



# Public Utilities Commission

**Mike DeWine**, Governor  
**Jenifer French**, Chair

## Commissioners

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

Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad St.  
Columbus, Ohio 43230

*RE: In the Matter of the RPA Energy, Inc., dba Green Choice Energy's Compliance with the Ohio Administrative Code and Proposed Remedial Action.*

Dear Attorney Examiner:

On October 16, 2021, Staff of the Public Utilities Commission of Ohio's (Commission) Reliability and Service Analysis Division (Staff) sent a Notice of Probable Non-Compliance (Notice)<sup>1</sup> to RPA Energy, Inc., dba Green Choice Energy (RPA). In the Notice, Staff found that RPA was in probable non-compliance with several sections of the Ohio Administrative Code (Ohio Adm.Code) and proposed corrective actions to resolve the violations. After many discussions, RPA and Staff were unable to resolve the issues raised in the Notice. Staff continues to have concerns regarding RPA's compliance, as outlined in the Notice and as discovered by Staff during its further investigation into RPA's conduct. For the reasons set forth in the attached Notice, Staff asks the Commission to formally open a proceeding to address RPA's compliance with the Commission's rules and laws.

## Background

On November 18, 2020, the Commission issued a renewal certificate to RPA, certifying RPA as a competitive retail electric service (CRES) provider under R.C. 4928.08.<sup>2</sup> RPA's CRES certificate is effective from November 18, 2020 to November 18, 2022.

On July 20, 2020, the Commission issued a renewal certificate to RPA, certifying RPA as a competitive retail natural gas service (CRNGS) marketer and aggregator under R.C. 4929.20.<sup>3</sup> RPA's CRNGS certificate is effective from July 20, 2020 to July 20, 2022.

Therefore, RPA is subject to the Commission's jurisdiction pursuant to R.C. 4928.16 and 4929.24.

## Staff's Review

In late February 2021, based on review of customer contacts to the Commission's call center, Staff became concerned about RPA's marketing and enrollment practices. During the course of Staff's investigation into a customer contact to the Commission's call center, after reviewing the sales call audio recording RPA provided to Staff, Staff began to suspect that the recording was altered. Staff

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<sup>1</sup> See Attachment A.

<sup>2</sup> See Case No. 16-0892-EL-CRS.

<sup>3</sup> See Case No. 16-0893-GA-CRS.

began monitoring RPA's customer contacts at that time. From January 1 to October 1, 2021, the Commission's call center received 35 contacts regarding RPA. Upon review of the investigations into the customer contacts, Staff identified a pattern of misleading and deceptive practices in both RPA's door to door and telephonic sales practices as outlined in the Notice letter.

On June 4, 2021, the Chief of the Commission's Reliability and Service Analysis Division, Barbara Bossart, was solicited on her personal cellphone by a sales agent representing RPA. The number that showed on her caller ID was (614) 478-5676. Upon answering, she was greeted by an automated message instructing her to press 1 to get a \$50 discount and a gift card. After pressing 1, she spoke to a sales representative. The agent made several misleading and deceptive statements, so Mrs. Bossart documented the call and emailed the information to a supervisor in the Commission's call center. The following Monday, June 7, 2021, she was again solicited by a different sales agent who provided similar information as the previous representative. Mrs. Bossart completed the enrollment. Mrs. Bossart then filed a complaint with the Commission's call center. The investigator requested RPA submit the sales recording, third-party verification (TPV) recording, and the contract associated with Mrs. Bossart's enrollment. After listening to the recordings provided by RPA, Mrs. Bossart determined that parts of her conversation with the sales agent were not included in the call.

In addition to Mrs. Bossart's complaint, the Commission's call center received a customer contact where the customer provided a video recording of his and his son's interaction with a door-to-door sales agent for RPA.<sup>4</sup> After reviewing the video recording, Staff determined that RPA's door-to-door sales agent engaged in misleading and deceptive marketing and solicitation practices.

During the course of another investigation into a customer complaint to the Commission's call center, RPA informed Staff that the customer's husband, "James," completed the enrollment.<sup>5</sup> RPA provided a TPV recording and signed contract to Staff as proof of consent for the enrollment. However, the customer in question stated that she lives alone, her husband is deceased, and his name was "Daniel." The customer did not know the person on the TPV recording provided by RPA.

The Commission's call center continues to receive contacts from RPA's customers. Due to the nature of the violations and pervasive nature of RPA's conduct, Staff requests that the Commission open a formal proceeding to review RPA's compliance with the Commission's rules and laws, pursuant to Ohio Adm.Code 4901:1-1-23-05(A) and 4901:1-34-06(A). RPA voluntarily, at the urging of Staff, ceased marketing in Ohio after receiving the Notice. Staff also request that the Commission order the company to continue the suspension of marketing pending the outcome of the investigation.

Signature

A handwritten signature in blue ink, appearing to read "R. Falley".

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<sup>4</sup> Call Center Case No. 00693258

<sup>5</sup> Call Center Case No. 00672275

## **Attachment A**



# Public Utilities Commission

**Mike DeWine**, Governor  
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## Commissioners

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

October 6, 2021

Brian Trombino  
RPA Energy, Inc dba Green Choice Energy  
P.O. Box 1508  
Huntington, NY 11743

Dear Mr. Trombino:

Pursuant to Ohio Administrative Code (“Ohio Adm.Code”) 4901:1-23-02 and 4901:1-34-03, this letter is a notice of probable non-compliance to RPA Energy, Inc dba Green Choice Energy (“RPA”). Based on our investigation of consumer complaints, Staff of the Public Utilities Commission of Ohio (“Staff”) finds that RPA is in probable non-compliance with certain sections of the Ohio Administrative Code.

Staff reviewed investigation records from consumer complaints along with information provided by RPA in response to those complaints as well as responses to Staff’s data request<sup>1</sup> and identified the following instances of probable noncompliance.

Staff is aware of at least one instance of RPA submitting a manipulated telemarketing sales call to Staff as part of a response to an investigation (PUCO Case No. 00693651). In this case, RPA also spoofed a number to make it appear that someone local was calling the consumer. According to the consumer, who is a member of Staff, the call started as a recording (robocall) instructing her to press 1 to get a \$50 discount and a gift card. After pressing 1, she spoke to a sales representative. The agent made several misleading and deceptive statements, so she documented the call and emailed the information to a supervisor in the Consumer Services Division (CSD). The following Monday, June 7, 2021, she was again solicited by a different sales agent who provided similar information as the previous representative. The consumer completed the enrollment and filed another complaint with CSD. A Staff Investigator in CSD requested the sales recording, third-party verification (“TPV”) recording, and the contract. The consumer listened to the sales recording provided and advised Staff that parts of her conversation with the sales agent were not included in the call.

Staff found other instances of misleading and deceptive behavior on the part of telemarketing sales agents as well as door-to-door sales agents. Other issues discovered were:

- Door-to-door agents informed customers that they were with or working on behalf of the local utility company (PUCO Case Nos. 00679073 and 00682929).
- A consumer provided a video of his and his son’s interaction with a door-to-door sales agent that was misleading and deceptive (PUCO Case No. 00693258).

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<sup>1</sup> Staff data request sent to RPA on June 22, July 19, and August 9, 2021.  
180 East Broad Street  
Columbus, Ohio 43215-3793

- In another consumer complaint, RPA informed Staff that the consumer's husband, "James," agreed to the enrollment and provided a TPV and signed contract. The consumer stated that she lives alone, her husband is deceased, and his name was "Donald." She did not know the person on the TPV recording (PUCO Case No. 00672275).
- RPA Energy provided a TPV and signed contract to Staff in response to a consumer complaint disputing an enrollment. The consumer reviewed the contract and listened to the TPV. He stated that he never signed the contract and the voice on the TPV was clearly not his (PUCO Case No. 00696256).
- In sales calls, consumers were encouraged to enroll in RPA's low "competitive variable rate" which would be based on "market conditions." Consumers were charged a rate around \$0.05/kWh for one month with the subsequent rates being over \$0.12/kWh.
- In another call (DR call 003132135\_\_93756XXXXX.wav), the sales agent informed a lady, who appears to be elderly, that she should have seen a message on her bill regarding price protection on her account. He wanted to lock her into a "great price," "price protection for 12 months" and "\$100 a month in reward dollars." The agent also advised the consumer that RPA has the best program and is the least expensive. In the sales call, the sales agent never provided the customer with a rate. Upon listening to the TPV, the rate the customer was enrolled in was \$0.1012 /kWh for 12 months. The TPV further stated that in 5 business days, she would receive the contract via electronic mail or text message.
- In a sales call related to a consumer complaint, the sales agent appeared to have followed the script approved by RPA; however, the call did not sound like a natural conversation. For instance, the sales agent informs the consumer that the rate will be variable and can change month to month with no guaranteed savings. In addition, the consumer will be charged a \$5.00 monthly fee. The agent asked the consumer, "does that sound good to you" and the consumer's response was "yes, it is." Based on the sales call and the TPV, the consumer appeared to have agreed to a contract that was variable, with no mention of a rate, and without asking a single question. The responses were only "yes" or some other form of agreement (PUCO Case No. 00660823).
- Contracts that were sent to customers because of telephonic enrollment show a customer's initials on the document. In response to Staff's data request, the company stated "Upon successful completion of a TPV, the vendor's system automatically initials a copy of the contract with the customer's initials. The initials verify that the customer consents to the contract terms disclosed in the sales call and TPV. The presence of the initials is not intended to convey that the customers initialed the contract". Staff does not believe there is any other way to interpret initials on a contract than that a customer initialed it. Nothing in the sales or TPV calls or the contract indicates anything different.
- A consumer contacted the PUCO, stating that "A door-to-door salesman representing "RPA Energy" came to my door running a scam. He got a lot of my info because he lied about his role and the company's offer at first. He name-dropped PUCO several times and convinced me they were a vetted company. Ultimately, I declined the contract, but I'm worried they still got enough info to scam me and I'm worried they will scam others. PUCO should be very concerned about how this organization is using their name." (PUCO Case No. 00672405).

Staff also reviewed a number of TPV recordings for both door-to-door and telephonic solicitations. In at least one door-to-door enrollment case, according to the TPV recording, the sales agent remained at the home for part, if not all, of the verification (PUCO Case No. 00682929).

Additionally, the TPV recordings and TPV script RPA provided to Staff are not compliant with the Commission's rules. For example, in the TPV recordings, the TPV agent informs consumers that a contract will be emailed or texted to them within five business days, which violates the requirement that contracts be immediately provided to the customer upon door-to-door enrollment or sent within one business day of a telephonic enrollment. (Ohio Adm.Code 4901:1-21-06(D)(1)(d), (D)(2)(b), (D)(2)(a), and 4901:1-29-06(D)(4), (D)(6)(c), (E)(2)(a)). Most TPV recordings reviewed by Staff did not disclose the \$5.00 monthly fee to customers, which violates the requirement that TPVs provide customers with the principal terms and conditions of the contract. (Ohio Adm.Code 4901:1-21-06(D)(2)(a) and 4901:1-29-06(E)(1)). Neither the TPV recordings nor the script discloses the factors which impact the monthly variable rate, which violates the requirement that TPVs provide customers with the principal terms and conditions of the contract. (Ohio Adm.Code 4901:1-21-06(D)(2)(a) and 4901:1-29-06(E)(1)).

In addition to the above-mentioned violations, on June 17, 2021, RPA resumed door-to-door marketing activities without first notifying the Director of the Commission's Service Monitoring and Enforcement Department, in violation of the Commission's Order in Case No. 20-591-AU-UNC.<sup>2</sup>

Finally, Staff has concerns with RPA's overall monitoring of its operations. In a data request<sup>3</sup>, Staff requested the sales scripts RPA requires vendors to use when soliciting consumers and how RPA monitors its vendors for compliance. RPA provided the sales script and its quality assurance plan. When the telemarketing sales scripts were compared to sales calls provided by RPA to Staff, Staff found that some sales agents appeared to have followed the script. This is concerning because the script informs customers that they would be enrolled in a competitive variable rate based on market conditions, but Staff found no evidence of market conditions that would justify one month of a rate near \$0.05/kWh and all subsequent months billed above \$0.12/kWh. In other sales calls which resulted in enrollments, agents did not follow RPA's script. In RPA's compliance plan, it states that "each sale submitted for enrollment meets compliance standards." Staff is concerned that several noncompliant sales calls and TPVs passed RPA's quality assurance process and resulted in consumers being enrolled. (See PUCO Case Nos. 00672275, 00682929, and 00660823; data request calls 008132373\_51340XXXXX.wav, 61440XXXXX\_20210602125206\_Sale\_12dhornbukle\_751940, 51381XXXXX, and 51320XXXXX\_SalesCall).

RPA Energy filed a waiver request with the Commission in case number 21-0157-GE-WVR. The application requests a waiver of certain provisions of Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06. In part, the waiver seeks to send consumers the terms and conditions via email or text message when enrollment occurs via door-to-door solicitation. As of the date of this notice, the Commission has not

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<sup>2</sup> *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, (Emergency Case), Entry (June 17, 2020) at paragraph 16, which states, in part that "before commencing any door-to-door solicitation campaign, the Commission directs CRES and/or CRNGS suppliers to report, in writing, to the Director of the Commission's Service Monitoring and Enforcement Department (SMED), or his designee, the times, dates, duration, and locations where a CRES and/or CRNGS supplier intends to engage in door-to-door solicitation at least 48 hours prior to beginning such solicitations."

<sup>3</sup> Staff data request sent on June 22, 2021.

granted the waiver. However, during the investigation, Staff found that RPA is sending contracts via text message to consumers.

### **Probable Non-Compliance Violations**

1. R.C. 4905.54 and Ohio Adm.Code 4901:1-24-16 – Noncompliance with rules or orders “In addition to penalties specified in rule [4901:1-24-13](#) of the Administrative Code, any person subject to certification under section [4928.08](#) of the Revised Code that fails to comply with any rule in this chapter or with sections [4928.01](#) to [4928.10](#) of the Revised Code or any commission order issued thereunder may be subject to any and all remedies available under the law.”
2. 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.”
3. Ohio Adm.Code 4901:1-29-03(A) “A retail natural gas supplier [“CRNGS”] or governmental aggregator shall not engage in unfair, misleading, deceptive, or unconscionable acts of practices related to, without limitation, the following activities: (1) Marketing, solicitation, or sale of a competitive retail natural gas service. (2) Administration of contracts for such service. (3) Provision of such service, including interactions with customers.”
4. Ohio Adm.Code 4901:1-21-03(C) “CRES providers shall not change or authorize the changing of a customer’s supplier of retail electric service without the customer’s prior consent, as provided for under rule 4901:1-21-06 of the Administrative Code.”
5. Ohio Adm.Code 4901:1-29-03(D) “A retail natural gas supplier or governmental aggregator shall not change or authorize the changing of a customer’s supplier of competitive retail natural gas service without the customer’s prior consent, as provided for under rule 4901:1-29-06 of the Administrative Code.”
6. 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.”
7. OAC 4901:1-21-05(C)(10): Engaging in any solicitation that will lead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of any entity other than the CRES provider.
8. Ohio Adm.Code 4901:1-29-05(D) “No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service.”
9. Ohio Adm.Code 4901:1-21-06(C) “CRES providers are prohibited from enrolling potential customers without their consent proof of that consent as delineated in paragraph (D) of this rule.”

10. Ohio Adm.Code 4901:1-21-06(D)(1)(d) requires that, for door-to-door enrollments, “Immediately upon obtaining the customer’s signature, CRES providers shall provide the applicant a legible copy of the signed contract.”
11. Ohio Adm.Code 4901:1-21-06(D)(2)(b)(i) requires that, for telephonic enrollments, within one business day of the enrollment CRES providers must “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.”
12. Ohio Adm.Code 4901:1-29-06(D)(4) requires that, for door-to-door enrollments, “Immediately upon obtaining the customer’s signature, a retail natural gas supplier and governmental aggregator shall provide the applicant a legible copy of the signed contract, unless the retail natural gas supplier or governmental aggregator has already provided the customer with a separate, complete copy of the terms and conditions for the customer’s records and the retail natural gas supplier or governmental aggregator has complied with paragraph (C) of rule 4901:1-29-10 of the Administrative Code.”
13. 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: \* \* \* .”
14. Ohio Adm.Code 4901:1-29-06(E)(2)(a) requires that, for telephonic enrollments, within one business day of the enrollment CRNGS providers must “send the customer a written contract that details the terms and conditions summarized in the telephone call pursuant to rule 4901:1-29-11 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.”
15. Ohio Adm.Code 4901:1-29-06(E)(1), which requires, among other things, that TPVs include a “verbal statement and the customer’s acceptance of each of the principal terms and conditions for the service that will be provided \* \* \* .”
16. Ohio Adm.Code 4901:1-29-06(B) “A retail natural gas supplier and governmental aggregator is prohibited from enrolling potential customers without consent and proof of that consent as delineated in paragraphs (C), (D), and (E) of this rule.”

### **Proposed Corrective Actions**

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

1. Provide Staff with a plan to come into compliance with Commission rules. The plan should address, at least, enrollment practices, an auditing process for enrollments, and any corrective actions to be implemented by RPA.
2. Contact each customer by US mail who enrolled via door-to-door solicitation in the last 9 months. The notice should:

- a. Inform them of the date it appears they consented to enroll and how.
  - b. Inform the customer of the terms and conditions of the enrollment including but not limited to the rate for the contract, and the factors that impact the rate if it is variable.
  - c. Advise the customers of the ways in which they may cancel the contract.
  - d. For customers who choose to terminate the contract, no penalty shall be assessed.
3. For all customers enrolled from May 2021 through present, RPA must take the following actions:
  - a. For customers who were offered an introductory rate for a variable rate contract:
    - i. Rerate these customers back to the utilities' price-to-compare unless RPA has evidence that the customers were aware, or should have been aware, that the rate may increase substantially.
  - b. For customers who were offered a fixed rate that was above their utilities' default rate:
    - i. Rerate these customers back to the utilities' price-to-compare unless RPA has evidence that the customers were not misled in the solicitation of the offer. Examples of such misleading actions are outlined above.
  - c. Provide Staff a list of all customers RPA determines should not be rerated and the information RPA relied upon to make this determination.
4. Rerate all RPA customers back to the utilities' price-to-compare who filed a complaint with the Commission, RPA, or any other entity (ex. Better Business Bureau and local utility) disputing their enrollment.
5. Suspend all marketing and enrollment activity for a period of 2 years from the date of this notice.

### **Proposed Forfeiture**

Finally, Staff is proposing a forfeiture of three hundred thousand dollars (\$300,000) against RPA for the above-mentioned failures to comply with the requirements found in the Ohio Administrative Code.

By Wednesday, October 20, 2021, please respond to this notice of probable non-compliance with RPA's plan to address the above proposed corrective actions.

Sincerely,



Nedra Ramsey  
Service Monitoring and Enforcement  
Public Utilities Administrator 2  
Nedra.Ramsey@puco.ohio.gov

**This foregoing document was electronically filed with the Public Utilities  
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**Case No(s). 22-0441-GE-UNC**

Summary: Correspondence Staff Letter in the Matter of RPA Energy, Inc dba Green  
Choice Energy electronically filed by Nedra Ramsey on behalf of PUCO Staff