

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 October 17, 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'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 21, 2022; this renewal application was suspended by attorney examiner entry on July 19, 2022. *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 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 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 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.

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.

{¶ 6} 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 notice 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. The procedural schedule was subsequently altered by Entries filed on June 22, 2022, July 26, 2022, and August 25, 2022.

{¶ 7} On September 16, 2022, RPA filed a motion to temporarily suspend the procedural schedule established by Entry on August 25, 2022. RPA also requested a prehearing conference be held to discuss the procedural schedule.

{¶ 8} On September 23, 2022, the prehearing conference occurred as scheduled. During the conference, the parties discussed the upcoming testimony and hearing dates. The attorney examiner stated during the conference that the due date of testimony should be moved to September 30, 2022, and that the hearing should be rescheduled to commence on October 19, 2022.

{¶ 9} On September 30, 2022, RPA filed its testimony and a motion for protective order.

{¶ 10} On October 3, 2022, Staff filed a motion to extend the procedural schedule to October 3, 2022. Also on October 3, 2022, Staff filed a motion for protective order.

{¶ 11} On October 5, Staff filed a motion to allow virtual testimony of two of its three consumer witnesses. In its accompanying memorandum, Staff cites to financial hardship, work-related scheduling conflicts, and physical restrictions as reasons for its request that witnesses Ed Tokar and Sheila Barton-Johnson be allowed to testify virtually using remote access technology. Staff notes that neither OCC nor RPA oppose this motion.

{¶ 12} On October 12, 2022, Staff filed a motion to allow virtual testimony of expert witness Jennifer Owen, a resident of New Jersey who is scheduled to testify in a case in a New Jersey court on October 18. Staff cites to flight scheduling issues and potential for saving expenses by allowing witness Owen to testify virtually. Staff notes that neither OCC nor RPA are opposed to its motion.

{¶ 13} Also on October 12, 2022, Staff filed a motion for subpoenas for its three consumer witnesses: Ed Tokar, Sheila Barton-Johnson, and Tyler Beauregard. Staff states that neither RPA nor OCC oppose the motion.

{¶ 14} Pursuant to Ohio Adm.Code 4901-1-12(A), which provides that the attorney examiner may grant a motion for good cause shown, Staff's unopposed motion for two of its consumer witnesses to testify virtually is reasonable and should be granted. Further, Staff's motion for its expert witness, Jennifer Owen, should be denied where the scheduling conflict Staff cites on October 18-19 is eliminated by the rescheduling of the hearing, addressed in Paragraph 16 of this Entry.

{¶ 15} Pursuant to Ohio Adm.Code 4901-1-25(A), which provides that the attorney examiner may issue subpoenas upon motion of any party. Staff's motion for subpoenas to properly notify the participants of the time and date of the hearing, which Staff states will also provide its witnesses with a justifiable reason for employers to allow them to be absent

to testify. Where the motion is unopposed, the attorney examiner finds it is reasonable and should be granted.

{¶ 16} At this time, the attorney examiner finds that, owing to emergent scheduling issues, the procedural schedule should be modified. The evidentiary hearing shall now commence on October 26, 2022.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That Staff's motion for two of its consumer witnesses to appear virtually is granted. It is, further,

{¶ 19} ORDERED, That Staff's motion for one of its expert witnesses to appear virtually is denied. It is, further,

{¶ 20} ORDERED, That Staff's motion for subpoenas is granted. It is, further,

{¶ 21} ORDERED, That the procedural schedule be modified, with the evidentiary hearing commencing on October 26, 2022, in accordance with Paragraph 16. It is, further,

{¶ 22} 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

JRJ/dh

**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 ordering that Staff's motion for two of its consumer witnesses to appear virtually is granted; Staff's motion for one of its expert witnesses to appear virtually is denied; Staff's motion for subpoenas is granted; that the procedural schedule be modified, with evidentiary hearing commencing October 26, 2022 in accordance with Paragraph 16 electronically filed by Ms. Donielle M. Hunter on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio