

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 July 26, 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. *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. 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's most recent renewal application was filed on September 1, 2020; this renewal application was approved by the Commission on November 18, 2020. Additionally, on July 20, 2016, the Commission granted RPA's application for certification as a CRNGS supplier in this state. *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. 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.

{¶ 4} Both R.C. 4928.08 and 4929.20 authorize the Commission to suspend, rescind, or conditionally rescind the certification of any electric services company or retail natural gas supplier issued under these sections if the Commission determines, after reasonable notice and opportunity for hearing, that the electric services company or retail natural gas 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 practices. Staff states that it has received 35 customer complaints 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 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 rule. 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 because the deadline for testimony is 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 filed a memorandum contra OCC's motion to extend the procedural schedule, arguing that whereas 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} By Entry issued June 22, 2022, the attorney examiner granted the motion to extend the procedural schedule.

{¶ 13} By Entry issued July 6, 2022, the attorney examiner granted OCC's motion to intervene, and denied both OCC's motion to compel discovery and RPA's motion for protective order.

{¶ 14} On July 19, 2022, OCC filed a motion requesting a prehearing conference be held to engage the parties in discussion related to discovery and procedural questions. OCC states in its motion that neither Staff nor RPA opposes its motion. Accordingly, the request should be granted.

{¶ 15} On July 21, 2022, Staff filed both a motion to extend the procedural schedule and continue the hearing, and a motion for leave to file an amended Staff Report. In its accompanying memorandum, Staff states that RPA has refused to provide requested data, which prevents Staff from completing its investigation. Staff states that the amended Staff Report includes note of RPA's refusal to fully respond to its data requests. Staff was not able to confirm the positions of the other parties concerning its motion.

{¶ 16} 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 where the parties may require additional time to review the amended Staff Report before submitting testimony. Further, because of the upcoming July 27, 2022 testimony deadlines, the attorney examiner finds it appropriate to grant Staff's motion on an expedited basis.

{¶ 17} Under Ohio Adm.Code 4901-1-12, a party may file a motion in writing, with an accompanying memorandum in support. Where Staff cites that, as part of its ongoing investigation, Staff made certain data requests of RPA which RPA refused to comply with, resulting in additional alleged violations and the need to amend the Staff Report, the attorney examiner finds good cause exists to grant Staff's motion for leave to file an amended Staff Report.

{¶ 18} Accordingly, pleadings responsive to the amended Staff Report shall be due by August 10, 2022. Further, the hearing scheduled for August 10, 2022, should be converted to a prehearing conference to occur telephonically and for which the attorney examiner will provide connection information to the parties prior to the conference date. Further, the evidentiary hearing should be rescheduled for 10:00 a.m., on September 7, 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 August 24, 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.

{¶ 19} It is, therefore,

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

{¶ 21} ORDERED, That Staff's motion for leave to file an amended Staff Report be granted. It is, further,

{¶ 22} ORDERED, That the procedural schedule as set forth in Paragraph 18 be adopted. It is, further,

{¶ 23} ORDERED, That a prehearing conference be held telephonically in accordance with Paragraph 18. It is, further,

{¶ 24} ORDERED, That a hearing be scheduled as set forth in Paragraph 18. It is, further,

{¶ 25} 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

JMD/dmh

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 22-0441-GE-COI

Summary: Attorney Examiner Entry ordering that the hearing scheduled for August 10, 2022, should be converted to a prehearing conference to occur telephonically and for which the attorney examiner will provide connection information, the evidentiary hearing should be rescheduled for 10:00 a.m., on September 7, 2022, at the offices of the Commission, Hearing Room 11-D electronically filed by Ms. Donielle M. Hunter on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio electronically filed by Ms. Donielle M. Hunter on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio