

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF TOWN SQUARE
ENERGY EAST, LLC.

CASE NO. 18-1785-EL-UNC

ENTRY

Entered in the Journal on February 27, 2019

I. SUMMARY

{¶ 1} The Commission finds that the stipulation between Town Square Energy East, LLC and Staff regarding Town Square's marketing and enrollment practices is reasonable and should be adopted.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Town Square Energy East, LLC (Town Square or the Company) is an electric services company as defined in R.C. 4928.01(A)(9) and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On August 3, 2017, Staff advised Town Square that it should cease marketing in Ohio pending a Staff investigation regarding complaints that representatives of the Company were using misleading and deceptive sales practices in its tabletop marketing campaign.¹ Staff averred that Town Square cooperated with its requests and advised Staff of the actions it had already completed to correct the violations, including detailed remedial actions, which included retraining all of Town Square's marketing vendors. Additionally, on August 10, 2017, Town Square provided Staff with its training materials and advised Staff that all agents had been retrained on Town Square compliance policy and Ohio Adm.Code 4901:1-21-05. Based on its investigation and review, Staff found no issues with Town Square's request to begin marketing again.

¹ Tabletop marketing refers to a display of marketing materials, usually presented in a public area such as the front of a grocery store, with the goal of soliciting enrollment by advertising services offered.

{¶ 4} Subsequently, on November 3, 2017, Staff received another complaint regarding Town Square's tabletop marketing practices.

{¶ 5} On January 16, 2018, Staff issued a Notice Letter to Town Square alleging that the Company was in noncompliance of the Commission's marketing and enrollment regulations for competitive retail electric service (CRES) providers. Specifically, Staff determined that Town Square was in probable noncompliance with Ohio Adm.Code 4901:1-21-05(A), 4901:1-21-05(C), 4901:1-21-06(D), 4901:1-21-11, and 4901:1-21-12. In its Notice Letter, Staff instructed Town Square to suspend all marketing and enrollment operations in Ohio and proposed corrective action, including but not limited to: retraining employees, providing staff with training documents, developing and submitting for Staff's approval a quality assurance program, contacting customers enrolled through the tabletop marketing campaign and giving them the option to properly enroll in Town Square or be returned to the distribution utilities' default services, and paying a forfeiture.

B. Stipulation

{¶ 6} On December 3, 2018, Staff and Town Square (Signatory Parties) filed a joint stipulation and recommendation (Stipulation). The Stipulation signed by Staff and Town Square purports to resolve all outstanding issues in this proceeding. The Stipulation states that the Signatory Parties have engaged in settlement discussions in an effort to reach a mutually acceptable resolution that addresses the concerns raised in Staff's Notice Letter. The following is a summary of the provisions agreed to by the Stipulating Parties and is not intended to replace or supersede the stipulation:

- (1) Upon Commission approval of the Stipulation, the Program, as defined below, shall be implemented within the timeframes set forth below to the extent the actions have not already been accomplished by Town Square as of the date of the Stipulation.

- (2) Town Square will work collaboratively with Staff to implement the following measures (Program):
- (a) Town Square will mail a letter to all current electricity customers who were enrolled via tabletop marketing in Ohio between August and November 2017. Town Square will submit to Staff a list of the customer names and mailing addresses of where Town Square sent the letters. Town Square will also inform Staff of which customers responded to the letters and the result of any customer inquiries.
 - (b) Town Square has submitted to Staff and obtained Staff's approval of quality assurance and compliance plans.
 - (c) Town Square agrees to notify and work with Staff to ensure compliance with current Commission rules and policies related to tabletop marketing in Ohio, including but not limited to:
 - (i) Prior to resuming tabletop marketing in Ohio, Town Square will submit to Staff for review any information necessary for Staff to monitor and/or audit Town Square's compliance.
 - (ii) Townsquare will provide quarterly updates to Staff for one year following approval of this Stipulation.

- (3) Town Square agrees to a forfeiture of \$150,000 and agrees to submit payment to the Commission within 30 days of the issuance of this Entry.
- (4) Upon execution of this Stipulation, the signatory parties agree to Town Square recommencing online marketing and enrollments in Ohio via the internet enrollment process.

C. Consideration of the Stipulation

{¶ 7} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 8} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Res. Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 9} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 10} The Signatory Parties opine that the Stipulation is the product of serious negotiations among knowledgeable parties and that the Stipulation represents a compromise involving a balancing of interests. The Signatory Parties state that the Stipulation is not an admission or finding of liability and is entered into without prejudice to the positions the parties may have taken in the absence of the Stipulation or may take in the event the Commission does not approve this Stipulation. Upon review, we find that the first prong of the test is met.

{¶ 11} Further, the Signatory Parties aver that it is not in the public interest to subject Staff, Town Square, and the Commission to the burdens associated with litigating the issues raised in Staff's Notice Letter when a reasonable and acceptable outcome can be achieved through settlement negotiations. The Signatory Parties believe that the Stipulation represents a reasonable compromise of varying interests. The Commission agrees and finds the Stipulation also satisfies the second prong of the test.

{¶ 12} The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice, and, therefore, the Stipulation meets the

third criterion. Accordingly, the Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

III. ORDER

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the Stipulation filed in this proceeding be approved and adopted. It is, further,

{¶ 15} ORDERED, That Town Square take all necessary steps to carry out the terms of the Stipulation and this Entry. It is, further,

{¶ 16} ORDERED, That nothing in this Entry shall be binding upon the Commission in any future proceeding or investigation. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon each party of record.

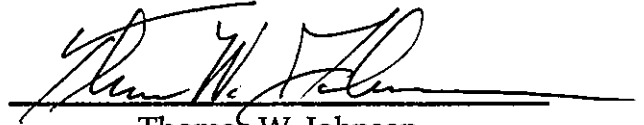
THE PUBLIC UTILITIES COMMISSION OF OHIO



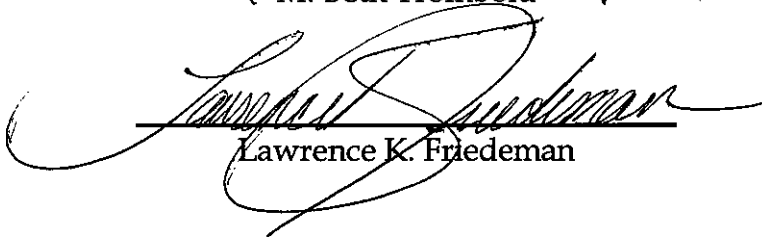
Asim Z. Haque, Chairman



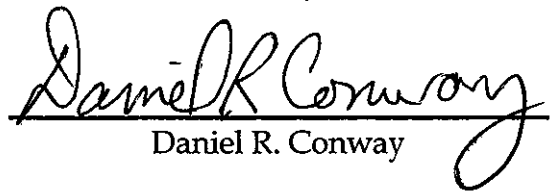
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman




Daniel R. Conway

LLA/hac

Entered in the Journal

FEB 27 2019



Tanowa M. Troupe
Secretary