

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Commerce :
Energy, Inc. dba Just : Case No. 02-1828-GA-CRS
Energy for Certification :
as a Competitive Retail :
Natural Gas Provider :

- - -

PROCEEDINGS

before Scott E. Farkas, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10:01
a.m. on Thursday, November 4, 2010.

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APPEARANCES:

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On behalf of the Company.

Janine L. Migden-Ostrander
Ohio Consumers' Counsel
By Mr. Joseph P. Serio
and Mr. Larry S. Sauer
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

On behalf of the Residential
Consumers of the State of Ohio.

Richard Cordray, Ohio Attorney General
Public Utilities Section
By Mr. John H. Jones
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3793

On behalf of the Staff of the Public
Utilities Commission.

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1 Thursday Morning Session,
2 November 4, 2010.

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4 THE ATTORNEY EXAMINER: The Commission
5 has called for hearing at this time and place: In
6 the Matter of the Application of Commerce Energy,
7 Inc. dba Just Energy for Certification as a
8 Competitive Retail Natural Gas Provider. Case No.
9 02-1828-GA-CRS.

10 My name is Scott Farkas. I'm the
11 attorney-examiner assigned to hear this case.

12 First, I'll take appearances starting
13 with the Company.

14 MR. PETRICOFF: Thank you, your Honor.
15 On behalf of the Company, Commerce Energy, M. Howard
16 Petricoff and Stephen Howard with the law firm of
17 Vorys, Sater, Seymour and Pease, 52 East Gay Street,
18 Columbus, Ohio.

19 THE ATTORNEY EXAMINER: On behalf of the
20 Staff.

21 MR. JONES: Good morning, your Honor. On
22 behalf of the Staff of the Public Utilities
23 Commission of Ohio, Ohio Attorney General Richard
24 Cordray, Assistant Chief Rebecca Hussey, Assistant
25 Attorney General John Jones, 180 East Broad Street,

Columbus, Ohio.

THE ATTORNEY EXAMINER: And OCC.

MR. SERIO: Thank you, your Honor. On behalf of the residential utility customers in the State of Ohio, Janine Migden-Ostrander, Consumers' Counsel, by Joseph P. Serio and Larry S. Sauer, 10 West Broad Street, Columbus, Ohio.

THE ATTORNEY EXAMINER: Okay. Thank you.

It's my understanding that the parties have reached a stipulation in this case; is that accurate?

MR. JONES: That is correct, your Honor.

THE ATTORNEY EXAMINER: Are there any witnesses in support of the stipulation?

MR. JONES: There are, your Honor.

THE ATTORNEY EXAMINER: Okay. Let's go off the record for a second.

(Discussion off the record.)

MR. PETRICOFF: Thank you, your Honor. At this time we would like to have marked as Company Exhibit No. 1, the Application for Renewal Certification for the Commerce Energy company.

THE ATTORNEY EXAMINER: Okay. So marked.

Is there any objection to the admission of Company Exhibit 1?

1 MR. SERIO: No objection.

2 MR. JONES: No objection, your Honor.

3 THE ATTORNEY EXAMINER: Then it will be
4 admitted.

5 And OCC has an exhibit, also.

6 MR. SERIO: Yes, your Honor. We would
7 like to mark, for purposes of identification, OCC
8 Exhibit 1, which is a call log of complaints received
9 by the OCC.

10 THE ATTORNEY EXAMINER: Is there any
11 objection to the admission of OCC Exhibit 1?

12 MR. PETRICOFF: No objection.

13 MR. JONES: No objection, your Honor.

14 THE ATTORNEY EXAMINER: Then it will be
15 admitted, also.

16 My understanding is that that is OCC and
17 the Company, the sole exhibits from both OCC and the
18 Company, and neither have witnesses they want to go
19 forward with.

20 MR. PETRICOFF: That is correct, your
21 Honor.

22 MR. SERIO: That is correct, your Honor.

23 THE ATTORNEY EXAMINER: All right. Okay.
24 Then I guess the ball is in the proverbial court of
25 the Staff.

MR. JONES: Thank you, your Honor. At this time, your Honor, the Staff would like to call Jim Drummond to the stand.

