

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of Reliant Energy Northeast)
LLC dba NRG Business, NRG Home and) Case No. 20-1758-GE-UNC
NRG Retail Solutions)**

JOINT STIPULATION AND RECOMMENDATION

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.¹ This Joint Stipulation and Recommendation (“Stipulation”) sets forth the understanding of Reliant Energy Northeast LLC dba NRG Business, NRG Home and NRG Retail Solutions (“NRG” or “Company”) 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 November 27, 2019 (“Notice Letter”), attached hereto as Exhibit A.

The Stipulation represents a just and reasonable resolution of the issues raised in these proceedings, violates no regulatory principle or precedent, and is the product of bargaining among knowledgeable and capable Parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, to resolve the aforementioned issues. Although this Stipulation is not binding on the Commission, it is

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

entitled to careful consideration by the Commission. For purposes of resolving all issues raised by this proceeding, the Parties stipulate, agree and recommend as set forth below.

This Stipulation is the product of an open process in which all Parties were represented by able counsel and technical experts. The Stipulation represents a comprehensive compromise of issues raised by Parties with diverse interests. The only parties to the proceeding, NRG and the Commission Staff, have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits customers and is in the public interest. The Signatory Parties agree that the settlement does not violate any important regulatory principle or practice. Pursuant to Ohio Adm.Code 4901-1-30, 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:

HISTORY

1. NRG provides competitive retail electric service and competitive retail natural gas services, as defined in R.C. 4928.01 and 4929.01, respectively and is subject to the jurisdiction of this Commission.
2. On November 27, 2019, Staff issued the Notice Letter to NRG regarding several issues identified therein, which is attached hereto as Exhibit A.
3. NRG conducted an extensive review of numerous Ohio customer complaint records during the six months preceding the Notice Letter, as well as contacts to the Commission's Call Center. The Signatory Parties agree that NRG has responded and resolved all customer complaints it received during the six months preceding the Notice Letter.
4. NRG and Staff engaged in numerous discussions to address the issues

raised in Staff's Notice Letter, worked cooperatively during their discussions, and have reached a resolution of all issues.

JOINT RECOMMENDATION OF SIGNATORY PARTIES

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

1. For a period of one year from the date of Commission approval of this Stipulation, NRG agrees to use, without material modification, its contact-free enrollment process, as approved in Case No. 20-1008-EL-WVR, for all in-store enrollments. The Signatory Parties understand and acknowledge that, at the conclusion of the one-year period, NRG may elect, at its own discretion, to continue using its contact-free enrollment process for in-store enrollments.
2. For a period of six months from the date of Commission approval of this Stipulation, NRG will provide Staff with a list of all its retail marketing locations and will use its best efforts to update the list at least seven calendar days prior to marketing at a location. The list will include the date, time, and location of the marketing event, subject to the acknowledged limitation in the next sentence. The Signatory Parties understand and acknowledge that NRG will not be able to specify the hours on specific dates when NRG sales agents are working in-store because NRG's retail partners set the hours for the sales agents.
3. NRG agrees to a forfeiture of \$100,000 upon approval of this Stipulation by the Commission. NRG 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 4321-3793

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.

PROCEDURAL MATTERS

1. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party

or the Commission itself. This Stipulation is not an admission or a finding of liability. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.²

2. This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the Commission reject or materially modify all or any part of this Stipulation,³ the Signatory Parties shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing. Should the Commission, in issuing an entry on rehearing, not adopt the Stipulation in its entirety and without material modification, any Signatory Party may withdraw from the Stipulation. Such withdrawal shall be accomplished by filing a notice with the Commission, including service to all Parties, in the docket within thirty days of the Commission's entry on rehearing. Prior to the filing of such a notice, the Signatory Party wishing to withdraw agrees to work in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Signatory Party wishing to withdraw, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, and a Signatory Party files a notice to withdraw from the Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing party will be afforded the opportunity to contest the Stipulation by presenting evidence through witnesses and cross-examination, presenting rebuttal testimony, and briefing all issues that the Commission shall decide based upon the record and briefs.
3. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation. If the Stipulation is adopted by the Commission, the Signatory Parties will support the Stipulation in any appeal of the decision.

² This includes NRG's position that the records and data do not indicate a pattern of noncompliant behavior, a trend, or a developing issue.

³ 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.

CONCLUSION

WHEREFORE, the Signatory Parties agree and recommend this 7th day of December 2020 that the Commission find that the Stipulation represents a reasonable resolution of all issues in this matter, and that the Stipulation should be adopted and approved in its entirety.

On behalf of the Staff of the Public Utilities
Commission of Ohio

On behalf of Reliant Energy Northeast
LLC dba NRG Business, NRG Home
and NRG Retail Solutions

/s/ Jodi J. Bair

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Public Utilities Commission

Mike DeWine, Governor
Sam Randazzo, Chairman

Commissioners

M. Beth Trombold
Lawrence K. Friedman
Dennis P. Deters
Daniel R. Conway

November 27, 2019

Lindsay Cervenak
Reliant Energy Northeast LLC dba
NRG Business, NRG Home, and NRG Retail Solutions
3711 Market St, Suite 1000
Philadelphia, PA 19104

Dear Ms. Cervenak:

Pursuant to Ohio Administrative Code ("Ohio Adm.Code") 4901:1-23-02 and 4901:1-34-03, this letter is a notice of probable non-compliance to Reliant Energy Northeast LLC dba NRG Business, NRG Home, and NRG Retail Solutions ("NRG"). Based on our investigation of customer complaints, Staff of the Public Utilities Commission of Ohio ("Staff") finds that NRG is in probable non-compliance with certain sections of the Ohio Administrative Code. Staff's review of results from consumer investigations has revealed a pattern of non-compliant behavior from agents representing NRG.

Staff reviewed investigation records provided by NRG in response to complaints to the Public Utilities Commission of Ohio ("PUCO") by customers. Those complaints involved customers disputing their enrollment, receiving misleading and incomplete information, or complaints of high bills. After reviewing the information and responses from NRG, Staff determined that customers are not receiving complete information regarding enrollment; some customers were enrolled without their consent; and customers are not being supplied with a copy of the contract to which they are agreeing.

Not all customers are knowingly enrolling with NRG. Multiple customers have stated that they agreed to receive additional information from NRG or answered questions from a representative and then declined to enroll. Later, customers received a rescission notice from their utility in the mail or discovered NRG appearing on their utility bill. Some enrollment documents provided in response to consumer investigations included false email addresses, including "no@nrg.com", or incorrect physical addresses. Staff also determined that the signatures captured electronically are copied or transferred onto another document. This indicates to Staff that the customer did not read and sign all documents required to complete the enrollment.

Probable Non-Compliance Violations

1. Ohio Adm.Code 4901:1-21-03(A) "Competitive retail electric service (CRES) providers shall not engage in unfair, misleading, deceptive or unconscionable acts or practices related to, without limitation the following activities: (1)

Marketing, solicitation, or sale of a CRES. (2) Administration of contracts for CRES (3) Provision of CRES, including interactions with consumers.”

2. Ohio Adm.Code 4901:1-29-03(A) “A retail natural gas supplier [“CRNGS”] or governmental aggregator shall not engage in unfair, misleading, deceptive, or unconscionable acts of practices related to, without limitation, the following activities: (1) Marketing, solicitation, or sale of a competitive retail natural gas service. (2) Administration of contracts for such service. (3) Provision of such service, including interactions with customers.”
3. Ohio Adm.Code 4901:1-21-03(C) “CRES providers shall not change or authorize the changing of a customer’s supplier of retail electric service without the customer’s prior consent, as provided for under rule 4901:1-21-06 of the Administrative Code.”
4. Ohio Adm.Code 4901:1-29-03(D) “A retail natural gas supplier or governmental aggregator shall not change or authorize the changing of a customer’s supplier of competitive retail natural gas service without the customer’s prior consent, as provided for under rule 4901:1-29-06 of the Administrative Code.”
5. Ohio Adm.Code 4901:1-21-05(C) “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.”
6. Ohio Adm.Code 4901:1-29-05(D) “No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service.”
7. Ohio Adm.Code 4901:1-21-06(C) “CRES providers are prohibited from enrolling potential customers without their consent proof of that consent as delineated in paragraph (D) of this rule.”
8. Ohio Adm.Code 4901:1-29-06(B) “A retail natural gas supplier and governmental aggregator is prohibited from enrolling potential customers without consent and proof of that consent as delineated in paragraphs (C), (D), and (E) of this rule.”
9. Ohio Adm.Code 4901:1-21-06(D)(1)(a) “Where enrollment occurs by mail, facsimile, or direct solicitation, the customer’s signature on a contract shall constitute consent.”
10. Ohio Adm.Code 4901:1-29-06(D)(1) “Where enrollment occurs by mail, facsimile, or direct solicitation, the customer’s signature on a contract shall constitute consent.”
11. Ohio Adm.Code 4901:1-21-06(D)(1)(b) “Prior to entering into a contract for service, CRES providers shall provide each customer with enrollment documents...”

