

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Commission's
Investigation into SFE Energy Ohio, Inc.
and Statewise Energy Ohio, LLC's
Compliance with the Ohio Revised Code
and Ohio Administrative Code and
Potential Remedial Action

CASE NO. 20-1216-GE-COI

JOINT STIPULATION AND RECOMMENDATION

I. Introduction.

SFE Energy Ohio, Inc. (SFE) and Statewise Energy Ohio, LLC (Statewise) are certified by the Public Utilities Commission of Ohio (Commission) to supply competitive retail electric service (CRES) and competitive retail natural gas service (CRNGS) pursuant to Chapters 4928 and 4929 of the Ohio Revised Code, and are subject to the jurisdiction of the Commission.

On June 30, 2020, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) filed a letter on this docket (Staff Letter) indicating that Staff was investigating the marketing, sales, and enrollment practices of SFE and Statewise. In the Staff Letter, Staff identified 49 customer contacts regarding SFE's provision of CRES and CRNGS, and 76 contacts regarding Statewise's provision of CRES and CRNGS, between January 1, 2020 and June 26, 2020. Staff also identified two video recorded instances of a possible violation of the Commission's June 17, 2020 Entry

allowing CRES and CRNGS marketers to resume door-to-door marketing in Case No. 20-591-AU-ORD. In light of these potential non-compliance issues, Staff recommended the opening of a Commission Ordered Investigation.

On July 1, 2020, the Commission entered an Order opening this investigation (Investigation) and directing SFE and Statewise to elect one of the three options by July 6, 2020: (1) provide notice accepting the voluntary suspensions of their CRES and CRNGS certifications; (2) request a hearing regarding the issues raised in the Entry; or (3) provide notice that SFE and Statewise intend to file a written response in lieu of a hearing. By notice filed on July 6, 2020, SFE Energy and Statewise Energy elected to proceed to a hearing. On July 15, 2020, upon consideration of a joint motion for an extension of case deadlines filed by Staff, SFE Energy, and Statewise on July 14, 2020, the Commission directed SFE Energy and Statewise to: (1) cease all marketing and enrollments of residential gas and electric customers; (2) cease all door-to-door marketing to small commercial and mercantile gas and electric customers; and (3) comply with all other representations made in the joint motion until further ordered by the Commission. Further, the Commission vacated the July 20, 2020 show cause hearing and instructed the attorney examiners to establish a new procedural schedule. On September 28, 2020, the attorney examiners established a new procedural schedule, subsequently amended by entries dated October 23, 2020, November 23, 2020, and December 7, 2020. On October 13, 2020, Staff filed a Report (“Staff Report”) in this Investigation, which was corrected via letter filed on October 21, 2020.

Staff, the Office of the Ohio Consumers' Counsel ("OCC"), SFE and Statewise have since engaged in settlement discussions in an effort to reach a mutually acceptable and comprehensive resolution that would address the concerns raised in the Staff Letter, the Investigation, the Staff Report, and the Commission's July 1, 2020 Order. As a result of these negotiations, Staff, OCC, SFE and Statewise hereby enter into this Joint Stipulation and Recommendation (Stipulation). This Stipulation sets forth the agreement reached between Staff, OCC, SFE and Statewise, each of whom is a "Signatory Party" and together constitute the "Signatory Parties," regarding compliance with the Ohio Administrative Code and potential remedial actions for alleged non-compliance as outlined in the Staff Letter, the Staff Report, and the July 1, 2020 Commission Order filed in this matter. The Stipulation is not an admission or finding of liability,¹ and is entered into without prejudice to the positions the Signatory Parties may have taken in the absence of the Stipulation, or may take in the event the Commission does not approve this Stipulation. If approved by the Commission, the Stipulation resolves all of the issues raised in this Investigation, including the Staff Letter, the Staff Report, and the July 1, 2020 Commission Order.

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 all the issues involved in the Investigation, violates no regulatory principle or precedent, and is

¹ With the exception of the violations of Ohio Adm.Code 4901:1-21-05(C) and 4901:1-29-05(D)(5) identified in paragraphs IV(8) and IV(9) on page 8 of the Staff Report relating to the incidents on June 24 and 26, 2020, described in paragraph 1 on page 1 of the Staff Report.

in the public interest. The Signatory Parties represent that the Stipulation is the product of serious and intensive 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. The primary objective of this Stipulation is to avoid, to the extent reasonably possible, the potential for future customer complaints resulting from marketing, solicitation, and customer enrollment practices by SFE and Statewise to consumers of power and gas in Ohio.

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

II. Recitals.

WHEREAS, SFE is an electric services company as defined in R.C. 4928.01 and a retail natural gas supplier as defined in R.C. 4929.01; is certified to provide competitive retail electric service under R.C. 4928.08 and to supply competitive retail natural gas service under R.C. 4929.20; and is subject to the jurisdiction of the Commission pursuant to R.C. 4928.16 and R.C. 4929.24;

WHEREAS, Statewise is an electric services company as defined in R.C. 4928.01 and a retail natural gas supplier as defined in R.C. 4929.01; is certified to provide competitive retail electric service under R.C. 4928.08 and to supply competitive retail natural gas service under R.C. 4929.20; and is subject to the jurisdiction of the Commission pursuant to R.C. 4928.16 and R.C. 4929.24;

WHEREAS, on June 30, 2020, Staff filed the Staff Letter on this docket indicating that Staff was investigating the marketing, sales, and enrollment practices of SFE and Statewise and recommending the opening of an investigation;

WHEREAS, on July 1, 2020, the Commission entered an Order opening this Investigation;

WHEREAS, on October 13, 2020, Staff filed the Staff Report in this Investigation, which was corrected via letter filed on October 21, 2020; and

WHEREAS, Staff, OCC, SFE and Statewise engaged in serious and intensive settlement negotiations to address the issues raised in the Investigation, the Staff Letter, and the Staff Report, and have reached a resolution of all of those issues.

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

III. Joint Recommendation of Signatory Parties.

The Signatory Parties agree that, for purposes of settlement, the Commission should approve this Stipulation without modification as set forth herein:

1. As of June 30, 2020, both SFE and Statewise voluntarily ceased all residential marketing and customer enrollment activities in Ohio, including any door-to-door or other in-person residential marketing and customer enrollment, as represented to the Commission in the notice filed in this matter on July 6, 2020. As reflected in the Commission's Order dated July 15, 2020, SFE and Statewise also ceased all door-to-door marketing to small commercial and

mercantile gas and electric customers in Ohio. The Signatory Parties agree that this suspension by SFE and Statewise of all residential marketing activities and new customer enrollment in Ohio, and of all door-to-door marketing to small commercial and mercantile gas and electric customers in Ohio, will continue until March 15, 2021, for a total of more than eight (8) months, if SFE and Statewise submit an acceptable compliance plan to Staff. SFE and Statewise may continue to serve their existing customers in Ohio during this suspension. If this Stipulation has been filed on the case docket in this Investigation but the Commission has not yet approved this Stipulation by March 15, 2021, SFE and Statewise may commence all residential marketing activities and new customer enrollment in Ohio, and all door-to-door marketing and enrollment to small commercial and mercantile gas and electric customers in Ohio, on a provisional basis pending approval of this Stipulation by the Commission.

2. By not later than January 15, 2021, SFE and Statewise will submit directly to Staff for review and comment a compliance plan for resuming and conducting residential marketing and enrollment activity in Ohio, and any door-to-door marketing and enrollment to small commercial and mercantile gas and electric customers in Ohio, that addresses the enrollment practices, auditing process for enrollments, and other corrective actions SFE and Statewise will take to

address the issues noted in the Staff Report.² In the compliance plan, SFE and Statewise agree to provide to Staff:

- a. A list of vendors retained since January 1, 2020 by SFE and Statewise to perform Ohio outbound telemarketing and door-to-door marketing in Ohio; and
 - b. A plan for coming into compliance with the Commission's Entries in the Door-to-Door marketing Case No. 20-591-AU-ORD, and applicable local and state health guidelines and directives in the State of Ohio in relation to the COVID-19 pandemic. The compliance plan will include 100% touchless enrollment and photographic documentation of required face coverings by independent sales representatives at the point of sale so long as the Ohio Department of Health's social distancing requirements and mask mandates remain in place.
 - c. The compliance plan will also address training, oversight, and supervision of all Ohio vendors and their independent sale representatives.
3. After approval of this Stipulation by the Commission, SFE and Statewise will rerate³ all retail electric and natural gas residential customers enrolled by SFE

² By agreeing to the terms of this Stipulation, OCC does not concede that any such compliance plan is necessarily sufficient to adequately protect customers from the type of conduct alleged in the Staff Report and reserves all rights to address any deficiencies in the compliance plan, as appropriate, in a future proceeding.

³ "Re-rate" means SFE and Statewise will calculate the difference between the rate it charged to the customer, including any fees, and the rate the customer would have paid to the applicable utility under the utility's standard service offer or default rate, and refund or credit the difference to the customer.

or Statewise in Ohio through vendors iMarket Global, Inc. or 616 Marketing Consultants from January 1, 2020 through June 30, 2020. This re-rate will result in restitution payments to Ohio consumers of approximately \$105,000 in the aggregate.

4. After approval of this Stipulation by the Commission, SFE and Statewise will perform an audit of the vendors Synegece LLC and Southeast Energy Consultants LLC for the time period from November 1, 2019 through June 26, 2020 and re-rate customers who were enrolled by misleading and deceptive sales practices. SFE and Statewise shall provide the audit⁴ results to the Signatory Parties within fifteen (15) days of completion of the audit. Those customers that are re-rated under this paragraph shall be notified by SFE or Statewise in the re-rate notice of their right to terminate, at no cost or penalty, their contracts with SFE or Statewise.
5. After approval of this Stipulation by the Commission, SFE and Statewise will provide notice to (i) all customers enrolled from November 1, 2019 to June 26, 2020, and (ii) all customers enrolled on a hybrid plan and/or daily rate plan regardless of their enrollment date, that Commission Staff has alleged that SFE and Statewise engaged in misleading enrollment practices that impacted the customer during their enrollment and that customers may cancel their contracts

⁴ Including examples of calls. SFE and Statewise will provide Staff with any requested calls and/or documents associated with the audit.

with SFE or Statewise without penalty. The form of the notice agreed to by the Signatory Parties is attached as Exhibit A.

6. After approval of this Stipulation by the Commission, SFE and Statewise will provide restitution in the form of re-rates to all customers that complained to the Commission's call center or SFE or Statewise and were enrolled⁵ during the period of January 1, 2020 and the date of the signing of this Stipulation. SFE and Statewise will also provide restitution in the form of re-rates to all SFE or Statewise customers that complain to the Commission's call center at any time from the date of the signing of this Stipulation through the date that is forty-five (45) days after the date of the notice sent pursuant to Paragraph III(5) of this Stipulation. SFE and Statewise shall provide to the Signatory Parties the amount of this re-rate total and customer names. Restitution shall take place within 30 days of the Commission's Order adopting this Stipulation for customers that complained prior to such Order. For customers complaining after the Order, such customers shall receive restitution within 30 days after the date of their complaint. In the re-rate notice, these customers shall also be notified of their right to terminate, at no cost or penalty, their contracts with SFE or Statewise.
7. Upon the execution of this Agreement, SFE and Statewise will terminate offering the hybrid plan and/or daily rate plan until authorized by the

⁵ Enrolled is defined as the time when the gas and/or electricity begins to flow with SFE or Statewise and SFE or Statewise bills for the service.

Commission. Upon expiration of the current term for those customers enrolled with SFE or Statewise under a hybrid plan and/or daily rate plan, SFE and Statewise agree not to renew the customer for another hybrid plan and/or daily rate plan unless and until the Commission authorizes SFE and/or Statewise to offer the hybrid plan and/or daily rate plan in a separate proceeding. The Signatory Parties reserve all rights with respect to any position they might take in such separate proceeding.