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JAMES R. DRUMMOND
being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Jones:

Q. Could you please state your name for the record and where you're employed, please?

A. My name is James R. Drummond. I'm employed by the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio.

MR. JONES: May I approach the witness, your Honor?

THE ATTORNEY EXAMINER: Yes.

Q. Mr. Drummond, I have put before you, Staff Exhibit 1 and Joint Exhibit 1. Could you please identify those documents for the record, please?

A. Yes. Staff Exhibit 1 is the Staff Report filed on September 20th. Joint Exhibit 1 is the Joint Stipulation which is the subject of this hearing.

1 Q. Thank you.

2 What is your job title and
3 responsibilities with the Commission?

4 A. I'm a Public Utilities Administrator 2 in
5 the Reliability and Service Analysis Division, and
6 the Service Monitoring and Enforcement Department.
7 I'm the Section Chief of the Competitive Energy and
8 Telecommunications Section; this section manages the
9 Commission's Staff's review of certification
10 applications filed by both the competitive retail
11 natural gas service and competitive retail electric
12 service providers; drafts and enforces the
13 competitive gas and electric rules, the Minimum
14 Telephone Service Standards rules in response to
15 customer issues and complaints associated with their
16 telecommunication services and participation in
17 natural gas and electric markets.

18 Q. And what is the purpose of your testimony
19 in this proceeding?

20 A. The purpose of my testimony is to sponsor
21 and support the Joint Stipulation and Recommendation
22 filed on November 4, 2010, in this case, and marked
23 as Joint Exhibit 1 for this proceeding, and to
24 explain, for the record, how the stipulation
25 satisfies the Commission's three-part test for

1 stipulations.

2 The stipulation is filed with support of
3 the parties of this proceeding, including Commerce
4 Energy, Incorporated, doing business as Just Energy,
5 the Office of the Consumers' Counsel, and Commission
6 Staff.

7 In addition to highlighting key terms, I
8 will demonstrate that the stipulation is just and
9 reasonable as shown by meeting the Commission's
10 three-part test for reviewing stipulations.

11 Specifically: (1) the stipulation is a
12 product of serious bargaining among capable and
13 knowledgeable parties; (2) that the stipulation does
14 not violate any important regulatory principle or
15 practice; and (3) that the stipulation is a just and
16 reasonable resolution of the issues that, taken as a
17 whole, have the objective of reducing further
18 complaints through improved oversight of Just
19 Energy's door-to-door solicitation in their own
20 efforts.

21 Q. So you're here, today, to sponsor Joint
22 Exhibit 1?

23 A. Yes, I'm sponsoring the stipulation filed
24 on this docket on November 4th, 2010.

25 Q. And would you please generally describe

1 the stipulation and recommendation, please?

2 A. Yes. I have carefully reviewed the
3 stipulation and recommendation. In addition to other
4 Staff members, I participated in the settlement
5 discussions that led to the parties reaching a
6 resolution of the issues raised in the Staff Report
7 of the investigation of Just Energy's Certificate
8 Renewal Application. This stipulation and
9 recommendation is a product of these discussions, and
10 it resolves both the Company's renewal application
11 and all the issues in the Staff Report of
12 investigation that was filed on September 20th, 2010
13 in this case.

14 The key provisions of the stipulation
15 are:

16 1. It provides for the issuance of a
17 two-year certificate for Just Energy. The terms and
18 conditions of the stipulation shall apply to the
19 first calendar year of the certificate which will be
20 the period of January 1st, 2011 to December 31st,
21 2011.

22 2. It provides for the forfeiture of
23 \$311,000; \$111,000 paid to the State of Ohio upon
24 Commission approval of the stipulation, and \$200,000
25 to be held in abeyance for the duration of the

1 stipulation.

2 3. During calendar year 2011, if the
3 Company has 10 complaints verified by Staff and OCC
4 for any two months in a rolling three-month period
5 which is referred to as a cycle, then 100,000 of the
6 abeyance will become due. A repeat of the above
7 cycle will trigger the final advance payment of
8 100,000 and may also result in the Commission Staff
9 and OCC seeking suspension, rescission, or
10 conditional rescission of the Company's certificate.

