

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
INVESTIGATION INTO RPA ENERGY  
INC.'S COMPLIANCE WITH THE OHIO  
ADMINISTRATIVE CODE AND POTENTIAL  
REMEDIAL ACTIONS FOR NON-  
COMPLIANCE.

CASE No. 22-441-GE-COI

### ENTRY

Entered in the Journal on June 22, 2022

{¶ 1} RPA Energy, Inc. d/b/a Green Choice Energy (RPA) 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, RPA 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.

{¶ 2} R.C. 4928.08 states that no electric services company shall provide a CRES to a consumer in this state without first being certified by the Commission regarding its managerial, technical, and financial capability to provide such service and providing a financial guarantee sufficient to protect customers and electric distribution utilities from default. Similarly, R.C. 4929.20 states that no retail natural gas supplier shall provide a CRNGS to a consumer without first being certified by the Commission regarding its managerial, technical, and financial capability to provide that service and providing reasonable financial assurances sufficient to protect customers and natural gas companies from default.

{¶ 3} On October 5, 2016, the Commission granted RPA's application for certification as a CRES provider in this state. RPA timely filed renewal applications for certification as a CRES provider every two years pursuant to Ohio Adm.Code 4901:1-24-09; its first renewal application was automatically approved by the Commission pursuant

to R.C. 4928.08. RPA Energy's most recent renewal application was filed on September 1, 2020; this renewal application was approved by the Commission on November 18, 2020. *In the Matter of the Application of RPA Energy, Inc. for Certification as a Competitive Retail Electric Service Provider in Ohio*, Case No. 16-892-EL-CRS. Additionally, on July 20, 2016, the Commission granted RPA's application for certification as a CRNGS supplier in this state. RPA timely filed renewal applications for certification as a CRNGS provider every two years pursuant to Ohio Adm.Code 4901:1-27-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4929.20. RPA's most recent renewal application was filed on June 19, 2020; this renewal application also was automatically approved by the Commission pursuant to R.C. 4929.20. *In the Matter of the Application of RPA Energy Inc. for Certification as a Competitive Retail Natural Gas Marketer*, Case No. 16-893-GA-CRS.

{¶ 4} Both R.C. 4928.08 and 4929.20 allow the Commission to suspend, rescind, or conditionally rescind the certification of any CRES or CRNGS supplier issued under these sections if the Commission determines, after reasonable notice and opportunity for hearing, that the CRES or CRNGS supplier has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in this state. Additionally, R.C. 4928.16 and 4929.24 grant the Commission the authority to order any remedy or forfeiture provided under R.C. 4905.54 to 4905.60 and 4905.64, and to order restitution to customers and rescission of customer contracts.

{¶ 5} On April 18, 2022, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) filed a letter in the above-captioned docket, stating that, after reviewing customer contacts received by the Commission's call center from January 1, 2021, to October 1, 2021, as well as an audio recording provided by RPA, Staff believes that RPA has engaged in a pattern of misleading and deceptive practices to market and enroll customers during both door to door and telephonic sales. Staff states that it has

received 35 customer contacts regarding RPA. Further, on June 4, 2021, the Chief of the Commission's Reliability and Service Analysis Division, Barbara Bossart, was solicited on her personal cell phone by a representative of RPA. When she spoke to a sales representative during the call, Ms. Bossart noted several misleading statements, so she documented the call and forwarded that information to a supervisor in the Commission's call center. After being solicited again by an RPA sales agent, Ms. Bossart filed a complaint with the Commission's call center, resulting in an investigation that yielded a recording, which Ms. Bossart claims is missing parts of her exchange with the sales representative. Staff also references other specific instances where it believes that RPA engaged in misleading and deceptive marketing and solicitation practices.

{¶ 6} Staff stated that, on October 16, 2021, a notice of probable non-compliance (notice) was sent to RPA; however, after many discussions, RPA and Staff were unable to resolve the issues raised in the notice. Staff concluded that: RPA used inaccurate caller identification information, including inaccurate third-party-verification; RPA used robo-calling with automated messages which included misleading and deceptive information to entice a customer to speak to a sales representative; RPA's sales representatives provided misleading information during telemarketing efforts; RPA did not clearly make an offer for sale when marketing to a customer; RPA failed to provide signed contracts for customers who were enrolled through door to door enrollment; and RPA's completed third-party verifications did not contain all of the elements required by law. As a result of its conclusions indicating probable non-compliance with statutory and rule requirements, Staff recommended that the Commission open a formal proceeding to review RPA's compliance with Ohio law. Further, Staff noted that, at the urging of Staff, RPA ceased marketing in Ohio after receiving the notice. Staff requested that the Commission order RPA to continue the suspension of marketing pending the outcome of the investigation.

{¶ 7} On April 20, 2022, the Commission found that a hearing should be held at which RPA shall, among other things, have the opportunity to respond to the findings contained in the Staff Report and show cause why its certification as a CRES provider and its certification as a CRNGS supplier should not be suspended, rescinded, or conditionally rescinded. The Commission established a procedural schedule whereby motions to intervene were to be filed by May 18, 2022, a Staff Report was to be filed by June 10, 2022, testimony was to be filed by June 24, 2022, and an evidentiary hearing was scheduled for July 11, 2022.

{¶ 8} On April 27, 2022, the Ohio Consumers' Counsel (OCC) filed a motion to intervene. RPA filed a memorandum contra the motion on May 10, 2022, to which OCC filed a reply on May 17, 2022, and RPA filed a surreply on May 19, 2022.

{¶ 9} On June 10, 2022, Staff submitted its Staff Report.

{¶ 10} On June 15, 2022, OCC filed a motion to extend the procedural schedule with a request for expedited ruling. In its accompanying memorandum in support, OCC argues that where the deadline for testimony is near, on June 24, 2022, and there are pending motions in the case, the procedural schedule should be extended to allow OCC to pursue discovery.

{¶ 11} On June 17, 2022, RPA Energy filed a memorandum contra OCC's motion to extend the procedural schedule, arguing that where OCC's motion to intervene has not yet been granted, the procedural schedule should not be extended as this would unduly delay the case. RPA further states that should OCC's motion to intervene be denied, the case will have been delayed needlessly.

{¶ 12} Under Ohio Adm.Code 4901-1-13(A), continuances of public hearings and extensions of time to file pleadings or other motions may be granted upon motion of any party for good cause shown. Upon review, the attorney examiner finds good cause exists

to grant the motion for continuance of the deadlines established in the Entry of April 20, 2022.

{¶ 13} Accordingly, the hearing should be rescheduled for 10:00 a.m., on August 10, 2022, at the offices of the Commission, 11th Floor, Hearing Room 11-D, 180 East Broad Street, Columbus, Ohio 43215. Testimony shall be due by July 27, 2022. All parties or interested persons should register at the lobby desk and then proceed to the 11th floor in order to participate in the hearing.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That OCC's motion to extend the procedural schedule be granted. It is, further,

{¶ 16} ORDERED, That the procedural schedule as set forth in Paragraph 13 be adopted. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jesse M. Davis

By: Jesse M. Davis  
Attorney Examiner

NJW/mef

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

Summary: Attorney Examiner Entry granting the motion to extend the procedural schedule; rescheduling the hearing to August 10, 2022 at 10:00 a.m.; and setting the due date for testimony to July 27, 2022 electronically filed by Ms. Mary E. Fischer on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio