

December 6, 2019

**Via FedEx**

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, OH 43215-3793

2019 DEC 12 PM 12:57  
PUCO

**Re: Case No. 13-2164-GA-CRS  
Verde Energy USA Ohio, LLC – Certificate Number 13-334G License Update**

Pursuant to Rule 4901:1-27-11 of the Ohio Administrative Code, Verde Energy USA Ohio, LLC (“Verde”), a licensed Competitive Retail Natural Gas Service provider in Ohio, submits its license update.

On November 6, 2019, the Connecticut Public Utilities Regulatory Authority (“PURA”) approved a settlement agreement between PURA and Spark Energy, LLC (“Spark”) resolving an outstanding dispute regarding alleged telemarketing activity in Connecticut.

On September 5, 2018, PURA issued a Notice of Violation (“NOV”) assessing a civil penalty in the amount of \$750,000 which alleged that agents of Spark disseminated a deceptive pre-recorded message to consumers in Connecticut. Spark contested the allegations contained in the NOV and appealed in Connecticut Superior Court PURA’s final order upholding the civil penalty. In its appeal, Spark maintained that the agency had improperly considered the evidentiary record and ignored evidence disclosing that telemarketing agent at issue was in fact working on behalf of other suppliers and was not associated with Spark.

Without PURA or Spark admitting the positions of either party and to avoid the time and expense of protracted litigation, under the terms of the settlement agreement Spark agreed to withdraw its appeal in consideration of PURA’s reduction of the civil penalty to \$500,000. As part of the settlement, PURA will also monitor Spark’s telemarketing in Connecticut for a period of one year. The settlement agreement resolves all telemarketing issues associated with Spark’s alleged use of pre-recorded messages.

Should you have any questions or need any further information, please contact me directly at [mleclerc@sparkenergy.com](mailto:mleclerc@sparkenergy.com) or 207-890-4094

Respectfully submitted,

*Muriel LeClerc*  
Muriel LeClerc  
Regulatory Specialist

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician mm Date Processed 12/12/19

Attachment: Spark Energy, LLC v. CT PURA --- Settlement Agreement

# STATE OF CONNECTICUT

## PUBLIC UTILITIES REGULATORY AUTHORITY



Chairman

JOHN W. DELKUSKI III, Vice Chairman

Michael A. Caron, Commissioner

### PURA Commissioners' Regular Meeting

#### Executive Session Minutes

At the conclusion of votes on the Consent Calendar Chairman Gillet requested a Motion to enter Executive Session.

Commissioner Caron made the motion to enter Executive Session, seconded by Chairman Gillet.

A roll call was ordered.

Gillet                Yea

Caron                Yea

Chairman Gillet convened the Executive Session at 10:14 a.m.

Commissioner Caron made a motion to approve a Resolution for a proposed Settlement Agreement between Spark Energy, LLC and the CT Public Utilities Regulatory Authority and to authorize the Chairman of PURA to formalize the Settlement Agreement with the parties to the administrative appeal before the Judicial District of New Britain captioned as *Spark Energy LLC v. PURA*, Docket No. HHB-CV19-6055021-S (*Spark Energy Superior Court Action*) at the CT Superior Court.

The Motion was seconded by Chairman Gillet. Discussion ensued.

A vote was taken with no objections. The Executive session was adjourned at 10:15 a.m.

Recorded by Commissioner Michael A. Caron

*Michael A. Caron*

November 6, 2019

10 Franklin Square, New Britain, CT 06051

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[www.ct.gov/pura](http://www.ct.gov/pura)

WHEREAS, on September 5, 2018, pursuant to General Statutes of Connecticut (Conn. Gen. Stat.) § 16-41(c), the Public Utilities Regulatory Authority (PURA or Authority) issued a Notice of Violation to Spark Energy, LLC (Spark Energy or Company). The Notice of Violation found that certain instances of Spark's telemarketing to electric generation services customers violated Conn. Gen. Stat. §§ 16-245(g)(2), 16-245o(h)(1), 16-245o(h)(2)(A), 16-245o(h)(3), 16-245o(h)(4) and 16-245o(h)(5) and 42-110b. The Notice of Violation assessed Spark Energy a civil penalty of \$750,000 and imposed one year of continued monitoring of marketing.

WHEREAS, on September 25, 2018, Spark requested a hearing on the Notice of Violation pursuant to Conn. Gen. Stat. § 16-41(d).

WHEREAS, PURA conducted a contested case proceeding in accordance with Conn. Gen. Stat. § 16-41 and Chapter 54 of the General Statutes of Connecticut. The contested case proceeding was designated Docket No. 10-06-18RE02, Application of Spark Energy, L.P. for an Electric Supplier License – Investigation Into Marketing.

WHEREAS, on July 17, 2019, PURA issued its final Decision in Docket No. 10-06-18RE02. PURA's final decision found that certain instances of Spark's telemarketing to electric generation services customers violated Conn. Gen. Stat. §§ 16-245(g)(2), 16-245o(h)(1), 16-245o(h)(2)(A), 16-245o(h)(3), 16-245o(h)(4) and 16-245o(h)(5) and 42-110b. The final decision assessed Spark Energy a civil penalty of \$750,000 and imposed one year of continued monitoring of marketing.

WHEREAS, Spark Energy disagreed with PURA's determination and filed an administrative appeal of Docket No. 10-06-18RE02. The administrative appeal, pending before the Judicial District of New Britain, is captioned as *Spark Energy, LLC v. PURA*, Docket No. HHB-CV19-6055021-S (*Spark Energy Superior Court Action*).

WHEREAS, in the interest of resolving the pending *Spark Energy Superior Court Action*, the parties agree to the entry of a Settlement Agreement as set forth in the attached proposed draft is desirable.

NOW, THEREFORE, the Authority adopts the following resolutions and orders:

Resolved, the terms and conditions of the proposed settlement agreement with Spark Energy are acceptable to the Authority. It is FURTHER RESOLVED that the Authority's legal counsel and its Chairman are hereby authorized to effectuate the purpose and intent of the settlement agreement and to formalize the settlement agreement with parties to the appeal and, where appropriate, receive the Superior Court's approval of said settlement agreement.

DOCKET NO. HHB-CV19-6055021-S

SPARK ENERGY, LLC

v.

CONNECTICUT PUBLIC UTILITIES  
REGULATORY AUTHORITY

SUPERIOR COURT  
JUDICIAL DISTRICT OF  
NEW BRITAIN

NOVEMBER 6, 2019

### SETTLEMENT AGREEMENT

Spark Energy, LLC ("Spark Energy"), the Connecticut Office of Consumer Counsel ("OCC") and the Connecticut Public Utilities Regulatory Authority ("PURA" collectively the "Parties") hereby stipulate, agree and submit the following Settlement Agreement (the "Settlement Agreement") for the Court's consideration as follows:

#### Section I: Preamble

A. Conn. Gen. Stat. §§ 16-245o(h)(1), 16-245o(h)(2)(A), 16-245o(h)(3), 16-245o(h)(4) and 16-245o(j) (collectively, "the Electric Supplier Marketing Statutes") set forth various requirements to which an electric supplier must adhere when marketing electric generation services to end use customers.

B. On April 25, 2018, PURA reopened Docket No. 10-06-18, Application of Spark Energy, L.P. for an Electric Supplier License to investigate allegations made against Spark Energy by customers. The Reopened proceeding was designated Docket No. 10-06-18RE02, Application of Spark Energy, L.P. for an Electric Supplier License - Investigation Into Marketing.

C. On September 5, 2018, PURA issued a Notice of Violation and Assessment of Civil Penalty ("NOV") pursuant to Conn. Gen. Stat. § 16-41(c) in which it stated it had reason to believe Spark Energy violated the Electric Supplier Marketing Statutes, as well as Conn. Gen. Stat. §§ 16-245(g)(2), and 42-110b. The NOV concluded that 151,892 telemarketing calls were made on Spark's behalf from the telephone number 475-275-8919 between May 17, 2017 and June 20, 2017, and that the calls violated Electric Supplier Marketing Statutes, as well as Conn. Gen. Stat. §§ 16-245(g)(2), and 42-110b.

D. The September 5, 2018 NOV assessed Spark Energy a civil penalty in the amount of \$750,000.

E. Conn. Gen. Stat. § 16-41(d) grants the recipient of an NOV twenty days from the receipt of the notice to request a hearing. On September 25, 2018, Spark Energy requested a hearing. PURA conducted a contested hearing in PURA Docket No. 10-06-18RE02 in accordance with Chapter 54 of the General Statutes of Connecticut.

F. On July 17, 2019, PURA issued a final decision in Docket No. 10-06-18RE02 (the "Decision"). The Decision assessed Spark Energy a \$750,000 civil penalty (Order

No. 1) and ordered Spark Energy to maintain complete audio recordings for one year and produce such recordings upon the Authority's request for continued auditing (Order No. 2).

G. Spark Energy disagreed with PURA's Decision and filed the instant action in Superior Court, captioned as *Spark Energy, LLC v. Public Utilities Regulatory Authority*, Docket No. HHB-CV19-6055021-S, pending before the Judicial District of New Britain (the "*Spark Energy Superior Court Action*").

H. On September 9, 2019, OCC moved to intervene as a party defendant in the *Spark Energy Superior Court Action*.

I. In the interest of resolving the *Spark Energy Superior Court Action* and without admitting each other's respective positions and to ameliorate the risks of litigation, the parties agree to the entry of a Settlement Agreement as follows:—

### **Section II: Terms and Conditions**

NOW THEREFORE, for and in consideration of the representations in the Preamble, set forth above in Section I, and the mutual promises, covenants and obligations set forth in this Section II, and for the good and valuable consideration as stated herein, the receipt and sufficiency of which is hereby acknowledged, Spark Energy, OCC and PURA agree as follows:

1. In full and final settlement of all allegations and claims set forth in the *Spark Energy Superior Court Action* and as full compliance with the civil penalty imposed in Order No. 1 of PURA's Decision, Spark Energy agrees to pay the amount of five hundred thousand dollars (\$500,000) to the General Fund of the State of Connecticut. Spark Energy's payment shall be made payable to the "Treasurer, State of Connecticut." Spark Energy shall make the payment no more than five (5) business days from the Effective Date of this Settlement Agreement. Spark Energy shall continue to fulfill order No. 2 of the Decision.

2. The payment specified in paragraph 1 shall be in lieu of, and in full satisfaction of, the civil penalty assessed in Order No. 1 in the Decision.

3. Within five (5) business days from the execution of this Settlement Agreement by the parties, Spark Energy agrees to withdraw its *Spark Energy Superior Court Action*.

4. This Settlement Agreement constitutes the settlement of all disputed claims set forth in Spark Energy's complaint filed in the *Spark Energy Superior Court Action*.

5. This Settlement Agreement also does not and shall not constitute an admission by PURA or OCC with respect to the merits of any claims set forth in Spark Energy's complaint, and shall not be used by Spark Energy or any other person or entity in any litigation or proceeding for that purpose. Except for the amount to be paid to the Treasurer of the State of Connecticut by Spark Energy as stated in paragraph 1, PURA's Decision remains in full effect as to Spark Energy, including continuing compliance with Order No. 2 of the Decision.

6. This Settlement Agreement does not represent an admission or concession by the Parties as to the claims, or facts and circumstances surrounding the claims, or proper disposition of any issue related to the PURA NOV, *Spark Energy Superior Court Action* or this Settlement Agreement. Accordingly, this Settlement Agreement shall not be used as evidence either in a court of law, or other legal proceeding. Nothing herein constitutes a waiver of Spark Energy's right to raise defenses in any subsequent legal proceeding. Notwithstanding the foregoing, nothing in this paragraph or this Settlement Agreement shall prevent PURA from relying upon the findings of violations in its Decision as evidence of past violations pursuant to Conn. Agencies Regs. Section 16-245-6(3), when assessing a civil penalty or taking adverse licensing action against Spark Energy in any possible future enforcement actions brought by PURA for violations not discharged by this agreement. Spark agrees not to contest any findings of violations in the Decision if PURA seeks to rely on those findings of violations, in any future proceeding, as evidence of past violations pursuant to Conn. Agencies Regs. Sec. 16-245-6(3).

7. The payment and compliance with all obligations required by this Settlement Agreement fully discharge Spark Energy from any obligation to pay any additional payments under Conn. Gen. Stat. § 16-41 for telemarketing calls made on behalf of Spark Energy by Consumer Utility Choice, LLC or Higher Response Marketing, Inc. prior to January 1, 2018.