8. Commencing on the restart of residential marketing and enrollment in Ohio under the terms of this Stipulation, SFE and Statewise agree to retain recordings of all sales calls in Ohio that result in enrollment of residential customers for gas and/or electric service, and SFE and Statewise agree to provide Staff with copies of such recordings upon request.
9. SFE and Statewise collectively agree to pay a total forfeiture of \$174,000.00. Upon approval of this Stipulation by the Commission, SFE Energy and Statewise Energy agree to submit payment, by certified check, money order or wired funds made payable to “Treasurer, State of Ohio,” to:

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

Payment shall be paid within thirty (30) days of the entry approving this Stipulation and shall note the docket number assigned to the matter.

10. After approval of this Stipulation by the Commission, SFE and Statewise will re-rate any customers enrolled in November or December 2019 who submit a complaint either to the Commission or to SFE or Statewise up to a total of \$26,000 in re-rates. Re-rates will be available to any such customers who call to complain within four months after the date of the approval of this Stipulation by the Commission. If less than \$26,000 is paid by SFE and Statewise collectively for re-rates to these customers in the four-month period following approval of this Stipulation, the remaining amount will be paid to the Commission as an additional forfeiture by the method set forth in Paragraph III(9) within thirty (30) days of the end of that four-month period. After this time period, customer issues shall be addressed through the regular PUCO and Company channels for resolutions.

IV. 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 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.

V. The Signatory Parties believe that this Stipulation represents a reasonable compromise of varying interests. This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification.

Each Signatory Party has the right, in its sole discretion, to determine whether the Commission's approval of this Stipulation constitutes a "material modification" thereof. Should the Commission reject or materially modify all or any part of this Stipulation, the Signatory Parties shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing or to terminate and withdraw from the Stipulation by filing a notice with the Commission in this proceeding and serving all Signatory Parties. Should the Commission, in issuing an entry on rehearing, not adopt the Stipulation in its entirety and without material modification, any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within 30 days of the Commission's entry on rehearing. 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 proceeding shall go forward at the procedural point at which this Stipulation and Recommendation was filed, and the parties will be afforded the opportunity to present evidence through witnesses, cross-examine all witnesses, present rebuttal testimony, and brief all issues which shall be decided based upon the record and briefs as if this Stipulation had never been executed.

- VI.** 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.

WHEREFORE, the Signatory Parties agree and recommend this 21st day of December, 2020 that the Commission find that the Stipulation represents a reasonable resolution of this matter, that the Stipulation should be adopted and approved.

Respectfully submitted,

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Attorney General

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Exhibit A

Agreed Form of Customer Notice Under Paragraph III(5) of the Stipulation

[DATE]

Dear [NAME],

[COMPANY] recently or currently serves as your supplier of electricity and/or natural gas. We are committed to keeping our valued customers informed about our services. Our company settled a case before the Public Utilities Commission of Ohio in which Commission Staff alleged that our company engaged in misleading enrollment practices that impacted customers during their enrollment with us. Though we disagreed with most of these allegations, we settled the case in order to continue focusing on delivering excellent service to our customers.

As part of that settlement, if we are your current supplier, you may cancel your contract with us without penalty and either return to utility default service or select another competitive supplier.

If you have any questions about this notice or our service, or if you wish to cancel your electricity and/or natural gas service with us, you may contact our dedicated customer care team at [TOLL FREE PHONE] or by email at [EMAIL]. You can also ask to be returned to your local utility's competitive standard offer rate by calling the utility's customer service department directly. You may contact the Public Utilities Commission of Ohio directly at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service).

Finally, if you have questions about this notice, you may contact the Office of the Ohio Consumers' Counsel, which is the State's residential consumer advocate, at (877) 742-5622 or by email at occ@occ.ohio.gov.

Thank you for the opportunity to serve your energy needs!

Warm Regards,

Jeffrey Donnelly
Director, Regulatory Affairs & Compliance

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