12. Ohio Adm.Code 4901:1-29-06(D)(2) “Prior to entering into a contract for service, a retail natural gas supplier or governmental aggregator shall provide each customer with enrollment documents...”
13. Ohio Adm.Code 4901:1-21-06(D)(1)(c) “Before obtaining a signature from the applicant, CRES providers shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any applicant about information contained in the documents.”
14. Ohio Adm.Code 4901:1-29-06(D)(3) “Before obtaining a signature from the applicant, a retail natural gas supplier or governmental aggregator shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any applicant about information contained in the documents.”
15. Ohio Adm.Code 4901:1-21-06(D)(1)(i) “Terms and conditions print specifications
The terms and conditions must be provided to the residential customer at the time of sale. Paper copies of terms and conditions must be printed in dark ink on white or pastel paper and be ten-point type or greater. Electronic copies of the signed contract may be provided in the following conditions: ... (v) The CRES provider shall provide a mechanism by which both the submission and receipt of the electronic terms and conditions are recorded by time and date.”
16. Ohio Adm.Code 4901:1-29-06(D)(6)(c) “Terms and conditions print specifications
The terms and conditions must be provided to the residential customer at the time of sale. Paper copies of the terms and conditions must be printed in dark ink on white or pastel paper and be ten-point type or greater. Electronic copies of the signed contract may be provided in the following conditions: ... (v) The retail natural gas supplier shall provide a mechanism by which both the submission and receipt of the electronic terms and conditions are recorded by time and date.”

Proposed Corrective Actions

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

1. Provide Staff with a plan to come into compliance with Commission rules. The plan should address, at least, enrollment practices, an auditing process for enrollments, and any corrective actions to be implemented by NRG.
2. Review all enrollments completed within the last 6 months and take the following actions:
 - a. Review each contract, sales call, TPV, and other enrollment documentation for completeness and customer consent.
 - b. Contact each customer where enrollment documents are not complete or the customer’s consent is not certain.

- c. Give each customer identified in 2.b. above, the option to cancel without any penalties or to re-enroll with NRG, in which case, new enrollment and consent must be obtained in accordance with Ohio Adm.Code 4901:1-21-06 and/or 4901:1-29-06.
 - d. For each customer who was switched without consent, return those customers to their utility and re-rate the last 6 months of their supply with NRG back to the utility's price-to-compare.
3. Provide a list of all customers and associated agents identified in 2.b. above to Staff for review.

Additionally, Staff recommends that NRG cease all retail marketing and enrollment activities in the State of Ohio until this matter is resolved. In accordance with R.C. 4905.54 and Ohio Adm.Code 4901:1-21-15(A)(1), Staff will view any continuation in NRG's retail marketing and enrollments that result in violations to constitute additional offenses, which may result in additional enforcement actions, including rescission of NRG's CRES and CRNGS certificates and forfeitures to the state of up to ten thousand dollars (\$10,000) per offense.

Proposed Forfeiture

Finally, Staff is proposing a forfeiture of one-hundred thousand dollars (\$100,000) against NRG for the above mentioned failures to comply with the requirements found in the Ohio Administrative Code.

By Tuesday, December 17, 2019, please respond to this notice of probable non-compliance with NRG's plan to address the above proposed corrective actions.

Sincerely,



Melissa Scarberry
Public Utilities Commission of Ohio
Service Monitoring and Enforcement
Utility Specialist 2
614-644-7960
Melissa.Scarberry@puco.ohio.gov

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Summary: Stipulation Joint Stipulation and Recommendation electronically filed by Mrs. Kimberly M Naeder on behalf of PUCO