

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PROPER PROCEDURES AND PROCESS FOR THE COMMISSION'S OPERATIONS AND PROCEEDINGS DURING THE DECLARED STATE OF EMERGENCY AND RELATED MATTERS.

CASE NO. 20-591-AU-UNC

IN THE MATTER OF THE JOINT APPLICATION OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND CERTAIN COMPETITIVE RETAIL SUPPLIERS FOR WAIVER OF THE CURRENT SUSPENSION OF IN-PERSON MARKETING TO CUSTOMERS IN OHIO.

CASE NO. 20-1040-GE-UNC

ENTRY NUNC PRO TUNC

Entered in the Journal on August 26, 2020

I. SUMMARY

{¶ 1} The Commission amends, nunc pro tunc, the Entry on Rehearing issued on August 12, 2020, in order to correct an error in Paragraph 27 of the Entry on Rehearing.

II. DISCUSSION

{¶ 2} R.C. 4928.08 states that no electric services company shall provide a competitive retail electric service (CRES) to a consumer in this state without first being certified by the Commission. R.C. 4928.16(A) states that the Commission has jurisdiction under R.C. 4905.26, upon initiative of the Commission, regarding the provision by an electric services company or governmental aggregator subject to certification under R.C. 4928.08 of any service for which it is subject to certification. Similarly, R.C. 4929.20 states that no retail natural gas supplier shall provide a competitive retail natural gas service (CRNGS) to a consumer without first being certified by the Commission. R.C. 4929.24 states that the Commission has jurisdiction under R.C. 4905.26, upon initiative of the Commission, regarding the provision by a retail natural gas supplier subject to certification under R.C. 4929.20 of any service for which it is subject to certification.

{¶ 3} R.C. 4928.02 states that it is the policy of this state to ensure retail electric service consumers protection against unreasonable sales practices and to protect at-risk populations. R.C. 4928.02(I) and (L). Ohio Adm.Code 4901:1-21-02(B) states that after notice and, if necessary, an opportunity for hearing, the Commission, upon its own motion, may require CRES providers to take any appropriate action necessary to comply with the state’s policy as stated in R.C. 4928.02. Similarly, Ohio Adm.Code 4901:1-29-02 states that after notice and, if necessary, an opportunity for hearing, the Commission, upon its own motion, may require CRNGS suppliers to take any appropriate action necessary to comply with the state’s policy as stated in R.C. 4929.02.

{¶ 4} On March 9, 2020, the Governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Ohio Department of Health (ODH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the ODH regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. ODH is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 5} Pursuant to R.C. 3701.13, the Director of the ODH has the authority to issue orders and has supervisory authority over “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 6} On March 12, 2020, the Commission opened Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light

of the state of emergency. *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7.

{¶ 7} Further, on March 17, 2020, the Commission directed CRES providers and CRNGS suppliers to immediately suspend, for all customer classes, all door-to-door and in-store marketing to customers as well as any other sales or solicitation practice that involves in-person contact in this state for the duration of the emergency, unless otherwise ordered by the Commission. *Emergency Case*, Entry (March 17, 2020) at ¶ 7.

{¶ 8} On April 30, 2020, the Director of the ODH issued an Order to reopen certain businesses, subject to social distancing and other workplace safety requirements and sector specific provisions, including provisions for the consumer, retail, and services sector.

{¶ 9} On May 14, 2020, Retail Energy Supply Association, AEP Energy, Inc., Direct Energy Business, LLC, Direct Energy Services, LLC, Energy Harbor LLC, Energy Professionals of Ohio, Interstate Gas Supply, Inc., and Vistra Energy Corp. filed a joint application in Case No. 20-1040-GE-UNC. The joint application requested that, in light of the updated guidance from ODH, the Commission allow the recommencement of all in-person and door-to-door solicitations as soon as reasonably possible.

{¶ 10} On May 20, 2020, the Director of the ODH issued an Order to responsibly rescind requirements of the Stay Safe Ohio Order and lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 pandemic. On May 29, 2020, the Director issued a revised Stay Safe Ohio Order that further lifted restrictions previously issued. Since May 29, 2020, the Director issued additional Orders which opened up various parts of the economy, including youth day camps, full dine-in service in restaurants and bars, and banquet facilities, subject to social distancing requirements.

{¶ 11} By Entry dated June 3, 2020, the Commission modified its March 17, 2020 directive by allowing CRES providers and CRNGS suppliers to resume marketing activities

at stores and other retail establishments and to start scheduling in-person appointments for non-residential customers, subject to arrangements between the CRES providers and CRNGS suppliers and the store; compliance with relevant requirements and best practices issued by the ODH, as well as any guidance or order from any relevant local health authority; and in accordance with all Commission rules and statutory mandates.

{¶ 12} Moreover, by Entry dated June 17, 2020, in light of the May 20, 2020 and subsequent Orders issued by the Director of the ODH to lift mandatory requirements and restrictions to safely open up the Ohio economy, the Commission further modified its March 17, 2020 directive to CRES providers and CRNGS suppliers. Specifically, the Commission allowed the resumption of door-to-door solicitation of CRES and CRNGS, subject to all relevant requirements and best practices issued by the ODH and any relevant local health authority and specific guidance outlined by the Commission. Further, the Commission allowed CRES providers and CRNGS suppliers to resume scheduling in-person appointments for residential customers, subject to the parameters outlined in the Entry.

{¶ 13} On July 17, 2020, the Coalition of Homelessness and Housing in Ohio (COHHIO), Northeast Ohio Public Energy Council (NOPEC), Ohio Poverty Law Center (OPLC), Pro Seniors, Inc. (PSI), Southeastern Ohio Legal Services (SEOLS) and Ohio Consumers' Counsel (OCC) filed an application for rehearing of the June 17, 2020 Entry, asserting two assignments of error.

{¶ 14} On August 12, 2020, the Commission issued an Entry on Rehearing. In the Entry on Rehearing, the Commission found that COHHIO, NOPEC, OPLC, PSI and SEOLS were not parties to these proceedings and did not seek leave to file an application for rehearing pursuant to R.C. 4903.10. Therefore, the Commission determined that COHHIO, NOPEC, OPLC, PSI and SEOLS lacked standing to join in the filing of the application for rehearing. Entry on Rehearing at ¶ 17. Further, the Commission denied rehearing on both assignments of error submitted by OCC.

{¶ 15} The Commission finds that the Entry on Rehearing issued on August 12, 2020, should be amended, nunc pro tunc, in order to correct an error in Paragraph 27. Accordingly, Paragraph 27 should read, in its entirety:

We are cognizant of the Marketers' contention that there have been no widespread violations of the Commission's June 17, 2020 Entry by suppliers. At this time, based on the alleged bad conduct of one entity¹ alone, we decline to cease door-to-door solicitation of all CRES and CRNGS. Therefore, OCC's first assignment of error is denied. [Footnote: SFE Energy and Statewise are affiliates. SFE Energy, Inc. is the parent company of both entities, owning 100 percent of SFE Energy and 51 percent of Statewise.]

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the Entry on Rehearing issued on August 12, 2020, be amended, nunc pro tunc, as set forth above. It is, further,

{¶ 18} ORDERED, That a copy of this Entry Nunc Pro Tunc be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

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Case No(s). 20-0591-AU-UNC, 20-1040-GE-UNC

Summary: Entry amending, nunc pro tunc, the Entry on Rehearing issued on August 12, 2020, in order to correct an error in Paragraph 27 of the Entry on Rehearing. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio