>Counsel for SmartEnergy Holdings, LLC</p>
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# Public Utilities Commission

Asim Z. Haque, Chairman

## Exhibit A

### Commissioners

M. Beth Trombold  
Thomas W. Johnson  
Lawrence K. Friedman  
Daniel R. Conway

July 13, 2018

Daniel Kern  
SmartEnergy Holdings LLC  
400 Madison Ave., 9<sup>th</sup> Floor  
New York, NY 10017

RE: Misleading marketing

Dear Mr. Kern:

Pursuant to Ohio Administrative Code ("Ohio Adm.Code") 4901:1-23-02, this letter is a notice of probable non-compliance to SmartEnergy Holdings, LLC ("SmartEnergy"). Based on the Public Utilities Commission of Ohio Staff's ("Staff") investigation of recent customer complaints, including case numbers 00166233, 00177832, 00188672, 00192652, 00206652, and 00207796. Staff finds that SmartEnergy is in probable non-compliance with certain sections of the Ohio Adm.Code. Staff's review of several SmartEnergy sales calls revealed that SmartEnergy sales agents were using misleading and deceptive practices to market to and enroll customers, including referring to the enrollment as simply entering a sweepstakes. Staff reached out to SmartEnergy with concerns and SmartEnergy did not agree to change its process.

### Probable Non-Compliance Violations

1. Ohio Adm.Code 4901:1-21-03(A) and 4901:1-21-05(C) – CRES providers "shall not engage in unfair, misleading, deceptive or unconscionable acts or practices related to \* \* \* (1) Marketing, solicitation, or sale of a CRES. (2) Administration of contracts for CRES. (3) Provision of CRES, including interactions with consumers."

## **Exhibit A**

2. Ohio Adm.Code 4901:1-21-06(D)(2)(a)(i) – To enroll a customer telephonically, CRES providers must verify with the customer the exact purpose of the call.
3. Ohio Adm.Code 4901:1-21-06(D)(2)(a)(iii) – The telephonic enrollment must include “A verbal statement and the customer’s acknowledgement that the CRES provider is not the customer’s current electric utility company and that the customer may choose to remain with the electric utility company or enroll with another CRES provider.”

### **Proposed Corrective Action**

To address these issues of probable non-compliance, Staff proposes that SmartEnergy take the following corrective actions:

1. Review all complaints regarding misleading information and re-rate customers enrolled due to the sweepstakes marketing offer, using each customer’s price-to-compare to re-rate.
2. Provide Staff with the contracts, welcome letters, standard communications, scripts, and marketing materials related to the sweepstakes marketing offer.
3. Cease marketing and enrollments using the sweepstakes marketing offer while staff reviews the above listed materials for compliance.


### **Proposed Forfeiture**

Finally, Staff is proposing a forfeiture of thirty-two thousand dollars (\$32,500) against SmartEnergy for the above mentioned failures to comply with the requirements found in the Ohio Adm.Code.

## Exhibit A

By Friday, July 27, 2018, please respond to this notice of probable non-compliance with SmartEnergy's plan to come into compliance with the above mentioned rules and implement Staff's proposed corrective actions.

Sincerely,



Melissa Scarberry  
Utility Specialist II  
Service Monitoring and Enforcement  
614-644-7960  
Melissa.Scarberry@puco.ohio.gov

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

**Commission of Ohio Docketing Information System on**

**8/16/2019 11:24:01 AM**

**in**

**Case No(s). 19-1590-EL-UNC**

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