8. Notwithstanding any other provisions of this Settlement Agreement, specifically reserved and excluded from the scope and terms of this Settlement Agreement, are any and all of the following:

- a. Any claims based upon such obligations as are created by this Settlement Agreement;
- b. Any criminal liability of any sort; and
- c. Any liability of any sort under State of Connecticut or federal internal revenue or tax codes.

9. Unless otherwise stated in writing subsequent to the Effective Date of this Settlement Agreement, all notifications and communications made pursuant to this Settlement Agreement shall be submitted to the entities listed below:

For PURA:

Seth Hollander, Assistant Attorney General  
Office of the Attorney General  
10 Franklin Square  
New Britain, CT 06051  
Tel. (860) 827-2681  
Fax. (860) 827-2893  
[seth.hollander@ct.gov](mailto:seth.hollander@ct.gov)

For Spark Energy:

C. Alexis Keene J.D., C.P.A.  
Interim General Counsel and Corporate Secretary  
12140 Wickchester Ln, Ste 100  
Houston, TX 77079  
Tel: (832) 217-1831  
Fax: (832) 320-2943  
[akeene@sparkenergy.com](mailto:akeene@sparkenergy.com)

With a copy to:

Stephen J. Humes, Esq.  
Holland & Knight LLP  
31 West 52<sup>nd</sup> Street  
New York, NY 10019  
Tel: (212) 513-3473  
Fax: (212) 385-9010  
[Steve.humes@hklaw.com](mailto:Steve.humes@hklaw.com)

For OCC:

Andrew W. Minikowski, Staff Attorney  
Office of Consumer Counsel  
10 Franklin Square  
New Britain, CT 06051  
Tel. (860) 827-2922  
Fax (860) 827-2929  
[Andrew.Minikowski@ct.gov](mailto:Andrew.Minikowski@ct.gov)

10. This Settlement Agreement is intended to be solely for the benefit of the parties of this Settlement Agreement, and except as stated herein, the parties do not by this Settlement Agreement release any claim against any other person or entity. No word, term, phrase or definition in this Settlement Agreement is or may be used for the benefit of any person, entity or litigant who is not a signatory to, or released by this Settlement Agreement.

11. This Settlement Agreement constitutes the complete agreement between PURA, OCC and Spark Energy and may not be amended except by a writing signed by PURA, OCC and Spark Energy.

12. This Settlement Agreement shall be equally binding on the successors, transferees and assigns of the parties hereto.

13. Nothing under this Settlement Agreement shall relieve Spark Energy of its other obligations under applicable federal, state and local law.

14. Nothing in this Settlement Agreement shall be construed to create a waiver of the State of Connecticut's sovereign immunity.

13. Nothing under this Settlement Agreement shall relieve Spark Energy of its other obligations under applicable federal, state and local law.

14. Nothing in this Settlement Agreement shall be construed to create a waiver of the State of Connecticut's sovereign immunity.

15. This Settlement Agreement shall neither create nor affect any rights of persons who are not parties to this Settlement Agreement.

16. Except as otherwise provided herein, each party to this Settlement Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement.

17. This Settlement Agreement shall be governed by the laws of the State of Connecticut.

18. The exclusive forum for resolving any disputes under this Settlement Agreement shall be the Superior Court for the Judicial District of New Britain. This Court shall retain jurisdiction over this matter.

19. The undersigned individual signing this Settlement Agreement on behalf of PURA represents that he is signing this Settlement Agreement in his official capacity and that he is duly authorized to execute this Settlement Agreement.

20. The undersigned individual signing this Settlement Agreement on behalf of OCC represents that he is signing this Settlement Agreement in his official capacity and that he is duly authorized to execute this Settlement Agreement.

21. The undersigned individual signing this Settlement Agreement on behalf of Spark Energy represents that he is duly authorized to execute this Settlement Agreement.

22. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall be deemed to constitute one and the same Settlement Agreement.

23. The Effective Date of this Settlement Agreement shall be the date upon which all of the Parties below have executed this Settlement Agreement.

IN WITNESS THEREOF, Spark Energy, OCC and PURA set their hands and seals on the dates set forth below:

Spark Energy, LLC

By



NATHAN KROEKER  
President and CEO

Date: November 6, 2019