11 4. By January 1st, 2011, the Company
12 will hire salaried quality-assurance personnel to
13 oversee the Just Energy sales force. The Company
14 also agrees to retain all sales agents.

15 5. For the duration of the two-year
16 certification, the Company will conduct a Third Party
17 Verification process for 100 percent of all customers
18 enrolled through residential door-to-door
19 solicitation.

20 6. A customer letter will be sent to all
21 residential customers who have signed up between
22 April 1st, 2010 and September 20th, 2010 for service.
23 The letter will offer customers the right to stay
24 with the agreement they have; select a different
25 offer from Just Energy; select a different marketer

1 for service; or return to standard service as offered
2 by the local distribution company.

3 7. The Company agrees to maintain, as a
4 part of its door-to-door solicitation contract, the
5 right of the customer to terminate within 30 -- the
6 first 30 days following the issuance of the first
7 bill, without an early-termination fee.

8 8. The Company agrees to make changes to
9 their customer agreement and customer acknowledgment
10 forms to bring them into compliance with current
11 rules.

12 Q. Okay. Mr. Drummond, is the
13 stipulation -- does it represent a product of serious
14 bargaining among capable, knowledgeable parties?

15 A. Yes. The knowledge and capabilities of
16 the parties involved with the stipulation and their
17 attorneys are readily apparent. The stipulating
18 parties regularly participate in proceedings before
19 the Commission, are knowledgeable in regulatory
20 matters, and are represented by experienced,
21 competent counsel.

22 Furthermore, the stipulated parties
23 represent a broad range of interests. All the
24 parties in the proceedings have participated in
25 multiple face-to-face meetings at the Commission's

1 offices over the course of several weeks.

2 Follow-up negotiations occurred via
3 e-mail, and all parties were included in all such
4 e-mails. All the parties were invited to attend all
5 settlement discussions. And all the issues raised by
6 the parties in this proceeding were addressed during
7 this negotiation. Despite the divergent interests
8 among the parties, all had an opportunity to express
9 their opinions in the negotiating process.

10 For all these reasons, I believe that the
11 stipulation is a compromise resulting from serious
12 bargaining among capable and knowledgeable parties.

13 Q. Mr. Drummond, does the stipulation
14 violate any important regulatory principle or
15 practice?

16 A. No. Based on the advice of counsel, my
17 understanding is that the stipulation complies with
18 all the relevant and important principles and
19 practices. The stipulation addresses customer
20 complaints and concerns with the Company's
21 door-to-door marketing program, and makes it
22 accountable for managing its sale force with the
23 objective of improving oversight of its door-to-door
24 solicitation and enrollment efforts.

25 The stipulation resolves recommendations

1 set forth in the Staff Report, and is fully supported
2 by the evidence presented to the Commission and other
3 parties in this case.

4 Q. Mr. Drummond, does the stipulation
5 benefit customers and the public interest?

6 A. Yes. The stipulation addresses the
7 recommendations contained in the Staff Report and
8 provides a number of customer benefit -- consumer
9 benefits, including providing residential customers,
10 enrolled between April 1st, 2010 and September 20th,
11 2010, with additional choices for their natural gas
12 supplier, as well as Third Party Verification of
13 their choice of Just Energy as their natural gas
14 supplier.

15 Q. Mr. Drummond, is the stipulation a just
16 and reasonable resolution of all issues in the case?

17 A. Yes. As I just described, the
18 stipulation addresses consumer complaints and
19 concerns, and is consistent with established
20 regulatory practices and principles. The stipulation
21 also represents a timely and efficient resolution of
22 the issues raised in this proceeding after thoughtful
23 deliberation and discussion by all the stipulating
24 parties.

25 Q. So, Mr. Drummond, is it your opinion,

1 then, that the stipulation and recommendation
2 satisfies the Commission's three-part test?

3 A. Yes.

4 Q. And is it your recommendation that the
5 Commission adopt and approve the stipulation?

6 A. Yes.

7 Q. And, as well, you're also sponsoring that
8 the Staff Exhibit to be admitted into this record,
9 and asking that, you've been a participant in helping
10 develop that Staff Report in the investigation?

11 A. Yes.

12 MR. JONES: Okay. Your Honor, I have no
13 further questions.

14 THE ATTORNEY EXAMINER: Okay. Do you
15 have any questions from the Company?

16 MR. PETRICOFF: No questions, your Honor.

17 THE ATTORNEY EXAMINER: Does OCC have any
18 questions?

19 MR. SERIO: No questions, your Honor.

20 THE ATTORNEY EXAMINER: I have a few
21 questions for you, Mr. Drummond.

22 THE WITNESS: Yes, your Honor.

23 - - -

24 EXAMINATION

25 By The Attorney Examiner:

1 Q. On the very beginning, under the terms of
2 the stipulation, it uses the phrase "verified
3 complaint." What is a verified complaint?

4 A. A verified complaint is one that has been
5 called in by a residential consumer to either the
6 Commission, OCC, the gas distribution company, or the
7 Attorney General's office. It's related to the
8 door-to-door solicitation and marketing efforts of
9 Just Energy Gas; is in violation of the Commission's
10 Competitive Gas Rules; and has been investigated for
11 its veracity by Staff and OCC.

12 Q. Okay. And in a footnote, in part of the
13 stipulation, it discusses meetings that OCC and Staff
14 could have on such verified complaints. How often
15 would meetings --

16 A. It would be conducted on a monthly basis.

17 Q. Okay. Do you know in the Third Party
18 Verification whether the entity that is going to be
19 doing the Third Party Verification are they
20 non-affiliated with Just Energy?

21 A. The understanding is they will be an
22 independent entity.

23 Q. Okay. There is a provision on page 6, I
24 think it's No. 6, with regards to that Third Party
25 Verification, that indicates that that Third Party

1 Verification will be "for the entire duration of the
2 two year certification period."

3 A. That is correct, as I understand.

4 Q. And in the stipulation, itself, it
5 indicates that the stipulation only is -- these
6 conditions only apply to the first of the
7 stipulation; is that --

8 A. In terms of our monitoring of the TPV
9 process.

10 Q. So with respect to the two-year -- I
11 mean, the Third Party Verification, that provision
12 that it applies to the entire two years is sort of
13 like a carve-out; even though the rest of the
14 stipulation only applies to the first year, that
15 would apply to both years; is that correct?

16 A. I believe that's the case if I understand
17 the provision in section six.

18 Q. Okay.

19 A. That they will conduct the TPV for two
20 years, but the stipulation only covers our monitoring
21 of the first year.

22 THE ATTORNEY EXAMINER: Okay. Maybe I
23 can just get that clarified by Counsel.

24 MR. PETRICOFF: Your Honor, if I may. It
25 is the Company's understanding and it is the

1 Company's agreement that although the stipulation is
2 only for a year, the 100 percent Third Party
3 Verification would last for the term of the
4 certificate renewal which is a two-year period.

5 THE ATTORNEY EXAMINER: Okay. And is
6 that OCC's understanding, also?

7 MR. SERIO: Yes, your Honor.

8 THE ATTORNEY EXAMINER: And Staff's
9 understanding?

10 MR. JONES: Yes, your Honor.

11 Q. In the provision that talks, I think this
12 is on page 7, No. 8, with regard to a waiver of the
13 termination fee, that if a customer opted out,
14 decided to opt out, it provides that the customer
15 would be given three weeks to opt out; three weeks
16 dated from the postmark of the letter.

17 Does the customer -- how does the
18 customer opt out? Is it by mail or is it by
19 telephone?

20 A. I believe that's in the customer letter
21 in terms of the requirements.

22 I think in the customer letter it
23 indicates if you wish to cancel your agreement, to
24 call Just Energy, and it provides the telephone
25 number.

