

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Josco Energy USA, LLC : Case No. 22-170-GE-UNC

JOINT STIPULATION AND RECOMMENDATION

Ohio Adm.Code 4901-1-30 provides that two or more parties to a Public Utilities Commission of Ohio (Commission) proceeding may enter into a written stipulation concerning the issues presented in the proceeding.¹ This Joint Stipulation and Recommendation (Stipulation) sets forth the understanding and agreement of Josco Energy USA, LLC (Josco) and the Staff of the Commission (Staff). Josco and Staff (collectively, Signatory Parties) recommend that the Commission approve and adopt this Stipulation, which will resolve all of the issues identified by Staff in its Notice of Probable Non-Compliance dated November 4, 2021 (Notice Letter), attached as Exhibit A.

The Stipulation represents a just and reasonable resolution of the issues raised in this proceeding, violates no regulatory principle or precedent, and it is the product of bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the Signatory Parties representing a range of interests, to resolve the issues in this proceeding. Although this Stipulation is not binding on the Commission, it is entitled to careful

¹ Pursuant to Ohio Adm.Code 4901-1-1(C), the Staff is considered a party for purposes of Ohio Adm.Code 4901-1-30.

consideration by the Commission. For purposes of resolving all issues raised by this proceeding, the Signatory Parties stipulate, agree and recommend as set forth below.

This Stipulation is the product of an open process in which all parties were represented by able counsel and technical experts, and represents a comprehensive compromise of issues raised by the Signatory Parties with diverse interests. The only parties to the proceeding, Josco and Staff, have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement achieved by the Stipulation, as a package, benefits ratepayers and is in the public interest, and that the settlement does not violate any important regulatory principle or practice. Pursuant to Ohio Adm.Code 4901-1-30, the Signatory Parties hereby stipulate, agree, and recommend that the Commission make the following findings and issue its Finding and Order in this case approving this Stipulation in accordance with the following:

History:

1. Josco provides competitive retail electric service (CRES), as that term is defined in R.C. 4928.01, and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16.
2. Josco provides competitive retail natural gas service (CRNGS), as that term is defined in R.C. 4929.01, and is subject to the jurisdiction of this Commission pursuant to R.C. 4929.24.
3. Following the discovery of unauthorized activity by one of its vendors, Josco ceased all marketing in Ohio on September 29, 2021, and has not yet resumed it.

4. On November 4, 2021, Staff issued the Notice Letter to Josco regarding several issues identified therein. (Exhibit A).
5. Josco and Staff engaged in numerous discussions to address the issues raised in Staff's Notice Letter and have reached a resolution of all issues.

Joint Recommendation of Signatory Parties

The Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Finding and Order in this proceeding approving this Stipulation. The Signatory Parties agree that, for purposes of settlement and in consideration of the terms and mutual promises set forth herein, the Commission should approve this Stipulation without modification as follows:

1. Josco has implemented or will implement all of the corrective actions proposed in Staff's Notice Letter. (Exhibit A). Specifically, the Signatory Parties recognize that, to the best of each party's knowledge, Josco has performed, or will perform as soon as is practicable, the following:
 - a. Provide Staff with and adhere to a compliance plan that addresses the vendor screening process and enhanced quality assurance to identify and prevent fraud.
 - b. Calculate and issue refunds to all customers enrolled by the vendor Fastlink, based on the difference between Josco's supply charges to the customer and what the customer's charges would have been for supply at the utility's price to compare, the total estimated amount of all refunds being approximately \$114.57 for natural gas supply, and \$3957.40 for electricity supply. This includes mailing each customer a refund check accompanied by a letter explaining the reason for the refund. Refunds are to be paid within 30 days of the Commission's approval of this Stipulation. The letter will also

- inform customers how to request a reimbursement for any switching fee or early termination fee incurred as a result of their enrollment with Josco by Fastlink.
- c. Submit all of Josco's sales and marketing scripts, third party vendor scripts, and customer contracts to Staff for review prior to resuming telemarketing in Ohio.
 - d. For a period of two years from the Commission's approval of this Stipulation, provide semi-annual reports to Staff which include: (1) the number of sales confirmation calls attempted to Ohio customers; (2) the number of sales confirmation calls completed to Ohio customers; (3) the number of customer enrollments that were cancelled as a result of the sales confirmation calls; and (4) any remedial actions taken against sales vendors as a result of sales confirmation calls.
2. Josco agrees to a forfeiture of \$16,000 upon approval of this Stipulation by the Commission. The payment shall be paid within 30 days of the Finding and Order approving this Stipulation and shall note the docket number assigned to this matter.

Procedural Matters

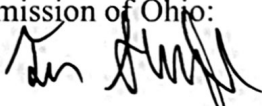

- 1. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party or the Commission itself. This Stipulation is a reasonable 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.
- 2. This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the Commission reject or materially modify all or any part of this Stipulation, the Signatory Parties shall have the right, within

30 days of issuance of the Commission's Order, to file an Application for Rehearing. Should the Commission, in issuing an Entry on Rehearing, not adopt the Stipulation in its entirety and without material modification, any Signatory Party may withdraw from the Stipulation. Such withdrawal shall be accomplished by filing a notice with the Commission, including service to all parties, in the docket within 30 days of the Commission's Entry on Rehearing. Prior to the filing of such notice, the Signatory Party wishing to withdraw agrees to work in good faith with the other Signatory Party to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Signatory Party wishing to withdraw, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, and a Signatory Party files a notice to withdraw from the Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing party will be afforded the opportunity to contest the Stipulation by presenting evidence through witnesses and cross-examination, presenting rebuttal testimony, and briefing all issues that the Commission shall decide based upon the record and briefs.

3. 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.

Conclusion

WHEREFORE, the Signatory Parties agree and recommend this ^{21st}~~17th~~ day of March, 2022, that the Commission find that the Stipulation represents a reasonable resolution of this matter, and that the Stipulation should be adopted and approved.

<p>On behalf of the Staff of the Public Utilities Commission of Ohio:</p> <p> /s/ Thomas M. Shepherd Robert Eubanks Assistant Attorneys General Public Utilities Section 30 East Broad Street, 26th Floor Columbus, OH 43215 614.644.8539 thomas.shepherd@ohioago.gov robert.eubanks@ohioago.gov</p> <p>Counsel for Staff of the Public Utilities Commission of Ohio</p>	<p>On behalf of Josco Energy USA, LLC</p> <p></p> <hr/> <p>Michael Gruin Stevens & Lee 17 North Second Street Harrisburg, PA 17101 717.255.7365 Michael.gruin@stevenslee.com</p> <p>Counsel for Josco Energy USA, LLC</p>
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Public Utilities Commission

Mike DeWine, Governor
Jenifer French, Chair

Commissioners

M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

Exhibit A

November 4, 2021

Marc Reichman
Josco Energy USA, LLC
200 Route 17S, Suite 200C
Mahwah, New Jersey, 07430

Dear Mr. Reichman:

Pursuant to Ohio Administrative Code ("Ohio Adm.Code") 4901:1-23-02, this letter is a notice of probable non-compliance to Josco Energy USA, LLC ("Josco"). Based on our investigation of consumer complaints, Staff of the Public Utilities Commission of Ohio ("Staff") finds that Josco is in probable non-compliance with certain sections of the Ohio Administrative Code.

Probable Non-Compliance Violations

Staff reviewed customer contacts to the Commission Consumer Services Division ("CSD") of the Service Monitoring and Enforcement Department. Based on Staff's review of CSD investigations, which included customer complaints and Josco's responses, Staff determined that Josco is in probable non-compliance with the following Ohio Adm.Code provisions:

1. Ohio Adm. Code 4901:1-21-03(A) "Competitive retail electric service (CRES) providers shall not engage in unfair, misleading, deceptive or unconscionable acts or practices related to, without limitation, the following activities: (1) Marketing, solicitation, or sale of a CRES. (2) Administration of contracts for CRES. (3) Provision of CRES, including interactions with consumers." Staff's investigation determined that Josco's marketing and sales practices in PUCO Case No. 00717354 were unfair, misleading, and deceptive.
2. Ohio Adm. Code 4901:1-21-04(A) "Each competitive retail electric service provider shall establish and maintain records and data sufficient to: (1) Verify its compliance with the requirements of any applicable commission rules. (2) Support any investigation of customer complaints." Staff's investigation determined that Josco did not have the proper or sufficient documentation to verify compliance, i.e., PUCO Case No. 00717354.
3. Ohio Adm. Code 4901:1-21-05(C) "No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES."
4. Ohio Adm. Code 4901:1-21-05(C)(8)(h) prohibits "Advertising or marketing offers that lead the customer to believe that the CRES provider is soliciting on behalf of or is an

agent of an Ohio electric utility when no such relationship exists.” During the sales call for PUCO Case No. 00717354, the sales representative instructed the customer to ask about new AEP Ohio services.

5. Ohio Adm. Code 4901:1-21-06(C) “CRES providers are prohibited from enrolling potential customers without their consent and proof of that consent as delineated in paragraph (D) of this rule.” Staff’s investigation of PUCO Case No. 00717354 determined that Josco failed to provide an authentic third-party verification (“TPV”) for that enrollment.
6. Ohio Adm. Code 4901:1-21-06(D)(2)(a) “To enroll a residential or small commercial customer telephonically, a CRES provider shall make a date and time-stamped audio recording verifying before the completion of the telephone call, at a minimum, all of the following * * * .” The customer complainant in PUCO Case No. 00717354 stated that he did not complete a TPV.
7. Ohio Adm. Code 4901:1-21-06(D)(2)(b)(i) “Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call and the generation resource mix and environmental characteristics information pursuant to rule [4901:1-21-09](#) of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.” Staff found that Josco did not provide a written contract that details the terms and conditions within one business in PUCO Case No. 00717354.
8. Ohio Adm. Code 4901:1-21-06(D)(2)(d) “The CRES provider shall not initiate the switch of a customer’s electric service with the electric utility prior to the completion of the enrollment transaction with the customer.” Staff found that Josco initiated a switch of the customer’s electric service without completion of the enrollment transaction in PUCO Case No. 00717354.

The above-mentioned violations were identified as a result of an investigation into PUCO Case No. 00717354. According to the customer, who is a member of Staff, he received a call from what appeared to be a local telephone number on July 29, 2021. The call started as an automated recording stating, “If you have not received any payment for electric you are eligible to receive a \$50.00 gift card. Press one to redeem rewards.” After pressing 1, a sales representative came on the line and spoke with the customer about saving money on his electric bill. Towards the end of the call, the representative instructed the customer to repeat words and phrases such as: “I want new supply services from AEP. Can you help me?”; “Nope, I don’t have no email.”; “Hold on.”; and “Sounds good.” The representative requested that the customer hold while he applied the discounts to his electric account. After being placed on hold for some time, the customer was disconnected.

The customer stated that he did not complete a TPV and that the sales representative failed to disclose the company he was representing or the purpose of the solicitation. The customer was unaware of who the supplier was until he received the “welcome packet,” postmarked September 10, 2021.

Staff reviewed the enrollment documentation provided by Josco and determined that it is not sufficient to show compliance with the above-mentioned rules. Josco submitted a telemarketing sales call and TPV to Staff. The customer listened to both recordings Josco provided and stated that the sales call recording was not accurate, and he never completed a TPV, although that was his voice responding to the questions. Additionally, the customer did not contact the company as it represented to Staff and the contact occurred five days prior to the date the company claimed the enrollment took place.

Staff notes that upon bringing these issues to the company's attention, Josco stated that it immediately contacted their sales vendor, Fast Link BPO from Springfield, VA, and demanded an explanation for the complaint. Due to not receiving a satisfactory answer, Fast Link BPO was immediately terminated and Josco is exploring legal options against Fast Link BPO for this unauthorized activity. Josco stated, in total, this vendor enrolled 215 customers on their behalf in Ohio. Due to the issue raised in the complaint in question, Josco decided to cancel these enrollments and return the customers to the utility's standard offer service.

Proposed Corrective Actions

To address these issues of probable non-compliance, Staff proposes that Josco take the additional corrective actions:

1. Provide Staff with a plan to come into compliance with the Commission's rules. The plan should address, at least, enrollment practices, an auditing process for enrollments, and any corrective actions to be implemented by Josco.
2. Review all marketing and sales scripts for compliance with the Commission's rules. Submit updated versions of these documents to Staff for review.
3. Rerate all 215 Ohio customers back to the utilities' price-to-compare or standard-service offer.
4. Comply with all provisions of Ohio Adm.Code 4901:1-21-08 and 4901:1-29-08, which includes but are not limited to the following:
 - a. Credit or refund to the customers any fees previously charged for switching the customer to and from the correct supplier.
 - b. Credit or refund early termination fees billed to customers by their previous supplier.
 - c. If a customer cannot be returned to the original contract terms with its previous supplier of electric service, Josco shall credit or refund to the customer the value of the customer's contract with the customer's previous supplier of electric service for the remaining of the contract immediately prior to the switch.

Additionally, Staff recommends that Josco cease all residential and small commercial marketing and enrollment activities in the State of Ohio until this matter is resolved. In accordance with R.C. 4905.54 and Ohio Adm.Code 4901:1-21-15(A)(1), Staff will view any

continuation in Josco's retail marketing and enrollments that result in violations to constitute additional offenses. Additional offenses may result in additional enforcement actions, including rescission of Josco's CRES and CRNGS certificates and forfeitures to the state of up to ten thousand dollars (\$10,000) per offense.

Proposed Forfeiture

Finally, Staff is proposing a forfeiture of eighty thousand dollars (\$80,000) against Josco for the above-mentioned failures to comply with the requirements found in the Ohio Administrative Code.

By November 18, 2021, please respond to this notice of probable non-compliance with Josco's' plan to address the above proposed corrective actions.

Sincerely,

A handwritten signature in cursive script that reads "Nedra Ramsey".

Nedra Ramsey
Public Utilities Administrator 2
Public Utilities Commission of Ohio
Service Monitoring and Enforcement

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/22/2022 9:45:01 AM

in

Case No(s). 22-0170-GE-UNC

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