

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
CONSIDERATION OF A SETTLEMENT
AGREEMENT BETWEEN COMMERCE
ENERGY, INC. D/B/A JUST ENERGY AND
THE COMMISSION'S STAFF.

CASE No. 16-2006-GE-UNC

FINDING AND ORDER

Entered in the Journal on November 3, 2016

I. SUMMARY

{¶ 1} The Commission adopts the stipulation and recommendation filed by Commerce Energy, Inc. d/b/a Just Energy and Staff addressing the marketing, solicitation, and customer enrollment issues identified in the notice of probable noncompliance issued by Staff on November 16, 2015.

II. DISCUSSION

{¶ 2} Commerce Energy, Inc. d/b/a Just Energy (Just Energy) 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 (CRES) under R.C. 4928.08 and to supply competitive retail natural gas service (CRNGS) under R.C. 4929.20; and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and R.C. 4929.24. Accordingly, Just Energy is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21, as well as the minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29.

{¶ 3} Ohio Adm.Code 4901:1-23-04(A) provides that, if Staff and a CRES provider reach agreement regarding the violation of a rule within Ohio Adm.Code Chapter 4901:1-21, the violation of a Commission order, a proposed corrective action or remedy, or the

amount of a forfeiture or other payment, the agreement must be reduced to writing in a settlement agreement and filed with the Commission for approval. Similarly, Ohio Adm.Code 4901:1-34-05(A) provides that, if Staff and a retail natural gas supplier reach agreement regarding the violation of a rule within Ohio Adm.Code Chapter 4901:1-27 through 4901:1-29, the violation of any provision of R.C. Chapter 4929, the violation of a Commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, the agreement must be reduced to writing and filed with the Commission for approval.

{¶ 4} On October 11, 2016, Just Energy and Staff filed a joint stipulation and recommendation (stipulation), which would resolve all of the issues identified by Staff in a notice of probable noncompliance issued to Just Energy on November 16, 2015, citing alleged violations of Ohio Adm.Code 4901:1-21-05(C), 4901:1-21-06(B)(1), 4901:1-21-06(D)(2)(a)(iii), and 4901:1-21-06(D)(2)(a)(x). The stipulation notes that, in January 2016, Just Energy provided Staff with a compliance plan that attempted to resolve all of the issues identified by Staff in the notice of probable noncompliance and that, subsequently, Staff and Just Energy met on numerous occasions to further address the issues, which culminated in the stipulation. According to the signatory parties, the stipulation's primary objective is to avoid, to the extent reasonably possible, the potential for future consumer or customer complaints resulting from Just Energy's marketing, solicitation, and customer enrollment practices. The signatory parties also note that the stipulation is not an admission or finding of liability, and is entered into without prejudice to the positions that the parties may have taken in the absence of the stipulation.

{¶ 5} The following is a summary of the provisions agreed to by the signatory parties and is not intended to replace or supersede the stipulation. The parties agree to the following conditions and recommendations:

- (a) Upon the filing of the stipulation with the Commission, the compliance program, as defined in the stipulation, shall be implemented immediately, insofar as the actions have not already been accomplished by Just Energy as of the date of the stipulation.
- (b) Just Energy will work collaboratively with Staff to implement the following compliance program:
 - (i) Just Energy will implement all of Staff's suggested revisions to identified sales scripts and provide the final agreed upon edited version of the sales scripts to Staff within 10 business days of the filing of the stipulation.
 - (ii) Just Energy certifies that it has mailed a letter to identified customers that were enrolled telephonically during 2015. Just Energy will submit to Staff a list of all mailing addresses of customers that were provided notice.
 - (iii) Just Energy will modify and submit for Staff approval its interactive voice response (IVR) call tree to remove the option for customers to report a service outage and to clearly identify Just Energy as a CRES/CRNGS provider in the introduction of the IVR and for all remaining options on the IVR.
 - (iv) Just Energy will submit to Staff within 10 business days of the filing of the stipulation all changes to its training requirements for call center managers and sales representatives that resulted from the stipulation.

- (v) Just Energy shall submit a monthly report to Staff on all oversight measures that it has taken during the previous 30 days to ensure compliance with the stipulation and Commission rules and orders on marketing, solicitation, and customer enrollment practices. Any questions on the data and information to be identified and included in this monthly report shall be managed through a cooperative process between Just Energy and Staff. At any time during the 12-month compliance program, Staff may request a meeting with Just Energy to review and discuss any issues identified by Staff's monitoring of Just Energy's monthly reports and overall progress in satisfying the terms of the stipulation.
- (c) The compliance program will be ongoing for 12 months and all revisions must be reported to Staff.
- (d) Just Energy agrees to pay a forfeiture of \$125,000. Payment shall be made within 30 days of the entry approving the stipulation.
- (e) The signatory parties agree that an additional \$50,000 shall be held in abeyance for 12 months beginning on the date of the Commission's entry approving the stipulation. Just Energy shall forfeit this amount to the state of Ohio, if it fails to complete the compliance program as required in the stipulation.

{¶ 6} The Commission notes that Ohio Adm.Code 4901:1-23-04(A) and 4901:1-34-05(A) permit Just Energy and Staff to enter into a stipulation for the purpose of resolving any alleged violations of the CRES and CRNGS minimum standards and service

requirements. We will, therefore, consider the stipulation pursuant to our enforcement authority under Ohio Adm.Code Chapters 4901:1-23 and 4901:1-34. The issue before the Commission in this case is whether the stipulation, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. The stipulation in this case provides for a compliance program intended to facilitate improvements in Just Energy's marketing, solicitation, and customer enrollment practices as a CRES and CRNGS provider in the state of Ohio. The stipulation also establishes a process whereby Just Energy will work with Staff to ensure full compliance with the Commission's rules and orders on these issues. Accordingly, we find that the stipulation represents a reasonable resolution of this matter and that it should be approved and adopted in its entirety.

{¶ 7} On November 2, 2016, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding. In support of its motion, OCC states that it has authority under R.C. Chapter 4911 to represent the interests of Ohio's residential utility customers and that the interests of such customers may be adversely affected by the marketing practices at issue in this case. OCC further submits that its participation will not unduly prolong or delay the proceeding and that its advocacy will significantly contribute to the full development and equitable resolution of the issues. The Commission finds that OCC's motion is reasonable and should be granted.

III. ORDER

{¶ 8} It is, therefore,

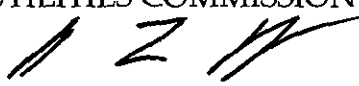
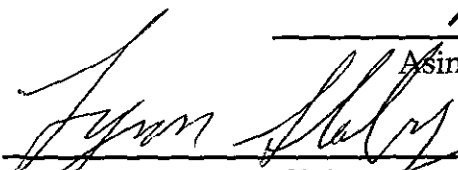
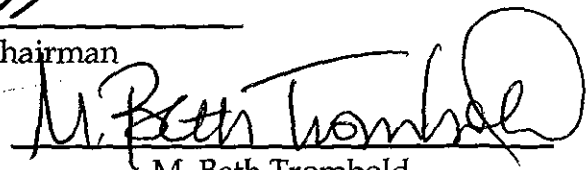
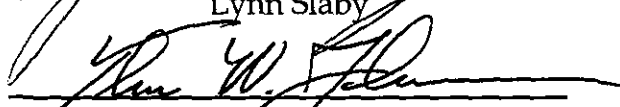
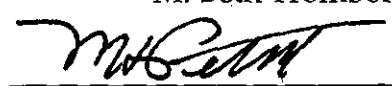
{¶ 9} ORDERED, That the stipulation filed by Just Energy and Staff be adopted and approved. It is, further,

{¶ 10} ORDERED, That OCC's motion to intervene in this case be granted. It is, further,

{¶ 11} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 12} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman
Lynn Slaby
M. Beth Trombold
Thomas W. Johnson
M. Howard Petricoff

SJP/sc

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Barcy F. McNealBarcy F. McNeal
Secretary