1 Q. So the call has to be made within --

2 A. Three weeks of the postmark.

3 Q. -- three weeks of the postmark.

4 And that's three calendar weeks, or not
5 three calendar weeks, but three weeks -- strike that.

6 And just to clarify, on page 7, in the
7 first provision of the penalty section, it indicates
8 that, it says, "...including, circumstances in which
9 the Staff and/or OCC accumulate 10 verified
10 complaints...."

11 The complaints that you're verifying
12 could also be -- the source could be, as in the very
13 beginning of the stipulation, where it says -- it
14 lists OCC, the Staff, it could also include the Ohio
15 Attorney General's Consumer Protection Section, as
16 well as the local distribution company?

17 A. Yes, that's my understanding.

18 THE ATTORNEY EXAMINER: Is that the
19 understanding of the Company, also?

20 MR. PETRICOFF: Yes, your Honor.

21 THE ATTORNEY EXAMINER: And OCC?

22 MR. SERIO: Yes, your Honor.

23 THE ATTORNEY EXAMINER: And the Staff?

24 MR. JONES: Yes, your Honor.

25 THE ATTORNEY EXAMINER: Thank you.

1 Okay. Those are all the questions I
2 have. Thank you.

3 MR. JONES: Your Honor, at this time, I
4 move for the admission of Staff Exhibit 1 and Joint
5 Exhibit 1 on behalf of all of the parties.

6 THE ATTORNEY EXAMINER: Any objection?

7 MR. SERIO: No, your Honor.

8 MR. PETRICOFF: Your Honor, there is one
9 thing I would like to bring to the Bench's attention.

10 THE ATTORNEY EXAMINER: You don't object
11 to the admission, though, right?

12 MR. PETRICOFF: I'm not objecting to the
13 admission.

14 THE ATTORNEY EXAMINER: Then those will
15 be admitted.

16 MR. PETRICOFF: But this relates to the
17 form in which it is admitted. The stipulation,
18 itself, is a public document; the letter is a public
19 document; but there are two attachments in the
20 stipulation which will be filed under seal, for which
21 we have asked for a protective -- to be taken under
22 the protective order in this matter.

23 There is a script -- there's a quality
24 assurance and a script of the third party verifier.
25 And for this to work, the script of the third party

1 verifier, obviously, has to be known by the Staff and
2 the OCC and they have agreed on the script. But that
3 probably shouldn't be public in order for it to have
4 its intended effect, so that has been filed under
5 seal.

6 THE ATTORNEY EXAMINER: Okay. And you've
7 filed a motion for a protective order with respect to
8 those?

9 MR. PETRICOFF: That's correct, your
10 Honor, with the stipulation. It was filed in
11 accordance with the Commission's rules. The script
12 and the quality assurance have been separated out of
13 the public filing and then filed under seal.

14 THE ATTORNEY EXAMINER: Okay. Since I
15 have not reviewed those, I can't rule on the
16 protective order at this time, but I will review them
17 and rule on the protective order.

18 MR. PETRICOFF: Thank you, your Honor.

19 THE ATTORNEY EXAMINER: Is there anything
20 further that the parties want to bring to my
21 attention?

22 MR. SERIO: Your Honor, we moved -- we
23 marked OCC Exhibit; I don't know that you actually --

24 THE ATTORNEY EXAMINER: I believe I -- it
25 was -- no one had an objection. I believe I admitted

1 it.

2 MR. SERIO: Okay. I just wanted to make
3 sure.

4 THE ATTORNEY EXAMINER: If I didn't, then
5 I am now.

6 MR. SERIO: Thank you, your Honor.

7 THE ATTORNEY EXAMINER: Is there anything
8 else?

9 MR. JONES: Nothing further, your Honor.

10 MR. SERIO: Nothing further.

11 MR. PETRICOFF: Nothing further.

12 THE ATTORNEY EXAMINER: Then we'll be
13 adjourned. Thank you.

14 (The hearing adjourned at 10:23 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, November 4, 2010, and carefully compared with my original stenographic notes.

Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2013.

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 02-1828-GA-CRS

Summary: Transcript Transcript of Commerce Energy, Inc. hearing held on 11/04/10.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Burke,
Carolyn M. Mrs.